

**OHIO BOARD OF TAX APPEALS**

First Baptist Church of Milford, )  
 )  
Appellant, ) (REAL PROPERTY TAX EXEMPTION)  
 )  
vs. )  
 )  
J. Patrick McAndrew, )  
Tax Commissioner of Ohio, )  
 )  
Appellee. ) **Affirmed on Appeal Oct. 11, 2006**  
 ) **Ohio Supreme Court**

APPEARANCES: **110 Ohio St.3d 496, 2006-Ohio-4966**

For the Appellant - Flach Douglas and Co., LPA  
Flach Douglas  
114 Main Street  
Milford, Ohio 45150

For the Appellee - Jim Petro  
Attorney General of Ohio  
Janyce C. Katz  
Assistant Attorney General  
State Office Tower  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43266-0410

Entered: August 12, 2005

Ms. Margulies, Mr. Eberhart, and Mr. Dunlap concur.

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed herein on January 14, 2004. This appeal is from a determination of the Tax Commissioner, appellee, wherein said official considered an application for exemption from real property taxation filed by the appellant. Through his final determination, the commissioner denied exemption. The appellant has challenged the commissioner's denial.

The appellant, First Baptist Church of Milford (First Baptist), is an evangelical congregation of approximately 800 families, located in southwestern Ohio. The property under consideration is owned by First Baptist and made available to First Baptist Church Scripture Publishing Ministry, Inc. This organization, more commonly known and doing business as Bearing Precious Seed Ministry (BPS), operates a printing shop where religious materials are printed for distribution to the church itself and throughout the country and world. The major publications printed by BPS are New Testament Bibles, which are published in 42 to 44 languages, and portions of the New Testament, such as John and Romans, which are distributed generally free of charge. H.R. at 10. Churches are asked to pay for bibles ordered with special imprinting for a particular church. S.T. at 57-58. BPS also publishes religious school publications and religious literature written by Baptist clergy and some laypersons through JB Publishing, a division of BPS. BPS charges a fee based upon its costs for some types of publications. H.R. at 34, 39.

In order to pay for the publications of the New Testament in whole or in part (some four million scriptures were published during 2004), missionaries reach out to churches in this country, seeking “love offerings.” H.R. at 18. The monies collected from the “love offerings” may be donated specifically to print a particular section of the New Testament or to print the New Testament in a particular language, or may be donated without specific intent. When donated without specific intent, the funds are used to pay for the ink, paper, employees and miscellaneous costs incurred in the printing operation or may be used to support the missionaries’ work in seeking

donations for the printing operation. H.R. at 50. BPS offered few financial records to either the Tax Commissioner or this board to substantiate the use of the funds received or the expenses incurred. BPS did attempt to segregate monies collected for printing from donations received. That presentation indicated that income earned from printing equaled from 3 per cent to 12 per cent of all income received during the years 2000 through 2003. Appellant's Ex. A.

BPS challenges the Tax Commissioner's finding that the print shop should not be exempt from real property taxation. BPS also challenges the Tax Commissioner's finding that two apartments located within the print shop should not be exempt. The apartments have housed a number of occupants over the years. Sometimes the occupants are connected with the BPS ministry; at other times the occupants are connected with First Baptist. For example, during 1999 and 2000, one apartment housed an associate pastor of First Baptist. At the time of the hearing one apartment was inhabited by a BPS missionary. The other apartment was either inhabited by or being made available to students attending a college associated with First Baptist.

We begin by acknowledging the duties imposed upon the Board of Tax Appeals when reviewing a decision of the Tax Commissioner. The Tax Commissioner's findings are entitled to a presumption of correctness, and it is incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut the presumption and establish a right to the relief requested. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121; *Belgrade Gardens v. Kosydar* (1974), 38 Ohio

St. 2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the Tax Commissioner's determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213.

As to the law relating to exceptions from taxation, exemption from tax is an exception to the rule that all property is subject to taxation, and therefore a statute granting such an exemption must be strictly constructed. *National Tube Co. v. Glander* (1952), 157 Ohio St. 407; *White Cross Hospital Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199.

First Baptist has previously sought an exemption from taxation for an earlier year on the real property under consideration in this appeal. In *First Baptist Church of Milford v. Tracy* (May 28, 1999), BTA No. 1997-B-1122, unreported, this board affirmed the Tax Commissioner's denial of real property exemption for a parcel of land used as a printing shop and two residences. The property in issue in the earlier appeal is the same parcel of land that is in issue in the present appeal.<sup>1</sup>

In the earlier appeal, the board reviewed case law which has consistently held that printing operations do not qualify as an exempt activity under

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<sup>1</sup>It must be noted that after this board issued its decision, the matter was appealed to the Clermont County Court of Appeals, case number CA99-06-062 on the docket of that court. Subsequent to the filing of the appeal with the court of appeals, the parties discovered that the parcel reviewed by the Tax Commissioner and, in turn, this board, did not contain the improvements which were discussed in the Tax Commissioner's final determination and this board's decision and order. Upon application to this board, the matter was remanded to the Tax Commissioner by agreement of the parties. Apparently, the parties discovered that the Clermont County Auditor had erroneously listed the property contested in the earlier appeal on the county's tax exempt list. Therefore, First Baptist had not been charged real property tax upon the parcel it was then seeking to have exempted. On May 22, 2000, the Tax Commissioner ordered that the print shop property, parcel no. 18-24-03H-006, be restored to the tax list and duplicate for the tax year 2000. S.T. at 63. The application for real property tax exemption, which was the genesis of this appeal, was filed for tax year 2000; thus, in effect, it challenged the same property for which this board denied exemption for tax year 1995.

R.C. 5709.07. *Hubbard Press v. Limbach* (June 26, 1992), BTA No. 1987-E-730, reported, affirmed on other grounds, (1993), 67 Ohio St.3d 564. The board then concluded that it did not have jurisdiction to consider First Baptist's claim that exemption should be granted under R.C. 5709.12 and 5709.121, finding that First Baptist failed to raise these grounds for exemption before the Tax Commissioner and, under *CNG Dev. Corp. v. Limbach* (1992), 63 Ohio St.3d 28, this board's jurisdiction was limited to only the issues considered by the Tax Commissioner. Nevertheless, the board suggested, even if First Baptist had raised the claim of exemption under R.C. 5709.12 or 5709.121 before the Tax Commissioner, this board would have "summarily rejected" the claim:

"Appellant is primarily a religious organization. In order to avail itself of the exemption under R.C. sections 5709.12 and 5709.121, appellant should have to be primarily a charitable organization. *Summit United Methodist Church v. Kinney* (1982), 2 Ohio St.3d 72. See also, *First Baptist Church of Milford v. Limbach* (November 24, 1989), B.T.A. Case No. 87-C-1177, unreported." *First Baptist*, supra, at 13.

After this board's determination in *First Baptist*, the Ohio Supreme Court was offered another opportunity to consider the application of the real property tax exemption granted by R.C. 5709.12 to evangelical organizations. In *True Christianity Evangelism v. Tracy* (1999), 87 Ohio St. 3d 48, the court concluded that a not-for-profit corporation operated for an evangelistic purpose, i.e., to bring the gospel to the general public, is an institution for purposes of R.C. 5709.12. In *True Christianity Evangelism v. Zaino* (2001), 91 Ohio St.3d 117, the court concluded that the manner in which an institution uses its property is the determining factor when determining

exemption under R.C. 5709.12. Therefore, even though First Baptist is a religious organization, it is an institution, and if it uses its property “exclusively for charitable purposes,” the property may qualify for exemption from real property taxation under R.C. 5709.12.

*True Christianity* does not, however, overturn the precedent set by earlier case law in which property used in a similar manner to the printing operation maintained by First Baptist has been found not to qualify for exemption from real property taxation. In *Hubbard Press*, supra, the Supreme Court considered the propriety of a real property tax exemption for certain land owned by Hubbard Press, a division of the United Presbyterian Church, improved with a printing operation where donation envelopes were printed for distribution to churches and congregations. The court ultimately concluded that the property itself was not used exclusively for charitable purposes, and that any charitable activities were vicarious.

In *True Christianity*, supra, the court considered the definition of “charity” found in *Planned Parenthood Assn. Inc. v. Tax Commr.* (1966), 5 Ohio St.2d 177, to determine whether “evangelistic activities” constitute charitable purposes under the definition found therein. However, in the present matter, the evangelistic activities are performed by BPS and not First Baptist. First Baptist merely provides space for BPS to print religious material. Therefore, the printing and distribution of bibles is only a vicarious use to the owner of the property, found not to qualify for tax exemption in *Hubbard Press*.

First Baptist's use of the property is a more commercial use -- leasing the property, albeit free of charge. However, leasing is not a charitable activity. In fact, charitable or educational institutions or political subdivisions may receive exemption from real property taxation when property is leased only when the leased property is to be used as a community or area center for the arts, or for other charitable, educational, or public purposes. R.C. 5709.121(A).<sup>2</sup> If First Baptist had qualified as a charitable institution under R.C. 5709.121, it may have been permitted to lease its property for charitable or educational purposes and still receive an exemption from real property taxation. However, First Baptist concedes that it is not a charitable institution (Appellant's brief at 5); it, therefore, cannot avail itself of the broader exemption legislatively granted to charitable institutions under R.C. 5709.121.

The portions of the realty used as apartments are also not entitled to real property tax exemption. First Baptist relies upon *Cincinnati Nature Center v. Bd. of Tax Appeals* (1976) 48 Ohio St.2d 122. However, that case is neither factually nor legally apposite. In *Cincinnati Nature Center*, the residences granted exemption were inhabited by employees of a nature center who were required to be on call day and night. No similar testimony concerning the use of the apartments here in issue was presented. More importantly, the residences in *Cincinnati Nature Center* were granted exemption under R.C. 5709.121. As we have earlier found, First Baptist, a religious institution, cannot avail itself of the exemptions granted under R.C. 5709.121. Church residences are not generally considered an exclusive charitable

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<sup>2</sup> When R.C. 5709.121 was first enacted, it was interpreted by the Supreme Court to define the phrase "exclusively for charitable use."

purpose under R.C. 5709.12. *Episcopal Parish of Christ Church v. Kinney* (1979), 58 Ohio St. 2d 199. Therefore, we must find that no exemption exists for the apartments here in issue.

Considering the record, statutes, and case law, this Board of Tax Appeals finds the Tax Commissioner's final determination in accord with the applicable law. Accordingly, the final determination must be, and hereby is, affirmed.

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