ORIGINAL

In the
Supreme Court of Ohio

INNKEEPER MINISTRIES, INC.,	:	
	:	Case No. 2014-0490
	:	
Appellee,	:	
v.	:	
	:	Appeal from Ohio Board of Tax Appeals
JOSEPH W. TESTA,	:	
TAX COMMISSIONER OF OHIO	:	
	:	Case Nos. 2010-2803
	:	
Appellant.	:	

APPENDIX TO APPELLANT TAX COMMISSIONER'S MERIT BRIEF

JAY C. BENNETT (0009822)
Attorney at Law
Oxford Professional Bldg., Suite #5
5995 Fairfield Rd., Suite 5
Oxford, Ohio 45056
Telephone: (513) 523-4104
Facsimile: (513) 523-1525
jcblaw24@yahoo.com

Counsel for Appellee
Innkeeper Ministries, Inc.

MICHAEL DEWINE (0009181)
Attorney General of Ohio
DAVID D. EBERSOLE (0087896)*
BARTON HUBBARD (0023141)
Assistant Attorneys General
*Counsel of Record
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
Telephone: (614) 466-2941
Facsimile: (866) 294-0472
dave.ebersole@ohioattorneygeneral.gov

Counsel for Appellant
Joseph W. Testa, Tax Commissioner of Ohio

FILED
SEP 02 2014
CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

Page

1) *Innkeeper Ministries, Inc. v. Levin*, BTA Case No. 2010-2803, Feb. 28, 2014 1

2) Appellant Tax Commissioner's Notice of Appeal in *Innkeeper Ministries, Inc. v. Testa*, Supreme Court Case No. 2014-0490 7

3) R.C. 5709.12 24

4) R.C. 5709.121 28

5) R.C. 5709.07 30

6) R.C. 5715.271 32

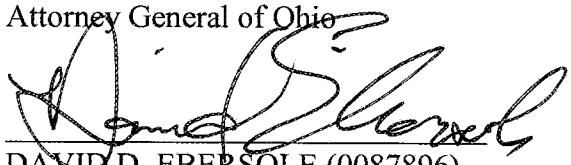
7) R.C. 5701.13 33

8) R.C. 1.47 36

9) R.C. 5713.30 37

Respectfully submitted,

Michael DeWine
Attorney General of Ohio



DAVID D. EBERSOLE (0087896)
Counsel of Record
BARTON A. HUBBARD (0023141)
Assistant Attorneys General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
Telephone: (614) 644-8909
Facsimile: (877) 636-8331
dave.ebersole@ohioattorneygeneral.gov

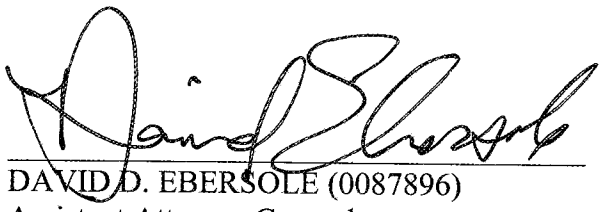
Counsel for Appellant
Joseph W. Testa, Tax Commissioner of Ohio

CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Appendix to Appellant Tax Commissioner's Merit Brief* was served upon the following by U.S. regular mail on this 2nd day of September, 2014:

JAY C. BENNETT
Attorney at Law
Oxford Professional Bldg., Suite #5
5995 Fairfield Rd., Suite 5
Oxford, Ohio 45056
Telephone: (513) 523-4104
Facsimile: (513) 523-1525
jcblaw24@yahoo.com

Counsel for Appellee
Innkeeper Ministries, Inc.



DAVID D. EBERSOLE (0087896)
Assistant Attorney General

OHIO BOARD OF TAX APPEALS

Innkeeper Ministries, Inc.,	)	CASE NO. 2010-2803
	)	
Appellant,	)	(REAL PROPERTY TAX EXEMPTION)
	)	
vs.	)	DECISION AND ORDER
	)	
Richard A. Levin, Tax Commissioner of Ohio,	)	
	)	
	)	
Appellee.	)	

APPEARANCES:

For the Appellant - Jay C. Bennett
Attorney at Law
Oxford Professional Bldg., Suite #5
5995 Fairfield Road
Oxford, Ohio 45056

For the Tax Commissioner - Michael DeWine
Attorney General of Ohio
Christine Mesirow
Assistant Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215

Entered FEB 28 2014

Mr. Williamson, Mr. Johrendt, and Mr. Harbarger concur.

This cause and matter is now considered by the Board of Tax Appeals upon the filing of a notice of appeal by the above-named appellant, Innkeeper Ministries, Inc. ("Innkeeper"), from a final determination of the Tax Commissioner in which the commissioner denied appellant's application for real property exemption, but granted remission of all penalties associated with tax years 2008 through 2010. We consider this case upon the notice of appeal, the statutory transcript ("S.T.) certified to this board by the Tax Commissioner, the record of the hearing before this board ("H.R."), and the briefs of counsel.

The findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. Consequently, it is incumbent upon a taxpayer challenging a determination of the commissioner to rebut the

Specifically, R.C. 5709.12(B) provides that "[r]eal and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation." As a non-profit corporation, we find that Innkeeper qualifies as an institution. See *True Christianity Evangelism v. Tracy* (1999), 87 Ohio St.3d 48, 50.

With regard to a determination of what constitutes a "charitable institution," *Planned Parenthood Assn. v. Tax Commr.* [1966], 5 Ohio St.2d 117, paragraph one of the syllabus, provides "'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." In its application for exemption, Innkeeper described its use of the subject property as "providing, free of charge, a quality facility with services that encourage, support and edify Christian leadership, weary and, at times, wounded from their godly pursuits. Innkeeper Ministries is called to offer a unique experience that equips and encourages those leaders. *** The ministry is able to provide a diverse setting that strives to meet the physical, emotional and spiritual needs of the 'wounded traveler.'" S.T. at 73. "Innkeeper's stated mission is to provide Sabbath rest to full time Christian ministry workers. *** [T]he nature of Sabbath rest in the context of the Christian life is a time of personal worship, prayer, meditation, reflection, as well as the reading and studying of the Bible. Said Sabbath rest is most effectively achieved in a reclusive atmosphere such as that provided by Innkeeper's 71 acres located in a remote rural setting. Such Sabbath rest can, and many times does, include the providing of Biblically based Christian counseling ***. The meaning, essence and intention of Sabbath rest is not merely taking a break from full time Christian employment or endeavors, but rather, to provide a time of spiritual renewal." Appellant Brief at 2. See, also, H.R. at 23. Further, "[a]ny pastor or full time Christian worker and their spouse, who is in need of a Sabbath rest," as well as "[a]ny pastoral team that needs to get away for fellowship and team building or to

property and the purpose of the institution. See *Community Health Professionals, Inc. v. Levin*, 113 Ohio St.3d 432, 2007-Ohio-2236 ***." As established through the evidence and testimony presented, we find that Innkeeper uses the subject property "in furtherance of or incidental to its charitable *** purposes and not with the view to profit." Innkeeper has demonstrated that its use of the property is related to its stated mission of providing "a place of [S]abbath rest for full-time [C]hristian servants." H.R. at 13.

Thus, based upon the foregoing, we find that the subject property is entitled to exemption, pursuant to R.C. 5709.121(A)(2). As such, the final determination of the Tax Commissioner is hereby 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.

A.J. Groeber, Board Secretary

FILED/RECEIVED
BOARD OF TAX APPEALS

2014 MAR 31 PM 1:01

In the
Supreme Court of Ohio

INNKEEPER MINISTRIES, INC.,	:	
Appellee,	:	Case No. 14-0490
v.	:	
	:	Appeal from Ohio Board of Tax Appeals
JOSEPH W. TESTA [RICHARD A. LEVIN], TAX COMMISSIONER OF OHIO	:	Case Nos. 2010-2803
Appellant.	:	

NOTICE OF APPEAL

JAY C. BENNETT
Attorney at Law
Oxford Professional Bldg., Suite #5
Oxford, Ohio 45056

Counsel for Appellee
Innkeeper Ministries, Inc.

MICHAEL DEWINE (0009181)
Attorney General of Ohio
DAVID D. EBERSOLE (0087896)*
BARTON HUBBARD (0023141)
Assistant Attorneys General
*Counsel of Record
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
Telephone: (614) 466-2941
Facsimile: (866) 294-0472
david.ebersole@ohioattorneygeneral.gov

Counsel for Appellant
Joseph W. Testa, Tax Commissioner of Ohio

FILED
MAR 31 2014
CLERK OF COURT
SUPREME COURT OF OHIO

in-law.[1] This real property may be referred to herein as the "subject property" or the "real property at issue."

The use and control of the subject property is exclusively a Hartenstein family affair in other ways as well. The "donations" for the payment of taxes, repairs, and all other expenses to maintain the real property at issue are provided primarily by Mr. and Mrs. Hartenstein's son. In fact, the BTA evidentiary record contains no evidence of any donations other than by the co-founders' own family members. Further, by Mr. Hartenstein's own account, the appellee engages in no fund-raising activities.

Additionally, by their own personal choice, Mr. and Mrs. Hartenstein invite persons of their own choosing and religious persuasion (of the Christian faith) to stay as guests at their residences. The extent to which the homes were and are actually used by any such guests, however, is a matter of pure speculation. Neither through testimony or documentary evidence has Innkeeper Ministries ever quantified the extent of any such ancillary use of the homes by any such invited guests of the Christian faith. Nor does the evidentiary record reflect that any of such invited guests of the Christian faith, by reason of their lack of financial means, had a particularized need for residential shelter.

Despite the purely private and primary use of the subject property as the permanent residential home of the appellee's co-founders (Robert and Jan Hartenstein) and other immediate family members, the BTA held that the land and family home qualified for real property tax exemption under R.C. 5709.121(A)(2), as "used exclusively for charitable purposes."

The appellant Commissioner complains of the following errors in the Decision and Order of the Board:

---

[1] According to Mr. Hartenstein, his mother-in-law lived on the property for roughly one year from November 2011 until October 2012.

personally chose (as limited, however, to persons of Christian religious beliefs). The BTA should have determined that such exclusive or primary purposes were not "charitable" and that, therefore, Innkeepers Ministries was not a "charitable institution" within the meaning of R.C. 5709.121.

5. The BTA's error in determining that Innkeeper Ministries qualified as a "charitable institution" is particularly evident given that Innkeeper Ministries' activities and operations: (1) were not conducted exclusively or primarily for charitable purposes; (2) were not funded by charitable donations from the disinterested generosity of non-family member donees, but instead were funded by Innkeeper Ministries' co-founders and their family members, thereby constituting a rent-free, "quid pro quo" family arrangement of a purely private, non-charitable nature; and (3) were not exclusively or primarily provided to the general public or those of the public in particularized need of residential shelter, but, instead, were provided only to the Innkeeper Ministries' co-founders, their immediate family members and, to an extent not quantified in the evidentiary record, on a purely temporary "guest" basis, to those persons of Christian religious beliefs personally chosen by Innkeeper Ministries' co-founders.

6. The BTA erred, as a matter of fact and law, by failing to hold that a religious institution such as Innkeeper may not qualify as a "charitable institution" within the meaning of R.C. 5709.121. *True Christianity Evangelism v. Tracy*, 87 Ohio St.3d 48, 50, 1999-Ohio-220 (holding that "[t]he effect of the BTA's finding that appellant was a religious institution should have resulted in two conclusions by the BTA: (1) R.C. 5709.121 has no application ***").

9. The BTA, as a matter of fact and law, erred by failing to consider whether the subject property was "made available under the direction or control of" the owner of the subject property, Innkeeper Ministries, within the meaning of R.C. 5709.121(A)(2), as required to qualify for real property tax exemption under that statutory exemption provision. Instead, the BTA should have determined that the subject property was held and controlled by the co-founders of Innkeepers Ministries for their own private purposes, and, therefore, failed to meet R.C. 5709.121(A)(2)'s express requirements. See, *Cincinnati Nature Center Ass'n v. BTA*, 48 Ohio St.2d 122, 125 (1976.)

10. The BTA erred, as a matter of fact and law, in failing to hold that the subject property was used with a view to profit and, therefore, that the subject property failed to qualify for real property tax exemption as "used exclusively for charitable purposes." See, *Seven Hills Schools v. Kinney*, 28 Ohio St.3d 186, 187-88 (1986).

11. The BTA erred, as a matter of fact and law, in failing to hold that the subject property may be exempt pursuant to R.C. 5709.121(A)(2) only where ownership and claimed exempt use of the property do not coincide in the same entity; otherwise, the applicable claim to real property tax exemption for "exclusive charitable use" is set forth in R.C. 5709.12. See, *Dialysis Clinic, Inc. v. Levin*, 127 Ohio St.3d 215, 2010-Ohio-5071, at ¶¶23-24.

FILED/RECEIVED
BOARD OF TAX APPEALS
2014 MAR 31 PM 1:01

BEFORE THE BOARD OF TAX APPEALS
STATE OF OHIO

INNKEEPER MINISTRIES, INC.,	:	
Appellee,	:	Case No. _____
v.	:	
	:	Appeal from Ohio Board of Tax Appeals
JOSEPH W. TESTA [RICHARD A. LEVIN], TAX COMMISSIONER OF OHIO	:	Case Nos. 2010-2803
Appellant.	:	

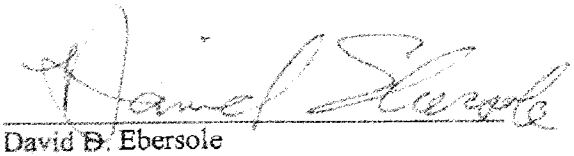
PRAECIPE

TO THE OHIO BOARD OF TAX APPEALS

Demand is hereby made that the Ohio Board of Tax Appeals ("Board") prepare, transmit and file with the Supreme Court of Ohio a certified transcript of the records and proceedings of the Board pertaining to its Order in the above-styled matter; including in said certified transcript, the Board's Order, the original papers in the case or a transcript thereof, and all evidence with originals or copies of all exhibits as adduced in said proceeding considered by the Board in making its Order.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Appeal and Praecipe were filed by hand delivery with the Ohio Supreme Court, 65 South Front St., Columbus, Ohio 43215, and the Ohio Board of Tax Appeals, 30 E. Broad St., 24th Floor, Columbus, Ohio 43215, and were served upon Jay Bennett, Oxford Professional Bldg., Suite #5, Oxford, Ohio 45056, by certified mail return receipt requested this 31st day of March, 2014.



David D. Ebersole
Assistant Attorney General

presumption and to establish a clear right to the requested relief. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. In this regard, 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.

In his final determination, the commissioner described the subject property as "71.066 acres comprised of vacant land, two houses and various other amenities." S.T. at 1. The applicant for exemption, Innkeeper, is a non-profit corporation and a tax exempt organization under I.R.C. section 501(C)(3). S.T. at 2. Innkeeper's purpose, according to Mr. Hartenstein, who founded Innkeeper with his wife, and acts as the corporate secretary/treasurer, "is to provide a place of Sabbath rest for full-time Christian servants." H.R. at 12-13, 54. He went on to describe a place for Sabbath rest as a "place *** to go away for periods of silence, for periods of reflection, as well as periods of counseling." H.R. at 14. Mr. Hartenstein testified that he and his wife, the only two employees of Innkeeper, serve as caretakers, cooks and counselors at the subject, caring for and maintaining the premises and providing for guests needs, both physical and spiritual, if requested. H.R. at 12, 17. Guests, who are first screened to see if their needs can be met by the subject, pay no fee to stay. H.R. at 18-20. Mr. Hartenstein testified that he and his wife reside on the property and approximately 60% of Innkeeper's budget consists of a personal donation from his son, with the remaining 40% made up of donations from others. H.R. at 21-22, 60-61.

Innkeeper sought exemption from taxation for the subject property pursuant to the provisions of R.C. 5709.07(A),[1] 5709.12(B), 5709.121(A)(2). S.T. at 63. "[P]ursuant to R.C. 5709.12(B), any institution, charitable or noncharitable, may qualify for a tax exemption if it is making exclusive charitable use of its property. But if the property belongs to a charitable or educational institution, R.C. 5709.121 defines what constitutes exclusive use of property in order to be exempt from taxation." *Cincinnati Community Kollel v. Testa*, 135 Ohio St.3d 219, 2013-Ohio-396, ¶23.

[1] Appellant has withdrawn its claim of exemption pursuant to R.C. 5709.07. Appellant Brief at 2-3.

simply worship God" are permitted to utilize the subject property, at "no charge or suggested donation" (although "unsolicited donations *** will be accepted"). S.T. at 73.

In *Dialysis Clinic Inc. v. Levin*, 127 Ohio St.3d 215, 2010-Ohio-5071, the court held that "the determination of an owner's status as a 'charitable institution' under R.C. 5709.121 requires a review of the 'charitable activities of the taxpayer seeking the exemption.' *OCLC Online Computer Library Ctr, Inc. v. Kinney* (1984), 11 Ohio St.3d 198, 201, ***; see also *Northeast Ohio Psych. Inst.*, 121 Ohio St.3d 292, 2009-Ohio-583, ***, ¶ 14. Activities have been deemed charitable if they accord with the standard of charity that we have developed when determining the charitable use of property directly under R.C. 5709.12(B)." Id. at 222. Based upon the foregoing, this board finds Innkeeper's year round use of the subject property, in providing a place of respite for the physical and spiritual renewal of Christian leaders, without charge, to be sufficiently charitable in nature to fall within the definition of charity set forth in *Planned Parenthood*, supra. See *True Christianity Evangelism v. Tracy* (2001), 91 Ohio St.3d 117, 120.

Therefore, as a charitable institution, Innkeeper must qualify for exemption pursuant to the provisions of R.C. 5709.121(A)(2), which provides in pertinent part that:

> "(A) Real property and tangible personal property belonging to a charitable or educational institution or to the state or a political subdivision, shall be considered as used exclusively for charitable or public purposes by such institution, the state, or political subdivision, if it meets one of the following requirements:
>
> "***
>
> "(2) It is made available under the direction or control of such institution, the state, or political subdivision for use in furtherance of or incidental to its charitable, educational or public purposes and not with the view to profit."

As the court instructed in *Cincinnati Community Kollel*, supra at ¶28, "the focus of the inquiry should be on the relationship between the actual use of the

conclusively presumed to be a charitable or educational institution. A private corporation established as a nonprofit corporation under the laws of a state, 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.A. 1 , as amended, and has as its principal purpose one or more of the foregoing objects, also is conclusively presumed to be a charitable or educational institution.

The fact that an organization described in this division operates in a manner that results in an excess of revenues over expenses shall not be used to deny the exemption granted by this section, provided such excess is used, or is held for use, for exempt purposes or to establish a reserve against future contingencies; and, provided further, that such excess may not be distributed to individual persons or to entities that would not be entitled to the tax exemptions provided by this chapter. Nor shall the fact that any scientific information diffused by the organization is of particular interest or benefit to any of its individual members be used to deny the exemption granted by this section, provided that such scientific information is available to the public for purchase or otherwise.

(2) Division (D)(2) of this section does not apply to real property exempted from taxation under this section and division (A)(3) of section 5709.121 of the Revised Code and belonging to a nonprofit corporation described in division (D)(1) of this section that has received a grant under the Thomas Alva Edison grant program authorized by division (C) of section 122.33 of the Revised Code during any of the tax years the property was exempted from taxation.

When a private corporation described in division (D)(1) of this section sells all or any portion of a tract, lot, or parcel of real estate that has been exempt from taxation under this section and section 5709.121 of the Revised Code, the portion sold shall be restored to the tax list for the year following the year of the sale and, except in connection with a sale and transfer of such a tract, lot, or parcel to a county land reutilization corporation organized under Chapter 1724. of the Revised Code, a charge shall be levied against the sold property in an amount equal to the tax savings on such property during the four tax years preceding the year the property is placed on the tax list. The tax savings equals the amount of the additional taxes that would have been levied if such property had not been exempt from taxation.

The charge constitutes a lien of the state upon such property as of the first day of January of the tax year in which the charge is levied and continues until discharged as provided by law. The charge may also be remitted for all or any portion of such property that the tax commissioner determines is entitled to exemption from real property taxation for the year such property is restored to the tax list under any provision of the Revised Code, other than sections 725.02 , 1728.10 , 3735.67 , 5709.40 , 5709.41 , 5709.62 , 5709.63 , 5709.71 , 5709.73 , 5709.78 , and 5709.84 , upon an application for exemption covering the year such property is restored to the tax list filed under section 5715.27 of the Revised Code.

(E) Real property held by an organization organized and operated exclusively for charitable purposes as described under section 501(c)(3) of the Internal Revenue Code and exempt from federal taxation under section 501(a) of the Internal Revenue Code, 26 U.S.C.A. 501(a) and (c)(3) , as amended, for the purpose of constructing or rehabilitating residences for eventual transfer to qualified low-income families through sale, lease, or land installment contract, shall be exempt from taxation.

The exemption shall commence on the day title to the property is transferred to the organization and shall continue to the end of the tax year in which the organization transfers title to the property to a qualified low-income family. In no case shall the exemption extend beyond the second succeeding tax year following the year in which the title was transferred to the organization. If the title is transferred to the organization and from the organization to a qualified low-income family in the same tax year, the

property as of the first day of January of the tax year in which the charge is levied and continues until discharged as provided by law.

In lieu of the application for exemption otherwise required to be filed as required under section 5715.27 of the Revised Code, a count land reutilization corporation holding the property shall, upon the request of any county or state agency, submit its articles of incorporation substantiating its status as a county land reutilization corporation.

Cite as R.C. § 5709.12

History. Amended by 129th General AssemblyFile No.127, HB 487, §101.01, eff. 9/10/2012.

Effective Date: 09-06-2002; 06-30-2005; 2008 SB353 04-07-2009

Note: *This section is set out twice. See also § 5709.12 , as amended by 130th General Assembly File No. TBD, SB 172, §1, eff. 9/4/2014.*

its conveyance; and

(f) The property is certified by the United States secretary of the interior as a "certified historic structure" or certified as part of a certified historic structure.

(2) Notwithstanding section 5715.27 of the Revised Code, an application for exemption from taxation of property described in division (B)(1) of this section may be filed by either the owner of the property or its occupant.

(C) For purposes of this section, an institution that meets all of the following requirements is conclusively presumed to be a charitable institution:

(1) The institution is a nonprofit corporation or association, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(2) The institution is exempt from federal income taxation under section 501(a) of the Internal Revenue Code;

(3) The majority of the institution's board of directors are appointed by the mayor or legislative authority of a municipal corporation or a board of county commissioners, or a combination thereof;

(4) The primary purpose of the institution is to assist in the development and revitalization of downtown urban areas.

Cite as R.C. § 5709.121

History. Amended by 129th General AssemblyFile No.127, HB 487, §101.01, eff. 9/10/2012.

Effective Date: 12-13-2001; 06-30-2005; 2008 HB562 09-22-2008; 2008 HB458 12-31-2008

(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 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.

Cite as R.C. § 5709.07

History. Amended by 129th General AssemblyFile No.28, HB 153, §101.01, eff. 9/29/2011.

Effective Date: 05-31-1988; 06-30-2005

Related Legislative Provision: *See 129th General AssemblyFile No.28, HB 153, §757.80.*

5701.13 Home for the aged defined.

(A) As used in this section:

(1) "Nursing home" means a nursing home or a home for the aging, as those terms are defined in section 3721.01 of the Revised Code, that is issued a license pursuant to section 3721.02 of the Revised Code.

(2) "Residential care facility" means a residential care facility, as defined in section 3721.01 of the Revised Code, that is issued a license pursuant to section 3721.02 of the Revised Code.

(3) "Residential facility" means a residential facility licensed under section 5119.34 of the Revised Code that provides accommodations, supervision, and personal care services for three to sixteen unrelated adults.

(B) As used in Title LVII of the Revised Code, and for the purpose of other sections of the Revised Code that refer specifically to Chapter 5701. or section 5701.13 of the Revised Code, a "home for the aged" means either of the following:

(1) A place of residence for aged and infirm persons that satisfies divisions (B)(1)(a) to (e) of this section:

(a) It is a nursing home, residential care facility, or residential facility.

(b) It is owned by a corporation, unincorporated nonprofit association, or trust of a charitable, religious, or fraternal nature, that is organized and operated not for profit, is not formed for the pecuniary gain or profit of, and whose net earnings or any part of whose net earnings is not distributable to, its members, trustees, officers, or other private persons, and is exempt from federal income taxation under section 501 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1.

(c) It is open to the public without regard to race, color, or national origin.

(d) It does not pay, directly or indirectly, compensation for services rendered, interest on debts incurred, or purchase price for land, building, equipment, supplies, or other goods or chattels, which compensation, interest, or purchase price is unreasonably high.

(e) It provides services for the life of each resident without regard to the resident's ability to continue payment for the full cost of the services.

(2) A place of residence that satisfies divisions (B)(1)(b), (d), and (e) of this section; that satisfies the definition of "nursing home" or "residential care facility" under section 3721.01 of the Revised Code or the definition of "residential facility" under division (A)(3) of this section regardless of whether it is licensed as such a home or facility; and that is provided at no charge to individuals on account of their service without compensation to a charitable, religious, fraternal, or educational institution, which individuals are aged or infirm and are members of the corporation, association, or trust that owns the place of residence. For the purposes of division (B)(2) of this section, "compensation" does not include furnishing room and board, clothing, health care, or other necessities, or stipends or other de minimis payments to defray the cost thereof.

Exemption from taxation shall be accorded, on proper application, only to those homes or parts of homes that meet the standards and provide the services specified in this section.

Nothing in this section shall be construed as preventing a home from requiring a resident with financial

Amended by 129th General AssemblyFile No.127, HB 487, §101.01, eff. 9/10/2012.

Amended by 129th General AssemblyFile No.79, HB 267, §1, eff. 5/22/2012.

Amended by 129th General AssemblyFile No.28, HB 153, §101.01, eff. 7/1/2011.

Effective Date: 09-06-2002

5713.30 Agricultural land definitions.

As used in sections 5713.31 to 5713.37 and 5715.01 of the Revised Code:

(A) "Land devoted exclusively to agricultural use" means:

(1) Tracts, lots, or parcels of land totaling not less than ten acres to which, during the three calendar years prior to the year in which application is filed under section 5713.31 of the Revised Code, and through the last day of May of such year, one or more of the following apply:

(a) The tracts, lots, or parcels of land were devoted exclusively to commercial animal or poultry husbandry, aquaculture, algaculture meaning the farming of algae, apiculture, the production for a commercial purpose of timber, field crops, tobacco, fruits, vegetables, nursery stock, ornamental trees, sod, or flowers, or the growth of timber for a noncommercial purpose, if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use .

(b) The tracts, lots, or parcels of land were devoted exclusively to biodiesel production, biomass energy production, electric or heat energy production, or biologically derived methane gas production if the land on which the production facility is located is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use, provided that at least fifty per cent of the feedstock used in the production was derived from parcels of land under common ownership or leasehold.

(c) The tracts, lots, or parcels of land were devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agreement with an agency of the federal government .

(2) Tracts, lots, or parcels of land totaling less than ten acres that, during the three calendar years prior to the year in which application is filed under section 5713.31 of the Revised Code and through the last day of May of such year, were devoted exclusively to commercial animal or poultry husbandry, aquaculture, algaculture meaning the farming of algae, apiculture, the production for a commercial purpose of field crops, tobacco, fruits, vegetables, timber, nursery stock, ornamental trees, sod, or flowers where such activities produced an average yearly gross income of at least twenty-five hundred dollars during such three-year period or where there is evidence of an anticipated gross income of such amount from such activities during the tax year in which application is made, or were devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agreement with an agency of the federal government;

(3) A tract, lot, or parcel of land taxed under sections 5713.22 to 5713.26 of the Revised Code is not land devoted exclusively to agricultural use;

(4) Tracts, lots, or parcels of land, or portions thereof that, during the previous three consecutive calendar years have been designated as land devoted exclusively to agricultural use, but such land has been lying idle or fallow for up to one year and no action has occurred to such land that is either inconsistent with the return of it to agricultural production or converts the land devoted exclusively to agricultural use as defined in this section. Such land shall remain designated as land devoted exclusively to agricultural use provided that beyond one year, but less than three years, the landowner proves good cause as determined by the board of revision.

(J) "Electric or heat energy" means electric or heat energy generated from manure, cornstalks, soybean waste, or other agricultural feedstocks.

Cite as R.C. § 5713.30

History. Amended by 129th General AssemblyFile No.82, HB 276, §1, eff. 6/4/2012.

Amended by 128th General AssemblyFile No.48, SB 232, §1, eff. 6/17/2010.

Effective Date: 09-26-2003