

IN THE SUPREME COURT OF OHIO

Christian Voice of Central Ohio,	:	
	:	Case No. 14-1626
Appellant,	:	
	:	Appeal from Ohio Board of Tax Appeals
v.	:	Case No. 2011-1446
	:	
Joseph W. Testa, Tax Commissioner,	:	
State of Ohio,	:	
	:	
Appellee.	:	

MERIT BRIEF OF APPELLANT
CHRISTIAN VOICE OF CENTRAL OHIO, INC.

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I. STATEMENT OF FACTS

A. For almost twenty-five years before the Board of Tax Appeals's August 2014 decision, Christian Voice of Central Ohio operated under an exemption of real property taxes.

Since 1964, Christian Voice of Central Ohio (CVCO) has been organized and operated exclusively as an Ohio not-for-profit corporation “for religious, literary, and educational purposes.” (Appellant’s Ex. 2 at p. 1). CVCO, therefore, operates with an IRS exemption from income under United States Code Section 501(c)(3). (Tr. at pp. 16 – 17). CVCO operates three Christian radio stations (Gahanna, Newark, and Chillicothe)¹ from its Gahanna location, which exclusively preach or teach the biblical principles of Jesus Christ. (Bd. of Tax Appeals Decision at p. 2; *see also* Tr. p. 221). The stations in Newark and Chillicothe are broadcast on 89.3 FM and are non-commercial stations. (Tr. p. 202). That is, these stations are completely underwritten by donations. (*Id.*; *see also* pp. 219 – 220). No radio advertisements are sold to help fund these non-commercial Christian radio stations. CVCO’s Gahanna station is broadcast on 104.9 FM and is a commercial station. That is, this station is funded by on-air advertising and listener donations. Approximately two hundred, fifty-five thousand listeners tune in daily. (*Id.* at p. 109).

CVCO’s purpose is to inspire others to know Jesus Christ through contemporary Christian music. (Tr. at p. 107). Its mission is to direct people to Jesus Christ to share the hope they have in Him. (*Id.* at p. 228). With its stations in Gahanna, Newark, and Chillicothe, CVCO broadcasts a message of hope and encouragement through music as well as its on-air personalities. (*Id.* at pp. 71 – 72). The music is religiously themed or biblical versus. (*Id.* at 185). The Christian music encourages a vertical relationship to God. (*Id.*). CVCO takes pride

¹ Although CVCO’s application indicated it operated nine radio stations, by the time the Board of Tax Appeals hearing commenced in May 2013, it was operating only three. (Tr. p. 201).

in being a connector – of its ministries to the community as well as the community to Jesus Christ. (*Id.*). This purpose has remained the same since CVCO began operating in 1964. (*Id.* at p. 55).

Before purchasing 881 E. Johnstown Road, Gahanna, Ohio (the property that is the subject of the instant appeal), CVCO owned 4400 Reynoldsburg-New Albany Road, New Albany, Ohio and operated 104.9 The River from this location. (Tr. at p. 211). In 1991, then-Ohio Tax Commissioner Roger Tracy determined CVCO's property located at 4400 Reynoldsburg-New Albany Road was "used for church purposes and [was] exempt from taxation under R.C. 5709.07, public worship." (Tr. p. 212; *see also* Appellant's Ex. 2). Over the years, the exemption was reduced slightly to include only the building and one acre of land. (Appellant's Ex. 1). This exemption withstood several challenges over the years. Most recently, in December 2007, the New Albany Plain Local School District filed a complaint challenging CVCO's exemption for 4400 Reynoldsburg-New Albany Road. In a decision rendered only one month prior to the hearing in the instant appeal, the Tax Commissioner and Appellee herein, made the following determination:

The Tax Commissioner, in a previous case (UC 0492), decided that the property should remain as a split listed property. The complaint at that time was denied and the Tax Commissioner decided to leave the property split listed as it was and still is; exempt the building and once acre of land, as the facility is used exclusively for public worship and to deny the balance of the property. Additionally, the Franklin County Auditor's Office marked that he complaint should be denied and the above property [4400 Reynoldsburg-New Albany Road] remain exempt from real property taxation. Based upon the information available, the Tax Commissioner finds that the building and one acre of land satisfies the requirements for exemption by reason of being used for church facilities. Therefore, the Tax Commissioner orders that the complaint be denied. (Appellant's Ex. 1).

Over the past twenty-five years, CVCO's Christian music has become more targeted, and 104.9 The River has become a well-known brand. Whether its building was located at 4400

Reynoldsburg-New Albany Road or 881 E. Johnstown Road, there have been no major changes in CVCO's purpose, operation, or format. (Tr. at pp. 55, 78, 210 – 211). CVCO is doing exactly the same thing today as it did in 1991, 2007, and 2013. (Tr. at p. 211). If anything changed, CVCO enhanced its religious aspect and ministry focus over the years. (Tr. p. 55).

B. CVCO uses the property located at 881 E. Johnstown Road primarily to propagate a religious purpose.

CVCO purchased the property located at 881 E. Johnstown Road in May 2007. (Tr. p. 69). After doing some renovations, CVCO moved into the building in October 2007. (*Id.*) The building sits on 2.184 acres, is two stories plus a finished lower level, and is about 15,600 total sq. ft. (*See* Franklin County Auditor's webpage public information). The building is open to all members of the public for private worship from 8:30 a.m. to 4:45 p.m. (Tr. pp. 55, 104, 108, and 214). Anyone can come into the building at any time to do private devotions or private worship. (*Id.* at p. 109). Whether it is an on-air offer or website invitation, CVCO encourages the public to use its facility for open worship. (Appellant's Ex. 3). The building contains a fully established and dedicated chapel that seats 20 – 25 people. (*Id.* pp. 15 and 101). The chapel has a library filled with Christian books. (*Id.* at p. 101). The chapel also has beautiful stained glass windows that tell the biblical story of Jesus Christ from his birth to his resurrection. (*Id.*) The building's lower level has two open assembly rooms. (Tr. pp. 81, 96 – 97). This space serves as a meeting room for different non-profit groups, including other religious organizations. (*Id.*).

CVCO has a simple format. It plays contemporary Christian music. (Tr. p. 92). The Christian music serves as ministry to upwards of 60% of its listeners - individuals who cannot attend religious service in a traditional church. (*Id.* at p. 188). For others, just listening to the Christian music is a form of worship. (*Id.* at pp. 109, 206 – 207). The River Promise allows

listeners to know there will not be advertisements that contradict Christianity or crude-talking DJ's. (*Id.* at p. 210). This is The River Promise. CVCO is all about the community and helping others through its ministries. (*Id.* at pp. 214 – 216). CVCO carries programming for national Christian ministries. (*Id.* at p. 79). On Sunday mornings, CVCO broadcasts the syndicated program Keep the Faith – an encouraging service of praise and worship. (*Id.* at pp. 221 - 223).

CVCO employs Pastor John Moriarty. He serves as the full-time pastor for 104.9 The River and also works as a part-time pastor for a small church in Westerville, Ohio. (*Id.* at pp. 85 – 86). This Westerville church actually started inside 104.9 The River. (*Id.* at p. 155). Pastor John has an office in the building and provides a staff devotional every Wednesday at noon in the lower level assembly rooms. (*Id.* at pp. 86 and 88). In addition to these weekly brown bag bible study lunches, Pastor John holds a daily prayer service in the chapel. (*Id.*; *see also* Tr. p. 100). Pastor John also records a devotional radio spot that runs cyclically throughout the day. (*Id.*; *see also* Tr. p. 106). Pastor John offers prayers four days per week with individuals who access 104.9 The River's website prayer wall and make direct prayer requests. (Tr. pp 88 – 89 and 103). The listener actually receives a text message when Pastor John's prayer is made from the on-line prayer wall. (*Id.* at p. 89). According to Pastor John, if an individual is looking "for the basic foundation of worship and getting music and talking to a pastor," he ministers those services. (Tr. p. 106). Therefore, whether in person or by telephone, email, or on-line, Pastor John helps CVCO staff members and members of the general public with the open and free celebration of CVCO's religious organization.

CVCO also allows Pastor Dax Welsheimer to keep an office at 881 E. Johnstown Road. (Tr. p. 112). When not in his office at 104.9 The River, Pastor Dax is the pastor at Epic Church. (*Id.* at p. 111). Pastor Dax holds a Wednesday night praise and worship service in the lower

level assembly rooms. (*Id.* at p. 112). On Sunday evenings, Pastor Dax conducts a discipleship worship service in this assembly space. (*Id.*). Pastor Dax’s services held at 881 E. Johnstown Road are the same (format and content) as those held at Epic Church – everyone is welcome to attend and have the opportunity to accept Jesus Christ. (*Id.* p. 117). According to Pastor Dax, this space is a sanctuary. (*Id.* at pp. 114 – 115). Pastor Dax considers 104.9 The River, and its building, “a vital part of [his] local ministry.” (Tr. p. 121).

II. ARGUMENT

A. Standard of review

In a claim for a tax exemption, the “onus is on the taxpayer to show that the language of the statute ‘clearly expresses[es] the exemption’ in relation to the facts of the claim.” *Bay Mechanical & Electrical Corp. v. Testa*, 133 Ohio St.3d 423, 2012-Ohio-4312, 978 N.E.2d 882, ¶15 (citations omitted). When a BTA decision is appealed, this Court “looks to see if that decision was reasonable and lawful.” *Aerc Saw Mill Village, Inc. v. Franklin County Bd. of Revisions*, 127 Ohio St.3d 44, 2010-Ohio-4468, 935 N.E.2d 472, ¶15 (citations omitted). This Court must afford deference to the BTA’s determination of the credibility of witnesses and its weighing of the evidence, subject only to an abuse-of-discretion review on appeal. *Healthsouth Corp. v. Testa*, 132 Ohio St.3d 55, 2012-Ohio-1871, 969 N.E.2d 232, ¶10 (citations omitted). However, this Court “will not hesitate to reverse a BTA decision that is based upon an incorrect legal conclusion.” *Aerc Saw Mill Village, Inc.*, 2010-Ohio-4468, ¶15 (citing *Gahanna-Jefferson Local School Dist. Bd. of Edn. v. Zaino*, 93 Ohio St.3d 231, 2001-Ohio-1335, 754 N.E.2d 789). Furthermore, if a “material portion of a Board of Tax Appeals decision is not supported by any probative evidence of record, the decision is unreasonable and unlawful.” *Healthsouth Corp.*,

2012-Ohio-1871, ¶10 (citing *Highlights for Children, Inc. v. Collins*, 50 Ohio St.2d 186, 187 – 188, 364 N.E.2d 13 (1977)).

Proposition of Law No. 1

The BTA’s decision to ignore a property owner’s prior tax exemption violates the doctrine of collateral estoppel when no material facts or circumstances changed since the prior determination.

The Board of Tax Appeals knew and understood CVCO operated its Christian Radio Station at 4400 Reynoldsburg-New Albany Road prior to purchasing the property at 881 E. Johnstown Road. There also was no dispute that CVCO’s business, operations, and format did not change once it moved from New Albany to Gahanna, Ohio. Moreover, there was no judicial declaration or change in statutory language intervening between the Tax Commissioner’s April 2013 Final Determination (regarding the property located in New Albany, Ohio) and the BTA’s August 22, 2014 Decision and Order (regarding the property located in Gahanna, Ohio). Nevertheless, the BTA chose to ignore CVCO’s prior exemption and find “the property location and tax years under consideration are different, and as such, we must evaluate the instant facts under the current statutory and case law standards.” (Decision and Entry, p. 3).

Twenty-five years ago, the United States Supreme Court set forth the operational features of the interrelated doctrines of res judicata and collateral estoppel. *Montana v. United States*, 440 U.S. 147, 99 S.Ct. 970, 59 L.Ed.2d 210 (1979). The court therein declared

Under res judicata, a final judgment on the merits bars further claims by parties or their privies based upon the same cause of action. * * * Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based upon a different cause of action involving a party to the prior litigation.

Collateral estoppel is a doctrine capable of being applied so as to avoid an undue disparity in the impact of tax liability. *See C.I.R. v. Sunnen*, 333 U.S. 591, 599 – 600, 68 S. Ct. 715, 92 L. Ed. 898 (1948). A taxpayer may secure a judicial determination of a particular tax

matter, a matter which may recur without substantial variation for some years thereafter. *Id.* But a subsequent modification of the significant facts or a change or development in the controlling legal principles may make that determination obsolete or erroneous, at least for future purposes. *Id.* And so, where two cases involve taxes in different taxable years, collateral estoppel must be used with its limitations carefully in mind so as to avoid injustice. It must be confined to situations where the matter raised in the second suit is identical in all respects with that decided in the first proceeding and where the controlling facts and applicable legal rules remain unchanged. *Id.* Where no such change is evident, it is unreasonable to deny a property tax exemption to a taxpayer who previously enjoyed tax exempt status. *Wooster Baptist Temple, Inc. v. Kinney*, 9th Dist. No. CA 1777, 1982 WL 5059 at *3.

Here, prior to purchasing the property at 881 E. Johnstown Road, CVCO operated its Christian radio station from 4400 Reynoldsburg-New Albany Road and enjoyed tax exempt status as a house of public worship. In fact, the Tax Commissioner upheld CVCO's exemption for its New Albany property only one month before the BTA hearing commenced regarding its Gahanna property. While the instant appeal addresses slightly different facts (a different tax year and a parcel four miles away), the record indicates CVCO is using the Gahanna property, in the exact same way and for the exact same reason, as the New Albany property – exclusively or primarily for public worship. The BTA should have concluded, by reason of the previous exemption, that the Tax Commissioner considered such use a justification for the exemption. Once the Tax Commissioner actually and necessarily determined CVCO's use of the 4400 Reynoldsburg-New Albany building was used primarily for public worship, this determination should have been conclusive for subsequent properties. Then, the BTA should have looked to the statute and caselaw to determine if anything changed. The statute authorizing the exemption

has not been amended. And, there was no intervening judicial declaration which changed the legal atmosphere as to render the rule of collateral estoppel inapplicable. Therefore, it was unreasonable, unlawful, and arbitrary for the BTA to affirm the Tax Commissioner's determination that CVCO was not entitled to tax exempt status under R.C. 5907.07(A)(2). The BTA's August 22, 2014 Decision must be reversed.

Proposition of Law No. 2

The BTA's decision to deny a property owner's tax exemption is unreasonable and unlawful when its primary use of the property is for public worship - whether on-air through contemporary Christian music or in-person through private daily devotionals and weekly discipleship worship services.

The Board of Tax Appeals denied CVCO a tax exemption because it concluded "the activities that occur on the subject property do not rise to the level" necessary to meet R.C. 5709.07(A)(2)'s requirements. (Decision and Entry, p. 4). According to the BTA, "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, but, instead constitute activities that are generally supportive of Christian religious beliefs." (*Id.* at p. 5). Such a draconian and narrow-minded interpretation does not pass muster under R.C. 5709.07(A)(2) or the Ohio Constitution.

In Ohio, all real property is subject to taxation unless expressly exempted therefrom. R.C. 5709.01. It is well-established that an exemption cannot be presumed or implied. R.C. 5709.07(A)(2), which governs this appeal, states the following shall be exempt from taxation

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.

“For 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*, 32 Ohio St.3d 432, 513 N.E.2d 1340 (1987), paragraph one of the syllabus. More importantly, as long as the “primary use” of the real property to be exempted under R.C. 5709.07(A)(2) is used for public worship, the exemption applies. *Id.* (citing *Bishop v. Kinney*, 2 Ohio St.3d 52, 442 N.E.2d 764 (1982)). In other words, the exemption allowed under R.C. 5709.07(A)(2) is for property used primarily to facilitate such celebrations or observances. *Id.* at paragraph two of the syllabus.

The concept of a “house used exclusively for public worship,” as it appears in R.C. 5709.07(A)(2), has its origin in Section 2, Article XII of the Constitution of Ohio, which concerns tax rate limitations and exemptions. That section provides, in relevant part

Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

Article I of the Ohio Constitution sets out the Bill of Rights. Section 7 deals with freedom of religion and provides, in relevant part

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted.

In *World Evangelistic Enterprise Corp. v. Tracy*, 96 Ohio App.3d 78, 644 N.E.2d 678 (1994), a Christian radio station applied for tax exemption as a “house used exclusively for public worship,” arguing its broadcast center was used to encourage public worship. In holding

for the broadcast corporation, the court invoked the constitutional provision against giving preference to any religious society. In its opinion, the court noted the term “society” traditionally “involved a community of persons living and worshipping together” and acknowledged that “[r]adio broadcasts of religious programs do not constitute an institutionalized church, which is the traditional form of religious society.” *Id.* at p. 82. It concluded, however, that “for purposes of the tax exemption concerned, the test does not concern the form of a religious society but the fact of its existence.” *Id.* The court held the statute “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.” *Id.*

Here, the BTA punished and singled out CVCO because its activities “are generally supportive of Christian religious beliefs,” rather than a specific Christian denomination. The BTA also penalized CVCO because the BTA believed CVCO’s activities did not amount to “the rites and observances of a [traditional] religious organization.” The BTA erred. Much of CVCO’s building is used in a traditional religious sense. That is, the building is open, the public is welcomed inside, and they gather regularly in congregation for religious worship. Whether in the dedicated chapel, or in the lower level assembly rooms, CVCO’s employees and the public gather formally for Christian worship.

In addition to these clear examples of activity that constitute a form of religious society, using the building primarily for public worship, CVCO’s contemporary Christian music listeners meet a fair definition of that term consistent with its purposes. Unlike the BTA, this Court’s concern is not whether CVCO’s Christian radio station form is traditional, but whether it exists.

CVCO is an association of people that is united in a common purpose and is motivated to do so through its belief in Jesus Christ. Whether individuals listen because they cannot attend a church service or they enhance their faith by tuning in daily, the broadcast and reception of Christian music constitutes a form of public worship. The BTA, therefore, acted unreasonable and unlawfully when it affirmed the Tax Commissioner's decision to deny CVCO an exemption under R.C. 5709.07(A)(2).

The BTA also found CVCO was not entitled to an exemption because the "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 operation." (Decision and Entry, p. 5). Such reasoning belies the record on appeal. CVCO has only one mission: to inspire others to know Jesus Christ through contemporary Christian music. CVCO accomplishes this mission through, *inter alia*, non-commercial radio stations in Newark and Chillicothe. Obviously, these non-commercial radio stations are not supported by advertising. As for the on-air radio advertising sold in Gahanna, it is "vital to the furtherance of the ministry." (Tr. p. 194). The record contains no evidence to the contrary. All revenue generated with on-air advertising is used exclusively for the exempt purpose of the organization. (*Id.* at p. 65). There are no stockholders. CVCO does not pay a dividend. In fact, there are no owners of the company. (*Id.*).

The BTA's isolation of the commercial advertising sales from the total picture is unwarranted by the evidence in this case. The evidence shows the building and radio station merely implement CVCO's clear religious objectives. The character of any nonprofit corporation must be found in its motives, its charter, its purposes, its methods, and its operation. CVCO, like most traditional churches, has dedicated all its land and buildings to charity and religion, and the operation of the radio station is not alone sufficient to change the underlying

foundation of the corporation. The sale of on-air advertising does not change this fact. The BTA, therefore, acted unreasonable and unlawfully when it affirmed the Tax Commissioner's decision to deny CVCO an exemption under R.C. 5709.07(A)(2).

Proposition of Law No. 3

The BTA's decision to completely deny a property owner's tax exemption was unreasonable and unlawful because R.C. 5713.04 permits real property to be split into exempt and non-exempt parts if the part used in the exempt manner can be precisely delineated.

Assuming this Court does not reverse the entire BTA decision, it must remand the matter so the BTA can determine which parts of the property should be exempt from real property tax. Although the record demonstrates CVCO uses the entire building and land located at 881 E. Johnstown Road as a house of public worship, the BTA should have examined if any portions of the building were exempt from taxation. It did not, and this failure demands remand.

R.C. 5713.04, which governs split listing for tax exemptions, states

[i]f a separate parcel of improved or unimproved real property has a single ownership and is so used so that part thereof, if a separate entity, would be exempt from taxation, and the balance thereof would not be exempt from taxation, the listing thereof shall be split, and the part thereof used exclusively for an exempt purpose shall be regarded as a separate entity and be listed as exempt, and the balance thereof used for a purpose not exempt shall, with the approaches thereto, be listed at its taxable value and taxed accordingly.

It is well-established that R.C. 5713.04 "permits real property to be split into exempt and taxable parts if the part which is used in the exempt manner can be precisely delineated, and the delineation is not the product of a calculation of a ratio of the part to be exempted to the whole of the property. *Faith Fellowship Ministries, Inc. v. Limbach*, 32 Ohio St.3d 432, 436, 513 N.E.2d 1340 (1987). A building may be divided perpendicularly as well as horizontally. *New Haven Church of Missionary Baptist v. Bd. of Tax Appeals*, 9 Ohio St.2d 53, 223 N.E.2d 366 (1967),

paragraph 2 of the syllabus. R.C. 5713.04 was created to “more equitably determine the tax exemptions allowable to institutions wherein a part of the property ownership if used as a separate entity might well be subject to exemption * * * .” *Id.* at 368. To be exempt under this provision, the real property must be used primarily for public worship and not merely supportive thereof or incidental thereto. *Faith Fellowship Ministries*, 32 Ohio St.3d at 437 (citations omitted).

Here, the BTA neglected to mention in its August 22, 2014 decision that Pastor John’s office, the chapel, and lower level assembly rooms are used for daily prayer services as well as weekly church services and discipleship worship services. These areas are used primarily for public worship. They are not merely supportive. Like the building at issue in *Faith Fellowship Ministries*, “it is profoundly clear that the public worship which was conducted in the exempt portions of [CVCO’s building] would not have occurred had they not had enough heat to render them comfortable.” The BTA, therefore, should have mentioned the computer server room, and furnace rooms as exempt. The BTA’s decision should be remanded and modified to take this into consideration.

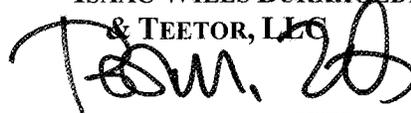
III. CONCLUSION

The Board of Tax Appeals’s August 22, 2014 Decision is fundamentally incorrect in its reasoning, unlawful, and unreasonable. The record on appeal does not support the determination of the Board of Tax Appeals, and its decision must therefore be reversed. As a whole, the evidence presented to the Board of Tax Appeals may be characterized as candid and comprehensive. It explains the internal operation of the not-for-profit corporation, and significantly, the record reflects how CVCO uses 881 E. Johnstown exclusively or primarily for public worship.

In the alternative, the matter should be remanded to the Board of Tax Appeals so that it can divide the property into exempt and non-exempt parts.

Respectfully submitted,

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I hereby certify that on this 5th day of January 2015, the foregoing *Brief of Appellant* was filed with the Ohio Supreme Court Clerk's Office, and a copy forwarded to the following via ordinary mail:

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Brian M. Zets

IN THE SUPREME COURT
STATE OHIO

APPEAL FROM THE OHIO BOARD OF TAX APPEALS

CHRISTIAN VOICE OF CENTRAL OHIO, :

Appellant, :

Vs. :

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

Appellees. :

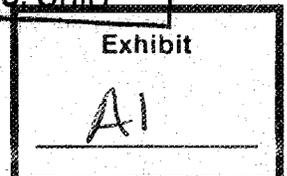
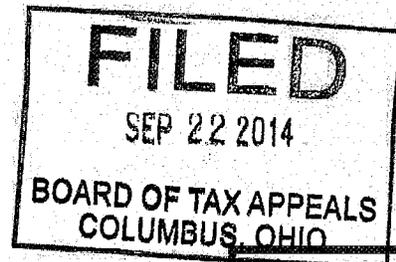
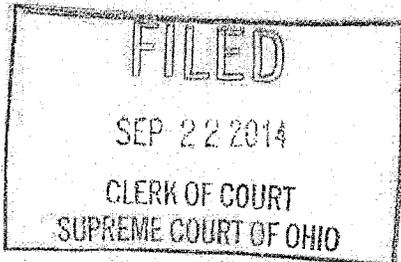
SUPREME COURT
Case No.: 14-1626

BOARD OF TAX APPEALS
Case No.: 2011-1446

NOTICE OF APPEAL

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IN THE SUPREME COURT
STATE OHIO

APPEAL FROM THE OHIO BOARD OF TAX APPEALS

CHRISTIAN VOICE OF CENTRAL OHIO, :

Appellant, :

Vs. :

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

Appellees. :

SUPREME COURT
Case No.: _____

BOARD OF TAX APPEALS
Case No.: 2011 -1446

NOTICE OF APPEAL TO THE
SUPREME COURT OF OHIO
PURSUANT TO SECTION
5717.04 OF THE OHIO
REVISED CODE

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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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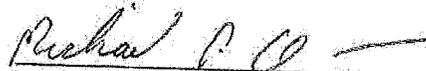
Franklin County Board of Revision

373 South High Street, 20th Floor

Columbus, OH 43215

Franklin County Auditor
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Columbus, Ohio 43215

Gahanna – Jefferson Board of Education
160 S. Hamilton Road
Gahanna, OH 43230



Michael P. Onore (0091527)
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:

For the Appellant(s)

- CHRISTIAN VOICE OF CENTRAL OHIO
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For the Appellee(s)

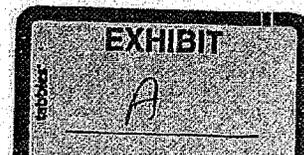
- JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO
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Entered Friday, August 22, 2014

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/Malibie 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	<i>[Signature]</i>	
Mr. Johrendt	<i>[Signature]</i>	
Mr. Harbarger	<i>[Signature]</i>	

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.

[Signature]

A.J. Groeber, Board Secretary

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:

For the Appellant(s)

- CHRISTIAN VOICE OF CENTRAL OHIO
Represented by:
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EUGENE L. MATAN LLC
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For the Appellee(s)

- JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO
Represented by:
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30 EAST BROAD STREET, 25TH FLOOR
COLUMBUS, OH 43215

Entered Friday, August 22, 2014

Mr. Williamson, Mr. Johrendt, 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.

Exhibit
A2

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/Malbie Partnership v. Levin*, 127 Ohio St.3d 178, 2010-Ohio-4904:

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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.

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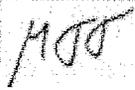
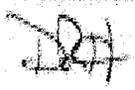
In contrast, however, this board has held that "[e]arly on, the Supreme Court interpreted the constitutional term 'houses used exclusively for public worship' which is incorporated into R.C. 5709.07. In *Gerke v. Purcell* (1874), 25 Ohio St. 229, the Court stated 'The exemption is not of such houses 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