

ORIGINAL

IN THE SUPREME COURT
STATE OHIO

APPEAL FROM THE OHIO BOARD OF TAX APPEALS

CHRISTIAN VOICE OF CENTRAL OHIO, :
Appellant, : SUPREME COURT
Case No.: ~~14-1626~~

Vs. : BOARD OF TAX APPEALS
Case No.: 2011 -1446

JOSEPH W. TESTA, TAX COMMISSIONER, :
STATE OF OHIO, FRANKLIN COUNTY :
BOARD OF REVISION, FRANKLIN :
COUNTY AUDITOR, AND THE GAHANNA :
- JEFFERSON BOARD OF EDUCATION :
Appellees. :

NOTICE OF APPEAL

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SUPREME COURT OF OHIO

FILED
SEP 22 2014
BOARD OF TAX APPEALS
COLUMBUS, OHIO

**IN THE SUPREME COURT
STATE OHIO**

APPEAL FROM THE OHIO BOARD OF TAX APPEALS

CHRISTIAN VOICE OF CENTRAL OHIO,	:	SUPREME COURT
Appellant,	:	Case No.: _____
 Vs.	:	 BOARD OF TAX APPEALS
	:	Case No.: 2011 -1446
JOSEPH W. TESTA, TAX COMMISSIONER,	:	
STATE OF OHIO, FRANKLIN COUNTY	:	<u>NOTICE OF APPEAL TO THE</u>
BOARD OF REVISION, FRANKLIN	:	<u>SUPREME COURT OF OHIO</u>
COUNTY AUDITOR, AND THE GAHANNA	:	<u>PURSUANT TO SECTION</u>
- JEFFERSON BOARD OF EDUCATION	:	<u>5717.04 OF THE OHIO</u>
	:	<u>REVISED CODE</u>
Appellees.	:	

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Appellant Christian Voice of Central Ohio (hereinafter, "CVCO") hereby gives notice of its appeal as of right, pursuant to R.C. 5717.04, to the Supreme Court of Ohio, from a Decision and Judgment Entry of The Ohio Board of Tax Appeals, rendered on the 22nd day of August, 2014. A true and accurate copy of this Decision and Order is attached hereto as Exhibit A.

The Appellant complains of the following errors:

Assignment of Error No. 1. - The Decision and Order of the Ohio Board of Tax Appeals was unreasonable and unlawful.

Assignment of Error No. 2. - The Ohio Board of Tax Appeals erred as a matter of law when it failed to apply the doctrine of collateral estoppel and res judicata as the parties already litigated the issue of whether or not CVCO's operation was considered a "House of Public Worship" which resulted in a favorable ruling for CVCO which stood since 1991, stating that the real property in question was used for church purposes and is exempt from taxation under R.C. § 5709.07, public worship.

Assignment of Error No. 3. - The Ohio Board of Tax Appeals erred in its Decision by narrowly construing the term, "house", and the meaning of R.C. 5709.07(A)(2) to limit it to the structures where a typical congregation meets to worship.

Assignment of Error No. 4. - The Ohio Board of Tax Appeals erred as a matter of law when it failed to consider the testimony of Pastor John Moriarty and Pastor Dax Welsheimer of Epic Church of Gahanna that church services and preaching do take place at CVCO.

Assignment of Error No. 5. - Ohio Board of Tax Appeal Vice Chairman Michael Johrendt erred when he failed to recuse himself from this matter as he recently represented a former partner of then counsel for Appellant Eugene L. Matan, deceased, in a rather contentious litigation which presents an appearance of partiality and/or bias.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice of Appeal of Appellant Christian Voice of Central Ohio was served via certified mail posted prepaid and via hand delivery on this 22nd day of September, 2014, upon the following:

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A handwritten signature in black ink, appearing to read "Michael P. Onore", written over a horizontal line.

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Attorney for Appellant

OHIO BOARD OF TAX APPEALS

CHRISTIAN VOICE OF CENTRAL OHIO, (et. al.),
Appellant(s),
vs.
JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO, (et. al.),
Appellee(s).

CASE NO(S). 2011-1446
(EXEMPTION)
DECISION AND ORDER

APPEARANCES:

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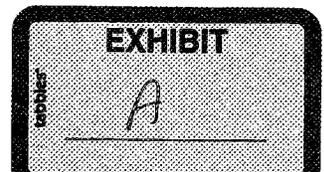
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Entered Friday, August 22, 2014

Mr. Williamson, Mr. Jöhrendt, and Mr. Harbarger concur.

This matter is considered by the Board of Tax Appeals upon the notice of appeal filed by the above-named appellant, Christian Voice of Central Ohio ("CVCO"). CVCO appeals from a final determination of the Tax Commissioner wherein its application for real property exemption for tax year 2008 for parcel 025-011487-00 in Franklin County was denied, but all penalties charged through the date of the final determination were remitted. In making our determination herein, we rely upon the statutory transcript certified to this board by the Tax Commissioner ("S.T."), the record of the hearing before this board ("H.R."), and the briefs filed by 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 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.



Additionally, "[a]ll real property in this state is subject to taxation, except only such as is expressly exempted therefrom." R.C. 5709.01(A). As a result, "in any consideration concerning the exemption from taxation of any property, the burden of proof shall be placed on the property owner to show that the property is entitled to exemption." R.C. 5715.271. Thus, exemption from taxation remains the exception to the rule, and a statute granting an exemption must be strictly, rather than liberally, construed. See, e.g., *Faith Fellowship Ministries, Inc. v. Limbach* (1987), 32 Ohio St.3d 432. The preceding standards were reiterated by the Supreme Court of Ohio in *Anderson/Maltbie Partnership v. Levin*, 127 Ohio St.3d 178, 2010-Ohio-4904:

"When a property owner applies for an exemption, we consider an overarching principle. Because laws that exempt property from tax are in derogation of equal rights, they must be strictly construed. *** The principle of strict construction requires that the statute's language be construed against the exemption, meaning that the onus is on the taxpayer to show that the language of the statute 'clearly express[es] the exemption' in relation to the facts of the claim. *** The fact that the burden is on the taxpayer means that "[i]n all doubtful cases the exemption is denied." Id. at ¶16. (Citations omitted.)

See, also, *Bethesda Healthcare Inc. v. Wilkins*, 101 Ohio St.3d 420, 2004-Ohio-1749.

In its application for exemption, CVCO described itself and the property in question, as follows:

"The property referred to within this application is utilized by the Christian Voice of Central Ohio, Inc. (hereinafter 'CVCO') for the purpose of furthering the gospel of Jesus Christ through Contemporary Christian Music and Preaching and Teaching radio programs. CVCO meets the definition of a 'Church' in the Ohio Revised Code. Contained within the building are production studios used for the origination of certain religious programming, offices, assembly rooms and a chapel.

"CVCO operates 9 radio stations with programming which originates from the studios housed within the building. These 9 stations are in existence exclusively to preach or teach the Biblical principles of Jesus Christ through music and other religious programming. These 9 stations include 3 Contemporary Christian radio stations which play inspirational music with positive and uplifting messages of hope, healing, worship and salvation under the River brand. Additionally, 6 preaching and teaching stations playing a variety of religious instruction and Bible preaching operate under the Promise and Pro Talk brand.

"The assembly rooms and the Chapel in the building are utilized for public meetings, church services and fundraising efforts of CVCO and other non profit organizations such as Faith Mission (Lutheran Social Services), FEMA (Federal Emergency Management Administration) in connection with Central Ohio Emergency Amateur Radio Community Services and Mission of Mercy. Our facilities are made available to certain other Non Profits on an as needed basis.

"The offices are used by the employees and volunteers of CVCO exclusively for the purpose of running and managing the day to day

operations of the radio stations and associated ministries. Additionally, the offices are made available to certain other Non Profit organizations on an as needed basis." S.T. at 26.

CVCO seeks exemption pursuant to the provisions of R.C. 5709.07(A)(2), which provides:

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

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

With regard to such statutory language, "[t]hat wording unambiguously applies the not-for-profit limitation only to the 'ground attached' to the building, not to the building itself. It follows that any limitations on the exemption for the building must relate to the requirement that it be used exclusively for public worship." *Anderson/Maltbie*, supra at ¶37.

CVCO first contends that because it was granted an exemption at its previous location, for previous tax years, it should have been granted an exemption at its current location, for tax year 2008. We disagree. At a minimum, the property location and the tax years under consideration are different, and, as such, we must evaluate the instant facts under the current statutory and case law standards. See *Hubbard Press v. Tracy* (1993), 67 Ohio St.3d 564.

Further, CVCO argues that it meets the definition of a house of public worship, pursuant to R.C. 5709.07(A)(2), "because it's [sic] mission is not just to be a radio station and play music, it *** is to inspire others to know Jesus Christ. CVCO is the connector not only with its ministries to help the community, but to connect the community to the Lord. *** The property *** is utilized by CVCO for the purpose of furthering the gospel of Jesus Christ through Contemporary Christian Music and Preaching and Teaching radio programs." Brief at 5-6. CVCO cites to its production studios used to play inspirational music and messages, religious instruction, and preaching and its offices used for management of the radio stations and other ministries, and assembly rooms and chapel, used for public meetings, other nonprofit organizations' activities, church services and fundraising events within the subject building as evidence of the subject's exempt use as a "house of worship." Brief at 6-7.

CVCO concedes that this board must apply a broader definition of church to the instant facts in order for the subject to be considered a house of worship that is entitled to exemption. Brief at 16. As support, CVCO points to *World Evangelistic Ent. Corp. v. Tracy* (1994), 96 Ohio App.3d 78, 83, where the court stated that "the term 'house,' as used in connection with the concept of public worship *** must be construed broadly ***. If it is limited to structures at which the members of a religious society gather in congregation to worship, that usage necessarily gives those societies a 'preference,' in the form of a tax exemption, over other religious societies which do not assemble in that fashion, or do not assemble at all. Section 7, Article I [of the Constitution] prohibits such preferences and any law which creates them. Therefore, a similar, broad construction must be given to the same terms as they appear in R.C. 5709.07. A 'house used exclusively for public worship,' as used in R.C. 5709.07, must accommodate a structure or facility that is used exclusively or primarily to propagate a religious message to persons who receive that message for a worshipful purpose. Those who engage in that activity constitute a form of religious society, whether they are gathered where the religious message originates or are dispersed elsewhere."

In contrast, however, this board has held that "[e]arly on, the Supreme Court interpreted the constitutional term 'houses used exclusively for public worship' which is incorporated into R.C. 5709.07. In *Gerke v. Purcell* (1874), 25 Ohio St. 229, the Court stated 'The exemption is not of such houses as may be used for the support of public worship, but of houses used exclusively as places of public worship.' The broadcasting of Christian programming supports the appellant's goal to spread the word of Jesus Christ, but the actual use is a television station. Any owner with adequate funds could operate a television station utilizing the appellant's facilities. The subject is simply not used as a place where people assemble to worship together. See *Jimmy Swaggert Evangelistic Association v. Kinney*, Sixth District Court of Appeals, Wood County, Case No. WD-82-64 (March 18, 1983). The subject property was designed and is used as a television station; thus, it is not a house used exclusively for public worship and is not entitled to an exemption from taxation under the terms of R.C. 5709.07." *Christian Television of Ohio, Inc. v. Limbach* (June 4, 1987), BTA No. 1985-E-157, unreported at 8-9. We also find appellant's reliance upon *The Way International v. Limbach* (1990), 50 Ohio St.3d 76 and *Maumee Valley Broadcasting Assn. v. Porterfield* (1972), 29 Ohio St.2d 95, cited therein, to be misplaced. Specifically, those cases involved exemption from sales tax and were not determined under the standards enunciated for exemption from real property taxation as a "house of public worship" in R.C. 5709.07.

Although World Evangelistic Ent. Corp. ("WEEC") was granted an exemption for its radio broadcasting facilities, we find the instant facts distinguishable. WEEC "operates a noncommercial radio station devoted to religious programming, supported by listener donations and contributions of churches and radio program producers. WEEC's religious programming includes a Sunday morning worship service from a church in Chicago, inspirational music, devotional prayers, youth programs with biblical and spiritual themes, Bible teaching programs, call-in programs, and activity announcements. WEEC is licensed by the Federal Communications Commission and broadcasts the news and public affairs information required by the FCC." *World Evangelistic*, supra, at 79-80. Herein, the evidence presented indicates that the variety of on-air radio programming offered by CVCO is much more limited in scope: "The majority of it would be music. *** [Y]ou would have to say outside of the commercials that 95 percent would be music and then five percent or less would be talk, maybe even higher than that. Maybe 96, 97 percent. *** [T]he DJs are given *** maybe five minutes out of the hour-ish to talk. Maybe a little more." H.R. at 183-184. Further, we find no evidence in the record that there are church services or preaching on the air; although discussed in CVCO's application for exemption, there is no evidence in the record concerning the "6 preaching and teaching [radio] stations" that are housed on the subject premises nor any description of their activities and/or the specific nature of their programming. H.R. at 184. In *Jimmy Swaggert*, supra, the court of appeals held that "WJYM, although affiliated with a religious organization, is not itself an institutionalized church. Even if, arguendo, some of its broadcasts could be considered 'worship' in that they show 'reverence for (a) Divine Being', such broadcasts are not physically participated in by 'a number of persons assembled (on the property) for that (particular) purpose.' The property at issue, not being a 'house used exclusively for public worship', is not entitled to an exemption from taxation pursuant to R.C. 5709.07." (Emphasis sic.) H.R. at 184.

Based upon the foregoing, we do not find that CVCO operates as a "house of public worship" on the subject property. While changes in society and advancements in technology may require a broader perspective in evaluating what constitutes an exempt use of property pursuant to R.C. 5709.07, it does not change the basic assumption that "[f]or the purposes of R.C. 5709.07, 'public worship' means the open and free celebration or observance of the rites and ordinances of a religious organization." *Faith Fellowship Ministries v. Limbach* (1987), 32 Ohio St.3d 432, ***, paragraph one of the syllabus. The exemption allowed pursuant to R.C. 5709.07(A)(2) is for property used primarily to facilitate such celebrations or observances. Id. at paragraph two of the syllabus." *World Evangelistic*, supra at 81. We find the activities that occur at the subject property do not rise to such level; CVCO's activities do not

constitute "the observance of the rites and ordinances of a religious organization," as CVCO does not espouse the beliefs and/or practices of any particular denomination or religious entity, H.R. at 55-56, but, instead, constitute activities that are generally supportive of Christian religious beliefs. H.R. at 55. In addition, even if CVCO's activities relating to its broadcasts and other activities could be considered exclusive use for public worship, we find that its sale of on-air advertising, which primarily funds CVCO's business, is not an exclusive use for public worship, but part of a commercial radio enterprise's operations. Ex. B.

Accordingly, we find the appellant has failed to meet its burden of demonstrating error by the commissioner. See *Federated*, supra; *Alcan*, supra. Therefore, this board finds that the Tax Commissioner's conclusions were reasonable and lawful. It is the decision and order of the Board of Tax Appeals that the final determination of the Tax Commissioner must be and hereby is affirmed.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Mr. Johrendt		
Mr. Harbarger		

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