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BOARD OF TAX APPEALS

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In the  
Supreme Court of Ohio

COUPLE TO COUPLE LEAGUE  
INTERNATIONAL, INC.,

Appellee,

v.

RICHARD A. LEVIN,  
TAX COMMISSIONER OF OHIO,

Appellant.

10-0864

Case No. 2010-

Appeal from Ohio Board of Tax Appeals  
Case No. 2007-M-101

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NOTICE OF APPEAL

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SUPREME COURT OF OHIO

## NOTICE OF APPEAL

Appellant, Richard A. Levin, Tax Commissioner of Ohio (the “Commissioner”), 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 “BTA”) journalized in Case No. 2007-M-101 on April 13, 2010 denying a real property tax exemption under R.C. 5709.12 to Couple to Couple League International, Inc. (“Couple to Couple”), as owner of the subject real property (a warehouse/office building and the land thereunder). The BTA reasonably and lawfully upheld the Commissioner’s final determination concerning the parking lot adjacent to the subject property. A true copy of the Decision and Order of the BTA 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.

The Decision and Order of the BTA was authored by a two-member majority of the BTA consisting of BTA members William E Dunlap and Michael J. Johrendt. BTA chairperson Pamela L. Margulies concurred in that part of the BTA decision affirming the Commissioner’s final determination in part, but dissented from the remainder of the BTA decision. Ms. Margulies would have affirmed the Commissioner’s final determination in its entirety.

The Commissioner, as appellant, complains of the following errors in the Decision and Order of the BTA:

1. The BTA erred as a matter of fact and law in holding that the subject property qualified for real property exemption pursuant to R.C. 5709.12(B), and in reversing the Commissioner’s final determination denying the R.C. 5709.12 exemption claim for that property. The BTA should have affirmed the Commissioner’s final determination in its entirety.

2. Because real property tax exemptions are a matter of legislative grace and in derogation of the rights of all other taxpayers, the Board erred in failing to strictly construe the R.C. 5709.12 exemption against the claim of exemption and in failing to require Couple to Couple, the real property tax exemption claimant, to establish by clear and convincing proof each of the requirements of exemption under R.C. 5709.12. See, e.g., R.C. 5709.01(A); R.C. 5715.271; *Cincinnati College v. State* (1850), 19 Ohio 110, 115; *Youngstown Metropolitan Housing Authority v. Evatt* (1944), 143 Ohio St. 268, 273; *First Baptist Church of Milford, Inc. v. Wilkins*, 110 Ohio St.3d 496, 2006-Ohio-4966, ¶10.

3. The Board erred as a matter of fact and law in holding that the property was used “exclusively for charitable purposes” within the meaning of R.C. 5739.12.

4. The Board erred in failing to accord the proper deference to the Commissioner’s findings in his final determination denying the exemption claim, namely, that those findings must be upheld unless the one challenging those findings demonstrates the findings to be “clearly unreasonable or unlawful.” *Am. Fiber Sys. v. Levin*, Slip Opinion No. 2010-Ohio-1468, ¶42 (citing *Hatchadorian v. Lindley* (1986), 21 Ohio St.3d 66, paragraph one of the syllabus). The Commissioner’s findings that the BTA erred in ignoring or otherwise failing to uphold include, but are not limited to:

- (i) Couple to Couple used the subject property exclusively for profit-making, income producing purposes, rather than “exclusively for charitable purposes”;
- (ii) The various items of coffee mugs, videos, books, T-shirts, totes, compact discs and other merchandise that Couple to Couple held for storage, distribution and sale at the subject property were: (a) not provided, in

significant numbers, free of charge, and (b) not provided at a reduced rate on a sliding scale to those who could not pay the full price for them;

- (iii) The subject property's use was exclusively for the purpose of a commercial activity in competition with other businesses;
- (iv) Regarding the various items of merchandise that it stored and held for sale at the subject property, Couple to Couple passed on the costs it incurred to acquire or produce these items, together with substantial profit thereon, in the prices it charged its customers for these items, rather than absorb those expenses and costs itself.

5. In direct contradiction to the Commissioner's findings in his final determination and of the facts established in the evidentiary record, the BTA erred as a matter of fact and law in holding that "the items [i.e., the items of merchandise stored and held for sale in the warehouse portion of the subject property], while sold for more than the cost of the items themselves, were not sold 'with a view to profit.'" *BTA Decision and Order* at 8. Remarkably, the BTA neither cited nor relied on any evidence for such a finding.

6. The BTA erred by ignoring the overwhelming evidentiary record establishing that Couple to Couple derived substantial profits from the sales of the merchandise located on the subject property and from the training classes conducted thereon and, thus, used the property "with a view to profit" in competition with commercial enterprises engaged in selling the same kinds of merchandise and services. The two-member majority of the BTA should have adopted the factual and legal analysis set forth by BTA Chairperson Margulies' dissent on this issue and affirmed the Commissioner's denial of the exemption claim. *BTA Decision and Order* at 10-14. See particularly Ms. Margulies analysis of Couple to Couple's gross sales and gross profit

figures, *id.* at 12-13, showing that Couple to Couple consistently has earned substantial profits from its sales of merchandise and training classes. Gross profit margins on the sale of merchandise consistently approximated 100% or greater, with total profits averaging several hundred thousands of dollars. Similarly, the “tuition” generated by Couple to Couple’s training classes consistently generated hundreds of thousands of dollars of income for Couple to Couple. Yet, by its own account, Couple to Couple “only offered 1½ to 2 percent of its classes for free.” *Id.* at 13 (citing to Couple to Couple’s BTA Ex. 11).

7. The BTA erred in contravening this Court’s established precedent pursuant to which income producing activities for substantial profit in competition with commercial enterprises have never qualified as “charitable” activities for purposes of the R.C. 5709.12 exemption, see, e.g., *Lutheran Book Shop v. Bowes* (1955), 164 Ohio St. 359; *Seven Hills Schools v Kinney* (1986), 28 Ohio St.3d 186, and this Court’s established precedent requiring the exemption claimant provide goods and services irrespective of ability to pay. See, e.g., *Planned Parenthood Ass’n of Columbus, Ohio, Inc. v. Tax Commissioner* (1966), 5 Ohio St.2d 117, 120 (charging a maximum of \$10 per individual for all of the interviews, lectures, instructions, examinations and prescriptions which constituted the charitable activities therein at issue, and providing free or reduced prices for the vast majority of individuals receiving the services).

8. The BTA compounded its errors by misreading and misapplying *Girl Scouts-Great Trail Council v. Levin*, 113 Ohio St.3d 24, 2007-Ohio-972, which involved a fundamentally different factual scenario, as cogently recognized by BTA Chairperson Margulies. *BTA Decision and Order* at 13-14. The BTA should have adopted Ms. Margulies’ conclusion that “the activities in question, the sale of products and materials and the classes offered for a fee, were not charitable in nature and certainly did not generate ‘incidental’ revenue.” *Id.* at 14

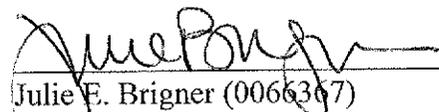
(citing to *Community Health Professionals Inc. v. Levin*, 113 Ohio St.3d 24, 2007-Ohio-972, ¶23; *Girl Scouts*, at ¶17; and *Northeast Ohio Psychiatric Institute v. Levin*, 121 Ohio St.3d 292, 2009-Ohio-583, ¶16).

9. The BTA erred in holding that Couple to Couple was entitled to exemption pursuant to R.C. 5709.12(B) in light of its finding that Couple to Couple presented “[v]ery little information regarding the real property itself” and, therefore, failed to meet its affirmative burden of establishing both the manner and extent of the claimed error in the Commissioner’s final determination. *Am. Fiber Sys.*, 2010-Ohio-1468, ¶12.

Wherefore, the Commissioner requests that the Court reverse that portion of the Decision and Order of the BTA that reversed the Commissioner’s final determination as unreasonable and unlawful and to remand the matter for issuance of an Order denying Couple to Couple’s application for real property tax exemption for tax year 2002 in its entirety.

Respectfully submitted,

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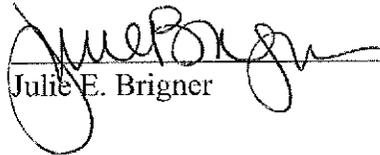
Counsel of Appellant Richard A. Levin,  
Tax Commissioner of Ohio

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Notice of Appeal was filed by hand delivery with the Ohio Board of Tax Appeals, 30 E. Broad St., 24<sup>th</sup> Floor, Columbus, Ohio 43215, and was served by certified mail, return receipt requested, on this 13<sup>th</sup> day of May, 2010 upon the following:

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**OHIO BOARD OF TAX APPEALS**

Couple to Couple League )  
International, Inc., )  
 ) (REAL PROPERTY TAX EXEMPTION)  
Appellant, )  
 ) DECISION AND ORDER  
vs. )  
 )  
Richard A. Levin, )  
Tax Commissioner of Ohio, )  
 )  
Appellee. )

**APPEARANCES:**

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Entered

**APR 13 2010**

Mr. Johrendt and Mr. Dunlap concur; Ms. Margulies concurs in part and dissents in part.

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed herein on February 7, 2007. This appeal is from a determination of the Tax Commissioner, appellee, wherein said official denied, in total, an application for exemption from real property taxation filed by the appellant.

The appellant, Couple to Couple League International, Inc. ("CCLI"), is a non-profit corporation the purpose of which is to disseminate information regarding

**EXHIBIT A**

natural family planning options. CCLI provides materials and programming, in the form of classes taught by volunteer instructors, to assist families and individuals in spacing children in accordance with practices accepted by the Catholic Church.

The organization, founded in 1971, promotes natural family-planning options, which include fertility awareness, temperature charting, and the encouragement of breastfeeding. The program also has a moral component. As explained by the executive director at the hearing before the board, "We don't teach natural family planning as a course in biology, as much as we do ground it in Catholic Church teaching." Hearing Record (H.R.) at 29.

In 1995 CCLI purchased two parcels of land and applied for exemption from real property taxation, which was granted in part. At the time, the portion of the property used as CCLI's business offices was granted exemption. However, also located on the same parcel was a single-family residence. As the residence was leased, the parcel was split listed and value for a portion of the land and the residence remained on the tax list. CCLI also had purchased an additional parcel of vacant land, but that parcel was not included in its original exemption application. In 2002 CCLI razed the rental property and filed a new application for exemption, listing both parcels owned by the organization. In an attachment to the application for exemption, CCLI explained that it was now seeking full exemption of the parcel previously split-listed and exemption of the parcel that had inadvertently been omitted. S.T. at 220.

Instead of granting full exemption to the previously split-listed parcel and the small parcel previously omitted, the Tax Commissioner denied exemption for the

small parcel and returned the entire larger parcel to the tax list. The Tax Commissioner determined that “the subject property is used to produce income, and since it is used for commercial activity in competition with other businesses, then it is not used exclusively for a charitable purpose.” S.T. at 3.

The Tax Commissioner’s determination is based upon his conclusion that CCLI’s property is used to distribute a significant number of books and promotional items for profit. By using the property to produce income, the Tax Commissioner determined, the property was not entitled to exemption under R.C. 5709.12.

CCLI appeals to this board and assigns the following as error:

“1. The Tax Commissioner erred in finding that the subject property is not used exclusively for charitable purposes and thereby not exempt from taxation under R.C. 5709.12.

“2. The Tax Commissioner erred in finding that the subject property is used with a view for profit and is in competition with commercial entities and thereby not exempt from taxation under R.C. 5709.12.”

The matter is considered upon the notice of appeal, the statutory transcript certified to this board by the Tax Commissioner, the testimony and evidence presented at the hearing held, and the legal argument provided by the parties. At the hearing, CCLI presented the testimony of Andrew B. Alderson, its executive director, and Jack Langlitz, its business manager. Mr. Alderson provided testimony regarding the purposes and goals of CCLI and Mr. Langlitz provided testimony regarding the financial structure of the organization.

We begin by acknowledging the duties imposed upon the Board of Tax Appeals when reviewing a decision of the Tax Commissioner. The Tax Commissioner's findings are entitled to a presumption of correctness, and it is incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut the presumption and establish a right to the relief requested. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121; *Belgrade Gardens v. Kosydar* (1974), 38 Ohio 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.

As to the law relating to exceptions from taxation, exemption from tax is an exception to the rule that all property is subject to taxation, and therefore a statute granting such an exemption must be strictly construed. *Nat. Tube Co. v. Glander* (1952), 157 Ohio St. 407; *White Cross Hospital Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199.

The statute upon which CCLI relies in seeking exemption is R.C. 5709.12(B), which provides in pertinent part:

“Real and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation \*\*\*.”

Any institution, whether charitable or noncharitable, may receive exemption for its property if that institution uses the property exclusively for charitable purposes. Therefore, the first question posed is whether CCLI is an institution. If the answer to

that question is in the affirmative, the second question to be answered is whether the real property under consideration is used "exclusively for charitable purposes." *Highland Park Owners, Inc. v. Tracy* (1994), 71 Ohio St.3d 405.

The Tax Commissioner found that CCLI was an institution. S.T. at 2. We agree. However, the Tax Commissioner held that CCLI's use of the property was not exclusively charitable. In *True Christianity Evangelism v. Zaino* (2001), 91 Ohio St.3d 117, the Ohio Supreme Court interpreted the terms "exclusively for charitable purposes" as found in R.C. 5709.12. Therein 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, \*\*\* this court held that for purposes of R.C. 5709.07, the phrase 'used exclusively for public worship' was equivalent to 'primary use.' There is no indication that the phrase 'used exclusively' as used in R.C. 5709.12 is to be interpreted differently than it is in R.C. 5709.07." Id. at 120. (Parallel citations omitted.)

Therefore, this board must determine whether the primary use of CCLI's real property is charitable.

In *Olmsted Falls Bd. of Edn. v. Tracy* (1997), 77 Ohio St.3d 393, the Supreme Court reaffirmed the definition of "charity" set forth in *Planned Parenthood v. Tax Commr.* (1966), 5 Ohio St.2d 177. In paragraph one of the syllabus, the Supreme Court defined "charity" in the following manner:

"In the absence of a legislative definition, 'charity,' in the legal sense, is the attempt in good faith, spiritually, physically, intellectually, socially and economically to advance and benefit mankind in general or those in need of advancement and

benefit in particular, without regard to their ability to supply that need from other sources, and without hope or expectation, if not with positive abnegation, of gain or profit by the donor or by the instrumentality of the charity.”

There is no question that CCLI attempts in good faith to spiritually, physically, intellectually and socially advance and benefit those with a particular need. Natural family-planning serves as a benefit to those members of the Catholic Church who seek to strictly follow the canons of their faith. At hearing, the executive director testified that instruction was provided regardless of ability to pay, as outlined by CCLI's constitution. H.R. at 34-35.

The Tax Commissioner, however, argues that the property's use is not primarily charitable because a major component of what the property is used for is the dissemination of books published and other items sold by CCLI. This, according to the Tax Commissioner, is a commercial activity, and, as such, removes the property from qualification for exemption.

Very little information regarding the real property itself was presented at hearing. CCLI claims by brief that the building consists of 13,500 square feet and 22.4 percent of that building is dedicated to the sale and distribution of books and promotional items. The executive director testified at hearing that, while he was unsure of the breakdown, the warehouse-to-office space could have been as much as 50-50. H.R. at 64. Fifteen employees, divided into two major departments, the programs team and the business team, are housed onsite. H.R. at 22. While the basic divisions remain,

the number of employees has decreased since 2002, the year for which exemption was sought. H.R. at 51, 52.

One reason for the reduction in employees is the types of items currently warehoused. In earlier years, CCLI stocked natural family-planning books, whether published by CCLI or merely approved by it, and promoted those books through a written catalogue. H.R. at 31, 42. With the popularity of the Internet and the advent of E-tailers such as Amazon.com, it became more cost efficient to direct customers to web-based retailers for the purchase of books not published by CCLI. H.R. at 43. Therefore, CCLI stopped warehousing non-published materials, except for those integral to its instructional program, such as thermometers. H.R. at 44. Currently, the bulk of the items CCLI warehouses and sells are self-published items. H.R. at 38.

The Tax Commissioner argues that the activities of warehousing and selling items places CCLI in competition with a commercial enterprise. In *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186, the Supreme Court made clear that the activities of a store that served as a clothing resale shop, while supportive of an educational institution, were not "in furtherance of" its charitable mission. In *Lutheran Book Shop v. Bowers* (1955), 164 Ohio St. 359, the court found a corporation was not exempt from taxation under the precursor to R.C. 5709.12 when a substantial portion of the gross income of that corporation was received for work done in competition with commercial concerns in the same line.

Not all sales activities require a finding of competition with commercial enterprise. In *Girl Scouts-Great Trail Council v. Levin*, 113 Ohio St.3d 24, 2007-Ohio-

972, merchandise was sold from a small portion of an office building owned by the not-for-profit Girl Scouts organization. All of the items sold related to the Girl Scouts. Some of the items were produced by the national organization and some items were produced by vendors licensed by the national organization. The Supreme Court held in that appeal that the store was an “essential and integral” part of the Girl Scouts’ operations and the items were not sold “with a view to profit.” *Id.* at ¶17, 18.

We find the court’s reasoning applies in the present appeal. The items sold by CCLI are specific to its cause. The books and instructional materials are not items which help to support its mission – they are a part of the mission itself. As such, the area in which the activities take place is an essential and integral part of CCLI’s operations. The items, while sold for more than the cost of the items themselves, were not sold “with a view to profit.” See *Bowers v. Akron City Hosp.* (1968), 16 Ohio St.2d 94. The fact that CCLI’s practices have changed over the years, or that items offered for sale include promotional items such as coffee mugs, does not compel a different conclusion.

The Tax Commissioner compares the present facts with the facts of *The Matthew Kelly Foundation v. Wilkins* (Oct. 27, 2006), BTA No. 2005-V-676, unreported. In that appeal, the board affirmed the Tax Commissioner’s denial of exemption for the administrative offices of a private foundation. The evidence in that appeal indicated that the administrative offices served as the planning point for speaking engagements and retreats as well as the distribution center for materials produced by Matthew Kelly, an inspirational speaker. That foundation, however,

served as the not-for-profit arm of a for-profit printing house which some evidence indicated was located at the same address. In this case, there is no correlating for-profit entity. Instead, this case is remarkably similar to *Girl Scouts*, which was also decided under R.C. 5709.12.<sup>1</sup>

We now consider the exempt status of the smaller parcel. According to the record, the smaller parcel of land sits directly at street level, while the larger parcel is subject to a steep incline. The only use to which the smaller parcel of land was put was for overflow parking for visitors of a neighboring business. According to the executive director, CCLI employees and guests do not use the parking area. H.R. at 60.

In *Bowers*, supra, the issue was the exempt nature of an adjacent parking lot. The court held that parking lot served as an “essential and integral” part of the charitable institution’s facilities; therefore exemption was proper. See, also, *Good Samaritan Hosp. v. Porterfield* (1972), 29 Ohio St.2d 25 (wherein the court relied upon *Bowers* so as to conclude that building materials used in the construction of a parking garage which was used to provide parking for hospital patrons were not subject to sales and use tax under former R.C. 5739.02(B)(13)).

In *State Teachers Retirement Bd. v. Kinney* (1981), 68 Ohio St.2d 195, the Supreme Court acknowledged and distinguished its prior decisions, ultimately

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<sup>1</sup> CCLI argues that this board should consider not only R.C. 5709.12, but R.C. 5709.121 as a basis for exemption. This board has previously held that R.C. 5709.121 cannot be considered unless identified on the complaint as a basis for exemption and considered by the Tax Commissioner in his review. *The Old West End Association, Inc. v. Wilkins* (Oct. 27, 2006), BTA No. 2005-H-359, unreported, affirmed (Jan 18, 2008), Lucas App. No. L-06-1374, 2006-Ohio-366. See, also, *Ohio Bell Tel. Co. v. Levin*, 124 Ohio St.3d 211, 2009-Ohio-6189. We would note, however, that in *Girl Scouts*, a case decided by this board only under R.C. 5709.12, the Supreme Court did consider the language of R.C. 5709.121 in making its determination.

concluding that a parking garage attached to a governmental building was not essential to the function of the building, nor used in furtherance of its public function. In *Case W. Res. Univ. v. Tracy* (1999), 84 Ohio St.3d 316, the court set forth a test for the exemption of a parking garage, to wit, whether the parking garage served as “an essential and integral part of the charitable and/or educational activities” of the charitable or educational institutions. *Id.* at 322.

In the present appeal, the testimony presented at hearing indicated that the parcel is not used by those visiting or working at CCLI’s offices. Therefore, this board cannot find that the parking area is an essential and integral part of CCLI’s mission. Therefore, we find that the Tax Commissioner was correct when he concluded that the property was not properly exempted from taxation.

Considering the record, statutes, and case law, the Board of Tax Appeals finds the Tax Commissioner’s final determination must be affirmed in part and reversed in part, consistent with this decision and order.

Ms. Margulies concurs in part and dissents in part.

I respectfully concur in part and dissent in part from the majority opinion. Based on the record in this case and applicable case law, I would deny the tax exemption under R.C. 5709.12(B) for the subject property.

To be qualified for tax exemption under R.C. 5709.12(B), property must (1) be owned by an institution and (2) be used “exclusively for charitable purposes.” *Highland Park Owners, Inc. v. Tracy*, *supra*. Couple to Couple League International,

Inc. (CCLI) meets the first prong of the test as an institution, but it fails to meet the second prong of the *Highland* test.

The majority finds that the items sold by CCLI were “specific to its cause,” [natural family planning], and although the items were sold for more than their cost, they were not sold “with a view to profit.” However, my review of the record of CCLI’s sales and warehousing activities, as evidenced by tax returns, other financial information, and the listing of goods for sale for tax years beginning in 2002, the year for which the exemption was requested, and ending in 2007, leads me to conclude that such activities were much expanded from CCLI’s natural family planning mission and generated sizeable amounts of revenue.

The evidence in the record indicates that CCLI engaged in a business on the premises involving the sale of large quantities of goods.<sup>2</sup> There were fifty-seven (57) pages of products offered for sale to the public on CCLI’s website, S.T. at 47-104, including videos, books, coffee mugs, t-shirts, totes, compact discs, tapes, and Christmas cards. Some of the videos, compact discs, and tapes offered were a film critic’s review of the treatment of religion in movies, S.T. at 49; a compilation of songs and reflections, S.T. at 54; an interactive computer game for children, S.T. at 54; a collection of lullabies, S.T. at 55; and teen dating advice, S.T. at 61.

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<sup>2</sup> The majority appears to rely on evidence introduced at the hearing before this board regarding the extent of CCLI’s sales of goods during the period of time subsequent to January 2008, H.R. at 47-48. CCLI’s representative testified that its sales practices changed in January 2008. H.R. at 48, a period of time too far removed from 2002, the year for which exemption was requested. As stated above, I have relied upon the evidence contained in the statutory transcript and the hearing record regarding the sales of goods, including tax returns and other documentary evidence, which represents CCLI’s activities and actual revenue for tax years beginning 7/1/02 and ending 6/30/07.

Some of the subjects of the books offered for sale on the CCLI website were as follows:

1. Health, such as breast cancer prevention, vaccination information, yeast-related maladies, and depression, S.T. at 60, 91, 102.
2. Cookbooks and diet, including recipes, making baby food, whole foods for children and adults, and removing sugar from diets, S.T. at 95, 103-104.
3. Choosing a good wife or a good husband, S.T. at 64, 88.
4. Dressing with dignity, S.T. at 65-66
5. Parenting guides, S.T. at 68, 83, 87, 90, 91, 91, 93, 94, 98, 99.
6. Prayer books, S.T. at 69, 73.
7. General Catholic Church doctrine, including annulment and "Catholicism for Dummies," S.T. at 70, 71.
8. Self-help, such as being kinder, balancing work and home, and adjusting to the transition from work to home, S.T. at 75, 90, 95.
9. Family activities and craft projects for Lent and Easter, S.T. at 77.
10. Religious teaching guides for grades 1-8, S.T. at 79-80, 83.

Approximately one-half of the building located on the subject property is warehouse space utilized in connection with the sale of goods and materials. H.R. at 64. CCLI's own exhibits demonstrate that the sale of goods generates substantial sums of money on an annual basis. For tax year 7/01/02-6/30/03, the gross sales of products produced revenue of \$620,573, with a resulting gross profit of \$328,768. S.T. at 129.

For tax year 7/01/03-6/30/04, gross product sales raised \$642,595 and the gross profit from sales was \$317,451. S.T. at 166, 158. In tax year 7/01/04-6/30/05, the gross sales amount was \$568,654 and the gross sales profit was \$278,161. H.R., Appellant's Ex. 6 at unnumbered p. 1. In tax year 7/01/05-6/30/06, gross sales were \$520,902 and the gross profit was \$198,443. H.R., Appellant's Ex. 5 at unnumbered p.1. For tax year 7/01/06-6/30/07, the gross sales were \$469,016 and the gross profit from the sales of goods was \$181,554. H.R., Appellant's Ex. 4 at unnumbered p.1.

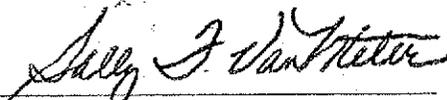
The other half of the building located on the subject property was used as CCLI's offices to administer the organization's activities. One such activity was CCLI's offering of classes for a fee. The "tuition" (non-materials) fees generated for fiscal year 2003 were \$196,196, S.T. at 129, 134; for fiscal year 2004, \$259,374, S.T. at 158; for fiscal year 2005, \$246,923, H.R., Appellant's Ex. 6 at unnumbered page 1; for fiscal year 2006, \$244,636, H.R., Appellant's Ex. 5 at unnumbered page 1; and for fiscal year 2007, \$243,597, H.R., Appellant's Ex. 4 at unnumbered page 1. The record illustrates that during fiscal years 2005-2007, CCLI only offered 1½ to 2 percent of its classes for free. H.R. Appellant's Ex. 11.

Clearly, based on the record herein, CCLI's use of the subject property was not "exclusively charitable" during the period in question so as to qualify the property for exemption under the pertinent case law. In order to be entitled to statutory exemption, a property can generate limited revenue and maintain its charitable character. As the Ohio Supreme Court characterized its own decisions in a recent opinion: "To be sure, we have held that charitable activities may generate *incidental*

revenue and still qualify as charitable. *Community Health Professionals Inc. v. Levin*, 113 Ohio St.3d. 432, 2007-Ohio-2336 \*\*\* paragraph 23; *Girl Scouts – Great Trail Council v. Levin*, 113 Ohio St.3d 24, 2007-Ohio-972 \*\*\* paragraph 17.” *Northeast Ohio Psychiatric Institute v. Levin*, 121 Ohio St.3d 292, 2009-Ohio-583, paragraph 16. (Emphasis added.). In the instant case, the activities in question, the sale of products and materials and the classes offered for a fee, were not charitable in nature and certainly did not generate “incidental” revenue.<sup>3</sup>

Thus, the property was not exclusively used for charitable purposes, as required under R.C. 5709.12(B), and I would find that it is not entitled to exemption from taxation. Accordingly, I dissent from the majority’s determination that part of the subject property is exempt from taxation, and concur in the conclusion that the remainder of the subject property is not tax exempt.

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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<sup>3</sup> One of the witnesses for CCLI at the hearing before this board testified that approximately fifty (50) percent of CCLI’s revenues were generated from the sale of goods and the offering of classes for a fee. H.R. at 38.