

OHIO BOARD OF TAX APPEALS

HEARTLAND EDUCATION COMMUNITY,)
INC., (et. al.),)
Appellant(s),)
vs.)
JOSEPH W. TESTA, TAX COMMISSIONER OF)
OHIO, (et. al.),)
Appellee(s).)

CASE NO(S). 2012-277

(EXEMPTION)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

- HEARTLAND EDUCATION COMMUNITY, INC.
Represented by:
STEVEN A. DIMENGO
BUCKINGHAM, DOOLITTLE & BURROUGHS,
LLC
3800 EMBASSY PARKWAY, SUITE 300
AKRON, OH 44333

For the Appellee(s)

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

Entered Wednesday, September 3, 2014

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

Appellant appeals a final determination of the Tax Commissioner wherein he denied its application for exemption from real property taxation for certain real property, i.e. parcel numbers 58-00623000 and 58-00624000, located in Wayne County, Ohio, for tax year 2007, and for remission of taxes and interest for tax year 2006. We proceed to consider the matter upon the notice of appeal, the statutory transcript certified by the commissioner pursuant to R.C. 5717.01, the record of the hearing before this board ("H.R."), and the parties' briefs.

The subject property is improved with a single building known as "Heartland Point," which the commissioner described in his final determination as "a community-connecting place in downtown Orrville, where citizens can find out what is happening in the community, become more involved, and engage in lifelong learning." Appellant applied for exemption of the property under R.C. 5709.12(B), which provides that "[r]eal *** property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation." In denying exemption thereunder, the commissioner found that appellant described no "charitable" use of the property; it merely showed that it allowed organizations and individuals to rent spaces in the property for a fee. Moreover, the commissioner found that the use of any

such rental proceeds did not entitle the property to exemption, as it is the use of the property itself, not any proceeds, that determines whether it is used "exclusively for charitable purposes." Appellant thereafter appealed to this board, arguing that the property is used for charitable purposes, specifically for community outreach and educational purposes. At this board's hearing, appellant presented testimony of those directly involved with the subject property about its uses.

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.

Because this matter involves the exemption of real property, we are also mindful that the rule in Ohio is that all real property is subject to taxation. R.C. 5709.01. Exemption from taxation is the exception to the rule. *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186. The burden of establishing that real property should be exempt is on the taxpayer. Exemption statutes must be strictly construed. *Am. Soc. for Metals v. Limbach* (1991), 59 Ohio St.3d 38; *Faith Fellowship Ministries, Inc. v. Limbach* (1987), 32 Ohio St.3d 432; *Willys-Overland Motors, Inc. v. Evatt* (1943), 141 Ohio St. 402. However, such construction must also be reasonable. *In re Estate of Morgan v. Bowers* (1962), 173 Ohio St. 89.

Appellant seeks exemption based on the property's exclusive charitable use. As the Supreme Court explained in *Cincinnati Community Kollel v. Testa*, 135 Ohio St.3d 219, 2013-Ohio-396, "[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." *Id.* at ¶23. We find appellant, a non profit corporation with the stated purpose of providing "lifelong learning opportunities" and encouraging "support of community schools, H.R. at 15, constitutes a charitable organization. As such, it must qualify for exemption pursuant to R.C. 5709.121, which states, in pertinent part:

"(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:

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

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

"(2) It is made available under the direction 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."

The Supreme Court has interpreted the phrase "used exclusively" to mean primary use. *True Christianity Evangelism v. Tracy* (2001), 91 Ohio St.3d 117. The court has also broadly defined "charitable" as "the attempt in good faith, spiritually, physically, intellectually, socially and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources, and without hope or expectation, if not with positive

abnegation, of gain or profit by the donor or by the instrumentality of the charity." *Planned Parenthood Assn. v. Tax Commr.* (1966), 5 Ohio St.2d 117, paragraph one of the syllabus.

Our review of the record reveals that the uses of the property are as follows: as a low-cost meeting space for for-profit entities or as a free meeting space for non-profit entities, as a gathering space for community members where local artwork is also displayed, as a location for educational classes, as a central information point for community events and volunteer opportunities, as a café, and as offices for the OrrViews free community newspaper.

In *Herb Society of America v. Tracy* (1994), 71 Ohio St.3d 374, the Supreme Court stated that "[t]he dissemination of useful information to benefit mankind is, traditionally, charity." *Id.* at 376 (citing *Planned Parenthood*, supra, at paragraph four of the syllabus; *Am. Humanist Assn., Inc. v. Bd. of Tax Appeals* (1963), 174 Ohio St. 545). The record demonstrates that most of the uses of the property, with the exception of the café, are used for such a charitable purpose. Although appellant does charge a fee, in some instances, for uses of the meeting spaces and for educational classes, it is clear that such fees are merely to recoup a portion of the costs associated with making the space available. See *Atwell v. Bd. of Park Commrs.* (1965), 2 Ohio St. 257; *Bd. of Edn. of South-Western City Schools v. Kinney* (1986), 24 Ohio St.3d 184. We find that the majority of the property is not used with a view to profit, and is used exclusively for charitable purposes.

We do not, however, find that the café meets the same standard. While appellant presented evidence that the current and former operators of the café have operated at a loss, it is and has been operated by for-profit entities. We therefore find that the café area is not used exclusively for charitable purposes under R.C. 5709.12(B). We further find that the café area does not qualify for exemption under R.C. 5709.121(A), as it is used with a view to profit, even if such profit has not yet been realized.

Appellant also argues that the property should be exempt under the "prospective use" doctrine for tax year 2006. Upon review of the record, we find sufficient evidence of appellant's active intent and plans to use the subject property as it is currently used. We therefore find that the property, with the exception of the café space, is entitled to exemption for tax year 2006. See *Episcopal School of Cincinnati v. Levin*, 117 Ohio St.3d 412, 2008-Ohio-939; *Holy Trinity Protestant Episcopal Church v. Bowers* (1961), 172 Ohio St. 103.

Accordingly, we reverse the determination of the Tax Commissioner, in part, finding that the subject property, with the exception of the area used as a café, is entitled to exemption for tax years 2006 and 2007.

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