

OHIO BOARD OF TAX APPEALS

Eastern Star Baptist Church,) CASE NO. 2002-J-1264
)
Appellant,) (EXEMPTION)
)
vs.) DECISION AND ORDER
)
Thomas M. Zaino,)
Tax Commissioner of Ohio,)
)
Appellee.)

APPEARANCES:

For the Appellant - Rev. John W. Williams, Pastor
Easter Star Baptist Church
2102 Mulberry Street
Toledo, Ohio 43608

For the Appellee - Jim Petro
Attorney General of Ohio
Richard C. Farrin
Assistant Attorney General
30 East Broad Street
Columbus, Ohio 43215-3400

Entered March 7, 2003

Mr. Johnson, Ms. Jackson, and Ms. Margulies concur.

The Board of Tax Appeals is considering this matter pursuant to a notice of appeal filed by the Eastern Star Baptist Church. (“Appellant”) Appellant has appealed from a final determination of the Tax Commissioner that granted in part and denied in part appellant’s application for the exemption of real property from taxation. The notice of appeal and final determination are incorporated by reference. Although the appeal had been scheduled for hearing before this board, only counsel for the Tax Commissioner entered an appearance.

The matter has been submitted to the Board of Tax Appeals upon the notice of appeal and the statutory transcript certified by the Tax Commissioner.

The appellant is seeking exemption for church-owned property.

R.C. 5709.07 provides an exemption for:

“(2) Houses used exclusively for public worship, * * * and the ground attached to them that is not leased or otherwise used with a view to profit and that is necessary for their proper occupancy, use, and enjoyment;”

The exemption provided by this section is not of such houses as may be used for the support of worship, but of houses used as places of public worship and the land necessary for their proper occupancy, use, and enjoyment of the house of worship. *Watterson v. Halliday* (1907), 77 Ohio St. 150. In order to qualify for exemption pursuant to this section, the property must be used in a principal, primary, and essential way to facilitate the public worship. *Faith Fellowship Ministries, Inc. v. Limbach* (1987), 32 Ohio St.3d 432. Such use need not be exclusive. *Bishop v. Kinney* (1982), 2 Ohio St.3d 52.

The general rule regarding exemptions from taxation is that exemption is the exception to the rule, and statutes granting exemptions are to be strictly construed. *White Cross Hospital Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199. With this standard in mind the board will examine the use of the subject property.

In the notice of appeal the appellant has requested exemption for the portion of the parsonage, parcels 04-26641, 04-26644 and 04-2654, where the pastor counsels and studies, and uses it as a prayer area for himself, officers of the church and members of the congregation. Exemption has been denied to parsonages, since the parsonage is a place of private residence, even though the presence of the pastor may be essential to conduct the services of public worship. *Gerke v. Purcell* (1974), 25 Ohio St. 229. Although the appellant has alleged that the pastor counsels, studies and uses the portion of the parsonage in question as a prayer area and as an area where he counsels members of the congregation, the appellant has failed to submit any evidence showing that the primary use of the area is for worship and not for residential purposes.

The findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. It is incumbent upon a taxpayer challenging a decision of the Tax Commissioner to rebut that presumption and establish a right to the relief requested. *Hatchadorian v. Lindley* (1986), 21 Ohio St.3d 68. When no competent and probative evidence is developed and properly presented to this board to establish that the Tax Commissioner's determination is erroneous, said finding is presumed to be correct. *Alcan Aluminum Corp.*, supra; *Hatchadorian*, supra. In this instance, appellant has failed to satisfy its burden to show that the property at issue is primarily being used in furtherance of a charitable purpose or public purpose.

The appellant has also requested in the notice of appeal that the commissioner reconsider parcels 01-55474, 04-55477 and 04-55481, alleging that these parcels are already paved, drained and striped and are being used as a parking lot for the church. However, the allegations contained in the notice of appeal remain unproven. As the board held in *Lynde v. Tracy* (Dec. 19, 1994), BTA No. 1994-M-111, unreported:

“As this Board has noted in the past, unsworn statements, made through a notice of appeal do not rise to the level of evidence upon which this Board can rely in making a determination. *Executive Express, Inc. v. Tracy* (Nov. 5, 1993), BTA No. 1992-P-880, unreported.” Id. at 4.

Likewise, in *Cunagin v. Tracy* (Mar. 31, 1995), BTA No. 1994-P-1083, unreported, the board held:

“Appellant’s Notice of Appeal is not an adequate substitute for reliable documentary and testimonial evidence. The Notice of Appeal merely constitutes unsworn, unproven statements, claims and allegations. Evidence presented at a hearing is accepted only upon conditions designed to insure its reliability. Appellants must first be sworn on oath. Their sworn testimony is then scrutinized and subjected to cross-examination. Documentary evidence is also subjected to the scrutiny of the parties and their counsel.”

Absent probative, competent evidence properly submitted to this board overcoming the presumption of correctness that attaches to the commissioner’s determination, this board cannot reverse that determination. *Alcan Aluminum*

Corp., supra; *Hatchadorian*, supra. Therefore it is the decision of the Board of Tax Appeals that the final determination is affirmed.

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