

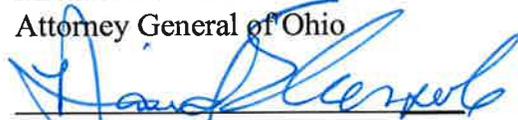
Pursuant to Rule 17.08 of the Supreme Court of Ohio Rules of Practice, appellant, Joseph W. Testa, Tax Commissioner of Ohio, hereby gives notice of the following additional authority upon which he will rely in presenting oral argument before the Court:

- *National Church Residences of Chillicothe v. Lindley*, 18 Ohio St.3d 53 (1985)
- *Chagrin Realty v. Testa*, BTA Case No. 2011-2523 (Apr. 29, 2014), unreported.

For the Court's convenience, copies of these additional authorities are attached hereto.

Respectfully submitted,

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Joseph W. Testa, Tax Commissioner of Ohio

18 Ohio St.3d 53
Supreme Court of Ohio.

NATIONAL CHURCH RESIDENCES OF
CHILLICOTHE, Ohio et al., Appellants,

v.

LINDLEY, Tax Commr., Appellee.

No. 84-1113. | June 26, 1985.

Organizations which operated apartments for persons who were at least 62 years of age or who were handicapped appealed from tax assessments levied by Tax Commissioner and affirmed by Board of Tax Appeals. The Supreme Court held that the apartments were not operated exclusively for charitable purposes within meaning of sales tax exemption, and thus, sale of building materials and supplies to the organizations for incorporation into their apartment facilities did not qualify for the sales tax exemption.

Affirmed.

Locher, J., concurred in judgment only.

[3] Taxation

☞ Clubs, Co-Operatives, and Nonprofit Organizations

Taxpayers, which were organizations which operated apartments for persons who were at least 62 years of age or who were handicapped, were not "operated exclusively for charitable purposes" within meaning of R.C. § 5739.02(B) (12), which provides sales tax exemption, where residents paid all or part of their rental costs, rental payments and any federal subsidies were forwarded directly to the organizations which received, in final analysis, monthly market price for each apartment, organizations reserved right to initiate eviction proceedings for nonpayment of rent, and where any charitable activities which occurred were provided by volunteer agents or benevolent organizations and not by the taxpayer organizations, and thus, sale of building materials and supplies to the organizations for incorporation into the apartment facilities did not qualify for the sales tax exemption. R.C. §§ 5701.13, 5701.13(B, D), 5739.02.

6 Cases that cite this headnote

West Headnotes (3)

[1] Taxation

☞ Judicial Review and Relief Against Assessments

When reviewing decision of Board of Tax Appeals, Supreme Court will not act as trier of fact de novo but, instead, will limit its review in accordance with R.C. § 5717.04 to determination of whether Board's decision is "reasonable and lawful."

Cases that cite this headnote

[2] Taxation

☞ General Rules of Construction

Statutes granting exceptions or exemptions from taxation are to be strictly construed.

4 Cases that cite this headnote

****871 *53** This appeal arises by virtue of two sales tax assessments levied by appellee, the Tax Commissioner (hereinafter "commissioner"), and affirmed by the Board of Tax Appeals, against appellants National Church Residences of Gahanna, Ohio and National Church Residences of Chillicothe, Ohio. The tax assessment against National Church Residences of Gahanna totaled \$47,643.56, while the assessment against National Church Residences of Chillicothe totaled \$42,405.18. The assessments were made on purchases of building materials and supplies used in the construction of Hopeton Village in Chillicothe and Stygler Village in Gahanna, after the commission had determined that appellants improperly provided exemption certificates to various contractors associated with the construction of the villages.

Stygler Village, located in Gahanna, contains one hundred fifty apartments, the majority of which are one-bedroom units. Hopeton Village in Chillicothe is a one-hundred-nine-unit complex, and also consists primarily of one-bedroom

units. Both villages were constructed with financial assistance from the Department of Housing and Urban Development (hereinafter "HUD"). The mortgages on each facility are held by the Secretary of HUD and the villages are operated in accordance with regulations prescribed by HUD.

Thus, in order to be eligible for residency at either village, a person must be at least sixty-two years of age or have incurred a handicap. *54 Although residency is not restricted to persons with low incomes, only low-income residents qualify for HUD rental subsidies. The monthly rental charges are controlled by HUD, and at the time of the hearing before the Board of Tax Appeals, one-bedroom units at Stygler Village were renting for \$350 monthly, while comparable apartments at Hopeton Village rented for \$410 each month. ¹

To qualify for HUD rental subsidies at either facility, a resident's income must not exceed \$12,000 annually, inclusive of a percentage of the resident's personal assets. Residents who qualify for rental subsidies pay no more than twenty-five percent of their monthly income for rent, with the balance of the monthly rent being paid to appellants by HUD. The record demonstrates that virtually all of appellants' residents qualify for rental subsidies, paying an average of between \$100 to \$125 a month, while HUD guarantees the monthly rental balances which generally range from \$250 to \$285 for each apartment unit per month. Although at the time of the hearing before the Board of Tax Appeals appellants had not evicted a tenant for failure to pay rent, each village had executed leases with its tenants containing a clause authorizing eviction for the failure to pay rent "promptly when due."

**872 The record further demonstrates that appellants provide no services except those which are common to apartment buildings in general. Appellants have, however, arranged for various community agencies to provide services for their tenants. For example, appellants do not prepare meals for their residents; instead, they have arranged for NICE or Meals on Wheels to provide meals to residents desiring this service. Arrangements have also been made for two community health nurses to volunteer their time and periodically visit each facility, and a community health van provides monthly blood pressure and heart rate checks, as well as informing residents of other health problems they may be facing.

On April 23, 1981, the commissioner issued the sales tax assessments to appellants on the basis that the materials and supplies used to construct Hopeton Village and Stygler Village were not incorporated into structures operated exclusively for charitable purposes. On appeal, the Board of Tax Appeals affirmed the assessments.

The cause is now before this court on an appeal as of right.

Attorneys and Law Firms

Lucas, Prendergast, Albright, Gibson & Newman and Rankin M. Gibson Co., L.P.A., Columbus, for appellants.

Anthony J. Celebrezze, Jr., Atty. Gen., and Mark A. Engel, Columbus, for appellee.

Opinion

PER CURIAM.

The question presented for review is whether the sale of building materials and supplies to appellants for incorporation into their *55 respective apartment facilities qualifies for the tax exemption provided under R.C. 5739.02(B)(12).

R.C. 5739.02, which levies a tax on all retail sales in this state, provides in relevant part:

"(B) The tax does not apply to the following:

" * * *

"(12) Sales of tangible personal property or services to churches and to nonprofit organizations operated exclusively for charitable purposes in this state, no part of the net income of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which consist of carrying on propaganda or otherwise attempting to influence legislation.

"Charitable purposes means the relief of poverty, the improvement of health through the alleviation of illness, disease, or injury * * * [or] the operation of a home for the aged, as defined in section 5701.13 of the Revised Code * * *."

[1] [2] In levying the assessments on the materials and supplies used in the construction of Hopeton Village and Stygler Village, the commissioner essentially determined that

the apartments were not used exclusively for “charitable purposes” as that term is used within R.C. 5739.02(B)(12), or as the term has been interpreted by prior decisions of this court. At the outset, we are mindful that when reviewing a decision of the Board of Tax Appeals this court will not act as a trier of fact *de novo* but, instead, will limit its review in accordance with R.C. 5717.04 to a determination of whether the board's decision is “reasonable and lawful.” *Operation Evangelize v. Kinney* (1982), 69 Ohio St.2d 346, 347, 432 N.E.2d 200 [23 O.O.3d 315]; *Citizens Financial Corp. v. Porterfield* (1971), 25 Ohio St.2d 53, 266 N.E.2d 828 [54 O.O.2d 191], paragraph one of the syllabus. In addition, it is axiomatic that statutes granting exceptions or exemptions from taxation are to be strictly construed. *Southwestern Portland Cement Co. v. Lindley* (1981), 67 Ohio St.2d 417, 425, 424 N.E.2d 304 [21 O.O.3d 261]; *Quaker Apartments v. Kosydar* (1974), 38 Ohio St.2d 20, 23, 309 N.E.2d 863 [67 O.O.2d 36].

On numerous occasions this court has examined the taxable nature of property rented to aged, needy or infirm persons, at or below cost, which property is claimed to be exempt from taxation as being operated exclusively for charitable purposes. The **873 rule which has emerged is that the furnishing of low-cost housing at or below market prices, where residents pay a part or all of their rental costs, is not, in and of itself, an exclusive use of the property for charitable purposes. *St. Barnabas v. Bd. of Tax Appeals* (1948), 150 Ohio St. 484, 83 N.E.2d 229 [38 O.O. 329]; *Beerman Foundation v. Bd. of Tax Appeals* (1949), 152 Ohio St. 179, 87 N.E.2d 474 [39 O.O. 462]; *Philada Home Fund v. Bd. of Tax Appeals* (1966), 5 Ohio St.2d 135, 214 N.E.2d 431 [34 O.O.2d 262]; *Quaker Apartments v. Kosydar* (1974), 38 Ohio St.2d 20, 309 N.E.2d 863 [67 O.O.2d 36].

In *St. Barnabas*, *Beerman Foundation*, and *Philada Home Fund*, charitable tax exemptions were denied to residential accommodations *56 dedicated respectively to providing low-income housing to student nurses, World War II veterans, as well as aged and needy persons. In each case, residents paid rent at or below the market rates for comparable accommodations. While recognizing the laudable purpose of the activity in *Beerman Foundation*, the exemption was nevertheless denied. The court stated:

“We agree with counsel for applicant in the instant case that housing for the needy, aged, sick, orphans or widows is charity entitling the property so used to be exempted from taxation. However, we are of opinion that such housing would

not be used exclusively for charitable purposes if each and every occupant was required to pay for accommodations.” *Id.* at 182, 87 N.E.2d 474.

In *Philada Home Fund*, the court reasoned as follows:

“Real property owned by a nonprofit charitable corporation the stated purpose of which is to secure and operate resident apartments for aged and needy persons is not exempt from taxation * * * even though it is shown that the rent intended to be charged is at or below cost, and in no event to result in a profit, and that it is expected that some persons unable to pay the full rental will be assisted by subventions from corporate funds.” *Id.* at the syllabus.

[3] As the commissioner correctly contends, however, our decision in *Quaker Apartments v. Kosydar*, *supra*, is dispositive of appellants' requested exemptions. In that case, a nonprofit Ohio corporation constructed an eighty-unit apartment complex which, as in the case at bar, obtained financial assistance from HUD. Federal rent subsidies were available to tenants who were at least sixty-two years of age or handicapped. The amount of each subsidy was contingent upon the tenant's income and assets, but in no event could a subsidy exceed seventy percent of the rental value of the apartment. Like the present case, the rental payments and the subsidies were forwarded directly to the taxpayer who received, in the final analysis, the monthly market price for each apartment. In addition, none of the apartments was available rent free, and the taxpayer reserved the right to initiate eviction proceedings for nonpayment of rent.

On these facts, involving the identical tax as was assessed in the cause *sub judice*, the court affirmed the denial of a sales tax exemption, stating in the syllabus:

“The operation on a nonprofit basis of an apartment building for low income tenants, for whom supplemental rent payments are made by an agency of the federal government, is not exclusively for charitable purposes within the meaning of R.C. 5739.02(B)(12), where all tenants must pay at least a part of their rent, nonpayment of rent will result in eviction, and no services other than those common to apartment buildings generally are provided for the tenants.”

*57 Appellants, however, seek to circumvent the holdings of the aforementioned cases by requesting that this court resurrect the rule recognized in *Carmelite Sisters. St. Rita's Home v. Bd. of Review* (1969), 18 Ohio St.2d 41, 247 N.E.2d

477 [47 O.O.2d 159]. The issue confronting the court in *Carmelite Sisters* was whether a home for the aged and infirm should be exempt from contributing to the Unemployment Compensation **874 Fund as having been “organized and operated exclusively for * * * charitable * * * purposes” within the purview of R.C. 4141.01(B)(2)(h). *Id.* at 43, 247 N.E.2d 477. In order to resolve the issue, the court relied upon cases involving charitable tax exemptions to determine whether the home was being operated exclusively for charitable purposes. As in previous cases construing charitable exemptions for homes for the aged, the home was operated by a nonprofit corporation, and residents paid a monthly charge to defray expenses. Admission was contingent upon the applicant being at least sixty-five years of age and having a need for the services provided by the home.

The exemption in *Carmelite Sisters* was granted, with the court stressing the differences between the services provided at St. Rita's Home and those considered in *Philada Home Fund*. In *Carmelite Sisters*, a doctor was on call at all times and practical nurses were employed at the facility on a daily basis. In addition to caring for residents in a medical sense, as well as aiding residents with day-to-day activities, the home also provided meals and dietary care. It was the nature of these services, which were above and beyond those traditionally provided to apartment residents, that led the court to conclude that the applicant was indeed using the property for charitable purposes. *Id.* at 44, 247 N.E.2d 477.

After the issues in *Carmelite Sisters* were framed, but prior to our consideration of the case, the General Assembly amended several tax exemption statutes, including R.C. 5739.02(B) (12), and enacted R.C. 5701.13² effective May 31, 1968. The result of the amendments was to supplant the “services exception” established in *Carmelite Sisters* and to impose a requirement that in order for low-rent apartments for the aged, similar to those in the present case, to be eligible for tax-exempt status, the facilities must meet the criteria contained in R.C. 5701.13. Accord *Toledo Retirement Living v. Bd. of Tax Appeals* (1971), 27 Ohio St.2d 255, 272 N.E.2d 359 [56 O.O.2d 153].

The requirements set forth under R.C. 5701.13 are specific, obligating the party seeking tax exempt status to provide lodging, prepared food, custodial care, medical and nursing care, as well as additional services for *58 the “full care” of residents. R.C. 5701.13(D). In addition to these and other requirements, not more than ninety-five percent of the

expenses for operating the home may come from the residents or be paid to the home on their behalf. R.C. 5701.13(B).

In addressing the above-described requirements, this court has held that the provision of one meal daily is insufficient to qualify as having offered prepared food, and that occasional visits by a doctor or the employment of part-time nurses who simply **875 dispense medications, does not satisfy the provision of the statute requiring that medical and nursing care be available for residents. *S.E.M. Villa li v. Kinney* (1981), 66 Ohio St.2d 67, 419 N.E.2d 879 [20 O.O.3d 60], *Ohio Presbyterian Homes v. Kinney* (1984), 9 Ohio St.3d 90, 459 N.E.2d 506. As demonstrated by the record, briefs, and by the oral argument in this appeal, appellants are not seeking an exemption pursuant to the qualifications contained within R.C. 5701.13, recognizing that they are not in compliance with that statute. Instead, appellants contend their case falls within a “gray” area, something short of the requirements set forth under R.C. 5701.13, yet still charitable in nature, thus justifying an exemption under R.C. 5739.02.

Suffice it to say that any charitable activities which occurred in the case at bar were provided by volunteer agents or benevolent organizations, and not by appellants who simply contacted these persons or organizations for the purpose of having them provide services for their residents. In the final analysis, appellants are attempting to obtain a vicarious charitable exemption similar to the theory advanced by the taxpayer and rejected by this court in *OCLC Online Computer Library Center, Inc. v. Kinney* (1984), 11 Ohio St.3d 198, 464 N.E.2d 572. We find appellant's argument untenable and again repeat that the furnishing of low-cost housing at or below market prices, to residents who pay part or all of their rental costs, is not an exclusive use of the property for charitable purposes which *59 will result in a tax exemption. *St. Barnabas v. Bd. of Tax Appeals; Beerman Foundation v. Bd. of Tax Appeals; Philada Home Fund v. Bd. of Tax Appeals; Toledo Retirement Living v. Bd. of Tax Appeals; Quaker Apartments v. Kosydar, supra.*

For the foregoing reasons, the decision of the Board of Tax Appeals, being neither unreasonable nor unlawful, is affirmed.

Decision affirmed.

CELEBREZZE, C.J., SWEENEY, HOLMES, CLIFFORD F. BROWN, DOUGLAS and WRIGHT, JJ., concur.

LOCHER, J., concurs in judgment only.

Parallel Citations

479 N.E.2d 870, 18 O.B.R. 87

Footnotes

1 Two-bedroom units at either facility rented for approximately \$75 to \$100 more each month.

2 R.C. 5701.13 provides, in part:

“As used in Title LVII of the Revised Code, and for the purpose of other sections of the Revised Code which refer specifically to Chapter 5701. or section 5701.13 of the Revised Code, a ‘home for the aged’ means a place of residence for aged persons which meets all of the following standards:

“(A) It is owned or operated by a corporation, unincorporated association, or trust of a charitable, religious, or fraternal nature, which is organized and operated not for profit, and which is not formed for the pecuniary gain or profit of, and whose net earnings or any part thereof is not distributable to, its members, trustees, officers, or other private persons.

“(B) Not more than ninety-five per cent of the expenses of caring for the residents of such home comes from the residents or is paid to the home in behalf of the residents. * * *

“ * * *

“(D) The following services are available, as needed by residents of the home, and shall be provided, at or below reasonable cost, for the life of each resident without regard to his ability to continue payment for the full cost thereof:

“(1) Lodging;

“(2) Prepared food;

“(3) Custodial care;

“(4) Medical and nursing care;

“(5) Such additional services as may be required for the full care of the resident.

“A service is provided, within the meaning of this division, if the home pays, or guarantees the payment, for all reasonable costs of securing such service on behalf of each resident and it can be secured without unreasonable inconvenience to the residents.

“Exemption from taxation shall be accorded, on proper application, only to those homes which meet the standards and provide the services specified in this section.”

2014 WL 2708168 (Ohio Bd.Tax.App.)

Board of Tax Appeals

State of Ohio

CHAGRIN REALTY, INC., APPELLANT

v.

JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO, APPELLEE

Case No. 2011-2523

April 29, 2014

***1 (Real Property Tax Exemption)**

DECISION AND ORDER

Appearances:

For the Appellant

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For the Appellee

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

Appellant appeals a final determination of the Tax **Commissioner** wherein he denied exemption from real property taxation of certain real property, i.e., parcel number 16-B-059-0-00-017-0, located in Lake County, Ohio,¹ for tax year 1999. We proceed to consider the matter upon the notice of appeal, the statutory transcript certified by the **commissioner**, the record of the hearing before this board, and the parties' briefs.

The **commissioner** explained the factual background of this matter in the final determination as follows:

“The applicant, **Chagrin Realty, Inc.**, a non-profit Ohio corporation incorporated in 1999, is requesting exemption of the above referenced parcel, totaling 2.7196 acres. The applicant acquired title to the subject property on August 28, 2000 from its affiliate the Leonard C. Rosenberg Foundation (‘Foundation’) by straw-man deed transfer. The Foundation had acquired the property the same day from the sole-member parent of both the Foundation and **Chagrin**, Community Dialysis Center. The property is being leased

to Community Dialysis Center ("Center"), an Ohio non-profit corporation, for use as a dialysis center. The initial year's rent was \$146,200.00, ***, plus 'additional rent' comprised of '...all Taxes, Operating Expenses, and Utility Expenses of each month of each Lease Year.' The lessee has continued to lease the subject property and operate a dialysis clinic there. The applicant seeks exemption under Ohio Revised Code (R.C.) Section 5709.12."²

At this board's hearing, witnesses for appellant further explained that appellant is a 501(c)(2) non-profit organization³ which was organized for the exclusive purpose of holding title to the subject property.

Appellant applied for exemption under R.C. 5709.12, which provides that "[r]eal *** property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation." The **commissioner** denied exemption thereunder, finding that the property was used by appellant with a view to profit through leasing at a substantial rent. The **commissioner** also considered exemption under R.C. 5709.121, which states:

"(A) Real property *** belonging to a charitable or educational institution *** shall be considered as used exclusively for charitable or public purposes by such institution *** if***:

"(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:

*2 "****

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

"(2) It is made available under the direction and 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 a view to profit."⁴

The **commissioner** rejected appellant's argument that its designation as a tax-exempt organization by the Internal Revenue Service establishes it as a charitable institution, citing *Dialysis Clinic, Inc. v. Levin*, 127 Ohio St.3d 21, 2010-Ohio-5071. As he did under R.C. 5709.12, the **commissioner** likewise found that appellant's lease of the property, which generates income, did not entitle it to exemption under R.C. 5709.121. Appellant thereafter appealed to this board.

In our review of this matter, we are mindful that 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.

Appellant's main argument on appeal is that the fact that it holds title to the subject property and leases it to another entity that uses the property, does not disqualify it from exemption from real property taxation. Appellant argues that its status as a 501(c)(2) organization qualifies it as a "charitable institution." However, the Supreme Court specifically rejected this argument in *Dialysis Clinic*, supra, at 125, where it cited its previous statement in *NBC-USA Hous., Inc.-Five v. Levin*, 125 Ohio St.3d 394, 2010-Ohio-1553, that "tying charitable use so tightly to Congress's policy goals is wrong because Congress does not define the scope of charitable use under Ohio law."⁵ Id. at ¶20.

Instead, appellant must qualify based on its own activities and use of the property. It is clear that appellant's use of the property is limited to leasing it to the Community Dialysis Center. While we acknowledge appellant's arguments that it, the Center,

and the Rosenberg Foundation essentially operate as one, and, it argues, the Center's activities are charitable, the court and this board have previously rejected vicarious exemption theories.⁶ See, e.g., *OCLC Online Computer Library Center, Inc. v. Kinney* (1984), 11 Ohio St.3d 198; *Central Ohio Medical Textiles v. Levin* (Apr. 10, 2012), BTA No. 2009-K-650, unreported. As its witnesses acknowledged at this board's hearing, the creation of the three entities that own and operate the subject facility was done for legal reasons; such decisions are not without legal consequences. Upon review of the record, we find no error in the **commissioner's** determination that appellant's use of the property does not qualify it for exemption under either R.C. 5709.12 or R.C. 5709.121.

***3** Accordingly, we find that the final determination of the Tax Commissioner must be, and hereby is, affirmed.

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

Footnotes

- 1 Although the **commissioner's** final determination indicates that the subject property is located in Cuyahoga County, records included in the statutory transcript clearly indicate that the property is actually located in Lake County.
- 2 As further explained at this board's hearing, the Leonard C. Rosenberg Foundation is the sole member of **Chagrin Realty, Inc.**, and Community Dialysis Center is the sole member of the Rosenberg Foundation. Although the three entities operate as one organization, they are separate legal entities.
- 3 Appellant indicated in its brief that "Ohio law does not provide for a corporation with similar restrictions" to an I.R.C. Section 501(c)(2) entity. Appellant's Brief at 7.
- 4 The Supreme Court recently explained the interaction between R.C. 5709.12 and 5709.121: "[P]ursuant to R.C. 5709.12(B), any institution, charitable or noncharitable, may qualify for a tax exemption if it is making exclusive charitable use of its property. But if the property belongs to a charitable or educational institution, R.C. 5709.121 defines what constitutes exclusive use of property in order to be exempt from taxation." *Cincinnati Community Kollel v. Testa*, 135 Ohio St.3d 219, 2013-Ohio-396, ¶23.
- 5 The court in *Dialysis Clinic*, supra, further stated: "Our case law has predicated entitlement to the charitable-use exemption on services being provided 'on a nonprofit basis to those in need, *without regard to race, creed, or ability to pay.*' (Emphasis added.) *Church of God in N. Ohio, Inc. v. Levin*, 124 Ohio St.3d 36, 2009-Ohio-5939, 918 N.E.2d 981, ¶ 19, citing *Vicky, Cleveland Mem. Med. Found.* (1965), 2 Ohio St.2d 30, 31 O.O.2d 16, 206 N.E.2d 2, paragraph two of the, syllabus. In contrast, federal tax law affords a charitable exemption on a less restrictive basis. See Rev.Rul. 69-545, 1969-2 C.B. 117; Rev.Rul. 83-157, 1983-2 C.B. 94; M. Hall & J. Colombo, *The Charitable Status of Nonprofit Hospitals: Toward a Donative Theory of Tax Exemption* (1991), 66 Wash.L.Rev. 307, 320-321 (in 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.*" [Emphasis added]). 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.
- 6 We also reject any argument that appellant's use of the proceeds from leasing the property entitles it to exemption. See *Hubbard Press v. Tracy* (1993), 67 Ohio St.3d 547, 566 ("It is only the use of the property in charitable pursuits that qualifies for tax exemption, not the utilization of receipts or proceeds that does so.").

2014 WL 2708168 (Ohio Bd.Tax.App.)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Appellant Tax Commissioner's List of Additional Authorities was served upon the following by U.S. regular mail on this 31st day of March, 2015:

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