

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS)	
BOARD OF EDUCATION, (et. al.),)	
)	
Appellant(s),)	CASE NO(S). 2018-649
)	
vs.)	
)	(EXEMPTION)
JEFFREY A. MCCLAIN, TAX)	
COMMISSIONER OF OHIO, (et.)	DECISION AND ORDER
al.),)	
)	
Appellee(s).)	

APPEARANCES:

For the Appellant(s)	- COLUMBUS CITY SCHOOLS BOARD OF EDUCATION Represented by: RICHELLE L. THOBURN FORD RICH & GILLIS LAW GROUP, LLC 6400 RIVERSIDE DRIVE, SUITE D DUBLIN, OH 43017
For the Appellee(s)	- JEFFREY A. MCCLAIN, TAX COMMISSIONER OF OHIO Represented by: DANIEL G. KIM ASSISTANT ATTORNEY GENERAL OFFICE OF OHIO ATTORNEY GENERAL 30 EAST BROAD STREET, 25TH FLOOR COLUMBUS, OH 43215 HAWTHORNE GROVE, LLC Represented by: HILARY J. HOUSTON VORYS, SATER, SEYMOUR AND PEASE, LLP 52 E. GAY STREET P.O. BOX 1008 COLUMBUS, OH 43216-1008

Entered Thursday, May 28, 2020

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education (“BOE”) appeals final determinations of the Tax Commissioner granting an application for exemption from real property taxation for parcel number 010-034539-00, located in Franklin County, Ohio. This matter is now considered upon the notice of appeal, the transcript certified by the Tax Commissioner, the record of the hearing

before this board regarding this property, the record of the hearing for BTA No. 2018-1184, which was incorporated into the record for this appeal, and the written argument of the parties.

The property is owned by Hawthorne Grove LLC, which is made up of the managing member, Hawthorne Grove, Inc., and investors who provided funding for construction and benefit from the project's tax credits. Community Housing Network ("CHN") is the majority shareholder of Hawthorne Grove, Inc., and manages the property. CHN is an agency connected to the Franklin County Alcohol, Drug, and Mental Health Board ("ADAMH") and is part of the ADAMH community continuum of care and Community Shelter Board. CHN provides housing for individuals with significant mental health issues, addiction disorders, and a history of homelessness. Samantha Shuler, CHN's CEO, testified that CHN is the residential part of the network that provides wraparound services for individuals that would otherwise end up in more restrictive institutions, homeless, or in prison.

The subject property is improved with a 40-unit residential facility that was constructed in 2014 through the use of low-income housing tax credits ("LIHTC"), and included funding directly from ADAMH. CHN developed the subject property to provide permanent supportive housing for individuals that have some disability that interrupts their daily living skills. The property receives a project-based subsidy for the 39 restricted units for that amount which the resident is unable to pay, while the last unit is set aside for a resident manager. Each resident is required to sign a lease and to pay rent, with the potential for eviction if they fail to pay or otherwise abide by the terms of the lease. With respect to services, CHN provides some services onsite, including planning and service coordination with other agencies working with ADAMH.

The findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach*, 42 Ohio St.3d 121 (1989). 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*, 38 Ohio St.2d 135 (1974); *Midwest Transfer Co. v. Porterfield*, 13 Ohio St.2d 138 (1968). 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*, 5 Ohio St.3d 213 (1983). Further, exemption from taxation remains the exception to the rule, and a statute granting an exemption must be strictly, rather than liberally, construed. See *Faith Fellowship Ministries, Inc. v. Limbach*, 32 Ohio St.3d 432 (1987); *Anderson/Maltbie Partnership v. Levin*, 127 Ohio St.3d 178, 2010-Ohio-4904. See also *Bethesda Healthcare Inc. v. Wilkins*, 101 Ohio St.3d 420, 2004-Ohio-1749.

R.C. 5709.12(B) provides that “[r]eal and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation.” Whether a property is entitled to an exemption under R.C. 5709.12 depends on the use of the property not on the nature of the institution. See *NBC-USA Hous., Inc.—Five v. Levin*, 125 Ohio St.3d 394, 2010-Ohio-1553, ¶17. In this case, there is no dispute that the subject property is used for residential purposes for those individuals who are served by ADAMH. CMH manages the property and receives rental payments from the tenants directly and through subsidies. The owner, Hawthorne Grove LLC, is a real estate holding company and does not directly provide any services to the individual tenants.




In *NBC-USA Housing*, the court held that the charitable-use exemption was unavailable for a government-subsidized apartment property for low-income handicapped and aged tenants. The court cited to a history of case law in support of the principle that “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 under Section 5709.12, Revised Code, 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 ¶¶6-7, quoting *Philada Home Fund v. Bd. of Tax Appeals*, 5 Ohio St.2d 135 (1966), syllabus. The court commented that the principle “reflects the consistent and longstanding doctrine that a *distinctly residential use* of real property defeats a claim of charitable exemption, even where attendant circumstances indicate the existence of charitable motives.” (Emphasis sic.) Id. at ¶9.

Hawthorne Grove argues that despite the residential component, this case is distinguishable from *NBC-USA Housing* because the subject property is not strictly residential because CHN provides additional wraparound services at the property. Hawthorne Grove further claims that the residential aspect of the property is distinct from the low-income housing in *NBC-USA Housing* because it is part of the “safety net” of services provided to residents that are disabled by residents with persistent mental illness, substance addiction, or have a dual diagnosis. We disagree. While the supportive housing provided may be part of a larger network of services provided to those individuals, the primary use of the subject property is as a private residence for the tenants living there. We also acknowledge Hawthorne Grove’s reliance on this board’s decision in *88/96 LP v. Wilkins* (July 20, 2007), BTA No. 2005-A-55, unreported. We find, however, that the court’s subsequent decisions have made clear that where a property is used primarily for a private residential purpose, it cannot qualify for exemption based on a charitable use, despite the circumstances of the residents.

Accordingly, based upon the foregoing, this board concludes that the BOE has established that the decision of the Tax Commissioner granting the requested exemption was in

error. Therefore, we hereby reverse the commissioner's final determination.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Harbarger		
Ms. Clements		
Mr. Caswell		

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.



Kathleen M. Crowley, Board Secretary