

In the
Supreme Court of Ohio

COUPLE TO COUPLE LEAGUE INTERNATIONAL, INC., : Case No. 2010-0864
:
Appellee, :
: On Appeal from the Ohio Board
v. : of Tax Appeals,
: Case No. 2007-M-101
RICHARD A. LEVIN, TAX :
COMMISSIONER OF OHIO, :
Appellant. :

MERIT BRIEF OF APPELLEE COUPLE TO COUPLE LEAGUE INTERNATIONAL, INC.

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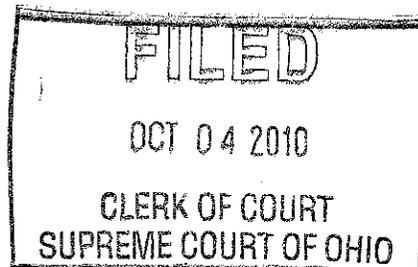
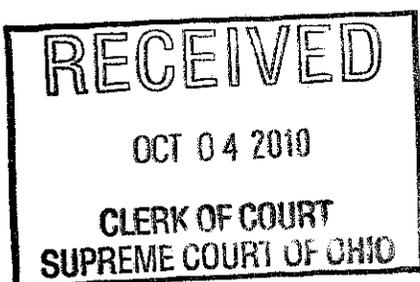


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I. INTRODUCTION

Appellee Couple to Couple League International, Inc. (“CCLI”) filed an application for exemption of real property from taxation with the Ohio Department of Taxation on August 20, 2002, which real property is more fully described herein. In a Final Determination dated December 13, 2006, the Tax Commissioner denied the application for exemption based on the assertion that the subject property “is not used exclusively for a charitable purpose” and that it otherwise fails to satisfy the requirements of R.C. §5709.12.

CCLI filed its Notice of Appeal of the Tax Commissioner’s Final Determination on February 5, 2007 and the matter was heard by the Board of Tax Appeals on June 20, 2008. In its decision of April 13, 2010 (“Decision”), the Board of Tax Appeals reversed the Tax Commissioner’s Final Determination in part and affirmed it in part. Specifically, the Board of Tax Appeals reversed the denial of CCLI’s property tax exemption with respect to the consolidated parcel on which its headquarters is located (described more fully below) and affirmed the denial of the exemption with respect to a separate parcel occasionally used by CCLI’s neighbor as an overflow parking lot.

Appellant Tax Commissioner is appealing the part of the Board of Tax Appeals Decision reversing the denial of CCLI’s property tax exemption. The affirmation of the denial of the property tax exemption concerning the separate parcel is not appealed and is not before this Court.

II. STATEMENT OF FACTS

A. Background on Couple to Couple League International, Inc.

CCLI is an international, interfaith, nonprofit organization dedicated to promoting marital chastity through the teaching of a process called Natural Family Planning (NFP) to married and

engaged couples. Appellant's Supplement (Hereinafter, "Supp." Appellee is not submitting a duplicate appendix or supplement in accordance with S.Ct. Prac. R. 6.3(B) and 7.1) 6-7, Hearing Record ("H.R.") 20, 23, 24. CCLI was organized in 1971. Supp. 7, H.R. 24. It has a support staff of 15 employees at its world headquarters in Cincinnati, and it delivers services throughout the world through approximately 1,000 professionally-trained volunteers. Supp. 6-7, H.R. 21-22. Its headquarters is located at 4290 Delhi Pike, which is identified by the Hamilton County Auditor as Parcel No. 540-0012-0013 (cons) (the "Property"). Supp. 6, H.R. 19. The Property has been improved with a 13,500 square foot non-residential building. No other structures currently exist on the Property. Supp. 6, H.R. 21. The tax-exempt status of the Property is the subject of this matter.

CCLI's Constitution sets forth its mission: helping couples live chaste and generous marriages by promoting the universal Christian tradition of marital chastity and generosity. Supp. 8, H.R. 27,28. NFP, the method taught by CCLI to facilitate this mission, is the only family planning method accepted by the Catholic church. Supp. 7, H.R. 23. Thus, CCLI teaches instructional courses on NFP that are grounded in Catholic church teaching. Supp. 8, H.R. 29. The courses include not only instruction on NFP using physiological information, but also teachings on moral and religious values. Supp. 8, H.R. 29. Other courses taught by CCLI – such as breastfeeding and fertility awareness – also directly support its mission. Supp. 8, H.R. 28.

B. Denial of CCLI's Property Tax Exemption

CCLI is exempt from federal income taxation pursuant to Internal Revenue Code section 501(c)(3). Supp. 172. In 1983, CCLI owned real property located at 3614 Glenmore Avenue in Hamilton County, Ohio, which is identified by the Hamilton County Auditor as Parcel No. 551-0010-0052. Supp. 20, H.R. 75. It used the Glenmore Avenue property for its administrative

offices. Supp. 20, H.R. 75. In 1983, CCLI applied for and was granted tax exempt status for the Glenmore Avenue property under R.C. §5709.12. Supp. 20, H.R. 75.

CCLI relocated its headquarters to the Property in 1995. Supp. 20, H.R. 76. At that time, the Property consisted of three parcels. The building housing CCLI's headquarters was situated on one parcel, a residence was located on another parcel, and the third parcel was vacant. Supp. 21-22, H.R. 79-82. CCLI immediately applied for and received tax exempt status under R.C. §5709.12 for the portion of the subject property that was used for its headquarters and parking lot. Supp. 21, H.R. 78-80. CCLI initially rented out the house located on the other parcel and did not seek tax exempt status for the parcel. Supp. 21, H.R. 79-80. Thus, the Tax Commissioner granted CCLI tax exempt status under R.C. §5709.12 for the headquarters and parking lot, and the residential rental property remained on the tax list. Issues concerning the third parcel are not germane to this appeal.

After the final tenant left the rental property in approximately 2001, CCLI decided to tear down the residence. Supp. 21, H.R. 80. CCLI then consolidated the newly-vacant parcel with the parcel containing its headquarters and applied for tax exempt status under R.C. §5709.12 for the consolidated parcel (the Property). Supp. 21, H.R. 81. Despite having twice previously granted CCLI a tax exemption under R.C. §5709.12, the Tax Commissioner denied CCLI's 2002 application for tax exemption on the Property. Supp. 20, H.R. 75-76. The Tax Commissioner based its denial upon CCLI's alleged use of the Property to produce income and not exclusively for a charitable purpose, even though CCLI's charitable mission has not changed since CCLI was founded in the early 1970s and CCLI's use of the Property has not changed – other than its decreased reliance on its warehouse – since CCLI acquired it in 1995. Supp. 9, H.R. 30.

C. CCLI's Use of the Property

CCLI uses the Property both as administrative offices and as a warehouse for instructional materials that are used in its programs. Supp. 17, H.R. 64. There are 15 employees at CCLI's headquarters who are divided into two "teams." Supp. 7, H.R. 22. The "Programs Team" develops the NFP programs, while the "Business Development Team" handles finances and operational functions. Supp. 7, H.R. 22.

CCLI creates and publishes many of the materials that it uses in its programs. Supp. 12, H.R. 43. It also recommends supplemental books, magazines, and brochures that promote CCLI's message of marital chastity through NFP. Supp. 9, H.R. 32. Reliance on supplemental materials is part of CCLI's Constitution. Supp. 10, H.R. 34. Article II of the CCLI Constitution states that one purpose of CCLI is "to provide such educational and promotional services and materials, including those produced by others, as are appropriate for pursuing the purposes of [CCLI]." Supp. 10, H.R. 34. If a certain material follows the philosophy of CCLI and does not go against Catholic church teaching, CCLI will recommend it to its students. Supp. 9, H.R. 32. CCLI has also sold negligible amounts of promotional items bearing the CCLI name, such as coffee mugs, tote bags, and Christmas cards, in an effort to raise awareness of the CCLI name and mission. Supp. 17, H.R. 63. These products have generated very little revenue for CCLI. Supp. 17, H.R. 63.

In the early days of CCLI, it provided a catalog that students could use to order the recommended materials. Supp. 9, H.R. 31. CCLI began to carry some of the materials that it recommended, including not only materials that it published, but also materials published by third parties. Supp. 9, H.R. 31. It stored these materials in its warehouse at the Property, received orders from its students, and shipped the purchased materials. Supp. 9, 12, H.R. 31, 42-

43. Within the last ten years, the rise in popularity and prevalence of the internet has permitted CCLI to entirely eliminate its catalog and substantially reduce its inventory. Supp. 9, 12, H.R. 31-32, 43. It now refers students to online retailers such as amazon.com to purchase third-party materials. Supp. 9, 12, H.R. 32, 43. Today, CCLI only carries the materials that it publishes and the materials that are a part of the specific coursework, such as thermometers. Supp. 12, H.R. 43-44.

CCLI relies upon funds from multiple sources to operate. It receives funds from donations, membership fees, course/material fees, and, the sale of its publications and materials. Supp. 19, H.R. 72. All materials sold by CCLI support, promote, and are entirely consistent with its charitable purposes, including natural family planning, chastity, and the importance of family life. Supp. 9-10, H.R. 32, 37.

All revenue generated by CCLI at the Property has been used for CCLI's charitable activities. Supp. 10, H.R. 37. CCLI does not operate with an eye on profitability. CCLI's 2002 tax year (the tax year in which CCLI's property tax exemption application was filed and denied) exemplifies this principle. CCLI's 2002 Form 990 shows that CCLI earned \$1,708,894 in revenue, but incurred expenses of \$1,797,540. Supp. 24, 172, H.R. 94. CCLI thus **operated at a loss** for tax year 2002. CCLI also operated at a loss for tax years 2003 (-\$4,817) and 2004 (-\$20,373). Supp. 196, 339.

With respect to sale of inventory in 2002, CCLI received gross revenues of \$620,573 over a cost of goods sold of \$291,805, for a gross profit of \$328,768. Supp. 24, 172, H.R. 92. But this figure does not incorporate the other costs that CCLI incurred, which is reflected in the net loss figure for 2002. Supp. 24, 172, H.R. 94. CCLI may have profited from the sale of inventory in 2002, but these funds were used to offset its cost of providing services (in the same

way that CCLI uses the donations that it receives). Supp. 24, H.R. 93.

CCLI's 2002 Form 990 also reflects that of its \$1,797,540 in total functional expenses, \$1,559,959 was attributable to program services expenses. Supp. 172-173. In other words, over 85% of CCLI's expenses went towards services that directly furthered its mission. Supp. 25, H.R. 97. This figure has been approximately consistent over at least the last 25 years of CCLI operations. Supp. 25, H.R. 95. Only \$176,630 was attributable to management expenses such as salaries (\$79,426), promotional expenses (\$35,447), and professional fees (\$19,035). Supp. 173. CCLI does not attempt to turn a profit – it attempts to provide a service to further its stated mission. Supp. 26, H.R. 101.

CCLI also gives away materials and services, or provides the same at a reduced cost, to couples who are unable to pay. Supp. 10, H.R. 36. Its Constitution states that “no one shall be denied attendance at [CCLI] classes because of an inability to make a financial contribution.” Supp. 10, H.R. 35. For example, in year 2007, CCLI gave away over \$26,000 in courses and materials, in addition to the materials and services that it provided at a substantially reduced cost. Supp. 27, H.R. 103. This practice of giving away courses and materials to those who are unable to pay has been consistent over at least the past 25 years of CCLI's operations. Supp. 27, H.R. 104.

III. ARGUMENT

Response to Tax Commissioner's First Proposition of Law: This Court must affirm a Decision of the Board of Tax Appeals (“BTA”) if the record contains reliable and probative support for the BTA's determination.

Appellant Richard A. Levin, Tax Commissioner of Ohio (“Commissioner”) correctly states that the *initial* burden of proof is on the taxpayer to show the manner and extent of the error in the Tax Commissioner's final determination. Appellant's Brief (“App. Br.”) 13; *Stds.*

Testing Laboratories, Inc. v. Zaino (2003), 100 Ohio St.3d 240, 797 N.E.2d 1278. Further, any claimed exemption from taxation must be strictly construed, and the taxpayer must affirmatively establish a right to the exemption. *Campus Bus. Serv. v. Zaino* (2003), 98 Ohio St.3d 463, 786 N.E.2d 889. However, on appeal from the BTA, this court must consider only whether the BTA's Decision was "reasonable and lawful." *Columbus City School Dist. Bd. of Edn. v. Zaino* (2001), 90 Ohio St.3d 496, 497, 739 N.E.2d 783. Further, if the record from the BTA contains reliable and probative support for the BTA's determination, this Court must affirm the determination. *American Nat'l Can Co. v. Tracy* (1995), 72 Ohio St.3d 150, 152, 648 N.E.2d 483. Therefore, so long as there is reliable and probative support in the record supporting the BTA's reversal of the Commissioner's denial of CCLI's property tax exemption, the reversal must be upheld.

Response to Tax Commissioner's Second Proposition of Law: Under R.C. §5709.12(B), where the materials sold by an institution are "essential and integral" to the institution's operations and the items were not sold "with a view to profit," then the criteria that the institution's use of the property be "primarily charitable" is satisfied and an exemption is warranted.

In order to qualify for an exemption under R.C. §5709.12(B), the applicant must meet two criteria: 1) the property must belong to an institution; and 2) the property must be used "exclusively for charitable purposes." Here, the parties do not dispute that CCLI is an institution. Rather, the question is whether the Property is used exclusively for charitable purposes.

As the BTA correctly noted in its Decision, this Court has interpreted the term "exclusively for charitable purposes" in the context of R.C. §5709.12(B) to mean *primarily* for charitable purposes. Appellant's Appendix ("Appx.") 28; *True Christianity Evangelism v. Zaino* (2001), 90 Ohio St.3d 117, 120, 742 N.E.2d 638. (Emphasis supplied). Therefore, so long as

CCLI uses the Property *primarily* for charitable purposes, an exemption is warranted under R.C. §5709.12(B).

With respect to the meaning of “charitable purpose,” the Commissioner correctly recites the appropriate definition of “charity”:

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.

Planned Parenthood v. Comm’r (1966), 5 Ohio St.2d 117, 214 N.E.2d 222, paragraph one of the syllabus.

The Commissioner argues that CCLI cannot satisfy the criteria of R.C. §5709.12(B) because CCLI does not use the Property exclusively for charitable purposes. App. Br. 13. Specifically, the Commissioner argues that CCLI’s primary use of the Property involves the distribution of merchandise and instructional classes on a fee-for-service basis (i.e., students pay for their classes and materials), with only a small amount of free or reduced-price materials and classes provided to the public. App. Br. 14.

This argument relies on two erroneous propositions: 1) that charging students a fee for courses and materials that facilitate the courses is necessarily antithetical to a charitable purpose; and 2) that an institution must give away a certain percentage of free or reduced-fee courses and materials to qualify as a charitable purpose (or, in the words of the Commissioner, more than “a de minimis level”). As described in more detail below, neither is the case. Moreover, as the BTA recognized in its Decision, an exemption is warranted under R.C. §5709.12 where the materials sold by an institution are “essential and integral” to its operations and are not sold with

a view to profit. Appx. 31; *Girl Scouts-Great Trail Council v. Levin* (2007), 113 Ohio St.3d 24, 862 N.E.2d 493.

There is reliable and probative support for the BTA's determination that CCLI has used the Property primarily for charitable purposes within the scope of the foregoing definition, and therefore the BTA's reversal of the Commissioner's denial of CCLI's exemption should be upheld.

- A. CCLI is entitled to a property tax exemption under R.C. §5709.12(B) because there is reliable and probative evidence in the record that CCLI gave away free and reduced-price courses and materials to students, and because the materials CCLI sold were an essential and integral part of its operations and not sold with a view to profit.**

This Court has consistently found that “the dissemination of useful information to benefit mankind is, traditionally, charity.” *Herb Soc. of Am., Inc. v. Tracy* (1994), 71 Ohio St.3d 374, 376, 643 N.E.2d 1132. In *Battelle Mem. Inst. v. Dunn* (1947), 148 Ohio St. 53, 60, 73 N.E.2d 88, this Court stated that “the dissemination of knowledge for the edification and improvement of mankind is regarded as a charitable object.” This Court has broadly defined the term “charity” as something that benefits mankind and betters its condition. *Am. Issue Publishing Co. v. Evatt* (1940), 137 Ohio St. 264, 266, 28 N.E.2d 613. Examples of activities that come within the definition of charity range from organizations that discourage the consumption of intoxicants and promote individual and social welfare to organizations that disseminate information about herbs. *Id.*; *Herb Soc. of Am., Inc.*, 71 Ohio St.3d at 375.

As quoted above, “charity” is defined as “the attempt in good faith, spiritually, physically, intellectually, socially and economically to advance and benefit mankind” and benefit those with a particular need without regard their ability to supply that need from other sources, and without regard to profit. *Planned Parenthood*, 5 Ohio St.2d at paragraph one of the syllabus.

In its Decision, the BTA correctly recognized that “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.” Appx. 29. The Commissioner apparently does not dispute that CCLI’s mission itself is a good faith attempt to spiritually, physically, intellectually, and socially advance and benefit its students.

The BTA also correctly recognized that CCLI provided instruction regardless of the ability to pay. Appx. 29. CCLI’s Constitution explicitly states that “[n]o one shall be denied attendance at the [CCLI] meetings because of an inability to make a financial contribution.”

Supp. 10, H.R. 35. Andrew Alderson, Executive Director of CCLI, testified as follows:

Q: Okay. Now, in both of these Constitutions, Mr. Alderson, are there provisions about providing these services to couples who cannot afford to pay for the cost of the materials or the cost of the license?

A: Yes. It’s -- **It’s been long-standing, not just tradition, but in writing, that if a couple cannot pay for the course, even if they can’t pay anything, they are still allowed either the – they get the materials for free, or they get the teaching for free, or both, but the inability (sic) to pay is not -- is not a requirement to attend the class.**

Q: Okay. And in the first exhibit of the Appellant, the Constitution that’s currently in effect, could you point out where that appears to the Court?

* * *

Q: It’s Article VII on Page 6.

A: Thank you. Under “Membership” -- let’s see -- it says that, “...no one shall be denied attendance at [CCLI] classes because of an inability to make a financial contribution.”

Q: And is that consistent with the philosophy of the organization to provide this whether couples can afford the --

A: Yes.

Q: -- fees that you charge on that?

A: We do that regularly.

Supp. 10, H.R. 34-35.

Statistics from recent years corroborate Mr. Alderson's testimony. In CCLI's fiscal year ending June 30, 2005, CCLI gave away courses and materials valued at over \$48,000. Supp. 27, H.R. 104. The reduced fee courses and materials that CCLI provided are not reflected in this figure. Supp. 27, H.R. 102. In the same year, CCLI had 7,533 instructional courses that were paid for in full or in part, and gave away 156 courses for free. Supp. 369. Of the 7,533 courses that were paid for, some were given at a reduced cost. Supp. 29, H.R. 111.

The same is true for CCLI's fiscal year ending June 30, 2007. In that year, CCLI gave away courses and materials valued at over \$26,000 to students who were unable to pay. Supp. 27, H.R. 103. CCLI had 7,162 instructional courses that were paid for (or given at reduced rates), and gave away 102 for free. Supp. 369. CCLI's Business Manager, Jack Langlitz, testified that CCLI's practice of giving away free and reduced-price instructional courses and materials has been consistent for at least the last 25 years. Supp. 27, H.R. 104.

The Commissioner first argues that CCLI's core business model involves the dissemination of information and merchandise for a fee, and therefore it cannot qualify as a charity under R.C. §5709.12(B). App. Br. 14-15. In other words, the Commissioner argues that a charity's core business model cannot include the sale of courses and materials. The Commissioner cites several cases and suggests that these cases create a precedent that an exemption is not appropriate where property is primarily used to distribute merchandise and information in the commercial marketplace for a price, with little regard given to the distribution

of such items to the general public on a free or reduced-fee basis. App. Br. 15-18.

All of the cases cited by the Commissioner in support of this purported rule are easily distinguishable from the present case. For example, in *Zindorf v. The Otterbein Press* (1941), 138 Ohio St. 287, 34 N.E.2d 748, a nearly 70-year old case, the property owner institution was a printing press and binding company affiliated with the United Brethren Church (“The Printing Establishment of the United Brethren in Christ”). It printed written materials, bound them, and published them. *Id.* While some of its work was for the United Brethren Church and other religious institutions, it did a substantial amount of commercial printing for organizations outside of the church. *Id.* In fact, 40% of its total revenues came from commercial printing that it performed for ordinary businesses, in competition with ordinary printing establishments. *Id.* at 290. This printing work had nothing to do with the church or its mission. *Id.* This Court held that where a substantial portion of the gross income of a corporation is received for work done in competition with commercial concerns, the corporation’s property is not exempt from taxation. *Id.* at syllabus. Accordingly, this Court upheld the decision of the BTA to deny the exemption. *Id.* at 293. Implicit in this Court’s holding is that the portion of the printing work performed for the church was charitable in nature (similar to the charitable nature of the NFP courses provided by CCLI). It was the work that the corporation performed for third parties that was not charitable and supported the denial of the corporation’s exemption.

Next, in *Battelle Memorial Institute v. Dunn* (1947), 148 Ohio St. 53, 73 N.E.2d 88, the reasoning of this Court is similar to its reasoning in *Zindorf*. The Battelle Memorial Institute was established through an endowment for the purposes of facilitating research and inventions in connection with the metallurgy of coal, iron, steel, zinc, and related resources. *Id.* at 54. This Court upheld the denial of Battelle’s property tax exemption on the basis that Battelle furnished

the results of its research work to commercial industries for their private gain, many of which results were patented either in the name of the industry, or in the name of the institute for the benefit of the industry. *Id.* at 59. The intention of the benefactor, as expressed in his will, was to have the institute work on a profitable basis – he even provided in his will for how the profits should be applied. *Id.* Since the institute’s work created profits for third-party corporations, the denial of Battelle’s property tax exemption was upheld. *Id.* at 60, 62.

Unlike both *Zindorf* and *Battelle*, CCLI does not operate with an eye to creating profits for itself or for any third-party organization. In fact, in the tax year most pertinent to CCLI’s application (2002), it was unprofitable. Supp. 24, 174, H.R. 94. Any profits that CCLI received from the sale of materials was allocated towards its services, and it showed a net loss for the year. Supp. 24, H.R. 93. Nor does CCLI receive any material income from the sale of merchandise that is not directly related to its mission. Supp. 17, H.R. 63. All materials sold are essential and integral parts of CCLI’s own courses, or supplements to such courses. Supp. 9, H.R. 30-33. Any negligible promotional items that CCLI sold, such as mugs, tote bags, and Christmas cards, were sold in an effort to raise awareness of the CCLI name and mission. Supp. 17, H.R. 63. And these products generated very little revenue for CCLI. Supp. 17, H.R. 63. Accordingly, neither *Zindorf* nor *Battelle* provide helpful guidance in the present case.

In *Lutheran Book Shop v. Bowers* (1955), 164 Ohio St. 359, 131 N.E.2d 219, this Court denied an exemption to a bookstore that was operated simply to sell religious-oriented material. The institution was merely a bookstore. *Id.* The materials that it sold were not an essential or integral part of the bookstore’s mission. *Id.* The bookstore was simply a commercial enterprise in direct competition with other commercial enterprises. *Id.* On the other hand, in this case, all materials that CCLI sold were essential and integral to its mission. Supp. 9, H.R. 30-33. It was

not a bookstore – it provided a service to its students by carrying the course materials and the recommended course supplements. *Id.* The clear mission of CCLI is to educate couples on the virtues of NFP. Supp. 8, H.R. 27-28. The mission itself is charitable in nature and the materials that it provides are critical to this mission.

Finally, in *American Soc. for Metals v. Limbach* (1991), 59 Ohio St.3d 38, 569 N.E.2d 1065, the nonprofit corporation published materials on metals and materials engineering, conducted conferences and exhibitions for the presentation of scientific papers and lectures on metallurgy, and offered courses in the areas of the science and technology of metals. The corporation, however, operated with a view to profit. Not only did the corporation profit on the sale of its publications, but it also “operate[d] every year with a view to having * * * operating revenues exceed * * * operating expenses.” *Id.* at 40. On this basis, this Court held that the corporation was disqualified from a property tax exemption under both R.C. §§ 5709.12 and 5709.121. *Id.* at 40-41.

Most importantly, *American Soc. for Metals* defines the term “profit” in the context of property tax exemption under R.C. § 5709.12 to include the “net income (as in a business) usu. (sic) for a given period of time.” *Id.* at 40. Critical to this Court’s holding was that the corporation in that case operated every year with a goal of having operating revenues exceed operating expenses – a profitable enterprise. *Id.* Under this Court’s definition of “profit,” CCLI most certainly did not operate its business with an eye to profit. Indeed, in 2002, 2003, and 2004, CCLI operated at a **net loss**. Supp. 24, 172, 196, 339, H.R. 94. CCLI is simply not attempting to turn a profit – it is attempting to provide a service to further its stated charitable mission. Supp. 26, H.R. 101.

The foregoing cases are all obviously distinguishable from the present case for the

reasons stated above. Nevertheless, the Commissioner argues that these cases are on point and establish a rule that “the act of distributing materials on a fee-for-service basis, with little regard given to the distribution of such materials on a free or reduced-fee basis, is antithetical to what this Court has come to regard as ‘charity.’” App. Br. 19. This interpretation is simply not supported by the cases.

Rather, the consistent theme throughout the cases cited by the Commissioner is that, in certain cases, where a corporation operates in direct competition with other commercial concerns, in the same line of business, with an eye to profitability, and is not operating in furtherance of its charitable mission, it is not operating as a “charity” under R.C. §5709.12(B) and a property tax exemption is unwarranted. The BTA recognized this reasoning in its Decision in this case and reconciled it with a more recent case that is most clearly on point: *Girl Scouts-Great Trail Council v. Levin* (2007), 113 Ohio St.3d 24, 862 N.E.2d 493. Appx. 30-31.

In *Girl Scouts*, the organization owned property that it used for administrative offices, meetings, training of volunteers, and various Girl Scout activities. *Id.* at 24. In a portion of its building, it operated a store that sold merchandise reflecting membership in the Girl Scouts, such as books, badges, patches, pins, and uniforms, as well as clothes bearing the Girl Scouts insignia. *Id.* The merchandise helped members recognize their participation and accomplishments in Girl Scouts. *Id.* In fact, all items sold at the store were related to the Girl Scouts. *Id.* Some items were sold at a markup and other items were sold at cost plus shipping. *Id.* at 24-25. In the year examined in the case, the store made a profit, but in the prior eleven years it was not profitable. *Id.* at 25. At the BTA hearing, a Girl Scouts representative testified that “the store does not exist to make a profit but only as a service to its membership.” *Id.* The BTA determined that the property was used for charitable purposes and not with a view to profit, and allowed the

exemption. *Id.*

In its review of the case on appeal, this Court stated, “The fact that an institution generates revenue from its use of property does not necessarily defeat the claim for tax exemption.” *Id.* at 26. This Court also recognized that the store existed to “accommodate” the Girl Scouts, the prices charged were intended to cover costs of operation, and the merchandise is not marketed to compete with commercial, for-profit enterprises. *Id.* Further, this Court cited *Bowers v. Akron City Hosp.* (1968) 16 Ohio St.2d 94, 243 N.E.2d 95, for the proposition that where the profit-generating segment of the business is an “essential and integral part” of the institution’s function and not used mainly for income purposes, then the property should be exempt from taxation. *Id.*

This case is strikingly similar. CCLI uses part of its headquarters for office functions such as developing courses and part as a warehouse for storing and shipping materials that are integral to its courses. Supp. 17, H.R. 64. All items sold by CCLI are related to CCLI and its mission. Supp. 9, H.R. 30-33. The items are generally sold above cost (although items are sometimes given away or sold at a reduced price), but are not sold with an eye to profit. Supp. 27, H.R. 103-104. In fact, in tax years 2002, 2003, and 2004, CCLI operated at a loss. Supp. 24, 172, 196, 339, H.R. 94. Similar to *Girl Scouts*, CCLI’s Business Manager testified that CCLI is not attempting to turn a profit – it is attempting to provide a service in accordance with its stated mission. Supp. 26, H.R. 101.

Under *Girl Scouts*, the appropriate rule to apply in this case is that where an institution operates a store that serves as an essential and integral part of the institution’s operations and is not operated with a view to profit, an exemption from property taxes must be granted.

In this case, CCLI’s operations easily meet this test. CCLI’s mission is to help couples

live chaste and generous marriages by promoting the universal Christian tradition of marital chastity and generosity. Supp. 8, H.R. 27-28. It achieves this mission by teaching instructional courses on NFP. Supp. 7, H.R. 23. CCLI sells the materials that are used in the course to its students. Supp. 12, H.R. 43. CCLI also recommends supplemental materials that help reinforce the message conveyed in its courses, which materials it has historically carried. Supp. 9, H.R. 32. Now, with the rise in popularity and prominence of the internet, CCLI has stopped carrying these supplemental materials and simply refers its students to on-line retailers such as amazon.com. Supp. 9, 12, H.R. 32, 43. Indeed, if CCLI were operating with a view to profit, one would expect that it would have continued to sell these items out of its own warehouse. CCLI's sale of materials has always served an "essential and integral" function in serving its charitable mission.

Further, CCLI has never operated with a view to profit. All revenue generated by CCLI at the Property has been used for CCLI's charitable activities. Supp. 24, H.R. 93. CCLI operated at a loss for the tax year in question in this case – 2002 – and the two following years. Supp. 24, 172, 196, 339, H.R. 94. With respect to sale of inventory in 2002, CCLI received gross revenues of \$620,573 over a cost of goods sold of \$291,805, for a gross profit of \$328,768. Supp. 24, 172, H.R. 92. But this figure does not incorporate the other costs that CCLI incurred, which are reflected in the net loss figure for 2002. CCLI may have profited from the sale of inventory in 2002, but these funds were used to offset its cost of providing services (in the same way that CCLI uses the donations that it receives). Supp. 24, H.R. 93. In 2002, over 85% of CCLI's expenses went towards services that directly further its mission. Supp. 25, H.R. 97. This figure has been approximately consistent over at least the last 25 years of CCLI operations. Supp. 25, H.R. 95.

CCLI also gives away materials and services, or provides the same at a reduced cost, to couples who are unable to pay. Supp. 10, H.R. 36. Its Constitution states that “no one shall be denied attendance at [CCLI] classes because of an inability to make a financial contribution.” Supp. 10, H.R. 35. For example, in year 2007, CCLI gave away over \$26,000 in courses and materials, in addition to the materials and services that it provided at a substantially reduced cost. Supp. 27, H.R. 103. This practice of giving away courses and materials to those who are unable to pay has been consistent over at least the past 25 years of CCLI’s operations. Supp. 27, H.R. 104. CCLI has never operated with a view on profitability.

Accordingly, under this Court’s holding in *Girl Scouts*, since CCLI’s sale of materials is an integral and essential part of its mission, and since it is not operating with a view on profitability, the BTA correctly reversed the Commissioner’s denial of a property tax exemption.

B. There is reliable and probative support for the BTA’s determination that CCLI has used the Property primarily for charitable purposes within the scope of the foregoing definition, and therefore the BTA’s reversal of the Commissioner’s denial of CCLI’s exemption should be upheld.

The Commissioner next argues that CCLI “failed to meet its evidentiary burden to demonstrate entitlement to the exemption provided for in R.C. 5709.12(B).” App. Br. 20. The Commissioner claims that the applicable standard is that “he who seeks exemption of property from taxation must show by clear and convincing proof his right thereto.” *Id.*, citing *Youngstown Metro Housing Auth. V. Evatt* (1944), 143 Ohio St. 268, 55 N.E.2d 122. The Commissioner apparently fails to recognize that a different standard applies on appeal. The appropriate standard of review for matters on appeal from the Board of Tax Appeals is set forth by R.C. §5717.04: “If upon hearing and consideration of [the] record and evidence the court decides that the decision of the board appealed from is **reasonable and lawful** it shall affirm the same.” *Girl Scouts*, 113 Ohio St.3d at 25. Further, “[t]he BTA is responsible for determining factual issues

and, if the record contains reliable and probative support for these BTA determinations,' this court will affirm them." *Id.*, quoting *Am. Natl. Can Co. v. Tracy* (1995), 72 Ohio St.3d 150, 152, 648 N.E.2d 483.

Therefore, in this appeal, so long as there is reliable and probative support for the BTA's reversal of the Commissioner's denial of CCLI's tax exemption, the BTA's Decision must stand. Coupled with the *Girl Scouts* rule, upon which the BTA relied in its Decision, so long as there is reliable and probative support that CCLI's sale of materials was an "essential and integral" part of CCLI's operations and the materials were not sold "with a view to profit," the BTA's Decision must be upheld.

The BTA held as follows:

We find the [*Girl Scouts*] 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."

Appx. 31.

CCLI has recited the reliable and probative evidence that supports the BTA's holding in Section III.A. of this Brief, and it will not rehash this evidence in detail here for the sake of brevity. In short, with respect to the materials sold by CCLI being an essential and integral part of its operations, both CCLI's Executive Director and Business Manager testified to how these instructional and supplemental materials support CCLI's mission. The instructional materials are used in CCLI's courses (which are the primary way that CCLI furthers its mission), and the supplemental materials reinforce the NFP instruction and Catholic doctrine.

With respect to profitability, both the Executive Director and Business Manager testified

that CCLI does not operate with a view to profitability, similar to the testimony that was relied upon in *Girl Scouts*. CCLI's federal Form 990s for tax years 2002 (the year in question), 2003, and 2004 show that CCLI was operating at a net loss for each of those years. Evidence in the record also shows that CCLI gave away over \$26,000 in materials in 2007 and over \$48,000 in courses and materials in 2005. Although CCLI's representatives did not testify to the specific amounts of materials given away in 2002, CCLI's Business Manager testified that CCLI's practice of giving away courses and materials has been consistent over at least the past 25 years.

The foregoing is reliable and probative support that for the BTA's holding, which is more than sufficient for this Court to uphold the BTA's Decision.

The Commissioner raises several issues in support of his argument that the BTA's Decision was erroneous. First, the Commissioner focuses on the fact that CCLI sold materials for more than their cost. App. Br. 20. The Commissioner points out that CCLI received substantial profits from the sale of merchandise in years 2002 through 2006. *Id.* It is indeed true that CCLI sold materials for more than they cost. But this is not necessarily indicative of operating the institution with a view to profitability. The whole picture must be examined.

In *American Soc. for Metals*, this Court defined the term "profit" in the context of property tax exemption under R.C. § 5709.12 to include the "net income (as in a business) usu. for a given period of time." 59 Ohio St.3d at 40. Critical to this Court's holding was that the corporation in that case operated every year with a goal of having operating revenues exceed operating expenses – a profitable enterprise. *Id.* Similarly, in this case, this Court should not examine the "profitability" of one component of CCLI's operations – particularly where that component is an essential and integral part of the services that CCLI provides. Doing so is simply inaccurate and misleading. In fact, even in *Girl Scouts*, the case upon which the BTA

relied in its Decision, the institution sold some of its merchandise for more than its cost. 113 Ohio St.3d at 24-25. And this Court upheld the exemption in *Girl Scouts*. *Id.* at 27. In this case, it is indisputable that CCLI made money on the sale of materials in 2002 and certain other years, but when examining the big picture, it is obvious that the proceeds were used to offset CCLI's substantial cost of services. Indeed, in 2002, over 85% of CCLI's expenses were attributable to its charitable services. Supp. 25, H.R. 97. The Commissioner's argument simply fails to take into consideration CCLI's overall financial picture, which is critical to the analysis.

Second, the Commissioner focuses on the fact that CCLI received substantial revenue from the services that it provides. App. Br. 21. But the receipt of revenue is not critical to the determination of whether an institution is operating in a charitable manner. "The fact that an institution generates revenue from its use of property does not necessarily defeat the claim for tax exemption." *Girl Scouts*, 113 Ohio St.3d at 26, citing *Bowers v. Akron City Hosp.* (1968), 16 Ohio St.2d 94, 243 N.E.2d 95.

Next, the Commissioner argues that there is a lack of evidentiary support, and particularly documentary evidence, which demonstrates that CCLI gave away courses and materials for free to some couples and discounted the price of courses and materials to other couples. App. Br. 21-22. This argument fails to recognize that the BTA based its Decision largely on the rule and holding in *Girl Scouts*. The amount of courses and materials given away is not germane to the BTA's holding under *Girl Scouts*. This is merely a red herring. Regardless, substantial testimony supports the conclusion that CCLI gave away courses and materials for free. This testimony includes the 2005 and 2007 analyses performed by CCLI's Business Manager, which illustrated that CCLI gave away over \$26,000 in courses and materials in 2007 and over \$48,000 in 2005. Supp. 27, H.R. 103-104. This reliable and probative

evidence is sufficient to support the BTA's Decision.

Finally, the Commissioner argues that the BTA did not consider cases such as *Zindorf*, *Battelle*, *American Soc. for Metals*, and *Gospel Worker Society*. App. Br. 23. Again, this argument fails to recognize that the BTA decided this matter under the more recent Ohio Supreme Court case *Girl Scouts*, which case was more on point factually than any of the foregoing cases (as explained in detail above). Further, the BTA's Decision was not inconsistent with this Court's holdings in the aforementioned cases (as explained in detail above).

Response to Tax Commissioner's Third Proposition of Law: CCLI's sale of instructional and supplemental materials to its students was not in competition against commercial concerns in the commercial marketplace.

The Commissioner's final argument is that, under *Zindorf*, CCLI should not be entitled to a property tax exemption because it purportedly sold materials "in the commercial marketplace against other competitors." App. Br. 26. This is entirely groundless. CCLI provided instructional materials to the couples that enrolled in its NFP courses or were interested in the NFP method. The materials that it publishes are generally available, but are geared towards CCLI's instruction. This is not a competitive marketplace. The instructional materials are essential to CCLI's courses and much of the material is published by CCLI itself. Supp. 9, 12, H.R. 32, 43. CCLI recommends supplemental materials to its students in order to reinforce its NFP instruction, and for a time it stored these materials in its warehouse along with its own materials. Supp. 9, H.R. 31-32. But this was simply out of convenience – once a commercially-viable alternative was available, CCLI ceased storing and selling the supplemental materials. Supp. 9, 12, H.R. 32, 43. This opportunity came with the rise in popularity and prevalence of the internet. Supp. 9, 12, H.R. 32, 43. CCLI worked with amazon.com to have it list CCLI's

recommended supplemental materials on a page dedicated to such purpose, and thus CCLI's couples can now simply order the materials through amazon.com. Supp. 9, 12, H.R. 32, 43. At no time was CCLI operating on a commercial market, in competition with other publishers – it provided the materials to the couples that were enrolled in its courses and those interested in its instruction.

Further, the cases cited by Commissioner, *Zindorf* and *Lutheran*, actually illustrate how CCLI was *not* competing with commercial concerns in the same line of business. In *Zindorf*, the property owner institution was a printing press and binding company that performed some work for the United Brethren Church and other religious institutions, but also did a substantial amount of commercial printing for organizations outside of the church. 138 Ohio St. at 287. In fact, 40% of its total revenues came from commercial printing that it performed for ordinary businesses, in competition with ordinary printing establishments. *Id.* at 290. This printing work had nothing to do with the church or its mission. *Id.* CCLI, on the other hand, was not actively marketing and selling materials to anyone other than those interested in CCLI and its instruction. There may have been other organizations that sold the same materials as CCLI, but CCLI was never in competition with these other organizations because CCLI never extended its operations onto the general commercial marketplace. Further, implicit in the *Zindorf* holding is that the portion of the printing work performed for the church was charitable in nature. *Id.* at 290. This is essentially the same as the charitable nature of the NFP courses and materials provided by CCLI.

In *Lutheran Book Shop*, the bookstore in question was operated to sell religious-oriented material. 164 Ohio St. at 359. The institution was merely a bookstore. *Id.* The materials that it sold were not an essential or integral part of any mission. *Id.* The bookstore was simply a

commercial enterprise in direct competition with other commercial enterprises. *Id.* On the other hand, in this case, all materials that CCLI sells are essential and integral to its mission. It is not a bookstore – it provides a service to its students and those interested in NFP by carrying the course materials and the recommended course supplements. As CCLI’s Executive Director testified, “[T]he purpose for which [the materials] are sold is to further that mission of promoting marital chastity, and the revenue received from those goes right back into continuing to promote that same purpose.” Supp. 10, H.R. 37. It was not competing with commercial concerns in the commercial marketplace.

Finally, and perhaps most importantly, where the materials sold are an essential and integral part of the charitable mission of the institution, it is irrelevant that the materials may be available from a third-party and that the institution is arguably operating in competition with commercial concerns. Such was the case in *Girl Scouts*. In that case, this Court recognized that the items sold at the Girl Scouts store were not available elsewhere in the county in which the Girl Scouts store was located. 113 Ohio St.3d at 24. Certainly these items were available elsewhere on the market – the Girl Scouts is a national organization. But the items sold were an essential and integral part of the Girl Scouts mission, so it was important that they be accessible in that area.

The same is true in this case. CCLI’s materials served an essential and integral part of its mission. The BTA recognized this, stating, “The books and instructional materials are not items which help to support [CCLI’s] mission – they are part of the mission itself.” Appx 31. Since the materials are an essential and integral part of CCLI’s mission, it is important that the items be available to those interested in CCLI’s instruction of natural family planning. As in *Girl Scouts*, it is inconsequential whether these items may also be available elsewhere from third-parties and,

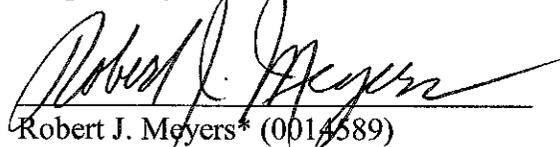
as the Commissioner argues, that the institution is arguably competing in commercial markets.

Accordingly, CCLI was not competing in the commercial marketplace by selling materials that were essential and integral to its mission, and even if it arguably was competing, it is still entitled to exemption under the rule in *Girl Scouts*. The rule stated in *Zindorf* is inapplicable in this case.

IV. CONCLUSION

For the foregoing reasons, Appellee Couple to Couple League International, Inc. respectfully requests that this Court affirm the BTA's Decision reversing the Commissioner's denial of tax exemption on the Property.

Respectfully submitted,



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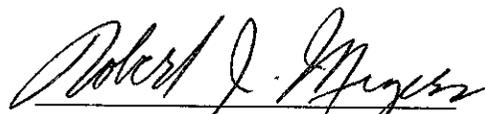
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CERTIFICATE OF SERVICE

I certify that a copy of the Appellee's Merit Brief was sent by regular U.S. mail on this 1st day of October, 2010 to the following:

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