

**IN THE SUPREME COURT OF OHIO**

AKRON GENERAL MEDICAL CENTER, :  
 :  
Appellant, : Case No. 2014-0876  
 :  
v. : Appeal from Ohio Board of Tax Appeals  
 : BTA Case No. 2012-426  
 :  
JOSEPH W. TESTA, TAX :  
COMMISSIONER, et al., :  
 :  
Appellees. :

---

**BRIEF OF APPELLEE STOW-MUNROE FALLS CITY SCHOOL  
DISTRICT BOARD OF EDUCATION**

---

Mark H. Gillis (0066908)  
Kelley A. Gorry (0079210)  
RICH & GILLIS LAW GROUP, LLC  
6400 Riverside Drive, Suite D  
Dublin, OH 43017  
PH: (614) 228-5822  
FAX: (614) 540-7476  
[kgorry@richgillislawgroup.com](mailto:kgorry@richgillislawgroup.com)  
*Counsel for Appellee Stow-Munroe  
Falls City Schools*

Melissa W. Baldwin (0066681)  
Assistant Attorney General  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, OH 43215  
PH: (614) 466-5968  
FAX: (866) 487-3731  
*Counsel for Appellee Ohio Tax  
Commissioner*

Sean M. McGlone (0075698)  
Ohio Hospital Association  
155 East Broad Street, Suite 301  
Columbus, OH 43215  
PH: (614) 384-9139  
FAX: (614) 917-2260  
*Co-Counsel for Amicus Curiae OHA*

Stephen W. Funk (0058506)  
Jessica A. Lopez (0090508)  
ROETZEL & ANDRESS, LPA  
222 South Main Street, Suite 400  
Akron, OH 44308  
PH: (330) 376-2700  
FAX: (330) 376-4577  
*Counsel for Appellant Akron General  
Medical Center*

Mark A. Engel (0019486)  
BRICKER & ECKLER LLP  
9277 Centre Pointe Drive, Suite 100  
West Chester, OH 45069  
PH: (513) 870-6565  
FAX: (513) 870-6699  
*Co-Counsel for Amicus Curiae Ohio  
Hospital Association ("OHA")*

## TABLE OF CONTENTS

Table of Authorities .....	iii
Statement of the Case and Facts .....	1
Law and Argument .....	2
Introduction.....	2
Response to AGMC’s Proposition of Law Nos. 1(B) & 1(D).....	3
<b>THE BTA APPLIED THE PROPER LEGAL STANDARD FOR EXEMPTION PURSUANT TO <i>BETHESDA</i> AND R.C. 5709.12 AND 5709.121.....</b>	<b>3</b>
<u>The Court already rejected the more expansive reading of R.C. 5709.121 that AGMC and OHA suggest .....</u>	<u>3</u>
<u>The BTA properly applied R.C. 5709.12 and R.C. 5709.121 consistent with Bethesda.....</u>	<u>6</u>
<u>AGMC has not demonstrated sufficient benefit to the public from Lifestyles to justify a real property tax exemption .....</u>	<u>11</u>
Response to AGMC’s Proposition of Law No. 1(C) .....	13
<b>LIFESTYLES IS NOT USED INCIDENTAL TO OR IN FURTHERANCE OF AGMC’S RECOGNIZED CHARITABLE PURPOSES.....</b>	<b>13</b>
<u>The use of Lifestyles as a private fitness center is too “remote” to fall under the purview of R.C. 5709.121.....</u>	<u>14</u>
<u>AGMC’s use of any proceeds from Lifestyles for its general hospital operations is insufficient to satisfy use incidental to or in furtherance of AGMC’s charitable purposes.....</u>	<u>17</u>
Conclusion .....	18
Appendix.....	1

**TABLE OF AUTHORITIES**

Statutes:

R.C. 5709.07 .....5

R.C. 5709.12 .....3, 4, 6, 11, 13

R.C. 5709.121 ..... *passim*

Cases:

*Bethesda Healthcare, Inc. v. Wilkins*,  
101 Ohio St. 3d 420, 2004-Ohio-1749, 806 N.E.2d 142 ..... *passim*

*Carney v. Cleveland City School Dist. Public Library of Cuyahoga Cty.*,  
169 Ohio St. 65, 157 N.E.2d 311 (1959) .....11

*Cincinnati Community Kolllel v. Testa*,  
135 Ohio St. 3d 219, 2013-Ohio-396, 985 N.E.2d 1236 .....5

*Community Health Professionals, Inc. v. Levin*,  
113 Ohio St. 3d 432, 2008-Ohio-2336, 866 N.E.2d 478 ..... 5, 14, 15-17

*Dialysis Clinic, Inc. v. Levin*,  
127 Ohio St. 3d 215, 2010-Ohio-5071, 938 N.E.2d 329 ..... *passim*

*Northeast Ohio Psychiatric Institute v. Levin*,  
121 Ohio St. 3d 292, 2009-Ohio-583, 903 N.E.2d 1188 ..... 17-18

*The Mercy Hospital Corp. v. Limbach*,  
BTA No. 86-A-573, 1989 Ohio Tax LEXIS 358 (Apr. 21, 1989), unreported ..... 15-17

*White Cross Hosp. Assn. v. Bd. of Tax Appeals*,  
38 Ohio St. 2d 199, 311 N.E.2d 862 (1974) ..... *passim*

## STATEMENT OF THE CASE AND FACTS

Appellant Akron General Medical Center (“AGMC”) filed an application for exemption with the Tax Commissioner upon that certain real property it owns in Stow, Ohio, called the Stow Health and Wellness Center North. *See* Architectural Rendering, Supplement at p. 195. The property is comprised of an emergency department, a diagnostics department, a physical therapy department, a laboratory, conference rooms, a mind-body studio (which has since vacated the premises) and a state-of-the art fitness center called Lifestyles. *Id.*

Before the Tax Commissioner, Appellee Stow-Munroe Falls City School District Board of Education (the “Board of Education”) elected to participate in the proceedings and objected to the exemption as a portion of the property was operated for commercial purposes. *See* Letter of Board of Education, Statutory Transcript. Upon the recommendation of the Summit County Auditor, the Tax Commissioner granted exemption upon 43,431 square feet, which included the emergency department, the diagnostics department, the laboratory and the physical therapy area.<sup>1</sup> *See* Final Determination, Supplement at p. 006. AGMC timely appealed to the Board of Tax Appeals (the “BTA”).

The BTA held a hearing and AGMC presented two witnesses, Ms. Deborah Gorbach and Mr. Douglas Ribley. *See* BTA Hearing Record (“H.R.”), Supplement at p. 013. The Board of Education essentially argued that the facts of this case were not a matter of first impression under Ohio law and that Court already denied exemption to a medically-supervised fitness facility in *Bethesda, infra. Id.* at p. 020 (p. 30). The evidence at the BTA hearing revealed that Lifestyles is

a private fitness center with little opportunity for access by the general public. Although Lifestyles does have a charitable policy in accordance with its Health & Wellness Community Grant (*see* Charitable Care Policy, Health & Wellness Community Grant, Supplement at p. 196), it offers minimal donated or free memberships to members of the community that cannot afford them. Membership Distribution, Supplement at p. 197. Lifestyles generates nearly \$1.9 million in revenue annually from its membership fees, enrollment dues and personal training fees. Income and Expense Statements, Supplement at pp. 201-205.

The BTA issued its decision on April 29, 2014, denying exemption to AGMC and affirming the Tax Commissioner’s Final Determination in its entirety. It applied *Bethesda* and held that the facts were “substantially similar” to those of *Bethesda*. BTA Decision, Supplement at p. 004. It found that Lifestyles was not open to the public at large (quoting *Dialysis Clinic, infra*), and concluded that the percentage of donated memberships for Lifestyles was “insufficient to constitute charitable use.” *Id.* at p. 005. AGMC timely appealed to this Court.

## **LAW AND ARGUMENT**

### **INTRODUCTION**

At issue in this appeal is whether the BTA’s decision denying exemption to AGMC for that certain portion of real property that it owns and operates as a private fitness center called “Lifestyles” was reasonable and lawful. The BTA relied upon this Honorable Court’s decision in *Bethesda Healthcare, Inc. v. Wilkins*, 101 Ohio St. 3d 420, 2004-Ohio-1749, 806 N.E.2d 142. and held that the facts of the instant matter were “substantially similar” to those in *Bethesda*.

---

<sup>1</sup> The square footage of the physical therapy area on the Architectural Rendering (*see* Supplement at p. 195) does not reconcile with the square footage estimated by the Commissioner.

The BTA properly applied *Bethesda* and the correct legal standard set forth therein in determining that the Tax Commissioner correctly denied exemption to Lifestyles. The Board of Education respectfully requests that the BTA’s decision be affirmed.

RESPONSE TO AGMC’S PROPOSITION OF LAW NOS. 1(B) & 1(D):

**THE BTA APPLIED THE PROPER LEGAL STANDARD FOR EXEMPTION PURSUANT TO *BETHESDA* AND R.C. 5709.12 AND 5709.121.**

AGMC and amicus Ohio Hospital Association (“OHA”) contend that as neither the Commissioner nor the Board of Education contest AGMC’s status as a “charitable institution,” the BTA failed to apply the correct legal standard set forth in R.C. 5709.121(A)(2) and that it need not demonstrate “exclusive” charitable use but use only incidental to or in furtherance of its charitable purposes. AGMC is misguided for the following reasons: (A) the Court already rejected the more expansive reading of R.C. 5709.121 that AGMC and OHA urge it to adopt; (B) the BTA properly applied both R.C. 5709.12 and R.C. 5709.121 consistent with *Bethesda*; and (C) Lifestyles does not confer sufficient public benefit to entitle AGMC to exemption.

A. The Court already rejected the more expansive reading of R.C. 5709.121 that AGMC and OHA suggest.

AGMC and OHA contend that AGMC was not required to demonstrate that it used Lifestyles principally or primarily for charitable purposes, but is entitled to exemption if using Lifestyles only incidentally to or in furtherance of its charitable purposes. But the Court already rejected this expansive reading of R.C. 5709.121 as relating to healthcare institutions. In *Dialysis Clinic, Inc. v. Levin*, 127 Ohio St. 3d 215, 2010-Ohio-5071, 938 N.E.2d 329, a non-profit dialysis clinic (“DCI”) sought exemption for its property used to administer dialysis services to patients with end-stage renal disease. *Id.* at ¶ 1. In applying for exemption pursuant

to R.C. 5709.12 and R.C. 5709.121, DCI and OHA suggested that “so long as an institution is charitable or educational \*\*\* its property only need be *used incidentally* to charitable or educational purposes” to qualify for exemption pursuant to R.C. 5709.121. *Id.* at ¶ 19 (emphasis in original).

The Court unequivocally rejected this argument, holding that “this interpretation significantly expands the scope of the property-tax exemption for facilities that provide healthcare services.” *Id.* at ¶ 20. Furthermore, this construction of R.C. 5709.121 “is inconsistent with the legislative purpose behind its enactment and with ordinary principles of statutory construction.” *Id.* at ¶ 21. The Court noted that the legislature enacted R.C. 5709.121 to “address a restriction on the availability of exemption under R.C. 5709.12(B).” *Id.* at ¶ 22. Prior to enactment, exemption was prohibited pursuant R.C. 5709.12(B) when the owner of property leased such property, “even if the lessee was using the property for charitable purposes.” *Id.* Thus, the “central purpose” of R.C. 5709.121, a *limited* expansion of R.C. 5709.12(B), was to “declare that the ownership and use of property need not coincide for that property to be exempt.” *Id.* at ¶ 24, *quoting White Cross Hosp. Assn. v. Bd. of Tax Appeals*, 38 Ohio St. 2d 199, 203, 311 N.E.2d 862 (1974) (Stern, J., concurring). Accordingly, the Court aptly held:

Although R.C. 5709.121 does expand the scope of the charitable-use exemption, this expansion has a narrower purpose than that which DCI and OHA advance. We have stated that R.C. 5709.121 does not itself grant any exemption. It merely sets forth certain situations in which real and personal property belonging to charitable or educational institutions \*\*\* may be considered as used exclusively for charitable purposes.

*Id.* at ¶ 24. The Court relied heavily upon Justice Stern’s concurrence in *White Cross Hospital* where he further elaborated on the meaning of R.C. 5709.121(A)(2) [then R.C. 5709.121(B)] as authorizing exemption when “the institution or governmental unit makes the property available

to anyone *besides* another qualified institution or governmental unit, for a nonprofit use that is in furtherance of, or incidental to the owner-institution's (or owner-governmental unit's) charitable purposes. *White Cross Hospital*, at 203 (emphasis in original).

AGMC and DCI repeatedly cite *Community Health Professionals, Inc. v. Levin*, 113 Ohio St. 3d 432, 2008-Ohio-2336, 866 N.E.2d 478, and *Cincinnati Community Kollel v. Testa*, 135 Ohio St. 3d 219, 2013-Ohio-396, 985 N.E.2d 1236, as support for the applicable interpretation of R.C. 5709.121 to be applied here. But the Court issued *Dialysis Clinic* several years after *Community Health Professionals* and *Dialysis Clinic* constitutes the most recent analysis of R.C. 5709.121 as relating to healthcare institutions. And *Cincinnati Community Kollel* is directly limited to *educational* institutions:

Rather, R.C. 5709.121 provides a clear test for exemption: property belonging to an *educational institution* is marked for exemption if it is 'used in furtherance of or incidental to' the institution's *educational* purposes and not with a view to profit.

*Cincinnati Community Kollel*, at ¶ 26 (emphasis added). Applying potentially different interpretations as to charitable and educational institutions is not prohibited by R.C. 5709.121 since the legislature elected to differentiate between charitable and educational institutions therein. See R.C. 5709.121(A) (real property belonging to charitable *or* educational institutions)<sup>2</sup>. Accordingly, *Cincinnati Community Kollel* is not inconsistent with *Dialysis Clinic*

---

<sup>2</sup> The legislature clearly sought to distinguish "educational" from "charitable" purposes in R.C. 5709.121(A) or its inclusion of "educational" would be rendered superfluous since most educational uses would also be deemed "charitable." Adopting different interpretations of R.C. 5709.121 for educational and charitable purposes is also consistent with R.C. 5709.07 which does not adopt an "exclusive" use test for exemption for educational purposes. See R.C. 5709.07(A)(1), R.C. 5709.07(A)(4). Therefore, and in proper context, the Court's decision in *Cincinnati Community Kollel* must be strictly limited to educational purposes and should not be extended to healthcare institutions in direct contravention of *Dialysis Clinic*.

and does not alter the interpretation of R.C. 5709.121 to be applied here.

Since *Dialysis Clinic* applies to AGMC as a healthcare institution, R.C. 5709.121 does not offer an independent basis for exemption to AGMC upon demonstration that it uses Lifestyles only incidentally to or in furtherance of its charitable purposes. As Justice Stern's analysis in *White Cross Hospital* makes crystal clear – the legislature did not intend for a charitable institution to own and use its own property for anything less than “exclusively” for charitable purposes in enacting R.C. 5709.121. *White Cross Hospital*, at 203. Rather, when property is owned by a charitable institution that does not use it itself, R.C. 5709.121 defines “exclusive” charitable use as including use by *another* to enable the owner-institution to obtain exemption under R.C. 5709.12(B). As AGMC essentially concedes in its Brief that it does not use its property exclusively for its charitable purposes, Lifestyles is not entitled to exemption and the BTA's decision was reasonable and lawful.

B. The BTA properly applied R.C. 5709.12 and R.C. 5709.121 consistent with Bethesda.

The BTA properly applied the legal analysis set forth in *Bethesda* to conclude that AGMC was not entitled to exemption pursuant to R.C. 5709.12 or R.C. 5709.121. Where no question has been raised as to the status of the applicant as a charitable institution, the first step in the analysis is to “consider the overall operation being conducted to determine whether the property is being used for charitable purposes.” *Bethesda*, at ¶ 35. Where services are offered to the public generally, charges may be incurred for such services so long as the operator “extends charitable benefits to members of the public at large” and “[w]hether an institution renders sufficient services to persons who are unable to afford them to be considered making a charitable use of the property must be determined upon the totality of the circumstances: there is no

absolute percentage.” *Id.* at ¶¶ 38, 39.

Regarding the fitness center at issue, the Court held that neither Bethesda’s charges to members nor its operation of the property as a fitness center were dispositive of charitable nature. *Id.* at ¶¶ 35, 36. The Court was not persuaded by the additional medical oversight at the facility as “[w]hile members of the Fitness Center may receive more attention, by better-trained instructors, and receive services that are not available at other fitness centers, these facts do not make the use of the property by the Fitness Center a charitable one.” *Id.* at ¶ 36. In holding that the Fitness Center did not convey sufficient benefits to the public to justify exemption, the Court found:

Similarly, in this case, when we look at all the facts, we find that only eight full scholarships and an unknown number of partial memberships were given to persons who could not otherwise afford the membership. Eight scholarships out of 5,400 members amounts to only slightly over one tenth of one percent of the total members. \*\*\*

Here, the small number of members able to use the Fitness Center without payment of membership dues does not indicate a charitable use under the facts of this case.

*Id.* at ¶ 39. As such, it affirmed the BTA’s decision denying exemption to the Fitness Center, excluding the physical therapy and rehabilitation areas, one-half of the warm water pool, and outdoor running track that the BTA found were used by Bethesda’s patients for rehabilitation purposes or made available to the general public. *Id.* at ¶ 5, 8.

The BTA properly applied *Bethesda* here and it is not distinguishable as AGMC suggests. The record in this case unequivocally supports the BTA’s determination that the Fitness Center and Lifestyles are “substantially similar.” In fact, the record reveals that the two centers are physically identical. Just like the Fitness Center, Lifestyles contains a second floor mezzanine

area with a track, a free-weights area and a group exercise area. *See* BTA H.R., Supplement at p. 52 (p. 202, 203); *see also Bethesda*, at ¶ 9. The first floor contains cardiovascular equipment, a warm water pool, a lap pool, a whirlpool, a basketball court, locker rooms and a physical therapy area. *See id.* at p. 51-52 (p. 201-205); *see also* Architectural Rendering, Supplement at p. 195; *Bethesda*, at ¶ 10.

AGMC's membership structure is also virtually identical to the Fitness Centers' in *Bethesda*. Each potential member is required to complete a membership application and meet with a Lifestyles employee. *See* BTA H.R., Supplement, at p. 44 (p. 172). According to the application, qualified members are those "[s]ubject to approval by the Center, without regard to race, sex, ethnic background or religion, any individual eighteen (18) years of age or older, *of proven financial responsibility*." Membership Application, Supplement at p. 214 (emphasis added). AGMC's "charitable" policy for membership is not listed on the application but is discussed with the employee at the time of application. *See* BTA H.R., Supplement at p. 44 (p. 172). New members are assessed enrollment fees of \$275 for individuals, \$325 for couples, and \$350 for families. *See* Schedule of Membership Fees, Supplement at p. 215. Seniors and students are offered a 20% discount off the enrollment fee and AGMC employees receive a 50% discount off the enrollment fee. *Id.* Monthly dues are \$53 for an individual, \$82 for couples, and \$107 for families. *Id.* AGMC also offers a 30% discount off the enrollment fee for physical therapy patients who become members but was unable to produce any evidence of the number of former physical therapy patients who became members. *See* BTA H.R., Supplement at p. 44 (p. 173). Corporate memberships are also offered for \$1,250 per year to \$3,250 per year, depending on the number of employees. *See* Schedule of Membership Fees, Supplement at p. 215; *see also*

*Bethesda*, at ¶ 12.

Upon joining the club, new members have an opportunity, which is not mandatory, to meet with an exercise physiologist for a health assessment and exercise recommendation. *See* BTA H.R. at p. 45 (p. 175-176), 46 (p. 180); *see also Bethesda*, at ¶ 14. Exercise physiologists and personal trainers are available for consultation for members at any time. *Id.* at p. 45 (p. 176). The facility is open to members and their guests and all first-time guests would be permitted in the facility only if completing the health assessment. *Id.* Members of the community cannot “come off the street and just walk into the center.” *Id.* at p. 46 (p. 180).

AGMC also offers some programs to the community but most programs are offered originally to the members and then if membership participation is overwhelmingly strong, those programs will occasionally be offered to the community. *Id.* at p. 47 (p. 185). AGMC could not quantify how many health programs, or which specific programs, were offered to the community. *Id.* at p. 48 (p. 186). Children’s programs such as birthday parties, day camps and overnights are offered to the community as well as members, with non-members paying an additional fee. *Lifestyles Recreation Packages, Supplement* at p. 217, 221. Portions of the facility, including the pool, rock wall, gymnasium, exercise studio and conference rooms may also be rented by members of the community for fees ranging from \$50 per hour to \$200 per hour. *Id.* at p. 218.

To determine the charitable nature of Lifestyles’ operations under R.C. 5709.12 and R.C. 5709.121, the BTA initially quoted the Court’s summarization of *Bethesda* in *Dialysis Clinic* that the Fitness Center in *Bethesda* was available to members and guests, with only minimal access to the public. *BTA Decision, Supplement* at p. 004. Like in *Bethesda*, the BTA concluded that

“AGMC renders an insufficient amount of services to persons who are unable to afford them to be considered as making charitable use of the property.” *Id.* at p. 005. While the BTA correctly concluded that no absolute percentage of free memberships were required, the evidence presented supported a finding that the percentage of donated memberships ranged from 3% to 0.2% between 2008 and 2013. *Id.* While AGMC attempts to manipulate the data it produced in response to the Board of Education’s subpoena in its Brief to support a higher percentage of donated memberships, it is worth noting that *Bethesda* considered the number of donated or free memberships as to the total number of *existing* memberships, whereas the data presented by AGMC compares the number of donated memberships to the total of *new* annual memberships. *See* Membership Distribution, Supplement at p. 197. Had AGMC presented the total number of existing members as of each applicable lien date (as the Board of Education requested in its subpoena), it is likely that the percentage would be equal to or *less* than the percentage the Court rejected in *Bethesda*.

Moreover, AGMC fails to cite a valid basis for distinguishing *Bethesda* in its Brief. Its argument regarding different ownership and use of the Fitness Center by a non-profit corporation consisting of two hospitals in *Bethesda* is irrelevant as *Bethesda*’s status as a charitable institution was not contested there. AGMC also alleges that Lifestyles is not restricted to “paying members” and is available for thousands of patients for rehabilitation and physical therapy purposes but fails to cite any evidence in the record in support of such assertion. *See* Appellant’s Merit Brief at p. 33. Unlike in *Bethesda*, AGMC failed to introduce any evidence of how many physical therapy patients elected to become members to continue their therapy, or how many members utilizing the center at any given time are actually physical therapy patients.

*See Bethesda*, at ¶ 12.<sup>3</sup> Accordingly, AGMC did not meet its burden in proving that the BTA acted unreasonably or unlawfully in applying *Bethesda* and holding that it was not entitled to exemption pursuant to R.C. 5709.12 or R.C. 5709.121.

C. AGMC has not demonstrated sufficient benefit to the public from Lifestyles to justify a real property tax exemption.

As the BTA alluded in its decision, AGMC has not proven sufficient public benefit from Lifestyles to justify its tax exemption. “The rationale justifying a tax exemption is that there is a present benefit to the general public from the operation of a charitable institution to justify the loss of tax revenue. *White Cross Hospital*, at 201. As the Court further explained in *Carney v. Cleveland City School Dist. Public Library of Cuyahoga Cty.*, 169 Ohio St. 65, 157 N.E.2d 311 (1959):

Where the entity is nongovernmental in character, deriving its funds from voluntary contributions and perhaps from charges for its services, the exemption is also based upon public benefit. That is, nongovernmental entities which have been granted tax exemptions are entities that operate for the benefit of the public. Since the sole legitimate purpose of taxation is to benefit the public, to tax property already devoted to public use would be merely to divert funds from one public benefit to another.

Thus the basic purpose of the tax-exemption provisions with which we are concerned is to allow certain entities which are operated for the public benefit to devote their funds entirely to that use without diminution by way of taxation.

*Id.* at 67.

In *Dialysis Clinic*, the Court recognized that as DCI’s core activities including providing healthcare services, DCI could qualify for tax exemption only if “it provided service ‘on a

---

<sup>3</sup> Such that the Court determines that the Tax Commissioner slightly underestimated the square footage of the physical therapy area, the Court may properly remand to the BTA with instructions to exempt the physical therapy area as set forth on the Architectural Rendering. *See Architectural Rendering, Supplement* at p. 195.

nonprofit basis to those in need, without regard to race, creed or ability to pay.’” *Dialysis Clinic*, at ¶ 30. Although federal law permits an institution to exclude a portion of the community and still engage in charitable activities, the Court emphatically rejected such standards as applicable to Ohio real property tax exemptions:

[I]n *Rev. Rul. 69-545*, the IRS ‘abandoned the charity care requirement’ and ‘adopted a ‘per se’ rule’ that ‘an entity engaged in the ‘promotion of health’ for the general benefit of the community is pursuing a charitable purpose, *even though a portion of the community, such as indigents, are [sic] excluded from participation.*’ We reject a reading of R.C. 5709.121 that essentially substitutes more lenient federal-law standards for the well-developed Ohio law of charitable use.

*Id.* at ¶ 26 (internal citations omitted, emphasis in original). While the Court rejected requiring a charitable institution to demonstrate a particular percentage of wholly unreimbursed care, it discussed *Bethesda* as properly denying exemption when the use of the property at issue failed to provide sufficient public benefit:

In *Bethesda*, a nonprofit corporation sought an exemption for the portion of a building that it leased to itself for accounting purposes; the area housed a fitness facility that was open only to dues-paying members and their guests, with minimal access to the public. The exemption was denied, for although a small number of memberships were given away through scholarships, analogous to ‘free care,’ the facility itself was not open to the public at large.

*Id.* at ¶ 45.

Here, AGMC fails to demonstrate sufficient public benefit just as in *Bethesda*. Although it had an opportunity to present specific evidence on the programs and services it offers that are generally available to the public, it failed to do. When cross-examined regarding its healthcare programs and services offered to the community, it could not even estimate a percentage of such services offered. *See* BTA H.R., Supplement at p. 48 (p. 186). Moreover, Mr. Ribley emphasized that its programs are designed primarily for its members as its initial priority. *Id.* at

p. 47 (p. 182). Upon success of a certain program or service with its members, AGMC would then look to expand such program or service to the community generally. *Id.* Furthermore, general members of the public are not welcome to “come off the street” and use the facility, even for a fee. *Id.* at p. 46 (p. 180).

AGMC essentially seeks exemption upon the more lenient federal standards rejected in *Dialysis Clinic*. As Lifestyles promotes “health for the general benefit of the community,” (i.e. its members), AGMC contends that it is entitled to exemption simply because it owns the property and it is a charitable institution. Since the Court unequivocally rejected relaxing standards akin to federal law to grant exemption pursuant to R.C. 5709.121, AGMC is not entitled to exemption as it has not demonstrated sufficient benefit to the general public.

In sum, the BTA did not apply an incorrect legal standard to AGMC in denying exemption pursuant to R.C. 5709.12 and R.C. 5709.121. The interpretation of R.C. 5709.121 set forth in *Dialysis Clinic* applies here and AGMC is not entitled to an exemption simply because it owns the property. *Bethesda* applies and supports the Court’s determination that the majority of Lifestyles, operating as a private gym for the benefit of its members and guests, fails to confer sufficient public benefit to justify the loss in tax revenue.

RESPONSE TO AGMC’S PROPOSITION OF LAW NO. 1(C):

**LIFESTYLES IS NOT USED INCIDENTAL TO OR IN FURTHERANCE OF AGMC’S RECOGNIZED CHARITABLE PURPOSES.**

Even if the Court declines to apply *Dialysis Clinic* to AGMC here and applies the more relaxed version of R.C. 5709.121 that AGMC and OHA urge it to apply, the Court should carefully scrutinize the relationship between AGMC’s recognized charitable purposes (i.e. providing medical services to those in need without regard to race, creed or ability to pay) and

the use of the property for which exemption is sought, particularly when the use of the property at issue is itself not charitable and would not qualify the user as a charitable institution. As otherwise, the Court will be issuing a carte blanche for charitable organizations to engage in general commercial activities and receive tax exemptions so long as the charitable organization advances any indirect connection to its lawful charitable purpose. Here, operating a private fitness center, medically supervised or otherwise, is not a charitable purpose and AGMC does not demonstrate use in furtherance of or incidental to its recognized charitable purpose as: (A) the use of Lifestyles as a commercial fitness center is too “remote” to be within the purview of R.C. 5709.121; and (B) use of proceeds derived from Lifestyles for AGMC’s hospital operations is insufficient to meet the standard of R.C. 5709.121 of use incidental to or in furtherance of AGMC’s recognized charitable purposes.

A. The use of Lifestyles as a private fitness center is too “remote” to fall under the purview of R.C. 5709.121.

While the Board of Education recognizes that the Court has applied the test of whether use of the property at issue is “functionally removed” from the owner’s charitable purposes (*see Community Health Professionals, supra*, at ¶21), the more applicable test here is that set forth in *White Cross Hospital*. There, the Court determined whether offices within a hospital rented to physicians for their private practices were entitled to exemption under R.C. 5709.121. The BTA denied the exemption, and the Court affirmed, finding that the commercial use of the property was too remote to establish a connection to recognized charitable purposes pursuant to R.C. 5709.121:

There is no evidence of any charitable activity being carried on in this building. Admittedly, it is a convenient arrangement and no doubt beneficial in some respects to the operation of the hospital, but the use of this property is a

commercial use and it is not within the purview of R.C. 5709.121. \*\*\*

The Board of Tax Appeals has decided that because of the commercial nature of the use of this property, whatever ‘benefit’ the hospital may derive from that use is too remote to bring that use within the purview of R.C. 5709.121. It is clear that the board has considered the pertinent language in that statute, but has still denied the exemption.

*White Cross Hospital*, at 200-201.

AGMC cites *Community Health Professionals* and the BTA’s decision in *The Mercy Hospital Corp. v. Limbach*, BTA No. 86-A-573, 1989 Ohio Tax LEXIS 358 (Apr. 21, 1989), unreported, as supporting a finding that Lifestyles is used incidentally to or in furtherance of its charitable purposes. But both of those cases are easily distinguishable, and *White Cross Hospital* more applicable. In *Community Health Professionals*, a company (“CHP”) providing “skilled, in-home nursing care and hospice services to those in the community who have approval and a care plan from a physician” applied for exemption of its administrative offices (including offices for its two affiliate companies), and a portion of the property operated as an adult daycare. *Community Health Professionals*, at ¶¶ 3, 4. The Tax Commissioner originally denied exemption, finding that the evidence was insufficient to support a finding that all three companies provided services free of charge or on a sliding scale to those unable to afford them. *Id.* at ¶ 5. The BTA reversed, holding that CHP used the property in furtherance of a “charitable purpose.” *Id.* at ¶ 23. On appeal, the Court affirmed the BTA pursuant to R.C. 5709.121, concluding that the property was used as administrative offices and for charitable purposes as an adult daycare. *Id.* at ¶ 23. Furthermore, the Court cited the common origin of the corporations, their overlapping resources and services provided without regard to their patients’ ability to pay. *Id.*

In *The Mercy Hospital Corp., supra*, the BTA determined whether a Lifestyle Improvement and Fitness Evaluation Center (“LIFE Center”) was entitled to exemption pursuant to R.C. 5709.121. *Id.* at \*2-3. The LIFE Center was adjacent to Mercy Hospital and was a part of the hospital’s physical, medical and cardiac departments. *Id.* at \*6. It noted that the patients of the Center were referred through a prescription from a physician for examination and testing, and then a program was designed for the patient by LIFE’s staff. *Id.* In holding that the LIFE Center was used in furtherance of or incidental to the hospital’s charitable purposes, the BTA found that the LIFE Center was built as a medical facility and was equipped to handle medical emergencies. *Id.* at \*8-9. The Ohio Department of Health also issued an official letter confirming that the center was a change or consolidation of the hospital’s existing programs. *Id.*

Here, an obvious distinction between *Community Health Professionals* and AGMC’s use of the property for Lifestyles here is that Lifestyles is *not* necessary for AGMC to carry out its charitable purpose (i.e. providing medical services to those in need) or is a part of its actual charitable services. There, CHP’s administrative offices were necessary for all three of its corporations to engage in their charitable purposes. But here, AGMC can fully operate and achieve its recognized charitable purposes without Lifestyles. Except as to physical therapy portion of the property, Lifestyles is not otherwise related to AGMC’s day-to-day provision of charitable medical services at its hospitals. Moreover, the adult daycare portion of the property in *Community Health Professionals* was actually used by CMH for charitable purposes. As to *Mercy Hospital*, there was no evidence in the record to suggest that the LIFE Center was used by anyone other than the hospitals’ patients with a prescription from a physician. However, Lifestyles does not require a prescription and any member of the community may become a

private member. In sum, *Mercy Hospital* is undoubtedly inapposite since it was not a *private fitness center*, as is Lifestyles.

Lifestyles is more akin to the commercial operation the Court considered in *White Cross Hospital*. While Lifestyles may be a “convenient arrangement” for AGMC and “beneficial” in some respects to AGMC’s operations of its hospitals, this “benefit” is “too remote” to bring the use of the property as Lifestyles “within the purview of R.C. 5709.121.” *White Cross Hospital*, at 200-201. Thus, even in the absent of a profit made by AGMC from Lifestyles, the connection between its recognized charitable purpose of providing medical services to those in need and the operation of a private fitness center is too “remote” to justify exemption and does not satisfy the requisite *public* benefit. *Id.* Moreover, the Court has already rejected the notion that “promotion of health for the general benefit of the community” is a recognized charitable purpose under Ohio law. *Dialysis Clinic*, at ¶ 26. Accordingly, the commercial use of the property does not fall within the purview of R.C. 5709.121 and exemption must be denied.

B. AGMC’s use of any proceeds from Lifestyles for its general hospital operations is insufficient to satisfy use incidental to or in furtherance of AGMC’s charitable purposes.

Finally, AGMC may not allege that its use of any proceeds from Lifestyles to support its overall charitable hospital operations is sufficient to demonstrate use incidental to or in furtherance of its charitable purposes. The Court rejected this argument in *Northeast Ohio Psychiatric Institute v. Levin*, 121 Ohio St. 3d 292, 2009-Ohio-583, 903 N.E.2d 1188. There, a corporation leased property to its affiliate entity which operated a behavioral health clinic (“Portage Path”) on the premises. *Id.* at ¶ 1. The lessor alleged, in part, that it was entitled to exemption pursuant to R.C. 5709.121 as the rent accrued from Portage Path furthered the

charitable activities of Portage Path. The Court succinctly rejected this suggestion:

Northeast argues that its income-producing activities actually redound to the advantage of the charitable activities of Portage Path, which derives the ultimate economic benefit on account of its control of Northeast. It is true that Northeast operates on a nonprofit basis, and there is no evidence of private inurement of its earnings. But that fact alone does not establish charitable status. To be sure, we have held that charitable activities may generate incidental revenue and still qualify as charitable. But that does not mean, as Northeast appears to suggest, *that all income-producing activities will qualify as charitable merely because their proceeds are applied to charitable purposes.*

*Id.* at ¶ 16 (internal citations omitted, emphasis added).

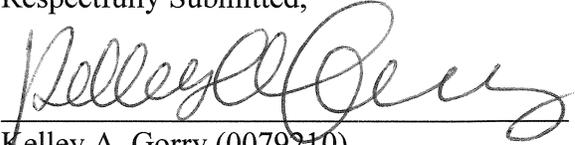
Here, AGMC alleges that Lifestyles is fully integrated with its hospital operations and that it does not maintain a separate fund for use of its proceeds. *See* Appellant’s Brief at pp. 8-10. However, as the Court held in *Northeast Psychiatric*, this fact alone is insufficient to justify charitable use or use in furtherance of AGMC’s recognized charitable purpose of providing medical services to those in need. Therefore, AGMC does not meet its burden in proving that Lifestyles is used incidentally to or in furtherance of its charitable purposes.

#### CONCLUSION

The BTA’s decision denying exemption to Lifestyles was reasonable and lawful. Since *Dialysis Clinic* applies, R.C. 5709.121(A)(2) does *not* offer an independent basis for exemption upon demonstration that a charitable institution uses its own property for anything less than “exclusively” for charitable purposes. *See Dialysis Centers*, at ¶¶ 21, 24; *see also White Cross Hospital*, at 203. As a private fitness center, Lifestyles does not convey sufficient public benefit to justify the exemption and the Court’s decision in *Bethesda* is fully applicable here. Even if the Court determines that *Dialysis Clinic* is not applicable here, AGMC’s use of the property for Lifestyles is “too remote” to fall within the purview of R.C. 5709.121. *See White Cross Hospital*,

at 200-201. Therefore, the Board of Education respectfully requests that the Court affirm the BTA decision.

Respectfully Submitted,



Kelley A. Gorry (0079210)

Mark H. Gillis (0066908)

Rich & Gillis Law Group, LLC

6400 Riverside Drive, Suite D

Dublin, OH 43017

PH: (614) 228-5822

FAX: (614) 540-7476

kgorry@richgillislawgroup.com

*Counsel for Appellee Stow-Munroe Falls  
City Schools*

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Merit Brief was served, by regular U.S. Mail, postage prepaid, upon: Stephen W. Funk, Esq., Roetzel & Andress, LPA, 222 S. Main St., Suite 400, Akron, OH 44308; Melissa W. Baldwin, Esq., Assistant Attorney General, 30 E. Broad St., 25<sup>th</sup> Floor, Columbus, OH 43215; and Mark A. Engel, Esq., Bricker & Eckler, LLP, 9277 Centre Pointe Dr., Suite 100, West Chester, OH 45069, this 26<sup>th</sup> day of November, 2014.



Kelley A. Gorry (0079210)

**IN THE SUPREME COURT OF OHIO**

AKRON GENERAL MEDICAL CENTER,	:	
	:	Case No. 2014-0876
Appellant,	:	
	:	Appeal from Ohio Board of Tax Appeals
v.	:	BTA Case No. 2012-426
	:	
JOSEPH W. TESTA, TAX COMMISSIONER, et al.,	:	
	:	
Appellees.	:	

---

**APPENDIX**

---

Mark H. Gillis (0066908)  
Kelley A. Gorry (0079210)  
RICH & GILLIS LAW GROUP, LLC  
6400 Riverside Drive, Suite D  
Dublin, OH 43017  
PH: (614) 228-5822  
FAX: (614) 540-7476  
[kgorry@richgillislawgroup.com](mailto:kgorry@richgillislawgroup.com)  
*Counsel for Appellee Stow-Munroe Falls City Schools*

Melissa W. Baldwin (0066681)  
Assistant Attorney General  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, OH 43215  
PH: (614) 466-5968  
FAX: (866) 487-3731  
*Counsel for Appellee Ohio Tax Commissioner*

Sean M. McGlone (0075698)  
Ohio Hospital Association  
155 East Broad Street, Suite 301  
Columbus, OH 43215  
PH: (614) 384-9139  
FAX: (614) 917-2260  
*Co-Counsel for Amicus Curiae OHA*

Stephen W. Funk (0058506)  
Jessica A. Lopez (0090508)  
ROETZEL & ANDRESS, LPA  
222 South Main Street, Suite 400  
Akron, OH 44308  
PH: (330) 376-2700  
FAX: (330) 376-4577  
*Counsel for Appellant Akron General Medical Center*

Mark A. Engel (0019486)  
BRICKER & ECKLER LLP  
9277 Centre Pointe Drive, Suite 100  
West Chester, OH 45069  
PH: (513) 870-6565  
FAX: (513) 870-6699  
*Co-Counsel for Amicus Curiae Ohio Hospital Association (“OHA”)*

**TABLE OF CONTENTS**

Notice of Appeal ..... *see* Appellant’s Appendix

BTA Decision ..... *see* Appellant’s Appendix

Tax Commissioner’s Final Determination..... *see* Supplement at p. 006

**Statutes:**

R.C. 5709.07 .....3

R.C. 5709.12 .....5

R.C. 5709.121 .....9

## **5709.07 Exemption of schools, churches, and colleges.**

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

(1) Real property used by a school for primary or secondary educational purposes, including only so much of the land as is necessary for the proper occupancy, use, and enjoyment of such real property by the school for primary or secondary educational purposes. The exemption under division (A)(1) of this section does not apply to any portion of the real property not used for primary or secondary educational purposes.

For purposes of division (A)(1) of this section:

(a) "School" means a public or nonpublic school. "School" excludes home instruction as authorized under section [3321.04](#) of the Revised Code.

(b) "Public school" includes schools of a school district, STEM schools established under Chapter 3326. of the Revised Code, community schools established under Chapter 3314. of the Revised Code, and educational service centers established under section [3311.05](#) of the Revised Code.

(c) "Nonpublic school" means a nonpublic school for which the state board of education has issued a charter pursuant to section [3301.16](#) of the Revised Code and prescribes minimum standards under division (D)(2) of section [3301.07](#) of the Revised Code.

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

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

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

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

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

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

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

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

(D) As used in this section:

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

(2) "State university" has the same meaning as in section [3345.011](#) 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.

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

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

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

## **5709.12 Exemption of property used for public or charitable purposes.**

(A) As used in this section, "independent living facilities" means any residential housing facilities and related property that are not a nursing home, residential care facility, or residential facility as defined in division (A) of section 5701.13 of the Revised Code.

(B) Lands, houses, and other buildings belonging to a county, township, or municipal corporation and used exclusively for the accommodation or support of the poor, or leased to the state or any political subdivision for public purposes shall be exempt from taxation. Real and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation, including real property belonging to an institution that is a nonprofit corporation that receives a grant under the Thomas Alva Edison grant program authorized by division (C) of section 122.33 of the Revised Code at any time during the tax year and being held for leasing or resale to others. If, at any time during a tax year for which such property is exempted from taxation, the corporation ceases to qualify for such a grant, the director of development shall notify the tax commissioner, and the tax commissioner shall cause the property to be restored to the tax list beginning with the following tax year. All property owned and used by a nonprofit organization exclusively for a home for the aged, as defined in section 5701.13 of the Revised Code, also shall be exempt from taxation.

(C)

(1) If a home for the aged described in division (B)(1) of section 5701.13 of the Revised Code is operated in conjunction with or at the same site as independent living facilities, the exemption granted in division (B) of this section shall include kitchen, dining room, clinic, entry ways, maintenance and storage areas, and land necessary for access commonly used by both residents of the home for the aged and residents of the independent living facilities. Other facilities commonly used by both residents of the home for the aged and residents of independent living units shall be exempt from taxation only if the other facilities are used primarily by the residents of the home for the aged. Vacant land currently unused by the home, and independent living facilities and the lands connected with them are not exempt from taxation. Except as provided in division (A)(1) of section 5709.121 of the Revised Code, property of a home leased for nonresidential purposes is not exempt from taxation.

(2) Independent living facilities are exempt from taxation if they are operated in conjunction with or at the same site as a home for the aged described in division (B)(2) of section 5701.13 of the Revised Code; operated by a corporation, association, or trust described in division (B)(1)(b) of that section; operated exclusively for the benefit of members of the corporation, association, or trust who are retired, aged, or infirm; and provided to those members without charge in consideration of their service, without compensation, to a charitable, religious, fraternal, or educational institution. For the purposes of division (C)(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.

(D)

(1) A private corporation established under federal law, as defined in 36 U.S.C. 1101, Pub. L. No. 102-199, 105 Stat. 1629, as amended, the objects of which include encouraging the advancement of science generally, or of a particular branch of science, the promotion of scientific research, the improvement of the qualifications and usefulness of scientists, or the increase and diffusion of scientific

knowledge is 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 that 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 exemption shall continue to the end of that tax year. The proportionate amount of taxes that are a lien but not yet determined, assessed, and levied for the tax year in which title is transferred to the organization shall be remitted by the county auditor for each day of the year that title is held by the organization.

Upon transferring the title to another person, the organization shall file with the county auditor an affidavit affirming that the title was transferred to a qualified low-income family or that the title was not transferred to a qualified low-income family, as the case may be; if the title was transferred to a qualified low-income family, the affidavit shall identify the transferee by name. If the organization transfers title to the property to anyone other than a qualified low-income family, the exemption, if it has not previously expired, shall terminate, and the property shall be restored to the tax list for the year following the year of the transfer and a charge shall be levied against the property in an amount equal to the amount of 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 application for exemption shall be filed as otherwise required under section 5715.27 of the Revised Code, except that the organization holding the property shall file with its application documentation substantiating its status as an organization organized and operated exclusively for charitable purposes under section 501(c)(3) of the Internal Revenue Code and its qualification for exemption from federal taxation under section 501(a) of the Internal Revenue Code, and affirming its intention to construct or rehabilitate the property for the eventual transfer to qualified low-income families.

As used in this division, "qualified low-income family" means a family whose income does not exceed two hundred per cent of the official federal poverty guidelines as revised annually in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C.A. 9902, as amended, for a family size equal to the size of the family whose income is being determined.

(F)

(1)

(a) Real property held by a county land reutilization corporation organized under Chapter 1724. of the Revised Code shall be exempt from taxation. Notwithstanding section 5715.27 of the Revised Code, a county land reutilization corporation is not required to apply to any county or state agency in order to qualify for the exemption.

(b) Real property acquired or held by an electing subdivision other than a county land reutilization corporation on or after April 9, 2009, for the purpose of implementing an effective land reutilization program or for a related public purpose shall be exempt from taxation until sold or transferred by the electing subdivision. Notwithstanding section 5715.27 of the Revised Code, an electing subdivision is not required to apply to any county or state agency in order to qualify for an exemption with respect to property acquired or held for such purposes on or after such date, regardless of how the electing subdivision acquires the property.

As used in this section, "electing subdivision" and "land reutilization program" have the same meanings as in section 5722.01 of the Revised Code, and "county land reutilization corporation" means a county

land reutilization corporation organized under Chapter 1724. of the Revised Code and any subsidiary wholly owned by such a county land reutilization corporation that is identified as "a wholly owned subsidiary of a county land reutilization corporation" in the deed of conveyance transferring title to the subsidiary.

(2) An exemption authorized under division (F)(1) of this section shall commence on the day title to the property is transferred to the corporation or electing subdivision and shall continue to the end of the tax year in which the instrument transferring title from the corporation or subdivision to another owner is recorded, if the use to which the other owner puts the property does not qualify for an exemption under this section or any other section of the Revised Code. If the title to the property is transferred to the corporation and from the corporation, or to the subdivision and from the subdivision, in the same tax year, the exemption shall continue to the end of that tax year. The proportionate amount of taxes that are a lien but not yet determined, assessed, and levied for the tax year in which title is transferred to the corporation or subdivision shall be remitted by the county auditor for each day of the year that title is held by the corporation or subdivision.

Upon transferring the title to another person, the corporation or electing subdivision shall file with the county auditor an affidavit or conveyance form affirming that the title was transferred to such other person and shall identify the transferee by name. If the corporation or subdivision transfers title to the property to anyone that does not qualify or the use to which the property is put does not qualify the property for an exemption under this section or any other section of the Revised Code, the exemption, if it has not previously expired, shall terminate, and the property shall be restored to the tax list for the year following the year of the transfer. A charge shall be levied against the property in an amount equal to the amount of 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.

In lieu of the application for exemption otherwise required to be filed as required under section 5715.27 of the Revised Code, a county 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.

(G) **[Effective 9/15/2014]** Real property that is owned by an organization described under section 501(c)(3) of the Internal Revenue Code and exempt from federal income taxation under section 501(a) of the Internal Revenue Code and that is used by that organization exclusively for receiving, processing, or distributing human blood, tissues, eyes, or organs or for research and development thereof shall be exempt from taxation.

Amended by 130th General Assembly File No. TBD, HB 483, §101.01, eff. 9/15/2014, applicable to tax year 2014 and every tax year thereafter.

Amended by 130th General Assembly File No. TBD, SB 172, §1, eff. 9/4/2014.

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

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

## **5709.121 Exclusive charitable or public purposes defined.**

(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:

(1) It is used by such institution, the state, or political subdivision, or by one or more other such institutions, the state, or political subdivisions under a lease, sublease, or other contractual arrangement:

(a) As a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein;

(b) For other charitable, educational, or public purposes.

(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.

(3) It is used by an organization described in division (D) of section [5709.12](#) of the Revised Code. If the organization is a corporation that receives a grant under the Thomas Alva Edison grant program authorized by division (C) of section [122.33](#) of the Revised Code at any time during the tax year, "used," for the purposes of this division, includes holding property for lease or resale to others.

(B)

(1) Property described in division (A)(1)(a) of this section shall continue to be considered as used exclusively for charitable or public purposes even if the property is conveyed through one conveyance or a series of conveyances to an entity that is not a charitable or educational institution and is not the state or a political subdivision, provided that all of the following conditions apply with respect to that property:

(a) The property has been listed as exempt on the county auditor's tax list and duplicate for the county in which it is located for the ten tax years immediately preceding the year in which the property is conveyed through one conveyance or a series of conveyances;

(b) The property is conveyed through one conveyance or a series of conveyances to an owner that does any of the following:

(i) Leases the property through one lease or a series of leases to the entity that owned or occupied the property for the ten tax years immediately preceding the year in which the property is conveyed or to an affiliate of that entity;

(ii) Contracts to have renovations performed as described in division (B)(1)(d) of this section and is at least partially owned by a nonprofit organization described in section 501(c)(3) of the Internal Revenue Code that is exempt from taxation under section 501(a) of that code.

(c) The property includes improvements that are at least fifty years old;

- (d) The property is being renovated in connection with a claim for historic preservation tax credits available under federal law;
  - (e) The property continues to be used for the purposes described in division (A)(1)(a) of this section after 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.

Amended by 129th General Assembly File 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