

1 West Side Deutscher Frauen Verein, d.b.a. Altenheim, Appellant, v. Tracy, Tax  
2 Commr., Appellee.

3 [Cite as *W. Side Deutscher Frauen Verein v. Tracy* (1997), \_\_\_ Ohio St.3d \_\_\_  
4 .]

5 *Taxation -- New addition to existing nursing home facility not entitled to*  
6 *real property tax exemption under R.C. 5709.12(B), when.*

7 (No. 95-2577 — Submitted January 8, 1997 — Decided April 2, 1997.)

8 APPEAL from the Board of Tax Appeals, No. 94-K-702.

9 In March 1980, West Side Deutscher Frauen Verein, a nonprofit  
10 corporation, was issued a license by the Ohio Department of Health (“ODH”)  
11 to operate a one-hundred-bed nursing home facility in Strongsville, Ohio. The  
12 nursing home facility is known as “Altenheim.” For tax year 1988, West Side  
13 Deutscher Frauen Verein, d.b.a. Altenheim, appellant, was granted a tax  
14 exemption pursuant to R.C. 5709.12 for the parcel of property upon which the  
15 nursing home facility was located, *i.e.*, permanent parcel number 397-01-007.  
16 In September 1990, parcel number 397-01-007 was consolidated with four  
17 other adjacent parcels owned by appellant, and the consolidated parcels were

1 collectively renumbered as permanent parcel number 397-01-006.<sup>1</sup> Apparently,  
2 appellant had requested the lot consolidation in anticipation of expanding its  
3 nursing home facility to include space for fifty additional beds. The creation of  
4 consolidated permanent parcel number 397-01-006 provided appellant with a  
5 total of approximately 19.6 acres upon which to operate an expanded facility.  
6 Sometime prior to October 1990, appellant apparently obtained a certificate of  
7 need from ODH authorizing appellant to increase the number of its nursing  
8 home beds from one hundred to one hundred and thirty-five and to add fifteen  
9 rest home beds.

10 In October 1990, appellant commenced a project to renovate the existing  
11 nursing home facility and to construct a new addition to the existing facility.  
12 Apparently, most (but not all) of the new addition was built within the  
13 boundaries of what had previously been permanent parcel number 397-01-007,  
14 *i.e.*, the property that had been exempted from taxation for tax year 1988. The  
15 new construction added space for, among other things, physical therapy, dining  
16 areas, thirty-five additional nursing home beds, and fifteen rest home beds.

1 The new addition was first occupied by appellant's residents in December 1991  
2 when ODH authorized some of appellant's one hundred licensed beds to be  
3 relocated to the newly constructed space while renovations continued in the  
4 older section of the facility. Prior to July 1992, the total number of residents at  
5 Altenheim never exceeded the total number of nursing home beds appellant  
6 had been authorized to maintain under its 1980 license. In July 1992, appellant  
7 was issued licenses by ODH to operate the expanded facility. Specifically, in  
8 July 1992, appellant was issued licenses to operate a one-hundred-thirty-five-  
9 bed nursing home and a fifteen-bed rest home.

10 Thereafter, appellant filed an application with the Tax Commissioner,  
11 appellee, seeking a real property tax exemption under R.C. 5709.12(B) for tax  
12 year 1992, and a tax remission for 1991, for all of permanent parcel number  
13 397-01-006, except for portions of the property occupied by certain personal  
14 residences. On June 13, 1994, an attorney examiner for the Ohio Department  
15 of Taxation, Division of Tax Equalization, issued a recommendation that the  
16 property be "split listed" pursuant to R.C. 5713.04. The examiner stated that

1 because the new addition to the Altenheim facility had not been licensed by  
2 ODH until July 1992, appellant was not entitled to an exemption for that  
3 portion of the property until the tax lien date of the year following licensure,  
4 *i.e.*, January 1, 1993. However, the examiner recommended that appellant be  
5 granted an exemption for the “original nursing home and 5.63 acres of land,”  
6 which had previously been listed as exempt for tax year 1988. The examiner  
7 also concluded that the personal residence of Altenheim’s maintenance director  
8 qualified for an exemption for tax year 1992 and a remission for tax year 1991.  
9 In an order and journal entry dated July 15, 1994, the Tax Commissioner  
10 adopted the recommendations of the attorney examiner, stating:

11 “The applicant is requesting tax exemption for an addition to its nursing  
12 home. As explained [in the attorney examiner’s recommendation], this  
13 property cannot qualify for exemption until it is licensed. The applicant  
14 contends that its possession of a license for the previously existing building  
15 satisfies the licensing requirement. However, a nursing home license is  
16 specific to a given location and to the number of beds that location is

1 authorized to maintain. A tax exemption is also specific to the given location  
2 that meets all the requirements for exemption. In this case, the Ohio  
3 Department of Health did not issue a license to include the new addition and an  
4 additional fifty beds until July 1992. Therefore, this newly licensed addition  
5 does not qualify for exemption until the following tax lien day, January 1,  
6 1993.

7       “\* \* \* Pursuant to R.C. 5713.04, the Tax Commissioner orders that the  
8 property be listed as follows:

9       “Property exempt from taxation: the original nursing home and 5.63  
10 acres of land previously listed as exempt [in tax year 1988], the maintenance  
11 director’s residence and attached land at 18681 Shurmer Road, and the entrance  
12 way at the northeast corner of the property; the additional building licensed in  
13 1992 and attached land extending to the tree line separating the facility grounds  
14 from the private residences are exempt for tax year 1993. The Tax  
15 Commissioner orders that taxes, penalties, and interest charged against and

1 paid for this part of the property for these tax years be refunded in the manner  
2 provided by R.C. 5715.22.

3 “Property to remain on tax list: the four private residences and attached  
4 land at 18673, 18727 and 18729, and 18821 Shurmer Road; the facility  
5 addition listed as exempt for 1993 remains taxable for tax years 1991 and 1992.  
6 The Tax Commissioner orders that penalties charged against this part of the  
7 property for these tax years be remitted.”

8 Appellant appealed to the Board of Tax Appeals (“BTA”), claiming that  
9 the commissioner had erred in determining that appellant’s facility addition and  
10 the attached land extending to the tree line separating the facility grounds from  
11 the private residences were taxable for tax years 1991 and 1992. On appeal,  
12 the BTA affirmed the order of the commissioner. The cause is now before this  
13 court upon an appeal as of right.

14 *Wegman, Hessler, Vanderburg & O’Toole* and *Jeffrey W. Krueger*, for  
15 appellant.

1           *Betty D. Montgomery*, Attorney General, and *Janyce C. Katz*, Assistant  
2 Attorney General, for appellee.

3           DOUGLAS, J.     The issue for our consideration is whether appellant’s  
4 building addition which was not licensed by ODH until July 1992 qualifies for  
5 a tax exemption under R.C. 5709.12(B) for tax years 1991 and 1992. For the  
6 reasons that follow, we find that the decision of the BTA upholding the  
7 determination of the Tax Commissioner that appellant’s facility addition and  
8 attached land were not entitled to the claimed exemption is neither unlawful  
9 nor unreasonable and, accordingly, we affirm the decision of the BTA.

10           R.C. 5709.12(B) provides, in part:

11           “All property owned and used by a nonprofit organization exclusively  
12 for a home for the aged, as defined in section 5701.13 of the Revised Code,  
13 also shall be exempt from taxation.”

14           At the time in question, R.C. 5701.13 provided in part:

15           “(A) As used in this section:

1           “(1) ‘Nursing home’ means a nursing home or a home for the aging, as  
2 those terms are defined in section 3721.01 of the Revised Code, *that is issued a*  
3 *license pursuant to section 3721.02 of the Revised Code.*

4           “(2) ‘Rest home’ means a rest home, as defined in section 3721.01 of the  
5 Revised Code, *that is issued a license pursuant to section 3721.02 of the*  
6 *Revised Code.*

7           “\* \* \*

8           “(B) As used in Title LVII [57] of the Revised Code \* \* \* a ‘home for  
9 the aged’ means a place of residence for aged and infirm persons that is either a  
10 nursing home [or] rest home \* \* \*.” (Emphasis added.) 143 Ohio Laws, Part  
11 III, 3840.

12           Thus, at the time in question, R.C. 5701.13 contained specific criteria  
13 necessary for a tax exemption under R.C. 5709.12(B), including the  
14 requirement that the applicant for exemption had been issued a license to  
15 operate the nursing or rest home facility. In *Christian Benevolent Assn. of*  
16 *Greater Cincinnati, Inc. v. Limbach* (1994), 69 Ohio St.3d 296, 631 N.E.2d



1 1034, we considered R.C. 5709.12(B) and a former version of R.C. 5701.13,  
2 which is virtually identical to the version at issue here, and held that “[i]n order  
3 to be entitled to a real property tax exemption for a nursing home or rest home  
4 under R.C. 5709.12(B) and 5701.13, an applicant for the exemption must have  
5 received a license to operate the facility by the tax lien date of the year for  
6 which exemption is sought.” *Id.* at syllabus. R.C. 323.11 provides that the lien  
7 of the state for taxes “shall attach to all real property subject to such taxes on  
8 the first day of January, annually \* \* \* [.]”

9 In the case at bar, appellant constructed its new facility addition for the  
10 purpose of increasing bed space and, particularly, to add thirty-five additional  
11 nursing home beds and fifteen rest home beds. The facility addition was not  
12 licensed for its intended purpose until July 1992. Accordingly, appellant was  
13 not entitled to a tax exemption for its new facility addition and attached land  
14 for tax years 1991 and 1992, since the facility addition was not licensed as of  
15 the applicable tax lien date for either tax year.

1           Nevertheless, appellant claims a right to a tax exemption for the facility  
2 addition and attached land for tax year 1992, as well as a tax remission for  
3 1991, on the basis that appellant possessed a valid license to operate a nursing  
4 home facility throughout the 1990-1992 construction and renovation project.  
5 Specifically, appellant maintains that its 1980 license to operate the original  
6 one-hundred-bed nursing home facility was sufficient to include the expanded  
7 facility for the tax years in question. In this regard, appellant points out that  
8 although the facility addition was first occupied by appellant's residents in  
9 December 1991, the total number of residents at Altenheim never exceeded the  
10 total number of licensed beds appellant had been authorized to maintain under  
11 the 1980 license. Thus, appellant urges that the licensing requirement of R.C.  
12 5701.13 was satisfied as of the tax lien date for 1991 and 1992 because  
13 appellant was never without a valid license to operate a home for the aged.

14           Appellant raised a similar argument before the BTA. The BTA rejected  
15 appellant's argument, stating:

1           “Appellant maintains that the present case is factually distinguishable  
2 from [*Christian Benevolent Assn.*, 69 Ohio St.3d 296, 631 N.E.2d 1034]. It  
3 insists that despite the fact that its additional building was not licensed until  
4 July 1992, this facility is exempt because appellant has continuously been  
5 licensed to operate a nursing home or home for the aged since March 1980. \* \*

6 \*

7           “In considering whether the subject property is exempt under R.C.  
8 5709.12 and R.C. 5701.13, appellant would have this Board focus upon *its*  
9 licensure as an entity capable of operating a nursing home facility. The Tax  
10 Commissioner, on the other hand, suggests that the appropriate focus is upon  
11 the *property* to which the license issued by ODH applies. Since the question  
12 before this Board is whether the subject *real property* is exempt from taxation,  
13 we find the focus advocated by the Tax Commissioner to be that which was  
14 intended by the General Assembly.

15           “As support for our position, we first note that [former] R.C. 5701.13(B)  
16 states in part:

1           ““As used in Title LVII [57] of the Revised Code \* \* \* a “home for the  
2 aged” means *a place* of residence for aged and infirm persons that is either a  
3 nursing home [or] rest home \* \* \*.’ (Emphasis added.)

4           “Moreover, in addition to requiring that an applicant satisfy certain  
5 requirements, R.C. 3721.02, as well as Ohio Adm. Code Chap. 3701-17.,  
6 provide[s] for physical inspections of the facilities sought to be licensed to be  
7 made by the director of health and the appropriate fire official prior to the  
8 issuance of a license. It is therefore not appellant’s license to operate nursing  
9 home facilities which controls the taxable status of the subject property.  
10 Instead, it is the issuance of a license by ODH regarding the property itself  
11 which satisfies the requirements for exemption imposed by R.C. 5709.12 and  
12 [former] R.C. 5701.13. While appellant would have this Board accept that the  
13 construction undertaken in this case was mere remodeling or renovation, the  
14 added facilities included space for physical therapy, department activities,  
15 resident dining areas and rooms, consisting of an additional thirty-five nursing  
16 beds and fifteen rest home beds. Due to this additional construction, appellant

1 was required to, and ultimately did obtain, a license from ODH for the property  
2 at issue. Accordingly, we find no error in the Tax Commissioner's decision to  
3 split list the subject property for purposes of taxation in the manner reflected in  
4 his journal entry." (Emphasis *sic* and footnote omitted.)

5 We agree with the BTA's resolution of this issue. The only license that  
6 existed as of the tax lien date for tax years 1991 and 1992 was appellant's 1980  
7 license to operate the original one-hundred-bed nursing home facility. The  
8 1980 license certainly did not include the new addition to appellant's facility  
9 which added space for, among other things, fifty additional beds.<sup>2</sup> Appellant  
10 did not receive licenses from ODH to operate the expanded facility until after  
11 the tax lien date for tax year 1992. Therefore, appellant was entitled to an  
12 exemption for tax year 1992 for that portion of the expanded facility that was  
13 licensed as of January 1, 1992, *i.e.*, the portion of the expanded facility  
14 occupied by the original nursing home. However, appellant was not entitled to  
15 an exemption for tax year 1992 for that portion of the expanded facility that  
16 was not licensed as of January 1, 1992, *i.e.*, the new addition. Accordingly, we

1 find that the decision of the BTA upholding the commissioner's order to split  
2 list appellant's property in the manner reflected in the commissioner's July 15,  
3 1994 journal entry was neither unlawful nor unreasonable.

4 Appellant also claims entitlement to a tax exemption for the facility  
5 addition and attached land for tax years 1991 and 1992 under the so-called  
6 prospective use rule. Appellant argues that "[a]pplication of the prospective  
7 use rule should not be precluded when considering an application for  
8 exemption under R.C. 5709.12(B) by an applicant that is already licensed to  
9 operate a home for the aged, as defined in section 5701.13 of the Revised  
10 Code, on the same lot as that for which exemption is sought." However, in  
11 *Christian Benevolent Assn.*, 69 Ohio St.3d at 298-299, 631 N.E.2d at 1036-  
12 1037, we considered a version of R.C. 5701.13 which is virtually identical to  
13 the version at issue here, and found that the statute's licensing requirement  
14 precluded application of the prospective use rule:

15 "In several cases, we have held that an applicant could obtain a tax  
16 exemption for its property if the applicant intended to use the property in an

1 exempt manner within a reasonable time and provided tangible evidence that  
2 the property would be so used. *Ohio Operating Engrs. Apprenticeship Fund v.*  
3 *Kinney* (1980), 61 Ohio St.2d 359, 362-363, 15 O.O.3d 440, 442-443, 402  
4 N.E.2d 511, 514 (vacant land to be used for public education); *Holy Trinity*  
5 *Protestant Episcopal Church of Kenwood v. Bowers* (1961), 172 Ohio St. 103,  
6 15 O.O.2d 173, 173 N.E.2d 682 (intent to erect church on vacant land); *Lake*  
7 *Cty. Bd. of Commrs. v. Supanick* (1972), 32 Ohio St.2d 45, 61 O.O.2d 279, 289  
8 N.E.2d 902 (intent to construct hospital on undeveloped land). The exemptions  
9 in these cases, however, did not involve the application of a statute requiring  
10 that a license to operate be issued before a tax exemption can be granted. At  
11 issue today is a statute that contains *specific* criteria, including the issuance of a  
12 license to operate, with which an applicant must comply in order to obtain a tax  
13 exemption. As pointed out by counsel for the Tax Commissioner, the license  
14 requirement of R.C. 5701.13, by its very nature, precludes an application of the  
15 prospective use test.

1           “Statutes granting tax exemptions must be strictly applied. *Ohio*  
2 *Operating Engrs., supra*, 61 Ohio St.2d at 360, 15 O.O.3d at 441, 402 N.E.2d  
3 at 512. We applied the home-for-aged exemption in *Toledo Business &*  
4 *Professional Women’s Retirement Living, Inc. v. Bd. of Tax Appeals* (1971), 27  
5 Ohio St.2d 255, 56 O.O.2d 153, 272 N.E.2d 359. In that case we stated:

6           “\* \* \* By [the] adoption [of former analogous R.C. 5701.12 and  
7 5701.13], the General Assembly has marked for exemption from taxation “all  
8 property owned and used by a nonprofit organization exclusively for a home  
9 for the aged, as defined in” R.C. 5701.13, which established the criteria for a  
10 “home for the aged.”

11           “Necessarily, that power is lodged exclusively in the General Assembly,  
12 and once it has chosen a specific subject for tax exemption, and defined the  
13 criteria, the function of the executive and judicial branches is limited to  
14 applying those criteria to a particular case, or to interpreting them if necessary.

15 \* \* \*’ *Id.* at 258, 56 O.O.2d at 154, 272 N.E.2d at 361-362.





1 RESNICK, COOK and LUNDBERG STRATTON, JJ., concur.

2 MOYER, C.J., F.E. SEWENEY and PFEIFER, JJ., dissent.

1 *FOOTNOTES:*

2 <sup>1</sup> Title to the four other adjacent parcels had been acquired by appellant  
3 during the span of approximately two years between August 1984 and October  
4 1986.

5 <sup>2</sup> Appellant relies heavily on Ohio Adm.Code 3701-17-03 to suggest that  
6 the “premises” Altenheim had been licensed to operate in 1980 essentially  
7 included all property currently occupied by its new facility addition. Ohio  
8 Adm.Code 3701-17-03(D) through (F) provide that:

9 “(D) The license to operate a nursing home shall be issued by the  
10 Director in accordance with Chapter 3721. of the Revised Code, and shall  
11 remain in effect until revoked by the Director or voided at the request of the  
12 applicant; provided, the annual renewal fee is paid during the month of January  
13 of each year.

14 “(E) A license to operate a nursing home is not assignable or  
15 transferable and *is valid only for the operator and premises named in the*  
16 *application.*

1           “(F) An operator who operates one or more nursing homes in more than  
2 one building shall obtain a separate license for each building; provided,  
3 however, where such buildings are on the same lot and constitute a single  
4 nursing home, such nursing home may be operated under a single license.”  
5 (Emphasis added.)

6           Ohio Adm.Code 3701-17-03(E) clearly states that a license to operate a  
7 nursing home is valid only for the *premises* named in the application. The  
8 record in this case does not include appellant’s application for either the 1980  
9 or 1992 licenses. However, we note, in passing, that a plain and ordinary  
10 meaning of the word “premises” is “a specified piece or tract of land with the  
11 structures on it.” Webster’s Third New International Dictionary (1986) 1789.  
12 Common sense dictates that the description (if any) of appellant’s premises in  
13 the 1980 application for licensure could not have included a description of the  
14 facility addition that was constructed by appellant between 1990 and 1992.  
15 Moreover, and in any event, we note that some of the land that is the subject of

1 appellant's claimed exemption had not even been purchased by appellant until  
2 well after 1980.

3 <sup>3</sup> R.C. 5701.13(C) currently sets forth a statutory procedure for obtaining a  
4 prospective use exemption with respect to constructing, adding to, or  
5 modifying a nursing home, but no such procedure existed under the version of  
6 R.C. 5701.13 which applied in *Christian Benevolent Assn. of Greater*  
7 *Cincinnati, Inc. v. Limbach* (1994), 69 Ohio St.3d 296, 631 N.E.2d 1034, or the  
8 version of R.C. 5701.13 which applies in the case at bar.

9 FRANCIS E. SWEENEY, SR., J., dissenting. I respectfully dissent from the  
10 majority's conclusion that appellant is not entitled to a tax exemption for the  
11 nursing home addition in tax years 1991 and 1992. As I stated in my dissent in  
12 *Christian Benevolent Assn. of Greater Cincinnati, Inc. v. Limbach* (1994), 69  
13 Ohio St.3d 296, 300, 631 N.E.2d 1034, 1037, I believe the prospective use rule  
14 can be applied to a nursing home seeking a tax exemption where the taxpayer  
15 has taken steps to prepare the property for an exempt use. Although R.C.  
16 5701.13(A) requires a nursing home or home for the aged to obtain a license

1 upon completion of an addition to its facility, the statute's technical  
2 requirement of obtaining a license should not be interpreted to prohibit  
3 application of the prospective use rule. Even the General Assembly, which has  
4 now modified the statute to allow application of the prospective use rule, has  
5 recognized that this is the true intent of the statute. The rule should be applied  
6 with equal force here as applied to other types of charitable-use property. The  
7 key issue remains the same. In order to invoke the prospective use rule, the  
8 taxpayer must have taken substantial steps to prepare the property for tax-  
9 exempt use.

10 In this case, appellant received a certificate of need to expand its nursing  
11 home facility. Appellant has thereby demonstrated that the addition would be  
12 used in a tax-exempt manner as a nursing home. Consequently, I believe  
13 appellant was entitled to apply the prospective use rule and to obtain an  
14 exemption for the nursing home addition.

15 Accordingly, I would reverse the decision of the Board of Tax Appeals.

16 MOYER, C.J., and PFEIFER, J., concur in the foregoing dissenting opinion.