

OHIO BOARD OF TAX APPEALS

Agape Hearts Ministry,)	CASE NO. 2004-V-1162
)	
Appellant,)	(REAL PROPERTY TAX EXEMPTION)
)	
vs.)	DECISION AND ORDER
)	
William W. Wilkins, Tax Commissioner)	
of Ohio,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	-	Agape Hearts Ministry Donna Mikusevich, Head Elder 1515 Stillwagon Road Warren, OH 44484
For the Appellee Tax Commissioner	-	Jim Petro Attorney General of Ohio Dwayne M. White Assistant Attorney General State Office Tower 30 East Broad Street, 16th Floor Columbus, Ohio 43266-0410

Entered September 30, 2005

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed on behalf of Agape Hearts Ministries, by Donna Mikusevich, Elder of Agape Hearts Ministries.¹ Agape Hearts Ministries appeals from the final determination of the Tax Commissioner, in which Ms. Mikusevich's application for exemption of real property from taxation for tax year 2003 and remission of taxes for 2002 was denied.

¹ Ms. Mikusevich has presented articles of incorporation for "The Office of Presiding Head Elder of Donna Mikusevich" filed in the Nevada Secretary of State's office. S.T. at 16. Ms. Mikusevich testified that Agape Hearts Ministry does not exist as a corporation; rather, she is the "corporation sole." H.R., audio tape.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript (“S.T.”) certified to the board by the Tax Commissioner, and testimony and evidence received at hearing (“H.R.”) before this board.

In reviewing appellant’s appeal, we first recognize the presumption that the findings of the Tax Commissioner are valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. It is therefore incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut that presumption and establish a right to the relief requested. *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.

The application for exemption filed before the Tax Commissioner seeks exemption over two different properties. The first property (“property one”) is located at 3119 Valacamp Road SE, Warren, Ohio and is further identified as parcels 28-216150, 28-216151, and 28-216152. Property one is improved with a single-family residence and titled in the name of Agape Hearts Ministries. H.R., audio tape, Ex.2. The second property (“property two”) is located at 1515 Stillwagon Road SE, Warren, Ohio and is further identified as parcel 28-215570. Property two is improved with a single-family residence titled in the name of Ms. Mikusevich. H.R., audio tape, Ex. 1. Agape seeks to have both properties exempt from taxation under R.C. 5709.07.

In his denial of the exemption application, the commissioner held that because both properties are used as residences, neither is exclusively used for public worship, and, therefore, they do not qualify for exemption under R.C. 5709.07.² S.T. at 4.

At hearing before this board, Ms. Mikusevich did not deny that both properties are used as residences. Property one is rented to a tenant that pays \$600 per month. H.R., audio tape. Property two is Ms. Mikusevich's home where she and her family live. Id.

Nevertheless, Ms. Mikusevich testified to the vow of poverty that her family has taken to support their spiritual ministry. Ms. Mikusevich testified at length as to the numerous examples of faith-based ministries conducted at her home (property two), which include: supporting the poor, housing the aged,³ a ministry for area youth, prayer, Bible studies, fellowship, and the like. Id.

In considering the application before us, we first note the general rule that “[a]ll real property in this state is subject to taxation, except only such as is expressly exempted therefrom.” R.C. 5709.01(A). As a result, “[i]n any consideration concerning the exemption from taxation of any property, the burden of proof shall be placed on the property owner to show that the property is entitled to exemption.” R.C. 5715.271. See, generally, *Akron Home Medical Services, Inc. v. Lindley* (1986), 25

² Ms. Mikusevich filed the underlying application on January 11, 2003. S.T. at 11. The Trumbull County Treasurer certified that all taxes, special assessments, penalties and interest had been paid in full including the tax year 2001, and further certified that the 2002 taxes and 2003 special assessments were unpaid on January 27, 2003. We find that the commissioner properly considered the application, given the first half taxes for 2002 were still being collected at the time the application was being considered. See, generally, *Cleveland Clinic Foundation v. Wilkins* (2004), 103 Ohio St.3d 382, 2004-Ohio-5468 (finding that the commissioner cannot consider an application for exemption when there are taxes due which have become a lien).

Ohio St.3d 107 (describing that exemption statutes are to be strictly construed.); *White Cross Hosp. Assn. v. Bd. of Tax Appeals* (1974) 38 Ohio St.2d 199; *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186.

R.C. 5709.07, the statutory basis for which Ms. Mikusevich seeks exemption, provides in part:

“(A) The following property shall be exempt from taxation:

“***

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

Accordingly, in order to determine whether the subject property qualifies for exemption under R.C. 5709.07, we first must consider whether any structures and attached ground were used exclusively for public worship, and were necessary for public worship.

In *Faith Fellowship Ministries, Inc. v. Limbach* (1987), 32 Ohio St.3d 432, the Ohio Supreme Court held:

“We can derive the definition of ‘public worship’ to be the open and free celebration or observance of the rites and ordinances of a religious organization.

“***

“The exemption is not of such houses as may be used for the support of public worship; but of houses used exclusively as places of public worship.” *Id.* at 435.

³ Ms. Mikusevich testified that her aunt and her mother and father in-law live at her home. H.R., audio tape.

We have previously held that a “primary use” test would be applied to determine whether or not property was “being used exclusively for public worship,” within the meaning of R.C. 5709.07, in *Allegheny West Conference Seventh-Day Adventists v. Limbach* (Aug. 21, 1992), BTA No. 1990-K-507, unreported. Further, in *True Christianity Evangelism v. Zaino* (2001), 91 Ohio St.3d 117, the Supreme Court held:

“The General Assembly has used the phrase ‘used exclusively’ as a limitation in both R.C. 5709.07 (houses used exclusively for public worship) and R.C. 5709.12 (property used exclusively for charitable purposes). In *Moraine Hts. Baptist Church v. Kinney* (1984), 12 Ohio St.3d 134, 135, ***, this Court held that for purposes of R.C. 5709.07, the phrase ‘used exclusively for public worship’ was equivalent to ‘primary use.’” Id. at 120.

Property one is a home rented to private individuals for \$600 a month. Although Ms. Mikusevich testified that the tenants are like-minded people who share her ministry, and that her family’s use of the rents is consistent with the ministry, we are unable to find that property one is used, much less primarily used, for public worship.

Similarly, property two’s primary use is that of the Mikusevich’s home. Although we recognize that Ms. Mikusevich and her family routinely use their home in various ways to promote their ministry, those activities do not amount to exclusive use for public worship as required by R.C. 5709.07.

The Supreme Court has long held that parsonages or other property used as a residence by church ministers or lay members do not qualify for exempt status

under R.C. 5709.07. The court's rationale was first stated in *Gerke v. Purcell* (1874), 25 Ohio St. 229, in paragraph ten of the syllabus:

“A parsonage, although built on ground which might otherwise be exempt as attached to the church edifice, does not come within the exemption. The ground in such a case is appropriated to a new and different use. Instead of being used exclusively for public worship, it becomes a place of private residence. The exemption is not of such houses as may be used for the support of public worship, but of houses used exclusively as places of public worship.”

Over the years, the court has reiterated the principle that church-provided homes, primarily used for residential purposes, are not tax exempt as houses of public worship even though many religious activities may also be conducted on the premises. See *Society of the Precious Blood v. Bd. of Tax Appeals* (1948), 149 Ohio St. 62; *New Haven Church of Missionary Baptist v. Bd. of Tax Appeals* (1967), 9 Ohio St.2d 53; *Episcopal Parish v. Kinney* (1979), 58 Ohio St.2d 199; *Moraine Hts. Baptist Church v. Kinney* (1984), 12 Ohio St.3d 134.

We previously held in similar cases that residences are not entitled to exemption under R.C. 5709.07. See, *Eastern Star Baptist Church v. Zaino* (Mar. 7, 2003), BTA No. 2002-J-1264, unreported, (a portion of the parsonage used as a prayer area and as an area where members of the congregation are counseled was not entitled to exemption); *Fulton v. Tracy* (Apr. 12, 1993), BTA No. 1991-Z-911, unreported, (holding that the appellant/evangelist's home was not entitled to an exemption although several religious activities were observed on the premises, the home was privately owned by appellant and primarily used as her personal residence); *First Baptist Church of Milford v. Tracy* (May 28, 1999), BTA No. 1997-B-1122,

unreported, (later vacated Feb. 25, 2000), (holding that the subject's use as a residence and for purposes of printing church-related newsletters did not constitute primary use as a place of worship); *South Norwood Church of Christ v. Zaino* (Jan. 12, 2001), BTA No. 2000-P-487, unreported, (holding that a building primarily used as a youth minister's private residence was not entitled to exemption, even though it was used for Bible and other youth classes).

Although we do not question the sincerity of Ms. Mikusevich or the personal efforts she and her family have made towards their ministry, we are unable to find that the use of either property meets the criterion for exemption under R.C. 5709.07.

It is the decision and order of the Board of Tax Appeals that the final determination of the Tax Commissioner be affirmed.

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