

In the
Supreme Court of Ohio

ANDERSON/MALTBIE PARTNERSHIP

And

LKH VICTORY CORP (dba CINCINNATI
COLLEGE PREPARATORY ACADEMY)

Appellees,

v.

RICHARD A. LEVIN,
Tax Commissioner of Ohio,

Appellant.

Case No. 2009-1671

Appeal from Ohio Board of Tax Appeals
Case No. 2007-A-11

APPENDIX TO
BRIEF OF APPELLANT

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In the
Supreme Court of Ohio

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BOARD OF TAX APPEALS

09-1671

ANDERSON/MALTBIE PARTNERSHIP

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LKH VICTORY CORP (dba CINCINNATI
COLLEGE PREPARATORY ACADEMY)

Appellees,

v.

WILLIAM W. WILKINS,
(RICHARD A. LEVIN),
Ohio Tax Commissioner,

Appellant.

Case No. 2009-

Appeal from Ohio Board of Tax Appeals

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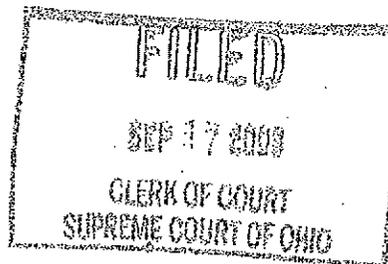
NOTICE OF APPEAL

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ANDERSON/MALTBIE PARTNERSHIP

And

LKH VICTORY CORP (dba CINCINNATI COLLEGE PREPARATORY ACADEMY)

Appellees,

v.

WILLIAM W. WILKINS,
(RICHARD A. LEVIN),
Ohio Tax Commissioner,

Appellant.

Case No. 2009-_____

Appeal from Ohio Board of Tax Appeals

Case No. 2007-A-11

NOTICE OF APPEAL

Appellant, Richard A. Levin, Tax Commissioner of Ohio, hereby gives notice of his appeal to the Supreme Court of Ohio from a Decision and Order of the Ohio Board of Tax Appeals (the "Board") journalized in Case No. 2007-A-11 on August 18, 2009. A true copy of the Decision and Order of the Board being appealed is attached hereto as Exhibit A and incorporated herein by reference. This appeal is filed as a matter of right pursuant to Revised Code ("R.C.") 5717.04.

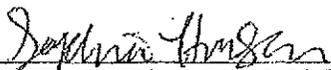
Appellant complains of the following errors in the Decision and Order of the Board:

1. The Board erred as a matter of fact and law in holding that the subject property qualified for real property exemption under R.C. 5709.07(A)(1), and in reversing the appellant Tax Commissioner's final determination denying the R.C. 5709.07(A)(1) exemption claim for that property. The Board erred in failing to strictly construe the R.C. 5709.07(A)(1) exemption against the claim of exemption because tax exemptions are in derogation of the rights of all other taxpayers.

2. The Board erred in failing to hold that the for-profit, commercial lease of the subject property by the appellee owner, Anderson/Maltbie Partnership ("AMP"), a for-profit entity engaged in commercial leasing, disqualified the property from the R.C. 5709.07(A)(1) exemption. The Board erred in failing to hold that AMP's use of the subject property in a for-profit commercial venture, in competition with other for-profit businesses engaged in commercial leasing, disqualified it from exemption under R.C. 5709.07(A)(1).
3. The Board erred in granting real property tax exemption to the subject property because AMP's leasing of the subject property to LKH Victory Corp. d/b/a Cincinnati College Preparatory Academy ("CCPA") was, as found by the Tax Commissioner, for the sole purpose of AMP's profiting from rental payments under the lease.
4. The Board erred by failing to hold that AMP's substantial annual rental in the amount of \$275,496.48 per year warrants a denial of the R.C. 5709.07(A)(1) exemption, due to the property being "leased or otherwise used with a view to profit" within the meaning of that exemption. The Board erred in holding that even though the property produces substantial income for its lessor/owner, AMP, the property qualifies for the exemption.
5. The Board erred in focusing solely on the lessee's, CCPA's, use of the property when determining the "use" of the subject property for R.C. 5709.07(A)(1) exemption purposes. The Board should have affirmed the appellant Commissioner's determination that because AMP was "using" the leased property with a view to profit in its own for-profit business that such for-profit use disqualified AMP from entitlement to the R.C. 5709.07(A)(1) exemption.

Wherefore, the Appellant Tax Commissioner requests that the Court reverse the unreasonable and unlawful decision of the Board and remand the matter for issuance of an Order denying AMP's application for real property tax exemption for tax year 2002. Appellant further requests remand so that the Board may deny AMP's request for the remission of taxes and interest for tax years 2001 and 2000.

Respectfully submitted,
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Ohio Tax Commissioner

OHIO BOARD OF TAX APPEALS

Anderson/Malibie Partnership and LKH)
Victory Corp (d/b/a Cincinnati College)
Preparatory Academy),)

Appellants,)

vs.)

William W. Wilkins, Tax Commissioner)
of Ohio,)

Appellee.)

CASE NO. 2007-A-11

(REAL PROPERTY TAX EXEMPTION)

DECISION AND ORDER

APPEARANCES:

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Entered **AUG 18 2009**

Ms. Margulies, Mr. Johrendt, and Mr. Dunlap concur.

This matter is before the Board of Tax Appeals upon a notice of appeal filed by appellants Anderson/Malibie Partnership ("Anderson/Malibie") and LKH Victory Corp (d/b/a Cincinnati College Preparatory Academy) ("CCPA"). Appellants appeal from a final determination of the Tax Commissioner, in which the commissioner denied their application for exemption of real property from taxation for tax year 2002 and remission of taxes and

Exhibit A

interest for tax years 1999¹ through 2001, but granted remission of all penalties charged for tax years 2000-2004. This matter is submitted to the board based upon the appellants' notice of appeal, the statutory transcript ("S.T.") certified to this board by the Tax Commissioner, the stipulation of facts ("Stip.") submitted by the parties in lieu of appearing at a hearing, including exhibits, and the briefs of counsel.

In his final determination, the Tax Commissioner summarized the facts of the instant matter, as follows:

"The record reflects that the property was acquired by the applicant Anderson/Maltbie Partnership ***, a for-profit partnership, on June 23, 1987. The partnership is comprised of real estate entrepreneurs and developers William F. Maltbie III, CEO of Wm. Maltbie and Associates, an international commercial real estate brokerage and consulting company, and Jeffrey R. Anderson, a commercial real estate broker and developer. On July 28, 1999 the applicant entered into a lease contract (as amended) with LKH Victory Corporation ***, a non-profit entity, wherein Anderson/Maltbie leases property to LKH for the purposes of operating a school, Cincinnati College Preparatory Academy ***. It is noted that while the subject property is located at 315 W. Twelfth Street in Cincinnati, the lease designates the property to be used by the school as 1141 Central Parkway. It is noted that the 1141 Central Parkway address and 1425 Linn Street are both listed in the record as the school locations.

"The applicant requests exemption pursuant to R.C. 5709.07(A)(1), which provides in part: '[t]he following property shall be exempt from taxation: [p]ublic schoolhouses, the books and furniture in them, and the ground attached to them necessary for the proper occupancy, use, and enjoyment of the schoolhouses, and not leased or otherwise used with a view to profit.' The Ohio Supreme Court held that a private, profit-making venture does not use property for exempt or charitable purposes. *** While the record reflects that Anderson/Maltbie

¹ Appellants acknowledged in their post-hearing brief to this board that they are not entitled to a remission of tax, interest, and penalty for tax year 1999, pursuant to the provisions of R.C. 5713.08. Brief at 2.

leased some property to the charter school for approximately \$300,000 per year, there is no evidence that the subject property is used for anything other than a profit-making venture.

"The record reflects that the property was not leased to the LKH-school and/or used for an exempt purpose until, at the earliest, the October 7, 1999 lease date. Prior to the lease the property was used by Anderson/Malibie for other for-profit business purposes. The applicant currently has the subject property listed for sale at an asking price of \$1,200,000. *** Further, the lease for the subject years mandates a rental amount of \$250,000 annually for years one through five, \$275,000 yearly for years six through ten, and \$300,000 per year for years eleven through fifteen. ***

**** the property is not entitled to exemption as leased or otherwise used with a view to profit by the owner." S.T. at 1-2, 4.

In response to the foregoing determination by the Tax Commissioner, the appellants filed a notice of appeal with this board, specifying the following errors:

"(a) By holding that the real property subject to the Real Property Tax Exemption and Remission application (i.e., the real property located at 1141 Central Parkway, Cincinnati, Ohio (which is also commonly known as 315 W. Twelfth Street, Cincinnati, Ohio) and having Hamilton County, Ohio real property parcel number 076-0001-0010-00 was not entitled to a tax exemption and remission pursuant to R.C. 5709.07(A)(1);

"(b) By holding that the real property subject to the Real Property Tax Exemption and Remission application is not entitled to exemption or remission as leased or otherwise used with a view to profit by the owner;

"(c) By holding that the real property subject to the Real Property Tax Exemption and Remission application does not meet the requirements to be exempt from taxation;

“(d) By holding that Appellant LKH Victory Corp (d/b/a Cincinnati College Preparatory Academy) operated as a public community school at multiple locations during the period of time at issue (i.e., October 7, 1999 through October 6, 2004);

“(e) By holding that there is no evidence that the real property subject to the Real Property Tax Exemption and Remission application is used for anything other than a profit-making venture; and

“(f) By failing to acknowledge that 315 W. Twelfth Street, Cincinnati, Ohio and 1141 Central Parkway, Cincinnati, Ohio are one and the same parcel of real property.”

The foregoing facts were further expanded upon in the parties' joint stipulation of facts and associated exhibits, submitted in lieu of the parties' appearance at a hearing before this board. Our review of such stipulation identifies the following facts pertinent to our determination herein:

1. Anderson/Maltbie Partnership is an Ohio general partnership involved in a for profit business. Stip. at #2.
2. Anderson/Maltbie purchased the subject property on June 23, 1987, for \$1,325,000. Stip. at #10.
3. CCPA is an Ohio nonprofit corporation with 501(C)(3) tax-exempt status, incorporated for educational purposes on December 14, 1998. Stip. at #3, #6.
4. CCPA is a public, community school for students in grades kindergarten through eighth grade, established pursuant to §3314 of the Ohio Revised Code. Stip. at #4, #5.
5. CCPA entered into a charter contract with the state of Ohio in 1999. Stip. at #7.
6. Pursuant to authority granted in §3314 of the Ohio Revised Code, on July 28, 1999, CCPA entered into a triple-net lease with Anderson/Maltbie for use of the real property located at 1141 Central Parkway, Cincinnati, Ohio, parcel number 076-0001-0010-00. The subject property, consisting of classrooms and administrative offices, is also referred to as 315 W. Twelfth Street. Stip. at #8, #11, #13.
7. The lease was amended on October 6, 1999, and pursuant to its terms, CCPA leased the subject from Anderson/Maltbie from October 7, 1999 through October 6, 2004, at a monthly

rent of \$22,958.04. CCPA was responsible for the payment of all real estate taxes and assessments, as well as insurance, maintenance and utility payments, associated with the subject. Stip. at #8, #9, #12, #14, #15.

8. Anderson/Maltbie leased the property to CCPA solely for the purpose of profiting from the rental payments under the lease and did not conduct any of its business from the subject property during the lease term. Stip. at #16, #17.
9. CCPA, during the lease term, leased the subject property solely for the purpose of operating its school and did not use the property for the purpose of generating a profit and did not sublease the premises to a third party. Stip. at #18, #19.
10. Upon expiration of the lease term, CCPA relocated its school to 1425 Linn Street, Cincinnati, Ohio. CCPA never operated two locations and during the lease term, was only located at the subject property. Stip. at #20.

We begin our review by observing that the findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121, 123. Consequently, it is incumbent upon a taxpayer challenging a determination of the Tax Commissioner to rebut that presumption. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135, 143; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138, 142. Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the commissioner's determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213, 215. When no competent and/or probative evidence is developed and properly presented to the board to establish that the commissioner's determination is "clearly unreasonable or unlawful," the determination is presumed to be correct. *Alcan Aluminum*, supra, at 123.

The rule in Ohio is that all real property is subject to taxation. R.C. 5709.01. Exemption from taxation is the exception to the rule. *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186. The burden of establishing that real property should be exempt is on the

taxpayer. Exemption statutes must be strictly construed. *Am. Soc. for Metals v. Limbach* (1991), 59 Ohio St.3d 38, *Faith Fellowship Ministries, Inc. v. Limbach* (1987), 32 Ohio St.3d 432; *White Cross Hospital Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199; *Goldman v. Robert E. Bentley Post* (1952), 158 Ohio St. 205; *Natl. Tube Co. v. Glander* (1952), 157 Ohio St. 407; and *Willys-Overland Motors, Inc. v. Evatt* (1943), 141 Ohio St. 402.

The appellants claim that the subject property is eligible for exemption under R.C. 5709.07(A)(1). Specifically, that section, during the tax years in question, provided that the following property shall be exempt from taxation:

“Public schoolhouses, the books and furniture in them, and the ground attached to them necessary for the proper occupancy, use, and enjoyment of the schoolhouses, and not leased or otherwise used with a view to profit;”

This board must now determine whether, pursuant to the foregoing statutory provision, certain real property, owned by a for-profit enterprise and leased to a non-profit entity which indisputably used the subject property as a public community school is exempt from real property taxation. Based upon this board’s previous consideration of such question, we find that such property should be exempt.

In *Performing Arts School of Metro. Toledo, Inc. v. Wilkins* (Dec. 20, 2002), BTA No. 2001-J-977, unreported, reversed on jurisdictional grounds, 104 Ohio St.3d 284, 2004-Ohio-6389,² the board considered property under lease for a thirty-nine month rental

²The Tax Commissioner, in his final determination, argues that because the board’s decision in *Performing Arts*, supra, was reversed by the Supreme Court on jurisdictional grounds, it is “of no precedential value in the original or subsequent matters such as the subject application under review.” While we agree with the commissioner that “[t]he issue of a real property tax exemption for a for-profit owner leasing to a charter

term that was utilized as a public community school for grades seven through twelve. The property was owned by a for-profit limited partnership and leased to a non-profit corporation that operated a school. We held:

“The commissioner contends that the lease by the owner to PASMT establishes that the property is being used to produce income, which precludes granting the exemption under R.C. 5709.07. We find to the contrary. R.C. 5709.07 does not preclude the owner’s leasing of property to PASMT for its use in the operation of a community school. The proper test is whether the property is presently being used for an exempt purpose. In keeping with *Gerke [v. Purcell (1874), 25 Ohio St. 229]*, it is not required that property be owned by PASMT to qualify it for exemption.” *Id.* at 6-7.

In arriving at our determination, we looked to our and other courts’ consideration of exemption requests made pursuant to other provisions for exemption within the same section of the Revised Code, i.e., R.C. 5709.07, including R.C. 5709.07(A)(2),³ granting exemption to houses used exclusively for public worship, and R.C. 5709.07(A)(4),⁴ which provides exemption from taxation for “public colleges and academics and all buildings connected therewith.” In *Jubilee Christian Fellowship, Inc. v. Tracy* (May 17, 2002), BTA No. 1999-R-239, unreported, we held that a church leased from private owners was entitled to exemption, since the property was used exclusively for public worship, and the church did not lease or otherwise use the property. In *Gary Clair/Christ United Church v. Tracy* (Sept. 11, 1998), BTA No. 1997-K-306, unreported, we held that the “evidence is unrefuted that the

school has not been finally determined by the Court,” it has been determined by this board and due regard will be given to our earlier pronouncements on such issue.

³ R.C. 5709.07(A)(2) provides that “[h]ouses used exclusively for public worship, the books and furniture in them, and the ground attached to them that is not leased or otherwise used with a view to profit and that is necessary for their proper occupancy, use, and enjoyment” shall be exempt from taxation.

⁴ R.C. 5709.07(A)(4) provides that “[p]ublic colleges and academics and all buildings connected with them; and all lands connected with public institutions of learning, not used with a view to profit ***” shall be exempt from taxation.

lessee, by virtue of its monthly rental, has possession to the subject property. The evidence is also unrefuted that the lessee uses the property as a house of public worship. Appellant testified before this Board, credibly, that the modest rent charged the lessee is used to offset the expenses unique to a property of the age and type of the subject. Accordingly, we find that the subject property is used 'exclusively for public worship' and 'that it is not leased or otherwise used with a view to profit.'" Id. at 6. In *Northcoast Christian Ctr. v. Tracy* (July 18, 1997), BTA No. 1996-M-811, unreported, we held that a church's lease of a former movie theater in a shopping center was exempt, holding that pursuant to the "court's directive in *Bexley Village, Ltd. [v. Limbach* (1990), 68 Ohio App.3d 306), this Board must focus on the use the property is put by the party entitled exemption under the statute. We return to the Commissioner's finding that the appellant qualifies as a 'house of public worship'. *** The Board further finds that the lease by which appellant obtains the right to use the property is not a bar to exemption." Id. at 5.

Further, the courts have agreed that properties used by various educational institutions did not lose their exempt status by virtue of being leased by the educational institution. In *Bexley Village, Ltd. v. Limbach* (1990), 68 Ohio App.3d 306, 311, the court held that "[w]here the property is used for educational purposes, the property is exempt from taxation even though it produces income for its true owner. When applying the phrase 'not used with a view to profit' found in R.C. 5709.07, the court should focus on the use to which the property is put by the party entitled to exemption under the statute." In *Cleveland State Univ. v. Perk* (1971), 26 Ohio St.2d 1, paragraph two of the syllabus, the court determined that "under the provisions of R.C. 5709.07, exempting from taxation 'public colleges and

academies and all buildings connected therewith, buildings located on the campus of a state university and used exclusively for classrooms and faculty offices are exempt from taxation, even though such buildings are not owned by the university, but are leased for a term of years, with provision for rental therefor, from a corporation for profit."

The commissioner claims that the foregoing analysis, comparing the instant exemption provision to other portions of R.C. 5709.07, is inappropriate because "the statutory language granting exemption to public colleges and academics is fundamentally different from the language granting exemption to public schoolhouses." Brief at 5. The commissioner argues that based upon the placement of the phrase "used with a view to profit," the exemption in R.C. 5709.07(A)(4) for public colleges and academics is granted to an institution, not a real property structure, while the exemption granted in R.C. 5709.07(A)(1) is for the real property structure. We are not convinced by the commissioner's interpretation of the statutory language under consideration. R.C. 5709.07 (A) specifically states that "the following *property* shall be exempt from taxation." Clearly, it is the property, not the institution, that is exempted.

In addition, the commissioner argues that "[t]he public school house exemption already focuses on the property, which is why there was no need to include the 'connected with' language [found in R.C. 5709.07(A)(4)] in R.C. 5709.07(A)(1). This absence of the 'connected with' language further indicates that the focus is on whether the property is leased with a view for profit, not on the nature of the lessee. *** The General Assembly intended for the public schoolhouse exemption to be applied to the building, by way of the owner. Thus, unity of ownership and use is necessary for the public schoolhouse exemption." Brief at 7.

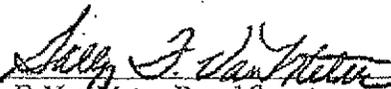
However, we find nothing in the law to support the commissioner's argument. As we stated in *Performing Arts*, supra, "[w]e find nothing in the language which limits the exemption upon the use of the property, without regard to ownership." Id. at 7. We also draw an analogy to the exemption granted in *Bexley*, supra, where the court concluded that "unity of ownership and use is not required to satisfy the 'connected with' element of R.C. 5709.07." Id. at 310.

The commissioner also argues that the substantial annual rent collected by Anderson/Maltbie from CCPA, i.e., \$275,496.48, demonstrates use of the subject property with a view to profit, thereby making it ineligible for an exemption. The commissioner states that "[p]roperty owned and leased by a for-profit corporation, for such a large amount has never been held to be exempt, not even for colleges and universities." Brief at 8-9. However, regardless of the amount, as we stated previously in *Performing Arts*, supra, even though "the subject property may produce income for its owner, it is being *used* as a schoolhouse for educational purposes." (Emphasis added.) Id. at 7. CCPA is not *using* the property with a view to profit.

Finally, the commissioner supports his position with regard to the subject property with a series of cases in which a property was found not to be exempt, pursuant to R.C. 5709.12 and R.C. 5709.121. See Brief at 11. We find such cases distinguishable from the instant matter because the exemption determinations in those matters have been made pursuant to different statutory provisions, and, as such, different requirements. In those cases, based upon the statutory provisions of R.C. 5709.12 and R.C. 5709.121, the subject property must be owned by a qualifying entity.

In sum, the commissioner's position may best be summarized by his statement at the outset of his brief that "[t]he proper focus for the exemption of real property is the use of the property by the *owner*." (Emphasis added.) Brief at 1. Clearly, based upon the foregoing, we find such perspective is not supported by current case law. Accordingly, in the interest of maintaining the consistent treatment by this board and the courts regarding exemptions claimed under R.C. 5709.07, as discussed herein, we find, pursuant to R.C. 5709.07(A)(1), that the subject property is entitled to exemption from real property taxation as it is undeniably being used as a school. Accordingly, it is the decision and order of the Board of Tax Appeals that the Tax Commissioner's final determination must be, and the same hereby is, reversed.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.


Sally F. Van Meter, Board Secretary

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the instructions of the defendant were reasonable and proper under the circumstances, and gave as their opinion that plaintiff, had he obeyed said instructions, would not have sustained the injuries of which he complains.

Confronted as we are with such evidentiary facts, established as we believe by the overwhelming weight of the evidence, we are constrained to hold that the verdict is not sustained by sufficient evidence.

All other claims of error have been carefully examined and in our opinion are without merit.

Entertaining these views, it follows that the judgment of the court of common pleas should be reversed.

Judgment reversed and cause remanded.

HUGHES and CROW, JJ., concur.

AS TO EXEMPTION OF CHURCH PROPERTY FROM
TAXATION.

Court of Appeals for Franklin County.

TAYLOR ET AL. V. ANDERSON, COUNTY TREASURER.

Decided February 3, 1930.

Church property Leased to Individuals by the Church Owning the Fee—Lessees in turn Lease it to another Church Organization—To be Used Exclusively for Public Worship—Property Held Taxable.

Property is not rendered exempt from taxation by reason of the fact that it is being used exclusively for public worship, where the occupying church is holding it under a lease and at a profit to the church owning the fee.

L. C. Barker, for plaintiffs in error.

John J. Chester, Jr., prosecuting attorney; *Myron B. Gessaman*, and *I. W. Garek*, asst. prosecuting attorneys, for defendant in error.

BY THE COURT. (KUNKLE, P. J., ALLREAD and HORNBECK, JJ., concurring.)

The lower court sustained a demurrer to the second amended petition of plaintiffs in error, upon the ground that the said pleading did not state a cause of action.

Plaintiffs in error not desiring to plead further, a final judgment was entered and from such judgment error is prosecuted to this court.

The question for determination relates to the exemption from taxation of the real estate described in the petition.

It is elementary that the law does not favor exemption of property from taxation and before such property can be exempt it must clearly fall within the class of property authorized to be exempt from taxation by the constitution. The theory of government is that all property should bear its equal share of the cost and expense of government.

The laws relating to exemption from taxation are, therefore, under the decisions, strictly construed as against such exemption.

In brief, it appears in the second amended petition that the premises in question were originally owned by the Central Methodist Church of Columbus, Ohio, a religious organization, and that such church now actually owns the fee to the said premises, but that the premises in question have been leased by such church to the plaintiffs in error under a ninety-nine year lease, renewable forever, by the terms of which plaintiffs in error pay to said church \$1,000 per year for the first five years, \$1,100 per year forever thereafter.

It further appears from the pleadings that plaintiffs in error have rented the premises in question to another church organization at a monthly rental of \$30 per month.

Under the state of facts, as set forth in the second amended petition, is the property in question exempt from taxation?

We shall not attempt to discuss the authorities in detail which have been cited and commented upon by counsel, but will content ourselves with announcing the conclusion at which we have arrived after a consideration of such authorities.

Article 12, Section 2 of the Constitution of Ohio provides that:

"Houses used exclusively for public worship * * * may, by general laws, be exempted from taxation."

The constitution does not exempt any of such property from taxation, but merely provides that the Legislature, in its wisdom, may, by general laws, so exempt property falling within the above and certain other classes.

By virtue of this provision in the constitution our Legislature has adopted Section 5349 in which exempted property is defined. The pertinent portion of this section is as follows:

"Public schoolhouses and houses used exclusively for public worship, the books and furniture therein and the ground attached to such buildings necessary for the proper occupancy, use and enjoyment thereof and not leased or otherwise used with a view to profit * * *"

This property was leased by the church organization to the plaintiff in error under a ninety-nine year lease renewable forever for the sum of from one thousand to fifteen hundred dollars per year. The property in turn was then rented by plaintiffs in error to another church organization for the sum of \$30 per month.

Without discussing the matter further, we think it is clear from the admitted facts that the property in question does not constitute a house used exclusively for public worship * * * and not leased or otherwise used with a view to profit.

This ninety-nine year lease took effect December 1, 1919. The said premises were not placed on the tax duplicate until the year 1920. It is apparent that plaintiffs acquiesced in such taxation of the property in question from 1920 to the date of the filing of the petition herein, namely, July, 1928.

We think the Trial Court properly sustained the demurrer to the second amended petition, and the judgment of the lower court will therefore be affirmed.

Gary Clair/Christ United Church, Appellant, vs. Roger W. Tracy, Tax Commissioner of Ohio, Appellee.

CASE NO. 97-K-306 (EXEMPTION)

STATE OF OHIO -- BOARD OF TAX APPEALS

1998 Ohio Tax LEXIS 1231

September 11, 1998

[*1]

APPEARANCES:

For the Appellant - Gary Clair, Pro Se, 28 Stoner Road, Clinton, Ohio 44821

For the Appellee Tax Commissioner - Betty D. Montgomery, Attorney General of Ohio, By: Phyllis J. Shambaugh, Assistant Attorney General, State Office Tower-16th Floor, 30 East Broad Street, Columbus, Ohio 43266-0410

OPINION:

DECISION AND ORDER

Mr. Johnson, Ms. Jackson and Mr. Manoranjan concur.

This cause and matter is before the Board of Tax Appeals as a result of a notice of appeal filed on March 25, 1997 by the above-named appellant. Appellant appeals a journal entry of the Tax Commissioner dated March 10, 1997 in which that official denied appellant's application for real property tax exemption for tax year 1995. The real property whose taxable status is at issue is located in Clinton, Ohio and appears in the records of the Summit County Auditor as parcel number 28-01106.

Denying appellant's application, the Tax Commissioner referred to the recommendation of his attorney examiner:

"Title to the property is in the name of Gary Clair. Mr. Clair leases the property to Christ Unity Church. A letter was sent to the applicant at the name and address listed in the application seeking additional information [*2] concerning the particular use of the property. Specifically, the letter requested a copy of the lease between Gary Clair and Christ Unity Church. The applicant, however, has not provided the Department with any additional information.

"Ohio Revised Code section 5709.07(A)(2) provides tax exemption for:

"[]Houses used exclusively for public worship, the books and furniture in them, and the ground attached to them that is not leased or otherwise used with a view to profit and that is necessary for their proper occupancy, use, and enjoyment.[]

"This exemption was recently reviewed in Full Gospel Pentecostal Holiness Church v. Limbach (Sept. 3, 1993), B.T.A. No. 91-R-432. In that case, the property was owned by one church and leased to another congregation for a rental amount intended only to offset the owner's expenses. In finding that the property qualified for exemption, the Board of Tax Appeals stated that 'the appropriate test is whether or not the parties intended to make a profit from the transaction.'

"The lessor in this case is an individual rather than another church. The applicant has not provided a copy of the lease. There is no reason to believe that the lessor's [*3] intent was other than to make a profit. Under these circumstances, the property does not qualify for tax exemption. Therefore, the attorney examiner recommends that the application for exemption be denied." S.T. 6.

Appellant appealed, stating as follows:

"I hereby set forth my notice of appeal. I would like to specify the errors for which I am complaining (appealling, [sic] but the tax commissioner prefers complaining). However, since in the tax commissioners [sic] infinite wisdom, he chose to be vague, I can only guess, it is either his belief that the church in question is leased or that I truly make a profit. Both and more are in error.

"1) This property is not leased. The church is rented month to month. However his own example (BTA No 91-R-432) does not find fault with this.

"2) So it must be profit. This term is in error since it is paid in the form of an hourly wage [and] because I do most of the work at less than minimum. And even then, these wages are used to pay utility bills and acquire antques [sic] and antique [sic] parts necessary to maintain [and] renovate a 128 year old structure and keep it historically correct. The church has been run this way [*4] throughout most of its history. Which brings to some [sic] of the as yet unanswered questions. Is the Church 'Grand-fathered in' under tax exemption because of its age? If a person is no longer allowed to own a church and maintain tax exempt status, why was I not informed by the tax commissioner. It has been used exclusively as a church for its entire 128 year history. And this church doesn't have a tele-evangelist living in a mansion or paying Stanley Gault \$ 500,000 to be chairman for a year (like United Way). This church exists on a shoe-string. It is in error not to let me know whether you want to add more strings or take them away."

This matter is now considered by this Board based upon appellant's notice of appeal, the statutory transcript certified by the Tax Commissioner and the evidence presented at the hearing conducted by this Board on March 24, 1998.

We acknowledge at the outset the affirmative burden which is generally borne by an appellant in an appeal taken from a final order of the Tax Commissioner. In *Alcan Aluminum Corp. v. Limbach (1989)*, 42 Ohio St.3d 121, the Supreme Court stated:

"Absent a demonstration that the commissioner's findings are clearly [*5] unreasonable or unlawful, they are presumptively valid. Furthermore, it is error for the BTA to reverse the commissioner's determination when no competent and probative evidence is presented to show that the commissioner's determination is factually incorrect. * * *" *Id. at 124.* (Citation omitted.)

Further, when considering a claim that property is entitled to exemption from taxation, we note the general rule that "all real property in this state is subject to taxation, except only such as is expressly exempted therefrom." R.C. 5709.01(A). It is as a result of this rule, that "in any consideration concerning the exemption from taxation of any property, the burden of proof shall be placed on the property owner to show that the property is entitled to exemption." R.C. 5715.271. It is obvious from the preceding statutory framework that exemption from taxation is the exception to the rule and a statute granting an exemption must be strictly construed. *National Tube Co. v. Glander (1952)*, 157 Ohio St. 407, paragraph two of the syllabus; *White Cross Hospital Assn. v. Bd. of Tax Appeals (1974)*, 38 Ohio St.2d 199, 201; *Seven Hills Schools v. Kinney (1986)*, 28 Ohio St.3d [*6] 186.

Turning now to the exemption which was considered by the Tax Commissioner to have been the one under which exemption was sought, n1 R.C. 5709.07 provides in pertinent part:

"(A) The following property shall be exempt from taxation:

"* * *

"(2) Houses used exclusively for public worship, the books and furniture in them, and the ground attached to them that is not leased or otherwise used with a view to profit and that is necessary for their proper occupancy, use, and enjoyment."

n1 We note that in his application filed with the Tax Commissioner, appellant indicated that exemption for the property was sought pursuant to R.C. 5713.08. See S.T. 9. However, this statute is not one granting exemption to real property, but is instead the statute which sets forth the procedures to be followed by county auditors in listing properties entitled to exemption and the limitations imposed upon the Tax Commissioner's ability to consider an application for exemption. Apparently, it was the Tax Commissioner's attorney examiner who first construed appellant's statement included on the application, i.e., that the subject property was being "used as and is church for worship of God by Christ Unity Inc. with Sunday serves [sic] [and] Sunday School," see S.T. 9, as a claim for exemption under R.C. 5709.07. Accordingly, we will consider appellant's challenge on appeal to be restricted to the Tax Commissioner's denial of exemption under this statute.

[*7]

The primary issue presented in this appeal is whether the Tax Commissioner improperly denied exemption to the subject property under the preceding statute because it was leased by appellant, a private individual, to a church. n2 In our decision in *Temple Beth Or v. Tracy* (Mar. 12, 1993), B.T.A. No. 90-M-291, unreported, we indicated that R.C. 5709.07 imposes two separate requirements for exemption: (1) the property must be used exclusively for public worship; and (2) it must not be "leased or used * * * with a view to profit." See, also, *Full Gospel Pentecostal Holiness Church v. Limbach* (Sept. 3, 1993), B.T.A. No. 91-R-432, unreported (stating that in the context of the second requirement, "the appropriate test is whether or not the parties intended to make a profit from the transaction."); *Bd. of Trustees of the Presbytery of the Western Reserve v. Tracy* (Sept. 3, 1993), B.T.A. No. 92-A-360, unreported; *Jerusalem Primitive Baptist Church v. Tracy* (May 1, 1998), B.T.A. No. 97-A-321, unreported.

n2 As required by R.C. 5709.07, exemption is restricted to "houses used exclusively for public worship." The only evidence which is contained in the record before us regarding the use of the property by the lessee, Christ Unity Church, has been provided by appellant, who testified that he is not a member of the church and is "actually an atheist." H.R. 11. As we have no reason to believe that appellant would have been in attendance at any of the lessee's services, we question appellant's competence to testify regarding whether the lessee's use qualifies as "public worship." However, the Auditor, who recommended that the property be granted exemption, and the Tax Commissioner, who denied the exemption on other grounds, seems to presuppose that the lessee occupies the subject property and uses it for public worship. Accordingly, we will not consider this aspect of R.C. 5709.07 to be in issue in this case.

[*8]

In the present case, the evidence is unrefuted that the lessee, by virtue of its monthly rental, has possession to the subject property. The evidence is also unrefuted that the lessee uses the property as a house of public worship. Appellant testified before this Board, credibly, that the modest rent charged the lessee is used to offset the expenses unique to a property of the age and type of the subject. Accordingly, we find that the subject property is used "exclusively for public worship" and "that it is not leased or otherwise used with a view to profit." n3

n3 We acknowledge appellant's testimony that the property is leased on a monthly basis due to the lessee's uncertainty as to whether or not they will continue to use the property. Should the lessee vacate the property, the Auditor may cause the property to be removed from the tax exempt list. See R.C. 5713.07; R.C. 5713.08.

Based upon the foregoing, it is the decision of the Board of Tax Appeals that appellant's arguments are well-taken. It is the order of this Board that the journal entry of the Tax Commissioner must be, and hereby is, reversed.

Jubilee Christian Fellowship, Inc., Appellant, vs. Roger W. Tracy, Tax Commissioner of Ohio, Appellee.

CASE NO. 99-R-239 (EXEMPTION)

STATE OF OHIO -- BOARD OF TAX APPEALS

2002 Ohio Tax LEXIS 927

May 17, 2002

[*1]

APPEARANCES:

For the Appellant - James E. Roberts, Roth, Blair, Roberts, Strasfeld & Lodge, Youngstown, OH.

For the Appellee - Betty D. Montgomery, Attorney General of Ohio, By: Richard C. Farrin, Assistant Attorney General, Columbus, Ohio.

OPINION:

DECISION AND ORDER

Mr. Johnson, Ms. Jackson, and Ms. Margulies concur.

This matter is before the Board of Tax Appeals upon a notice of appeal filed by Jubilee Christian Fellowship, Inc. ("Jubilee"). Jubilee appeals from a journal entry of the Tax Commissioner, in which the commissioner denied Jubilee's application for the exemption of real property from taxation for tax year 1996 and remission of taxes, penalties, and interest for tax year 1995.

The Tax Commissioner's basis for denial rests on the fact that the subject property is leased by Jubilee from Mr. and Mrs. Dennis Orr, presumably for a profit, and is therefore, in the commissioner's opinion, not exempt under R.C. 5709.07.

In its notice of appeal, Jubilee contends that at all relevant times, the subject property was used as a public house of worship. Jubilee argues that property leased to a church for use as a public house of worship is exempt from taxation, even if the property owner [*2] generates a profit.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to the board by the tax commissioner ("S.T."), the record of the evidentiary hearing held before this board ("R."), and the briefs of counsel. At the hearing, Jubilee was represented by counsel, and Pastor Jeffrey H. Mincher testified on its behalf. The Tax Commissioner appeared through counsel and rested on the statutory transcript and submitted no evidence in addition to cross-examination.

The subject property consists of approximately 5.68 acres of land, improved with a building that is used for religious purposes. It is located in the Canfield Township School District, Mahoning County, Ohio, and is identified in the auditor's records as permanent parcel number 26-039-0-011.00-0.

Initially, it is important to note the presumption that the findings of the Tax Commissioner are valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. It is therefore incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut that presumption and establish a right to the relief requested. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio [*3] St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the Tax Commissioner's determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213.

Turning to Jubilee's claim for exemption, we first note the general rule that "all real property in this state is subject to taxation, except only such as is expressly exempted therefrom." R.C. 5709.01(A). It is as a result of this rule, that "in any consideration concerning the exemption from taxation of any property, the burden of proof shall be placed on the

property owner to show that the property is entitled to exemption." R.C. 5715.271. The Supreme Court of Ohio explained the rationale for this principle in *Akron Home Medical Services, Inc. v. Lindley* (1986), 25 Ohio St.3d 107:

"Exceptions to a particular tax are governed by the oft-stated rules to be found in *Youngstown Metropolitan Housing Authority v. Evatt* (1944), 143 Ohio St. 268, 273 [28 O.O. 163]:

"By the decisions it is established in Ohio that exemption statutes are to be strictly construed, it being the settled policy [*4] of this state that all property should bear its proportional share of the cost and expense of government; that our law does not favor exemption of property from taxation; and hence that before particular property can be held exempt, it must fall clearly within the class of property specified * * * to be exempt.

"The foundation upon which that policy rests is that statutes granting exemption of property from taxation are in derogation of the rule of uniformity and equality in matters of taxation. (See 38 Ohio Jurisprudence, 853, section 114.)' See, also, e.g., id., at paragraph two of the syllabus; *Cleveland-Cliffs Iron Co. v. Glander* (1945), 145 Ohio St. 423, 430 [31 O.O. 39]; *Natl. Tube Co. v. Glander* (1952), 157 Ohio St. 417 [47 O.O. 313], paragraph two of the syllabus; *First Natl. Bank of Wilmington v. Kosydar* (1976), 45 Ohio St.2d 101 [74 O.O.2d 206]; *Southwestern Portland Cement Co. v. Lindley* (1981), 67 Ohio St.2d 417, 425 [21 O.O.3d 261]; *Natl. Church Residences v. Lindley* (1985), 18 Ohio St.3d 53, 55." Id. at 108.

See, also, *White Cross Hosp. Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199, 201. "Exemption is the exception to the rule and [*5] statutes granting exemptions are strictly construed." *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186.

R.C. 5709.07 provides an exemption from real property taxation for houses that are used exclusively for public worship and the attached grounds that are not leased or otherwise used with a view to profit. That section reads, in pertinent part:

"(A) The following property shall be exempt from taxation:

"* * *

"(2) Houses used exclusively for public worship, the books and furniture in them, and the ground attached to them that is not leased or otherwise used with a view to profit and that is necessary for their proper occupancy, use, and enjoyment[.]"

Accordingly, in order to determine whether the subject property qualifies for exemption under R.C. 5709.07, we must first determine whether such property was used exclusively for public worship during the period in question. For the reasons set forth below, we find that it was.

Two seminal cases explored the legislative intent behind the phrase "public worship." In *Gerke v. Purcell* (1874), 25 Ohio St. 229, the Supreme Court defined "public" to mean an open use, a use that was equally available to the public. [*6] In *Watterson v. Halliday* (1907), 77 Ohio St. 150, the phrase "public worship" was limited to the "religious rites and ordinances" that are celebrated or observed by the church and its parishioners. The Supreme Court confirmed this concept in a more recent decision, *Faith Fellowship Ministries, Inc. v. Limbach* (1987), 32 Ohio St.3d 432. In that case, the court held:

"From both cases we can derive the definition of 'public worship' to be the open and free celebration or observance of the rites and ordinances of a religious organization." Id. at 435.

And, in quoting from *Watterson*, supra, the *Faith Fellowship* court observed:

"The exemption is not of such houses as may be used for the *support* of public worship; but of houses used *exclusively* as places of public worship." *Id.* at 435.

In our decision in *Allegheny West Conference Seventh-Day Adventists v. Limbach* (Aug. 21, 1992), B.T.A. No. 90-K-507, unreported, we indicated that a "primary use" test would be applied to determine if property was being "used exclusively for public worship" within the meaning of R.C. 5709.07. We noted:

"In *Faith Fellowship Ministries, Inc. v. Limbach* (1987), [*7] 32 Ohio St.3d 432, the Supreme Court set forth the requisite characteristics which must be demonstrated by an applicant seeking exemption pursuant to R.C. 5709.07. In paragraph one of its syllabus, the court held:

"For purposes of R.C. 5709.07, 'public worship' means the open and free celebration or observance of the rites and ordinances of a religious organization.' (*Gerke v. Purcell* [1874], 25 Ohio St. 229; and *Watterson v. Halliday* [1907], 77 Ohio St. 150, 82 N.E.2d 962, approved and followed.)

"Although R.C. 5709.07 requires that the property be used exclusively for public worship, the Supreme Court has adopted a primary use test which requires more than merely calculating the amount of time that the property is used in a taxable as opposed to a nontaxable manner. *Faith Fellowship Ministries, Inc., supra*. Instead, a determination as to taxable status must include an examination of both the quantity and quality of the use for which the property is utilized. As the court held in paragraph two of its syllabus:

"To qualify for an exemption from real property taxation as a house used exclusively for public worship under R.C. 5709.07, such property must be [*8] used in a principal, primary, and essential way to facilitate public worship.'

"Under this test, the court has recognized that those uses of property sought to be exempted which are merely supportive are not entitled to exemption under R.C. 5709.07. See *Faith Fellowship Ministries, Inc., supra*; *Summit United Methodist Church v. Kinney* (1983), 7 Ohio St.3d 13; *Bishop v. Kinney* (1982), 2 Ohio St.3d 52." *Id.* at 5.

See, also, *Sylvania Church of God, Inc. v. Tracy* (Jan. 27, 1995), B.T.A. No. 93-P-252, unreported.

Most recently, the Supreme Court reaffirmed the use of the "primary use" test in determining qualification for exemption pursuant to R.C. 5709.07 in *True Christianity Evangelism v. Zaino* (2001), 91 Ohio St.3d 117. The court held:

"The General Assembly has used the phrase 'used exclusively' as a limitation in both R.C. 5709.07 (houses used exclusively for public worship) and R.C. 5709.12 (property used exclusively for charitable purposes). In *Moraine Hts. Baptist Church v. Kinney* (1984), 12 Ohio St.3d 134, 135, 12 OBR 174, 175, 465 N.E.2d 1281, 1282, this Court held that for purposes of R.C. 5709.07, the phrase 'used exclusively for public worship' [*9] was equivalent to 'primary use.'" *Id.* at 120.

In his testimony before the board, Pastor Mincher stated that the entire subject property was used exclusively for church purposes. (R. 13) Pastor Mincher testified that Jubilee conducted church services on the property on Sundays and Wednesdays. (R. 20) The building located on the subject property was divided into two parts. The newer section contained the main sanctuary, and the older section was used for religious education classes, children's church, and church offices. (R. 21-22)

Further, Pastor Mincher stated that Jubilee did not rent or sublease any portion of the property to others. During its tenure, Jubilee was presented with opportunities to rent out space, but all such offers were rejected. (R. 14, 19, 20) Under its five-year lease with the Orrs, Jubilee was obligated to pay rent at the rate of \$ 2,600 a month, as well as utilities and property taxes. (R. 17, 18) The Tax Commissioner did not present any evidence to refute Pastor Mincher's credible testimony.

In this board's opinion, the activities that Pastor Mincher described are exactly the types of uses that constitute "public worship" under R.C. 5709.07(A)(2). See *Gerke* [*10] and *Faith Fellowship Ministries*, supra. Furthermore, Pastor Mincher's testimony establishes that these activities represent the "exclusive" or "primary" use of the subject property. Therefore, we find that the subject property is primarily used as a house of public worship.

In his final determination, the Tax Commissioner does not contest that the subject property is being used as a house of public worship. Instead, it is the Tax Commissioner's position that pursuant to R.C. 5709.07(A)(2), "properties leased to a church for profit or with a view to profit are not exempt from real property taxation." (S.T. 4)

The fact that all or a portion of a house used for public worship is leased does not necessarily disqualify the property for exemption. *Clair v. Tracy* (Sept. 11, 1998), B.T.A. No. 97-K-306, unreported; *Northcoast Christian Center v. Tracy* (July 18, 1997), B.T.A. No. 96-M-811, unreported; *Full Gospel Pentecostal Holiness Church v. Limbach* (Sept. 3, 1993), B.T.A. No. 91-R-432, unreported; *First Baptist Church of Lone Star Texas v. Limbach* (Aug. 21, 1987), B.T.A. No. 85-E-738, unreported.

Although it deals with the exemption for public colleges, the Tenth District [*11] Court of Appeals' decision in *Bexley Village, Ltd. v. Limbach* (1990), 68 Ohio App.3d 306, may provide some assistance. n1 In *Bexley Village*, Capital University leased vacant land for use as a parking lot from a private for-profit developer. The court opined that the focus should be on the use to which the property is put by the party entitled to exemption. The court explained that R.C. 5709.07 includes two separate and distinct clauses. First, "public colleges * * * and all buildings connected therewith are exempt from taxation regardless of whether the property is used with a view toward profit." Id. at 308; see, also, *Cleveland State Univ. v. Perk* (1971), 26 Ohio St.2d 1. Second, all other lands connected with public institutions of learning "are exempted from taxation if they are not used with a view towards profit." *Bexley Village* at 308; see *Denison Univ. v. Bd. of Tax Appeals* (1965), 2 Ohio St.2d 17.

n1 Although in different subsections, the exemptions for public colleges and houses of public worship are both found in R.C. 5709.07.

Just as for public colleges, R.C. 5709.07(A)(2) makes a distinction between "houses used exclusively for public worship" [*12] and "the ground attached to them that is not leased or otherwise used with a view to profit * * *." Therefore, as the court in *Bexley Village* instructed, the focus should be on the use of the property by Jubilee, since it is the party seeking the exemption. See, also, *Temple Beth Or v. Limbach* (Mar. 12, 1993), B.T.A. No. 90-M-291, unreported. If the property consists of a building used as a house of public worship and not additional ground attached thereto, then we need not review nor analyze whether the property is used with "a view to profit." *Full Gospel Pentecostal Holiness Church*, supra, and *Presbytery of the Western Reserve* (Sept. 3, 1993), B.T.A. No. 92-A-360, unreported. It is irrelevant. *Bexley Village*.

Although the board acknowledges that there is a presumption in favor of the Tax Commissioner, based upon the foregoing, the Board of Tax Appeals finds that the subject property is used primarily as a house of public worship. As such, it is entitled to exemption from taxation.

Accordingly, it is the decision and order of the Board of Tax Appeals that the decision of the Tax Commissioner is reversed.

Northcoast Christian Center Appellant, vs. Roger W. Tracy, Tax Commissioner of Ohio,
Appellee.

CASE NO. 96-M-811 (Exemption)

STATE OF OHIO -- BOARD OF TAX APPEALS

1997 Ohio Tax LEXIS 851

July 18, 1997

[*1]

APPEARANCES

For the Appellant- K. Ronald Bailey, K. Ronald Bailey & Assoc., Co., L.P.A., P.O. Box 830, Sandusky, Ohio 44871-0830, Robert P. Boehk, Attorney-at-Law, 516 West Washington Street, Sandusky, Ohio 44870

For the Appellee- Betty D. Montgomery, Attorney General of Ohio, By: Richard C. Farrin, Assistant Attorney General, State Office Tower, 30 East Broad Street, 16th Floor, Columbus, Ohio 43266-0410

OPINION:

DECISION AND ORDER

Mr. Johnson, Ms. Jackson and Mr. Manoranjan concur.

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed herein on June 28, 1996. Appellant appeals from a Journal Entry of the Tax Commissioner, appellee herein, wherein the Commissioner denied appellant's application for real property exemption for tax year 1994.

The appellant, Northcoast Christian Center, is an evangelical church formed in 1991 and located in Sandusky, Ohio. In 1993, the Church contracted with Perkins Plaza, Inc. to lease a former four-bay movie theater located in the rear of a strip shopping center. The Church made significant modifications to the building, removing walls and redesigning many of the spaces for uses necessary to its ministry. [*2]

The original term of the lease is ten years. The lease agreement also obligates the Church to pay its pro-rata share of real estate taxes and assessments.

On December 30, 1994, the Church applied for exemption from real property taxation for that portion of the subject property which was equal to its pro-rata share of real property taxes paid to the lessor. The Commissioner denied the application. The Commissioner first found that "the subject property is unquestionably used by the applicant as a house of public worship". However, the Commissioner concluded that exemption was not proper.

Referring to the language "not leased or used with a view to profit" contained in R.C. 5709.07, the Commissioner indicated that the property was managed by a for-profit property management corporation, and then concluded that the payment of \$ 21,105 annually to a for-profit corporation was a prima facie showing that the property was leased "with a view to profit".

An appeal to this Board ensued. Not only did appellant specify as error the Commissioner's findings relative to R.C. 5709.07, it also raised constitutional arguments under both the Ohio and United States Constitutions. While the proper [*3] forum to raise such issues, this Board is a mere repository of evidence relating to constitutional questions and has no authority to consider the legal issues raised. *MCI Telecommunications Corp. v. Limbach (1994)*, 68 Ohio St. 3d 195.

The matter is considered upon the notice of appeal, the testimony and other evidence presented at the hearing before this Board, and the argument presented by counsel.

R.C. 5715.27(A) permits the "owner of any property" to file an application for the exemption of real property from taxation. A lessee who is obligated to pay real estate taxes assessed against the real property has standing to file such an application. *Cleveland St. Univ. v. Perk (1971)*, 26 Ohio St. 2d 1. The Commissioner did not question appellant's stand-

ing to apply for exemption, but found that the requirements of R.C. 5709.07(A)(2) had not been met. We hold appellant has standing to make an application for exemption in the instant case.

The Commissioner rejected appellant's application because appellant leased property from a for-profit organization. The Tax Commissioner found, as a matter of law, that the lessor's profit from the lease with appellant vitiated the [*4] statutory exemption conferred upon houses of worship. This Board finds that the Commissioner's determination is based upon a misreading of R.C. 5709.07. R.C. 5709.07 provides, in pertinent part:

"(A) The following property shall be exempt from taxation:

"(2) Houses used exclusively for public worship, the books and furniture in them, and the ground attached to them that is not leased or otherwise used with a view to profit and that is necessary for their property occupancy, use and enjoyment;

"(C) As used in this section, 'church' means a fellowship of believers, congregation, society, corporation, convention, or association that is formed primarily or exclusively for religious purposes and that is not formed for the private profit of any person."

In *Bexley Village, Ltd. v. Limbach* (1990), 68 Ohio App. 3d 306, the Franklin County Court of Appeals had the opportunity to consider the propriety of granting exemption under R.C. 5709.07(A) to real property leased by a university. Both Bexley Village, Ltd., a for-profit corporation, and its lessee, Capital University, applied for exemption from real property taxation of a parcel of land owned by Bexley Village, [*5] Ltd. and leased to the University. The Commissioner denied exemption, but this Board found exemption to be proper. Upon appeal, the Court of Appeals considered whether the leasehold interest indicated that the property was "used with a view towards profit". (While the yearly rental in that case was \$ 1.00, the appellant argued that the for-profit lessor profited by avoiding real property taxes and maintenance expenses it would have incurred.)

The Court of Appeals recognized that the words "used with a view towards profit" are not uncommon throughout the exemption statutes. The Court then reviewed two Supreme Court cases which considered whether a leased property was "used with a view towards profit." Both *Rose Inst. v. Myers* (1915), 92 Ohio St. 252, and *State, ex rel. Boss v. Hess* (1925), 113 Ohio St. 53, were cases in which a charitable and an educational organization were each denied exemption for property leased for a profit to non-exempt lessees even though the proceeds garnered from the leases were used for exempt purposes. Finding that critical emphasis was placed upon the use of the property, rather than ownership, the Court held:

"Where the property is [*6] used for educational purposes, the property is exempt from taxation even though it produces income for its true owner. When applying the phrase 'not used with a view to profit' found in R.C. 5709.07, the court should focus on the use to which the property is put by the party entitled to exemption under the statute."

Following the Court's directive in *Bexley Village, Ltd.*, this Board must focus on the use the property is put by the party entitled exemption under the statute. We return to the Commissioner's finding that the appellant qualifies as a "house of public worship". The testimony before this Board is consistent with the Commissioner's findings. The Board further finds that the lease by which appellant obtains the right to use the property is not a bar to exemption.

Our holding herein is consistent with the Supreme Court's consideration of "charitable use" under R.C. 5709.12. In *Highland Park Owners, Inc. v. Tracy* (1994), 71 Ohio St. 3d 405, the Court, citing *Gerke v. Purcell* (1874), 25 Ohio St. 229, for the proposition that exemption from taxation is controlled by the use of property, rather than ownership thereof, held that, under R.C. 5709.12, [*7] any property used exclusively for charitable purposes may be exempt from taxation. See, also, *Wilson, Aud. v. Licking Aerie No. 387, F.O.E. (1922)*, 104 Ohio St. 137 (Property belonging to institutions of public charity can only be exempt under the constitution when used exclusively for charitable purposes).

Considering the record, statutes, and case law, the Board of Tax Appeals finds and determines that the Tax Commissioner erred when denying exemption to appellant because it leased the subject property. Therefore, the decision of the Tax Commissioner must be, and hereby is, reversed.

The Performing Arts School of Metropolitan Toledo, Inc. and Gomez Enterprises, a Limited Partnership, Appellants, vs. Thomas M. Zaino, Tax Commissioner of Ohio, Appellee.

Case No. 2001-J-977 (EXEMPTION)

STATE OF OHIO – BOARD OF TAX APPEALS

2002 Ohio Tax LEXIS 2627

December 20, 2002

[*1]

APPEARANCES:

For the Appellants - Eastman & Smith, Ltd., Amy J. Borman, Graham A. Bluhm, M. Charles Collins, Of Counsel, One SeaGate, 24th Floor, P.O. Box 10032, Toledo, Ohio 43699-0032

For the Appellee - Betty D. Montgomery, Attorney General of Ohio, Richard C. Farrin, Assistant Attorney General, 30 East Broad Street, 16th Floor, Columbus, Ohio 43215-3428

OPINION:

DECISION AND ORDER UPON RECONSIDERATION

Mr. Johnson, Ms. Jackson, and Ms. Margulies concur.

The Board of Tax Appeals is again considering this matter pursuant to a notice of appeal filed by The Performing Arts School of Metropolitan Toledo, Inc., and Gomez Enterprises, a limited partnership. ("Appellants") Appellants have appealed from a final determination of the Tax Commissioner that denied appellants' application for the exemption of real property from taxation. The commissioner's final determination provides in pertinent part:

"In response to the recommendation of the attorney examiner, dated June 28, 2001, the applicant submitted written objections, which have been considered by this office. On review of the applicant's objections, the Tax Commissioner finds that neither the factual objections nor the objections to [*2] the legal interpretation of applicable statutes is sufficient to overcome the recommendation of the attorney examiner.

"Namely, the applicant has amended the application to add the owner of the property as an applicant. As well, the applicant states that the property should be granted exemption as used as a charter school. However, as stated in the recommendation, the property is leased to the school by the owner Gomez Enterprises, a for-profit limited partnership. The property is leased to the school for a thirty-nine month term at a rental amount of \$ 195,000.00, payable in installments of \$ 5000.00 per month.

"Ohio Revised Code section 5709.07

"It is noted that the applicant has applied for exemption under R.C. 2477.01, and under R.C. 3314.01 et. seq. Neither of these sections provide (sic) exemption from taxation for real property. However, Ohio Revised Code section 5709.07 does provide exemption to property used as a school, and states in part (sic)

"(A) The following property shall be exempt from taxation:

"(1) Public schoolhouses, the books and furniture in them, and the ground attached to them necessary for the proper occupancy, use, and enjoyment of the schoolhouses, [*3] and not leased or otherwise used with a view to profit.

"The applicant states that the property should be granted exemption as being used as a school, regardless of the lease and the use with a view to profit by the business owner. The applicant cites several cases in support of its statement, including *Cleveland State University v. Perk* (1971), 26 Ohio St.2d 1, 5, wherein the Court held 'that a lessee of buildings located on land which is owned by the lessee [university] * * * has standing to file * * * an application for exemption of such buildings from taxation'. [Emphasis added]. It is noted that the Cleveland State case dealt with property owned by a state university, and the statutory provisions governing exemption for state universities do not apply in this case.

"As well, the applicant cites several other cases concerning exemptions granted to schools or churches which leased property. In *Bexley Village, Ltd. v. Limbach* (1990), 68 Ohio St.3d 306, the Court held that property owned by a for-profit entity and leased to a college for \$ 1.00 a year was entitled to exemption. In *Northcoast Christian Center v. Tracy* (July 18, 1997) B.T.A. No. 96-M-811, [*4] the Board of Tax Appeals (Board) held that property owned by a business but leased to a church for worship was also exempt. The Board in *Northcoast* cited the *Bexley Village* case in its decision, noting the nominal \$ 1.00 per year lease. Later, in *Gary Clair/Christ United Church v. Tracy* (September 11, 1998), B.T.A. No. 97-K-306, the Board found that the appropriate test for exemption of leased property was whether the parties intended to make a profit from the lease. *Gary Clair* at 6. The Board held that leased property could be exempted as not used with a view to profit where the modest rent charged was used merely to offset the expenses unique to an historic, 128-year old church. *Id.*

"More recently, the Board held that the use of property by the owner must be examined in order to determine exemption, and that leased property may be subject to taxation where, as here, the lease is commercial in nature. *Thomaston Woods Limited Partnership v. Lawrence* (June 15, 2001) B.T.A. No. 99-L-551. Here, the for-profit owner charges a rent of approximately \$ 60,000 per year. Unlike the cases cited above, the apparent intent of the owner of the subject property is [*5] to make a profit from a commercial lease. Applying the case law cited above, the property is not entitled to exemption as used with a view to profit by the owner."

n1 An unreported decision and order was previously issued by the board under date of Sep. 6, 2002, which reversed the final determination of the Tax Commissioner. The decision was vacated by an unreported order issued Oct. 4, 2002, to afford an opportunity to fully consider the Attorney General's motion for reconsideration/clarification as to application of an exemption to the land which is privately owned and improved by the buildings occupied by a charter school.

The matter has been submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified by the Tax Commissioner and the briefs filed by counsel for the parties. Although the board had scheduled the matter for hearing, the parties did not submit evidence.

The facts are not in dispute. The subject property is a 1.870-acre parcel improved with a two-story building with classrooms and offices, a one-story recreation area, and parking lot, identified on the auditor's records as parcel 20-06168. The Performing Arts School of Metropolitan [*6] Toledo, Inc., ("PASMT") a non-profit corporation, leases n2 the property from Gomez Enterprises, a for-profit limited partnership. PASMT is operating a public community school for grades seven through twelve established under the authority of R.C. Chapter 3314. The lease term is thirty-nine months for a rental amount of \$ 195,000, payable in monthly installments of \$ 5,000.

n2 The lease is commonly referred to as a "triple-net lease," as its provisions require that the lessee, in addition to the rental payments, is also responsible for the payment of taxes, insurance and maintenance/utilities.

R.C. 5709.07, which provides an exemption for schools, reads:

"(A) The following property shall be exempt from taxation:

"(1) Public schoolhouses, the books and furniture in them, and the ground attached to them necessary for the proper occupancy, use, and enjoyment of the schoolhouses, and not leased or otherwise used with a view to profit;

* * * "

The commissioner contends that the exemption should be denied because the property is not a "public schoolhouse" within the context of R.C. 5709.07 because the property is not owned by a public entity. Since the term "public schoolhouse" [*7] is not defined in R.C. 5709.07, the commissioner has cited several cases that have construed the term "public property" as contained in what is currently R.C. 5709.08. These cases have held that "public property" embraces only such property that is owned by the state or a political subdivision. See *Bd. of Park Commrs. of City of Troy v. Bd. of Tax Appeals* (1954), 160 Ohio St. 451; *Dayton Metro. Hous. Auth. v. Evatt* (1944), 143 Ohio St. 10. However, the Supreme Court has not extended this construction to "public schoolhouse" as contained in R.C. 5709.07.

In *Gerke v. Purcell* (1874), 25 Ohio St. 229 the Supreme Court construed the term "public" contained in Section 2, Article 12 of the Ohio Constitution and section 3 of the tax law of 1859, S & S 761, now R.C. 5709.07. With respect to the constitutional provision the court held that the term "public" as applied to schoolhouses required the property to be publicly owned. However, the court also determined that the term "public" under the statute is based on the use of the property, not its ownership. The court stated:

"A consideration of this provision of the statute shows that the word 'public,' as here applied to schoolhouses, [*8] colleges, and institutions of learning, is not used in the sense of ownership, but as descriptive of the uses to which the property is devoted. The schools and instruction which the property is used to support, must be for the benefit of the public. The word public as applied to school-houses, is obviously used in the same sense as when applied to colleges, academies, and other institutions of learning. The statute must be construed in the light of the state of things upon which it was intended to operate. At the time of its passage, there were few, if any (and we know of none), colleges or academies in the state owned by the public, while there were many such institutions in the different parts of the state owned by private, corporate, or other organizations, and founded, mostly, by private donations.

"Besides, the condition prescribing that the property, in order to be exempt, must not be used with a view to profit, does not seem appropriate if intended to apply only to institutions established by the public. Such institutions are never established and carried on by the public with a view to profit."

The General Assembly in the creation of community schools has expressly designated [*9] such a school a "public school * * * and part of the state's program of education." R.C. 3314.01(B). In so doing the community school is brought within the exemption granted by R.C. 5709.07(A), consistent with the ruling in *Gerke*. The commissioner contends that the lease by the owner to PASMT establishes that the property is being used to produce income, which precludes granting the exemption under R.C. 5709.07. We find to the contrary. R.C. 5709.07 does not preclude the owner's leasing of property to PASMT n3 for its use in the operation of a community school. The proper test is whether the property is presently being used for an exempt purpose. In keeping with *Gerke*, it is not required that property be owned by PASMT to qualify it for exemption.

n3 R.C. 3314.01(B) authorizes a community school to "acquire facilities as needed."

In construing the exemption provided for public colleges and academies in R.C. 5709.07A(4), the Franklin County Court of Appeals has held that the statute cannot be read so narrowly that a property loses its exempt status when it is leased from an owner. *Bexley Village, Ltd. v. Limbach* (1990), 68 Ohio App.3d 306. The court stated at p. 311: [*10]

"Where the property is used for educational purposes, the property is exempt from taxation even though it produces income for its true owner. When applying the phrase 'not used with a view to profit' found in R.C. 5709.07, the court should focus on the use to which the property is put by the party entitled to exemption under the statute."

Although the subject property may produce income for its owner, it is being used as a schoolhouse for educational purposes. PASMT is not using the property with a view to profit. The Attorney General seeks to distinguish *Bexley Village*, upon the difference in language between the exemption conferred upon "lands connected with public institutions of learning, not used with a view to profit," and the exemption for schoolhouses "and the ground attached to them * * * not

leased or otherwise used with a view to profit." We find nothing in the language which limits the exemption upon the use of the property, without regard to ownership.

The board finds the analysis of the exemption by the Supreme Court in *Cleveland State Univ. v. Perk* (1971), 26 Ohio St.2d 1 compelling. Although the court construed the portion of R.C. 5709.07 exempting [*11] from taxation "public colleges and academies and all buildings connected therewith," language that is now contained in R.C. 5709.07(A)(4), the reasoning is applicable to this appeal. In *Cleveland State Univ.*, a for-profit corporation leased buildings to the state university that used the buildings as classrooms. The Supreme Court stated at p. 7:

"We do not think the term 'not used with a view to profit' refers to or controls the clauses 'all public colleges, public academies, all buildings connected with the same,' but refers to simply the clause preceding it in the statute 'all lands connected with public institutions of learning, not used with a view to profit.'"

Extending this reasoning to R.C. 5709.07(A)(1) requires the conclusion that the phrase "not leased or otherwise used with a view to profit" does not control the term "public schoolhouses," but refers simply to the clause preceding it in the statute, i.e., "the ground attached to them necessary for the proper occupancy, use, and enjoyment of the schoolhouses."

Our determination here is also consistent with our application of R.C. 5709.07(A)(3) granting exemption to houses used for public worship, and the similar [*12] limitation that the "land is not leased or otherwise used for profit." We have focused upon the use of the property, requiring that no restrictions be placed upon its use for public worship. See *First Christian Church of Medina v. Zaino* (Apr. 12, 2002), BTA No. 2000-N-480, unreported; *Youngstown Foursquare Church v. Zaino* (June 29, 2001), BTA No. 1999-S-1367, unreported; *World Harvest Church of God v. Zaino* (Jan. 26, 2001), BTA No. 1999-B-1914, unreported. It is uncontroverted that PASMT is using the subject property as a public community school without restrictions upon its public use.

In *Temple Beth Or v. Limbach* (Mar. 12, 1993), BTA No. 1990-M-291, unreported, the board granted exemption to the temple's property which was being leased to a church for a three-year term at a rate of \$ 2,000 per month, finding that the primary and controlling use was as a place of worship, which established the exemption. In *Full Gospel Pentecostal Holiness Church v. Limbach* (Sept. 3, 1993), BTA Case No. 1991-R-432, unreported, the board granted exemption where a church was leasing its property to another church. Although we made reference to the monthly rate of \$ 582.44, which [*13] covered the mortgage and insurance, our finding that there was no intent to profit from the lease was not determinative of the question of exemption. Similarly in *Northcoast Christian Center v. Tracy* (July 18, 1997), BTA No.1996-M-811, unreported, we granted exemption to what had been a four-bay movie theater in a strip shopping center leased to Northcoast, upon its conversion and use for public worship. In *Gary Clair/Christ United Church v. Tracy* (Sep 11, 1998) BTA Case No. 1997-K-306, unreported, a private owner rented a one hundred twenty-eight year old church building which was used as a house of public worship. A modest rental was charged to offset utilities and provide maintenance. Although we commented on the amount of the rental and lack of profit in each case, the granting of the exemption turned upon the primary use of the property for public worship. Most recently, in *Jubilee Christian Fellowship, Inc. v. Tracy* (May 17, 2002) BTA Case No. 1999-R-239, unreported, we again held that the church leased from private owners was entitled to exemption, since the property was used exclusively for public worship, and the church did not lease or otherwise use the property. [*14]

The commissioner maintains that to focus solely on the use of the property by PASMT fails to recognize the fact that Gomez, the owner of the property, is also using the property. To the contrary, Gomez has given possession to PASMT for its use, and receives only the income.

In support of this contention the commissioner cites *Lincoln Memorial Hospital v. Warren* (1968), 13 Ohio St. 2d 109, and *Thomaston Woods Limited Partnership v. Lawrence* (June 15, 2001), BTA No. 1999-L-551, unreported. *Lincoln Memorial Hospital* addressed a situation where a for-profit corporation, in order to maintain its affiliation with a Blue Cross organization, formed a nonprofit corporation to operate the hospital. The nonprofit corporation assumed the payment of the loan for construction and equipping of the hospital, and all other expenses of the hospital. The court expressed the view that ownership and use must coincide to sustain the exemption for charitable purposes. R.C. 5709.12 The court also observed that a large majority of the patients paid for their accommodations and nonpaying patients were decidedly in the minority. We do not find this case persuasive in applying the exemption for public [*15] schoolhouses.

In *Thomaston Woods Limited Partnership*, exemption was also sought pursuant to R.C. 5709.12. The Supreme Court has held in *Highland Park Owners, Inc. v. Tracy* (1994) 71 Ohio St.3d 405, that property owned by an institution

which is used exclusively for charitable purposes is exempt under R.C. 5709.12. The board determined that the owner *Thomaston Woods'* primary use of the property was to lease it to third parties. The board held that in a lease situation where it is the lessee who is engaged in the charitable activity, then for purposes of R.C. 5709.12(B), the lessor's primary use of the property is the leasing and not charitable. These cases construe the applicability of the exemption provided by R.C. 5709.12 to a leasing situation. R.C. 5709.12 requires that the qualifying party own the property in order to be eligible for the exemption. R.C. 5709.07 does not provide a similar restriction.

The commissioner also cites *Summit United Methodist Church v. Kinney* (1983), 7 Ohio St.3d 13 in support of his claim that exemption should be denied. In that case exemption was denied to a church that leased property to a third party. The lessee was using the property [*16] as a day care center, not a religious use under R.C. 5709.07. However, in the subject appeal the party seeking the exemption, PASMT, is using the property, the land and the improvements as a public school, a use for which an exemption is expressly granted under R.C. 5709.07(A)(1).

The Attorney General also introduces a new argument that title must be vested in the state or a political subdivision, pointing to the tax exemption provided by R.C. 3313.44 to property vested in boards of education. The argument is that R.C. 3313.375, which provides a board of education may enter into a lease-purchase agreement for construction of a school building, does not vest title in the board until the end of the lease term and all the obligations provided in the agreement have been satisfied. The suggestion is made that under a lease-purchase, the property would not be exempt. However, R.C. 3313.44 and 3313.375 are specific in application and limited in their scope. There is no reason to believe that the general exemption in R.C. 5709.07 would not apply to the lease-purchase arrangement so long as the building is being used as a schoolhouse. We have been given no judicial authority which supports [*17] the argument, and we are not persuaded.

Therefore, for all of the foregoing reasons, the board finds that the Tax Commissioner's final determination denying exemption to the subject property, the land and the improvements used as a public schoolhouse, is in error and it is hereby reversed.

R.C. 5709.07

§ 5709.07. Exemption of schools, churches, and colleges

(A) The following property shall be exempt from taxation:

(1) Public schoolhouses, the books and furniture in them, and the ground attached to them necessary for the proper occupancy, use, and enjoyment of the schoolhouses, and not leased or otherwise used with a view to profit;

(2) Houses used exclusively for public worship, the books and furniture in them, and the ground attached to them that is not leased or otherwise used with a view to profit and that is necessary for their proper occupancy, use, and enjoyment;

(3) Real property owned and operated by a church that is used primarily for church retreats or church camping, and that is not used as a permanent residence. Real property exempted under division (A)(3) of this section may be made available by the church on a limited basis to charitable and educational institutions if the property is not leased or otherwise made available with a view to profit.

(4) Public colleges and academies and all buildings connected with them, and all lands connected with public institutions of learning, not used with a view to profit, including those buildings and lands that satisfy all of the following:

(a) The buildings are used for housing for full-time students or housing-related facilities for students, faculty, or employees of a state university, or for other purposes related to the state university's educational purpose, and the lands are underneath the buildings or are used for common space, walkways, and green spaces for the state university's students, faculty, or employees. As used in this division, "housing-related facilities" includes both parking facilities related to the buildings and common buildings made available to students, faculty, or employees of a state university. The leasing of space in housing-related facilities shall not be considered an activity with a view to profit for purposes of division (A)(4) of this section.

(b) The buildings and lands are supervised or otherwise under the control, directly or indirectly, of an organization that is exempt from federal income taxation under *section 501(c)(3) of the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1*, as amended, and the state university has entered into a qualifying joint use agreement with the organization that entitles the students, faculty, or employees of the state university to use the lands or buildings;

(c) The state university has agreed, under the terms of the qualifying joint use agreement with the organization described in division (A)(4)(b) of this section, that the state university, to the extent applicable under the agreement, will make payments to the organization in amounts sufficient to maintain agreed-upon debt service coverage ratios on bonds related to the lands or buildings.

(B) This section shall not extend to leasehold estates or real property held under the authority of a college or university of learning in this state; but leaseholds, or other estates or property, real or personal, the rents, issues, profits, and income of which is given to a municipal corporation, school district, or subdistrict in this state exclusively for the use, endowment, or support of schools for the free education of youth without charge shall be exempt from taxation as long as such property, or the rents, issues, profits, or income of the property is used and exclusively applied for the support of free education by such municipal corporation, district, or subdistrict. Division (B) of this section shall not apply with respect to buildings and lands that satisfy all of the requirements specified in divisions (A)(4)(a) to (c) of this section.

(C) For purposes of this section, if the requirements specified in divisions (A)(4)(a) to (c) of this section are satisfied, the buildings and lands with respect to which exemption is claimed under division (A)(4) of this section shall be deemed to be used with reasonable certainty in furthering or carrying out the necessary objects and purposes of a state university.

(D) As used in this section:

(1) "Church" means a fellowship of believers, congregation, society, corporation, convention, or association that is formed primarily or exclusively for religious purposes and that is not formed for the private profit of any person.

(2) "State university" has the same meaning as in *section 3345.011 [3345.01.1] of the Revised Code*.

(3) "Qualifying joint use agreement" means an agreement that satisfies all of the following:

(a) The agreement was entered into before June 30, 2004;

(b) The agreement is between a state university and an organization that is exempt from federal income taxation under *section 501(c)(3) of the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1*, as amended; and

(c) The state university that is a party to the agreement reported to the Ohio board of regents that the university maintained a headcount of at least twenty-five thousand students on its main campus during the academic school year that began in calendar year 2003 and ended in calendar year 2004.

HISTORY:

RS § 2732; S&S 761; S&C 1440; 61 v 39, § 3; 88 v 95; 91 v 393, 216; 99 v 449; GC § 5349; Bureau of Code Revision, 10-1-53; 142 v S 71. Eff 5-31-88; 151 v H 66, § 101.01, eff. 6-30-05.

Section 2, Article XII, Ohio Constitution (1851).

Section 2. Laws shall be passed, taxing, by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property, according to its true value in money; but burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose; and personal property to an amount not exceeding in value two hundred dollars for each individual, may, by general laws, be exempted from taxation; but, all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law.

PAGE'S
OHIO GENERAL CODE
ANNOTATED

CONTAINING

ALL LAWS OF A GENERAL AND PERMANENT NATURE IN FORCE
AT THE DATE OF PUBLICATION, WITH NOTES OF DECISIONS
CONSTRUING THE STATUTES

WILLIAM H. PAGE

EDITOR-IN-CHIEF

AUTHOR OF PAGE ON CONTRACTS AND PAGE ON WILLS
EDITOR-IN-CHIEF, PAGE'S OHIO DIGEST. LIFETIME EDITION

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COMPLETE IN TWELVE VOLUMES

REPLACEMENT VOLUME FOUR A



CINCINNATI
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on the succession to the intangible property of a non-resident accruing under the provisions of this subdivision of this chapter, shall be deemed to have originated, shall be determined as follows:

1. In the case of shares of stock in a corporation organized or existing under the laws of this state, such taxes shall be deemed to have originated in the municipal corporation or township in which such corporation has its principal place of business in this state.

2. In case of bonds, notes, or other securities or assets, in the possession or in the control or custody of a corporation, institution or person in this state, such taxes shall be deemed to have originated in the municipal corporation or township in which such corporation, institution or person had the same in possession, control or custody at the time of the succession.

3. In the case of moneys on deposit with any corporation, bank, or other institution, person or persons, such tax shall be deemed to have originated in the municipal corporation or township in which such corporation, bank or other institution had its principal place of business, or in which such person or persons resided at the time of such succession.

HISTORY—108 v. Pt. I 561 (576).

See G.C. § 5335-4 which refers to this section.

Comparative legislation

Transfers from nonresidents or persons not inhabitants of state:

Ill.	Smith-Hurd Rev. Stat. 1933, ch. 120, § 375.
Ind.	Burns' Stat. 1933, § 6-2429.
Ky.	Carroll's Stat. 1935, § 4281a-44.
Mass.	Gen. Laws 1932, ch. 65, § 1.
Mich.	Comp. Laws 1929, § 3672.
N.Y.	Cahill's Consol. Laws, ch. 61, § 248 et seq.
Ore.	Code 1930, § 10-646.
Penna.	Purdon's Stat. 1936, title 72, § 2301.
W.Va.	Code 1931, ch. 11, art. 11, § 8.

Where tax originates: PAGE Taxation § 451;
O-JUR Taxation § 470.

Ohio inheritance tax in relation to bank deposits and stock ownership of nonresident decedents: (Editorial note.) 5 Cin.L.Rev. 245.

A succession to shares of stock in a national bank in Ohio is taxable under the Ohio inheritance law, though the deceased owner was a resident of another state and had the certificate for the shares in his possession at the time of his death: 1921 A.G.Opns. vol.1, p.277.

[SEC. 5348-15.] Pending proceedings not affected. This act [G. C. §§ 2624, 2685, 2689 and 5331 to 5348-14] shall not affect pending proceedings for the assessment and collection of collateral inheritance taxes under the original sections hereby amended, nor the duty to pay, nor the right to collect any such tax which has accrued prior to the approval of this act, nor the rights or duties of any officer with respect to the assessment and collection of such collateral inheritance taxes; nor shall this act affect successions taking place prior to its approval, whether the death of the decedent occurred prior to such

approval or not; but all successions occurring subsequently to the approval of this act shall be affected by and taxable under it, whether the death of the decedent occurred prior to its approval or not, unless a tax has already accrued thereon under the provisions of the original sections hereby amended.

HISTORY—108 v. Pt. I 561 (577), § 4.

Retroactive operation: PAGE Taxation § 429;
O-JUR Taxation § 427.

[SEC. 5348-16.] Collateral inheritance taxes paid, shall be refunded, when. That whenever an administrator, executor or trustee of an estate shall, in pursuance of an order or judgment of a court, have paid collateral inheritance taxes to the county treasurer of the county in which the estate is located, under the provisions of the statutes relating to collateral inheritance taxes before the same were amended by the act passed May 8, 1919, and the probate judge of said county shall thereafter have judicially determined that the whole or a part of said taxes ought not to have been paid, and said person is ordered to refund the whole or part of said taxes to the heirs, the county auditor shall, upon application, draw his warrant on the county treasurer, and the county treasurer shall refund out of the funds in his hands or custody, to the credit of inheritance taxes, such equitable proportion of the taxes, without interest, and be credited therewith in the accounts required to be rendered by him; but no such application for refunder shall be made after one year from the date of such judicial determination.

HISTORY—108 v. Pt. II 1107, § 1.

EXEMPT PROPERTY

SEC. 5349. School houses, churches, colleges, etc. Public school houses and houses used exclusively for public worship, the books and furniture therein and the ground attached to such buildings necessary for the proper occupancy, use and enjoyment thereof and not leased or otherwise used with a view to profit, public colleges and academies and all buildings connected therewith, and all lands connected with public institutions of learning, not used with a view to profit, shall be exempt from taxation. This section shall not extend to leasehold estates or real property held under the authority of a college or university of learning in this state, but leaseholds, or other estates or property, real or personal, the rents, issues, profits and income of which is given to a city, village, school district, or subdistrict in this state, exclusively for the use, endowment or support of schools for the free education of youth without charge, shall be exempt from taxation as long as such property, or the rents, issues, profits or income thereof is

used and exclusively applied for the support of free education by such city, village, district or subdistrict. (R. S. Sec. 2732.)

HISTORY.—R. S. § 2732; 39 v. 449; 91 v. 393, 216; 88 v. 95; 91 v. 39, § 3; S. & S. 761; S. & C. 1440. Held unconstitutional in part; State, ex rel. v. Hess, 113 O. S. 52, 148 N. E. 347.

See G.C. § 5670-1 which refers to G.C. § 5349 et seq.

Comparative legislation

Exempt property:

Fla.	Comp. Gen. Laws 1927, § 397.
Idaho	Code 1932, § 61-105.
Ill.	Smith-Hurd Rev. Stat. 1933, ch. 120, § 2.
Ind.	Burns' Stat. 1933, § 64-201.
Iowa	Code 1931, § 6944.
Ky.	Carroll's Stat. 1936, §§ 4019a-10, 4026.
Mass.	Gen. Laws 1932, ch. 69, § 5.
Mich.	Comp. Laws 1929, §§ 3395, 3397.
N.Y.	Cahill's Consol. Laws, ch. 61, § 4.
N.Car.	Code 1931, § 7880 et seq.
Ore.	Code 1930, § 69-104.
Penna.	Purdon's Stat. 1936, title 72, § 1891 et seq.
Tenn.	Williams' Ann. Code, § 1085 et seq.
Utah	Rev. Stat. 1933, § 80-2-1 et seq.
W.Va.	Code 1931, ch. 11, art. 3, § 2.

References to Page's Digest and Ohio Jurisprudence

Exemptions, in general: PAGE Taxation § 109 et seq.; O-JUR Taxation § 111 et seq.

Public schools and colleges: PAGE Taxation § 122; O-JUR Schools § 378, Taxation § 123.

Houses for public worship: PAGE Rel. Soc. § 10, Taxation § 124; O-JUR Rel. Soc. § 4, Taxation § 130.

ANNOTATIONS

1. Construction of exemption statutes
2. Educational institutions
3. Religious institutions

See note, G.C. § 5353, citing Bloch v. Board of Tax Appeals.

1. Construction of exemption statutes

General Code § 5349 is in conflict with § 2 of Art. XII of the constitution, in so far as it applies to a leasehold, or other estate, real or personal, which is not an institution used exclusively for charitable purposes, and is not public property used exclusively for any public purpose: State, ex rel. v. Hess, 113 O. S. 52, 148 N. E. 347.

For a discussion of the history of this and the following sections, and for a review of the earlier cases construing them, see *Rose Institute v. Myers*, 92 O. S. 252, 110 N. E. 924, L. R. A. 1916D, 1170 [citing *College v. State*, 19 O. 110; *Gerke v. Purcell*, 25 O. S. 229; *Humphries v. Little Sisters of the Poor*, 29 O. S. 201; *Library Association v. Felton*, 36 O. S. 253; *Watterson v. Halliday*, 77 O. S. 150].

If an exception or exemption from taxation is claimed, the intention of the general assembly to provide for the exemption must be expressed in clear and unambiguous terms. It must be shown indubitably to exist. At the outset every presumption is against it. Intent to confer immunity from taxation must be clear, beyond reasonable doubt, for nothing can be taken against the state by presumption or inference: *Cincinnati College v. State*, 19 O. 110; *Lima v. Cemetery Association*, 42 O. S. 128; *Lee v. Sturges*; *Insurance Co. v. Ratterman*, 46 O. S. 153, 19 N. E. 560, 2 L. R. A. 556; *Scott v. Smith*, 2 O. N. P. (N.S.) 617, 15 O. D. (N.P.) 590.

The county commissioners and the county auditor do not possess power to determine the question whether specific property is subject to taxation or not: State, ex rel., v. Commissioners, 31 O. S. 271; *Kenyon College v. Schnably*, 12 O. C. C. (N.S.) 1, 21 O. C. D. 150 [reversing in part, *Kenyon College v. Schnably*, 8 O. N. P. (N.S.) 160, 19 O. D. (N.P.) 432, and affirmed, without report, *Schnably v. Kenyon College*, 81 O. S. 514]; it was said that a more liberal

rule of construction was laid down in *Watterson v. Halliday*, 77 O. S. 150, 82 N. E. 962, than had formerly obtained in Ohio.

The fact that officers who are charged with the duty of enforcing tax laws have construed a statute as operating an exemption, does not bind the state nor the successors of such officers: *Lee v. Sturges*; *Insurance Co. v. Ratterman*, 46 O. S. 153, 19 N. E. 560, 2 L. R. A. 556.

With reference to exemptions claimed by individuals and corporations for profit, the rule is that the right to exemption under the law should be reasonably clear, the presumption being that all property is subject to taxation by a uniform rule, to the end that all property bear its true share of the burden of government. While the court does not apply strict rules of construction in cases where religious, charitable and educational institutions seek exemptions, we think that such right to exemption should appear in the language of the constitution or statute, with reasonable certainty, and not depend on their doubtful construction: *Watterson v. Halliday*, 77 O. S. 150, 82 N. E. 962.

In *Watterson v. Halliday*, 77 O.S. 150, 82 N.E. 962, it was said that the court had traveled toward the extreme of liberal statutory construction in *Davis v. Camp Meeting Association*, 57 O. S. 257, 49 N. E. 401; and that in the case at bar, the court would not apply the logic of such earlier case.

It was only necessary to enact Art. XII, §§ 7, 8 and 10 of the Ohio constitution for the purpose of permitting exemptions of lesser estates and incomes, and progressive taxation of larger estates and incomes, since the general power of taxation is conferred by Art. II, § 1: State, ex rel., v. Carrel, 99 O. S. 220, 124 N. E. 134.

If a public charity fund is invested for financial purposes during a period before dispensing the charity, it is not exempt from taxation during such period: *Jones v. Conn.*, 116 O. S. 1, 155 N. E. 791.

Real property of turnverein society is not exempt from taxation, being neither a public institution of learning nor an institution used exclusively for charitable purposes: *Sozialer Turnverein v. Board of Tax Appeals*, 139 O.S. 622, 23 O.O. 117, 41 N.E.(2d) 710.

Under G.C. §§ 1464-1 (1) and 5570-1, the board of tax appeals has jurisdiction to exercise authority relative to consenting to the exemption of property from taxation under G.C. § 5353, whether such property be real or personal: *Wehrle Foundation v. Evatt*, 141 O.S. 467, 26 O.O. 29, 49 N.E. (2d) 52.

The sole power to exempt any ground from taxation is vested in the general assembly. There is no implied exemption, but it must be expressed in clear and unmistakable terms: *Cincinnati v. Hynicka*, 9 O. N. P. (N.S.) 273, 20 O. D. (N.P.) 365.

Exemption from taxation of property used for religious, educational, and charitable purposes in Ohio. Article by E. R. Heisel of the Cincinnati bar. 3 Cin. L. Rev. 40.

Where unpaid assessments continue to be a lien upon property purchased by the board of education: 1920 A.G.Opns. vol.1, p.808.

General Code § 5349, exempting from taxation "public colleges and all buildings connected therewith," is not limited to such buildings and property as may be used exclusively for literary and educational purposes, but includes all property with reasonable certainty used in furthering the necessary objects of the institution; residences occupied, rent free, by the president or professors are exempt from taxation under that section: 1928 A.G.Opns. p.3902.

In general, the same rules are applied to personal property as are applicable to realty, in determining whether or not it is subject to taxation: 1930 A.G. Opns. p.2369.

2. Educational institutions

See notes, G.C. § 5353 (2), citing *College Preparatory School v. Evatt*.

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| <p>SECTION
63, 64. The return by banks organized under the "state bank of Ohio" act.—Proceedings on omission or refusal to make return, and collection of taxes, etc.
65. Distribution of such taxes.
66. What banks shall annually in May make returns to county auditor.
67. County auditor's duty upon receiving such returns; tax upon such returns.
68. Proceedings if such returns are not made, etc.</p> <p style="text-align: center;">MISCELLANEOUS.</p> <p>69. Owner of life estate, guardian, agent, etc., to pay tax;
70. —And list land for taxation; penalty for neglect;
71. —And pay tax, unless, etc.
72. Guardian's liability for neglect;
73. —Executor's;
74. —Agent's and attorney's;
75. —Their lien on the land, etc., for money advanced, etc.
76. Liability and forfeiture of tenants in curtesy or dower, for neglect; redemption in such cases.
77. Rights of a joint owner, who pays his portion of tax.—Those not paying, held liable as if partition had not been made.—A tax on lands sold at judicial sale to be paid out of proceeds of sale.
78. School or ministerial lands and lands hereafter sold by the U. S. to be taxed.
79. Annual levy of taxes.—rate thereof.
80. Levy to pay bonds of county, city or township given for railroad subscription.
81. Inhibition against counties, townships, cities, etc., contracting debts, etc., beyond certain limit.
82. Contracts in contravention thereof void as to corporation; but officer, etc., individually liable, etc.
83. Tax to build or pay for public buildings of county.
84. Commissioners may levy tax to pay interest.</p> <p style="text-align: center;">NONRESIDENT PERSONAL TAX.</p> <p>85, 86. County treasurer's duty as to nonresidents' taxes delinquent on personal property.
87, 88. Collection of such tax.
89. Commissioners' duty as to delinquent list of personal property.
90. Proceedings by treasurer where delinquent tax payer has dues within the state, and no property to distrain; or is nonresident with property, moneys or dues in the state.
91. How such delinquent collections distributed.</p> <p style="text-align: center;">REDEMPTION OF LAND SOLD AT DELINQUENT SALE.</p> <p>92. Within what period land sold for taxes may be redeemed.
93. Applications therefor, to whom made.
94. Deposit of money.
95. Joint owner, etc., may redeem his proportion.—Certificate for redemption, and proceedings.—Notice of redemption.
96. Payment of redemption money to tax purchaser, etc.</p> | <p>SECTION
97. When auditor to note on back of certificate that deposit has not been made.—Note of redemption on record of tax sales.
98. Tax purchaser's improvements, how paid for, etc.</p> <p style="text-align: center;">SALE OF FORFEITED LANDS.</p> <p>99. Lands, etc., forfeited to state to be sold.—Proceedings as to lands, etc., how effected;
100. —As to lands hereafter forfeited.—Sale of forfeited lands.
101. Notice of sale; time of sale, and sale.—Auditor may adjourn sale, from day to day until sold.
102. Proceedings if land not sold.
103. How forfeited and sold lands may be redeemed.—Excess of purchase money to be paid to owner, and when.—If doubtful who its owner, how to proceed.
104. Certificate to purchaser.—Survey.—Fee for deed; legal effect of deed.—Right of minors, infans cov. et. etc., to redeem.—Rights of parties if taxes have in fact been paid.
105. Purchasers may have partition as in other cases;
106. —Deemed the assignee of state; his lien; may recover, if ejected, the taxes, etc., and how; and not to be evicted until taxes, etc., refunded.
107. Auditor of state to keep record and forward list of lands hereafter forfeited, in alternate years.—Lands redeemed to be transferred on county duplicate.
108. Which county auditor to make return of sale.
109. Apportionment, etc., of moneys arising from sale of forfeited lands.—Treasurer's fees.
110. Acts repeated.
111. Times to pay taxes.—Road taxes.
112. Installments to be apportioned, etc.
113. Manner of placing taxes on duplicate, etc.
114. Effect of not paying taxes at times prescribed.—Penalty of five per cent.
115. —Same.—Penalty of thirty per cent.
116. List of delinquent lands and lots, and record thereof.
117. Delivery of duplicate to treasurer; times he must keep his office open.
118. Treasurer's settlement with auditor; settlement with commissioners.
119. Auditor's duty in settlement with treasurer.—Auditor's certificates to treasurer.—Delinquent list.
120. Treasurer to deliver certificates to auditor of state and comptroller.
121. Settlement with county treasurer as to moneys belonging to state.
122. County treasurer's payments to local treasurers.—Proviso.
123. Deficits in means to meet interest of principal of funded debt of state, how to be supplied.
124. Deficits in general revenue, how to be met.
125. When county treasurer's term begins and ends.—Bond and oath.—Vacancy.
126. Act repeated.—Proviso.
127. Rate of taxes—for ordinary state purposes.
128. Additional levy.—Expenses of government.—Sinking fund.
129. School fund.</p> |
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An act for the assessment and taxation of all property in this state, and for levying taxes thereon according to its true value in money.¹

[Passed and took effect April 5, 1859. 56 vol. Stat. 175.]

All property to be listed for taxation.

(1.) SECTION I. *Be it enacted by the General Assembly of the State*

¹ Under the constitution of 1802 a tax on steamboats navigating the Mississippi and Ohio rivers, and owned by citizens of this state, was constitutional. *Perry et al. v. Torrence*, 8 Ohio Rep. 521.

withdraw in money, on demand. The term "credits," whenever used in this act, shall be held to mean the excess of the sum of all legal claims and demands, whether for money or other valuable thing, or for labor or service due, or to become due, to the person liable to pay taxes thereon, including deposits in banks or with persons in or out of this state, other than such as are held to be money as hereinbefore defined by this section, when added together (estimating every such claim or demand at its true value in money), over and above the sum of legal, *bona fide* debts, owing by such person.¹ But in making up the sum of such debts owing, there shall be taken into account no obligation to any mutual insurance company, nor any unpaid subscription to the capital stock of any joint stock company, nor any subscription for any religious, scientific, literary, or charitable purpose; nor any acknowledgment of any indebtedness unless founded on some consideration actually received and believed at the time of making such acknowledgment to be a full consideration therefor; nor any acknowledgment of debt made for the purpose of diminishing the amount of credits to be listed for taxation; nor any greater amount or portion of any liability as surety, than the person required to make the statement of such credits believes that such surety is in equity bound, and will be compelled to pay, or to contribute, in case there be no securities: Provided, that pensions receivable from the United States, or from any of them, salaries or payments expected to be received for labor or services to be performed or rendered, shall not be held to be annuities within the meaning of this act.

Public property
exempt from tax-
ation.

(3.) SEC. III. That all property described in this section, to the extent herein limited shall be exempt from taxation,² that is to say, 1st: All public school houses and houses used exclusively for public worship, the books and furniture therein, and the grounds attached to such buildings necessary for the proper occupancy, use and enjoyment of the same, and not leased or otherwise used with a view to profit. All public colleges, public academies, all buildings connected with the same,³ and all lands connected with public institutions of learning, not used with a view to profit.⁴ This provision shall not extend to leasehold estates of real property, held under the authority of any college or uni-

¹ The 10th section of the act of April 13, 1853 (Swan's R. S., 903), which allowed individuals and certain corporations, in giving their tax lists, to deduct their liabilities from their credits, was held to be unconstitutional and void -- that the constitution permits no deduction of liabilities from moneys and credits. *Exchange Bank of Columbus v. Hines*, 3 Ohio Rep. 1; *Latimer et al. v. Morgan et al.*, 6 Ohio St. Rep. 279.

See note to section 2, Art. XII of the constitution.

² All laws exempting any property in the state from taxation, being in derogation of equal rights, should be construed strictly. *Cincinnati College v. The State*, 19 Ohio Rep. 110.

³ It would seem that this exemption would not include a house erected on the lands of a college, and occupied by one of the professors as a residence. *Kendrick v. Furquhar*, 8 Ohio Rep. 189.

⁴ In regard to similar language in the 3d section of the tax law of March, 1848, Caldwell, J., in delivering the opinion of the court, in *Cincinnati College v. The State*, 19 Ohio Rep. 110, 114, said: "We suppose the plain and palpable meaning of this statute is, that the houses and property which these different institutions need to use, whilst engaged in the pursuit of their respective objects, shall be exempt from taxation. Such property when thus used does not produce an increase. It is used for purposes other than making money; and as the objects for which it is used are beneficial to community, it is exempted from the burdens imposed upon other property." From the decision in that case, it seems that buildings belonging to a college or academy must, to escape taxation, be used exclusively for college or academy purposes; and if used for other purposes they are liable to taxation, although the proceeds are, in the future, to be applied for the promotion of literature and science.

versity of learning of this state. 2d: All lands used exclusively as grave yards or grounds for burying the dead, except such as are held by any person or persons, company or corporation, with a view to profit, or for the purpose of speculation in the sale thereof. 3d: All property, whether real or personal, belonging exclusively to this state, or the United States. 4th: All buildings belonging to counties used for holding courts, for jails, or for county offices, with the ground, not exceeding in any county ten acres, on which such buildings are erected. 5th: All lands, houses, and other buildings belonging to any county, township or town, used exclusively for the accommodation or support of the poor. 6th: All buildings belonging to institutions of purely public charity, together with the land actually occupied by such institutions, not leased or otherwise used, with a view to profit, and all moneys and credits appropriated solely to sustaining, and belonging exclusively to such institutions. 7th: All fire engines and other implements used for the extinguishment of fires, with the buildings used exclusively for the safe keeping thereof, and for the meeting of fire companies, whether belonging to any town, or to any fire company organized therein. 8th: All market houses, public squares or other public grounds, town or township houses or halls, used exclusively for public purposes, and all works, machinery and fixtures belonging to any town, and used exclusively for conveying water to such town. 9th: Each individual in this state may hold exempt from taxation personal property of any description of which such individual is the actual owner, not exceeding fifty dollars in value; no person shall be required to list a greater portion of any credits than he believes will be received, or can be collected, nor any greater portion of any obligation given to secure the payment of rent, than the amount of rent that shall have accrued on the lease, and shall remain unpaid at the time of such listing; no person shall be required to include in his statement as a part of the personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, which he is required to list, any share or portion of the capital stock or property of any company or corporation, which is required to list or return its capital and property for taxation in this state. The taxes upon banks, banking companies, and all other joint stock companies, or corporations, of whatever kind, levied and collected, in pursuance of the provisions of this act, shall be in lieu of any taxes which such banks or banking company, or other joint stock company or corporation was, by former laws, required to pay. *cc*

Fifty dollars of personal property exempt.

Rules for listing, etc.

Banks not to be twice taxed.

BY WHOM, WHERE, AND IN WHAT MANNER PROPERTY SHALL BE LISTED.

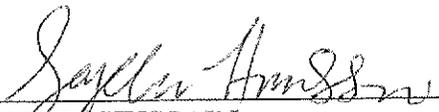
(4.) SEC. IV. Every person of full age and sound mind, not a married woman, shall list the real property of which he is the owner, situate in the county in which he resides, the personal property of which he is the owner, and all moneys in his possession; and he shall list all moneys invested, loaned or otherwise controlled by him, as agent or attorney, or on account of any other person or persons, company or corporation whatsoever, and all moneys deposited subject to his order, check or draft, and credits due from, or owing by any person or persons, body corporate or politic, whether in or out of such county. The property of every ward shall be listed by his guardian; of every minor child, idiot or lunatic having no other guardian, by his father, if living, if not, by his mother, if living, and if neither father nor mother be living, by the person having such property in charge; of every wife by her husband, if of sound mind, if not, by herself; of every person for whose benefit property is held in trust, by the trustee; of every estate

Statement of property—who to make it—and how.

(c) Repealed. Supplied, Sup. 761.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Appendix to Brief of Appellant was sent by regular U.S. mail to Graham A. Bluhm, Eastman & Smith Ltd., One SeaGate, 24th Floor, P.O. Box 10032, Toledo, Ohio 43699, counsel for Appellees, on this 14th day of December, 2009.



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