

OHIO BOARD OF TAX APPEALS

Great Miami Valley YMCA,)
)
 Appellant,) (REAL PROPERTY TAX
) (EXEMPTION)
 vs.)
) DECISION AND ORDER
 Thomas M. Zaino,)
 Tax Commissioner of Ohio,)
)
 Appellee.)

APPEARANCES:

For the Appellant - Parrish, Fryman and Marcum Co., LPA
Lee H. Parrish
300 High Street, Suite 704
Hamilton, Ohio 45011

For the Appellee - Betty D. Montgomery
Attorney General of Ohio
Janyce C. Katz
Assistant Attorney General, Taxation Section
State Office Tower – 26th Floor
30 East Broad Street
Columbus, Ohio 43215

Entered March 7, 2003

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

This matter is before the Board of Tax Appeals upon a notice of appeal filed by Great Miami Valley YMCA (“YMCA”) on March 29, 2002. The YMCA appeals from two final determinations of the Tax Commissioner, in which the commissioner granted in part, and denied in part, the appellant’s application for exemption of real property from taxation for tax year 1999, and the remission of taxes, penalties, and interest for tax year 1998.

The Tax Commissioner's final determinations addressed three parcels of real property located in the Edgewood School District, Butler County, Ohio, consisting of 102.23 acres, and one parcel located in the New Miami Local School District, Butler County, Ohio, consisting of 27.130 acres.¹ On 40 acres, there is a dairy and pasture land. There are also 30 acres used for hay and other crops. The YMCA owns not only the land, but also the buildings located on the property, including the milking parlor, and the milking equipment. The cows are owned by a neighboring farmer.

The farmer pays no rent to the YMCA. He received no remuneration except that he retains the proceeds from the sale of the milk produced at the site and shares the hay production with the YMCA.

The subject property is part of the YMCA camp called Camp Campbell Gard. At this camp, the YMCA provides two types of programs: environmental education programs drawing approximately 6,000 attendees during the year, and a summer day camp with weekly themes drawing 1,000 attendees annually. Some of the YMCA's programs include a farm and dairy element, such as Milk Pails and Cow Tails. The farmer who owns the cows also participates in these programs.

In his determinations, the Tax Commissioner split-listed the property, finding that a large portion of the property was used exclusively for charitable purposes pursuant to R.C. 5709.12.² However, the commissioner also found that 70 acres, the 40

¹ Originally, the Tax Commissioner reviewed exemption for nine parcels, consisting of approximately 315 acres. The remainder is not at issue here. (See S.T. 13)

² It should be noted that the YMCA did not indicate a statutory basis for exemption in its application. (S.T. 59) However, the Tax Commissioner made his determination based upon R.C. 5709.12. (S.T. 4) Therefore, that is the statutory basis this board will address in its analysis.

acres used as a dairy and pasture land and the 30 acres used for farming, were not used exclusively for charitable purposes, and therefore, not entitled to exemption.

The YMCA contends that the Tax Commissioner erred in finding that only part of the property is entitled to be exempt from taxation pursuant to R.C. 5709.12. The YMCA claims that the entire property is used in its educational programs, and therefore, is entitled to exemption.

The matter is now submitted to the board on the appellant's notice of appeal, the statutory transcript, and record of the August 28, 2002 hearing before this board, and the briefs filed by the parties. At the hearing, both the YMCA and the Tax Commissioner appeared and were represented by counsel. The YMCA presented the testimony of Richard T. Taylor, Executive Director of the YMCA Camp Campbell Gard. The Tax Commissioner presented no evidence in addition to the statutory transcript other than cross-examination of the witness.

We begin our review by noting that the findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121, 123. Consequently, it is incumbent upon a taxpayer challenging a determination of the Tax Commissioner to rebut that presumption. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135, 143; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138, 142. Moreover, 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, 215. When no competent and/or probative evidence is developed and properly presented to the board to establish that the commissioner's

determination is “clearly unreasonable or unlawful,” the determination is presumed to be correct. *Alcan Aluminum* at 123.

Because the YMCA seeks to exempt real property from taxation, we also note the general rule that statutes granting exemptions from taxation must be strictly construed. *Natl. Tube Co. v. Glander* (1952), 157 Ohio St. 407, paragraph two of the syllabus; *White Cross Hosp. Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199, 201; *Am. Soc. for Metals v. Limbach* (1991), 59 Ohio St.3d 38. See, also *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186 (holding that “exemption from taxation is the exception to the rule and statutes granting exemptions are strictly construed”). Furthermore, the burden rests on the one claiming an exemption to demonstrate that the property qualifies. *OCLC Online Computer Library Ctr., Inc. v. Kinney* (1984), 71 Ohio St.3d 405, 406.

R.C. 5709.01(A) subjects all real property located in Ohio to taxation, except as expressly exempted therefrom. The General Assembly is empowered by the Ohio Constitution to pass laws to exempt certain types of property. Section 2, Article XII, Ohio Constitution reads:

“*** Land and improvements thereon shall be taxed by uniform rule according to value ***. Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the *** exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose,”

Under R.C. 5709.12(B), all real property owned by institutions used exclusively for charitable purposes is exempt from taxation:

“Lands, houses, and other buildings belonging to a county, township, or municipal corporation and used exclusively for the accommodation or support of the poor, or leased to the state or any political subdivision for public purposes shall be exempt from taxation. Real and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation. ***.”

Therefore, to grant an exemption under R.C. 5709.12, it must first be determined that (1) the property belongs to an institution, and (2) the property is being used exclusively for charitable purposes. *Highland Park Owners, Inc. v. Tracy* (1994), 71 Ohio St.3d 405, 406.

In the present matter, the subject property is owned by the YMCA, a nonprofit corporation. Since the Tax Commissioner granted, at least in part, the YMCA’s application for exemption of real property from taxation under R.C. 5709.12, he must have first made a determination that the YMCA was an institution under that statute. We agree.

As to the second prong of the test, the General Assembly has not defined what activities of an institution constitute charitable purposes. However, the Supreme Court of Ohio held in *Planned Parenthood Assn. of Columbus, Inc. v. Tax Commr.* (1966), 5 Ohio St.2d 117, paragraph one of the syllabus, that:

“in the absence of a legislative definition, ‘charity,’ in the legal sense, is 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.”

Furthermore, the phrase “used exclusively” has been interpreted by the court to mean primary use. *True Christian Evangelism v. Zaino* (2001), 91 Ohio St.3d 117, 118.

The burden is on the YMCA to prove by competent, probative, and reliable evidence that the subject property was used primarily for exempt purposes. However, the YMCA did not adequately prove to the board’s satisfaction that either the 40 acres used for dairy and pasture land or the 30 acres used for farming was an integral part of the YMCA’s camping facilities, which has already been found to be exempt as a charitable purpose by the Tax Commissioner. (S.T. 4)

With regard to the 40 acres used for the dairy, there was only a single activity brochure contained in the statutory transcript (S.T. 55) that referenced the YMCA’s dairy program, and it referred to a YMCA 1998 program and not 1999, the tax year in question. In addition, in his testimony Mr. Taylor did not quantify or qualify how much time this property was actually used by the camp. A dairy operates 365 days a year, but it is unclear from the existing record how much of this time was devoted to camp programs. Therefore, the board is unable to find that this property was used primarily for the YMCA’s exempt purpose.

With regard to the 30 acres used for farming, the YMCA called no witness who was familiar with the farming operation. The record is devoid of evidence as to how these acres were incorporated into the YMCA’s programs, what portion of them was used

in connection with these programs, and how often. In fact, when Mr. Taylor was asked whether the YMCA incorporated any part of the cultivation of crops into the YMCA's agricultural or dairy programs, he answered, "No." (R. 21) Mr. Taylor generally testified that the entire land was used for nature walks and horse riding trails (R. 22, 23, 24). Further, he specifically stated that the land used for hay production was simply used to support and feed the horses used in other YMCA programs. (R. 20) Questions linger as to what happened to the crops and the proceeds therefrom. Consequently, because the YMCA has not demonstrated by competent, probative evidence that the 30 acres used for hay and other crops are primarily used to further the YMCA's charitable purposes, we find that this portion of the subject property is also not entitled to exemption.

Based upon the existing record, it appears that the primary use of this property is for commercial farming, which is consistent with the YMCA's grant of CAUV status. Therefore, we find that the Tax Commissioner's actions were supported by a preponderance of the evidence and in accordance with law. Accordingly, the Board of Tax Appeals orders that the Tax Commissioner's final determination must be, and the same hereby is, affirmed.

ohiosearchkeybta