

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.	:	

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

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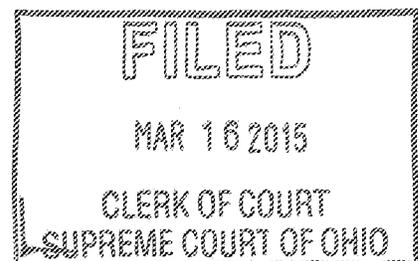


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I. INTRODUCTION

In its brief, the Tax Commissioner's focus is misdirected. The Tax Commissioner concentrates on the traditional religious spaces inside Christian Voice of Central Ohio, Inc.'s (CVCO) building, such as the chapel and lower level assembly rooms, and how often these rooms are used. In doing so, the Tax Commissioner treats CVCO's mission (to direct people to Jesus Christ and share the hope it has in Him thru contemporary Christian music) as an irrelevancy. This is not some academic quibble. It is legally significant. CVCO's Christian music encourages a vertical relationship to God and serves as a ministry to 60% of its 55,000 daily listeners.

The Tax Commissioner also spotlights case law dating back to 1874 and its definition of a "place of public worship." The first public radio broadcast, however, was not made until November 1910. *The New York Tribune*, January 13, 1910, p. 14. The technique for distributing information on the internet, via the World Wide Web, was not developed until 1989 and offered dial up access for customers. Internet Timeline, <http://www.infopleas.com/ipa/AO193167.html> (accessed March 16, 2015). The lifestyle of people in Ohio have changed considerably over the past one hundred forty-one years, and the nature of public worship has changed with it. Formal church services make up only a small part of the worship experience. Whether streaming Christian music at work or on a cell phone at the airport, Christian radio is public worship. That is, Christian radio is an open and free celebration or observance of religious rites and ordinances. And, CVCO's property is used in a principal, primary, and essential way to facilitate this public worship.

The Tax Commissioner also emphasizes Christian Voice of Central Ohio's gross income from the sale of on-air advertising. In doing so, the Tax Commissioner disregards CVCO's two non-commercial radio stations broadcast, via its Gahanna, Ohio location, in Newark and

Chillicothe, Ohio. He also overlooks the undisputed testimony that the on-air advertising is “vital to the furtherance of the ministry” and all revenue generated with on-air advertising is used exclusively for CVCO’s tax-exempt purpose. This is no different than a traditional church selling advertising space in the weekly bulletin. CVCO does not operate its property “for profit.”

The Tax Commissioner also calls this Court’s attention to several cases on the issue of collateral estoppel. Unlike the cases cited by the Tax Commissioner, this appeal does not involve tax valuations for different years. The BTA’s previous determination, that CVCO’s operation of a Christian radio station justified the requested tax exemption, presents the same set of facts as presented herein. By that logic, the ultimate issue of whether the radio station constitutes a “house used exclusively for public worship” has been conclusively determined, and serves to support the application of the Doctrine of Collateral Estoppel. This issue does not change, year-to-year or location-to-location.

Finally, the Tax Commissioner failed to address CVCO’s Third Proposition of Law whereby CVCO requests, in the alternative, this Court remand the BTA’s decision so it can be modified to take into consideration any exempt and taxable parts of the property.

II. ARGUMENT

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.

For purposes of this Reply, CVCO maintains and addresses its original propositions of law. For unknown reasons, the Tax Commissioner decided to create its own propositions of law, even though there is no cross appeal.

The Tax Commissioner speaks only in generalities when discussing the Doctrine of Collateral Estoppel. He focuses exclusively on the different tax years and CVCO's new location, while ignoring the relevant discrete factual issue that triggers the doctrine's applicability.

Collateral estoppel "precludes the relitigation, in a second action, of an issue that has been actually and necessarily litigated and determined in a prior action." *Progressive Plastics, Inc. v. Testa*, 133 Ohio St.3d 490, 2012-Ohio-4759, 979 N.E.2d 280, ¶ 17. "Quite simply, each tax year may or may not present a different set of facts from those presented for any other tax year * * * ." *Id.* at ¶ 18.

The cases relied upon by the Tax Commissioner are not as instructive as he suggests. To begin, these cases involve (1) the tax value of personal property (*Olmstead Falls Bd. of Educ. v. Cuyahoga County Bd. of Revisions*, 122 Ohio St. 134, 2009-Ohio-2461, 909 N.E.2d 597 and *Limbach v. Hooven & Allison*, 466 U.S. 353, 104 S.Ct. 1837, 80 L.Ed.2d. 356 (1984)), and (2) real property and tangible personal property belonging to a charity (*Hubbard Press v. Tracy*, 67 Ohio St.3d 564, 1993-Ohio-3, 621 N.E.2d 396). These cases do not involve the tax exemption at issue here. Furthermore, when deciding the tax issue in *Olmstead*, this Court explained it is "elemental that for purposes of any challenge to the valuation of real property, each tax year constitutes a new 'claim' or 'cause of action,' such that the determination of value for one tax year does not operate as res judicata ... of value as to the next tax year." *Id.* However, this Court also stated "***the determination in an earlier year of a discrete factual/legal issue that is common to successive tax years may bar relitigation of that discrete issue in the later years.***" *Olmstead*, 2009-Ohio-2461 at ¶ 17 (citation omitted) (emphasis added).

In 1991, Tax Commissioner Roger Tracy determined CVCO's New Albany property, where the radio station was located, "is used for church services and is exempt from taxation under R.C. 5709.07, public worship" for tax year 1991. *See* Appellant's Exhibit 2. CVCO enjoyed this exemption until tax year 2008. After CVCO moved its radio station to Gahanna, Ohio, Tax Commissioner Joseph Testa determined "the [Gahanna, Ohio] property is primarily used for broadcasting and is not a house of public worship" and therefore, denied the application for tax year 2008. *See* May 18, 2011 Final Determination. However, in April 2013 only one month before the instant BTA hearing regarding CVCO's Gahanna location, Tax Commissioner Joseph Testa again confirmed CVCO's New Albany location was exempt "by reason of being used for church purposes" for tax year 2007. *See* Appellant's Exhibit 1.

Whether it is tax year 1991, 2007, or 2008, two discrete common factual issues have remained unchanged. First, "CVCO is a 501(c)(3) non-profit organization that directs all its revenue back into the ministry." Tax Commissioner's May 18, 2011 Final Determination to deny tax exemption. And second, CVCO operates a contemporary Christian radio station. Whether it is tax year 1991, 2007, or 2008 is not relevant to whether CVCO's radio station qualifies as a "house used exclusively for public use." Likewise, whether its station is located in New Albany, Ohio (in 2007) or Gahanna, Ohio (in 2008) is not relevant to whether CVCO's radio station qualifies as a "house used exclusively for public use." While different tax years impacted the legal analysis in *Olmstead*, *Hubbard*, and *Limbach*, such is not the case here. Once the Tax Commissioner determined CVCO's contemporary Christian radio station was a house used exclusively for public worship, he was collaterally estopped from subsequently reaching the

opposite conclusion.¹ The Doctrine of Collateral Estoppel demands no less. 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.

Particular reliance is placed by the Tax Commissioner on cases decided at the turn of the last century. *Gerke v. Purcell*, 25 Ohio St. 229 (1874) and *Watterson v. Halliday*, 77 Ohio St. 150, 82 N.E.2d 962 (1907). However, the language cited by the Tax Commissioner in *Gerke* dealt with whether the parsonage was exempt, as opposed to the actual church. Similarly, *Watterson* dealt with the priests' residences and whether they could claim tax exempt status under the statute. This appeal and CVCO's use of the property is completely different. It does not deal with the question of a residence.

Likewise, the Tax Commissioner argues a "determination as to the taxable status must include an examination of both the quantity and quality of the use for which the property is utilized." Brief, p. 13. In support, the Tax Commissioner cites *Faith Fellowship Ministries, Inc. v. Limbach*, 32 Ohio St.3d 432, 513 N.E.2d 1340 (1987). Like the BTA, the Tax Commissioner's reliance on *Faith Fellowship* is misplaced. In *Faith Fellowship*, this Court was challenged to determine whether the classrooms, church offices, and counseling rooms shared

¹ The value of this exemption is significant. For example, CVCO paid \$54,229.94 in real property taxes for tax year 2014.

the same exemption as the church facilitate. In the end, this Court reversed in part the BTA decision and remanded the matter.

The Tax Commissioner also boasts “Ohio Courts have already considered whether religious themed radio or television stations could qualify for the ‘house of public worship’ exemption.” *See* Brief, p. 12. Yet, the Tax Commissioner cites only BTA decisions, not judicial opinions. *Id.* The only state court, which addressed the very issue presented here, made clear a Christian radio station qualifies for the exemption. As the Second Appellate District Court explained

the programs broadcast by WEEC [a Christian radio station] are primarily religious, and they are received for a worshipful purpose by those who subscribe and listen to them. The broadcast and reception constitute a form of public worship and the persons who participate in those exercises constitute a religious society. The property for which WEEC seeks an exemption is used primarily to facilitate the celebration and observances of that particular religious society. *World Evangelistic Ent. Corp. v. Tracy*, 96 Ohio App.3d 78, 83, 64 N.E.2d 678 (1994).

In its opinion, the Court noted the term “society” traditionally “involved a community of persons living and worshipping together” and acknowledged “radio broadcasts of religious programs do not constitute an institutionalized church, which is the traditional form of religious society.” *Id.* In order to make certain one form of religious society is not given preference over another, and thereby violate Section 7, Article 1 of the Ohio Constitution, the Court emphasized the purpose of the tax exemption “does not concern the form of the religious society, but the facts of its existence.” *Id.*

Here, by concentrating on the fact that CVCO operates a radio station with gross income derived from advertising, the Tax Commissioner requests a literal construction of the phrase “houses used exclusively for public worship.” Such a literal interpretation could prevent any exception being given under these words of the Constitution. It would not be difficult to show a

local church or diocese generated income thru weekly bulletin advertisements or bake sales. It also gives preference to religious organizations that assemble on a routine basis. The Tax Commissioner also ignores or mischaracterizes CVCO's programming. Today, people share their daily lives and experiences through mediums not even contemplated in 1874. No longer do individuals need to physically assemble at a single location. CVCO is not a top-40 radio station. It plays only contemporary Christian music. It carries a national Sunday morning syndicated program, *Keep the Faith*. It broadcasts hourly devotionals recorded by its pastor, John Moriarty. This broadcasting is a form of public worship for a majority of CVCO's 55,000 daily listeners. Just because anyone with adequate funds could operate any radio station does not mean CVCO's Christian radio station is not tax exempt. The BTA, therefore, acted unreasonably 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.

With its merit brief, CVCO explained how, in the alternative, Ohio statutory and case law demand the matter be reversed and remanded so the BTA can determine which parts of the property should be exempt from real property tax. The Tax Commissioner apparently concedes this point because he fails to address it. Therefore, assuming this Court does not reverse the BTA's decision and declare the property completely exempt under R.C. 5709.07(A)(2), the matter should be remanded. *See* R.C. 5713.04 (tracks to be valued separately – split listing for tax exemption – deductions) and *Faith Fellowship Ministries, Inc. v. Limbach*, 32 Ohio St.3d

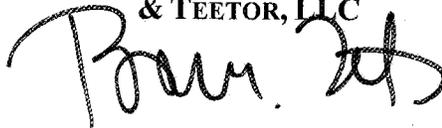
432, 436, 513 N.E.2d 1340 (1987) (holding “R.C. 5713.04 permits real property to be split into exempt and taxable parts if the part which is used in the exempt manner can be precisely delineated, and this delineation is not the product of a calculation of a ratio of the parts to be exempted to the whole of the property.”).

III. CONCLUSION

The Doctrine of Collateral Estoppel prevents the Tax Commissioner and BTA from concluding CVCO’s Gahanna, Ohio property was not used exclusively for public worship. The Tax Commissioner and BTA blindly follow the outdated definitions of “public worship” and “house used exclusively for public worship.” However, the nature of public worship has changed. With only one clear judicial opinion on point, this Court now has the opportunity to pull Ohio case law out of the 19th Century and into the 21st Century. The decision must be reversed.

Respectfully submitted,

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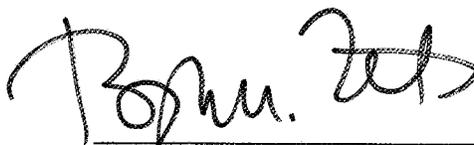
CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March 2015, the foregoing *Reply Brief of Appellant Christian Voice of Central Ohio, Inc.* was filed with the Ohio Supreme Court Clerk's Office, and a copy forwarded to the following via ordinary mail:

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