

OHIO BOARD OF TAX APPEALS

Girl Scouts—Great Trail Council,)
)
 Appellant,) (REAL PROPERTY TAX EXEMPTION)
)
 vs.)
)
 J. Patrick McAndrew,)
 Tax Commissioner of Ohio,) **Appeal Filed Feb. 6, 2006 Ohio Supreme Court**
)
 Appellee.)

APPEARANCES:

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Entered January 6, 2006

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

This matter is before the Board of Tax Appeals upon a notice of appeal filed by the Girl Scouts—Great Trail Council (“Great Trail”). Great Trail appeals from a final determination of the Tax Commissioner, in which the commissioner denied appellant’s application for exemption of real property from taxation for tax year 2002, and remission of taxes, penalties, and interest for 2001.

Great Trail contends that since the subject property was owned by an institution and used exclusively for charitable purposes pursuant to R.C. 5709.12, the Tax Commissioner erred in finding that the subject property was not entitled to exemption.

A merit hearing was held in the board's offices in Columbus, Ohio. Doreen M. Smith, a CPA, and Debra E. Koyle, the chief financial officer for Great Trail, testified as witnesses on behalf of the appellant. The Tax Commissioner was represented by counsel, but presented no additional witnesses or documentary evidence aside from cross-examination. This matter is submitted to the board on the appellant's notice of appeal, the statutory transcript ("S.T."), the record of the hearing before this board ("H.R."), including exhibits, and the briefs of counsel.

The following facts are undisputed. The Girl Scouts is a non-profit organization. Girl scouting provides informal educational programming for girls ages five to seventeen. The organization provides girls with experiences and educational opportunities about careers, about being a good citizen, and about the world.

The Great Trail property totals approximately three acres. The office building consists of approximately twelve thousand square feet. Great Trail operates a small store in a part of its office building. The store comprises a sixteen foot by sixteen foot area, or approximately three percent of Great Trail's real estate. While the majority of Great Trail's property has been granted exemption from real estate taxes, the store portion has not.

Only Girl Scout items are offered for sale in the store. There are basically two categories of merchandise. The first category consists of items reflecting a girl's membership in Girl Scouts, including uniforms, badges, patches, pins, handbooks, and other

Girl Scout resources. The second category consists of clothing with the Girl Scout logo, including polo shirts, tee shirts, and sweatshirts.

As to the first category of items, Great Trail is required to purchase these items directly from the National Equipment Service (“NES”). Great Trail must pay for these items and the shipping costs at the time of order. NES also sets the prices to be charged by Great Trail to the individual girl scouts, and Great Trail cannot deviate from those preset prices. Although not mandatory, these items are earned by the scouts by completing certain programs and tasks and make them feel a part of the organization. These items can only be purchased from a Girl Scout store because the individual scout must provide proof that the merit badge, patch, or pin was earned.¹ Category one items account for eighty-five to ninety percent of store sales. The mark-up for these items is twenty to twenty-five percent.

The second category of items basically promotes girl scouting. Great Trail purchases these goods from vendors licensed through the national Girl Scout organization. Great Trail establishes the sales prices for these goods. Sales prices are set based upon an item’s cost and shipping charge, with no consideration of the market or profit. The mark-up is generally twenty-five to thirty percent.

Great Trail does not advertise the store to the general public. The store provides an outlet to Girl Scout members to purchase items intrinsically and historically linked to Girl Scout membership. In fact, this is the only outlet for Girl Scout items in Stark

¹ Some items can be purchased from the national Girl Scout organization’s online store at the same price as available at Great Trail’s store.

County. Ms. Koyle testified that the store would not exist if not to provide these items for its members. H.R. at 40.

Prior to 2003, the store had not made a profit for eleven years. In 2003, the store made a profit of \$2,363. This was, in part, due to the fact that Great Trail had moved its headquarters and store into its new building.

The store employs a full-time shop supervisor and a part-time assistant. Both these employees receive employee benefits. In addition to salaries and benefits, other direct expenses include credit card fees, bank service charges, office supplies, postage, and shipping expenses.

Indirect expenses have been allocated to the store based upon a historical percentage of indirect costs. These include a percentage of the salary and benefits of Debra Koyle, Great Trail's chief financial officer, who is in charge of overseeing the operation of the store, and utilities, telephone, and depreciation.

We begin our review by observing 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.

The rule in Ohio is that all real property is subject to taxation. R.C. 5709.01. Exemption from taxation is the exception to the rule. *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186. The burden of establishing that real property should be exempt is on the taxpayer. This burden is a heavy one since exemption statutes must be strictly construed. *American Society for Metals v. Limbach* (1991), 59 Ohio St.3d 38, *Faith Fellowship Ministries, Inc. v. Limbach* (1987), 32 Ohio St.3d 432; *White Cross Hospital Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199; *Goldman v. Robert E. Bentley Post* (1952), 158 Ohio St. 205; *Natl. Tube Co. v. Glander* (1952), 157 Ohio St. 407; and *Willys-Overland Motors, Inc. v. Evatt* (1943), 141 Ohio St. 402.

Great Trail applied for exemption under R.C. 5709.12, which was granted for tax year 2002 under R.C. 5709.12 for all of its property except the Girl Scout shop. 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 addition, to qualify for exemption under the above statute, real property must not be used with a view to profit, *Am. Soc. for Metals v. Limbach* (1991), 59 Ohio St.3d 38, and cannot be in competition with commercial enterprises, *Lutheran Book Shop v. Bowers* (1955), 164 Ohio St. 359. See, also, *Seven Hills Schools v. Kinney*, supra; *Seven Hills Schools v. Tracy* (June 11, 1999), BTA No. 1997-M-1572, unreported; *Youngstown Area Jewish Fedn. v. Limbach* (June 30, 1992), BTA No. 1988-G-117, unreported; *Jewish Community Ctr. of Cleveland v. Limbach* (June 30, 1992), BTA No. 1988-A-124, unreported; and *Dayton Art Inst. v. Limbach* (June 19, 1992), BTA No. 1986-A-521, unreported.

In the present matter, the subject property is owned by Great Trail, a nonprofit corporation. Since the Tax Commissioner granted, at least in part, Great Trail's application for exemption of real property from taxation under R.C. 5709.12, he first made a determination that the appellant 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 Great Trails to prove by competent, probative, and reliable evidence that the subject property was used primarily for exempt purposes. The record demonstrates that Great Trail was selling only Girl Scout merchandise, some of which could not be obtained from any other licensed source. The goods that could be purchased from the national Girl Scouts online store sold for the exact same price. Therefore, Great Trail could not be deemed to be in competition with other commercial enterprises.

Further, a majority of the items sold, eighty-five to ninety percent, was category one items, such as uniforms, badges, patches, and pins. These items are an integral part of the Girl Scout program.

The record also establishes that these items were sold only as an accommodation to Great Trail’s scout members. Otherwise, the testimony shows, there would be no need for the store, and the store would not exist.

The sales prices were set to cover costs, which included the cost of the goods and the direct and indirect costs of operating the store. In fact, before 2003, the store had not made a profit for eleven years.

The Tax Commissioner denied Great Trail’s application for exemption based upon *Seven Hills Schools v. Kinney*, supra. The facts in that case, however, are distinguishable from the facts in the present matter. In *Seven Hills*, the store sold general merchandise. In the present appeal, Great Trail sold only Girl Scout merchandise. In *Seven*

Hills, the goal was to generate profits for scholarships. In the present matter, the goal was to provide these items to its members at a price set to cover costs. In *Seven Hills*, a profit was generated. In the case before us, a slight profit was generated in one out of twelve years of operation.

Based upon the existing record, we find that Great Trail is an institution using its property for charitable purposes and did not operate the store with a view to profit. Therefore, the subject property is entitled to exemption from real estate taxes.

Accordingly, it is the decision and order of the Board of Tax Appeals that the Tax Commissioner's final determination must be, and the same hereby is, reversed.

Ms. Margulies dissents.

I respectfully dissent from the majority opinion. Because I interpret statutory and case law to preclude the real property tax exemption of the retail, for-profit store at issue in this appeal, I would affirm the decision of the Tax Commissioner.

In assessing this case under the two-prong test for exemption under R.C. 5709.12, I agree with the majority that the Girl Scouts – Great Trail Council, appellant herein, is an “institution” as contemplated by the statute. However, I disagree that appellant meets the second prong of the exemption test, i.e., that the portion of the property at issue occupied by a retail store is being used exclusively for charitable purposes and not with a view to profit.

Exemption from taxation in Ohio is the exception to the rule. *Seven Hills School v. Kinney* (1986), 28 Ohio St.3d 186. The taxpayer requesting real property tax

exemption shoulders a heavy burden of proof, because tax exemption statutes must be strictly construed. *White Cross Hospital Assn. v. Bd. Of Tax Appeals* (1974), 38 Ohio St.2d 199.

The majority opinion correctly characterizes the second prong of the test for real property exemption under the law: “In addition, to qualify for exemption under the above statute [R.C. 5709.12], real property must not be used with a view to profit, *Am. Soc. For Metals v. Limbach* (1991), 59 Ohio St.3d 38, and cannot be in competition with commercial enterprises, *Lutheran Book Shop v. Bowers* (1955), 164 Ohio St. 359.”

However, in my opinion, the application of that test to the facts of this case leads to the conclusion that the subject property is not tax exempt. The evidence in this case demonstrates that the store in question does operate for profit. The record contains testimony that all items sold within the store are “marked up” between 20 and 30 percent. S.T. at 24, 38. The record also contains testimony that the Girl Scouts store operated in 2003 at a profit. S.T. at 18. The majority relies upon the fact that the store in question had not operated at a profit for a number of years prior to 2003; however, the testimony demonstrated that 2003 was the first full year that the store operated in its present location, and the relocation had resulted in an increase in business at the store. S.T. at 18.

The Ohio Supreme Court has examined a variety of cases in which it has determined that certain property was not exempt from taxation because it involved an operation for profit. See *Incorporated Trustees of Gospel Worker Society v. Evatt* (1942), 140 Ohio St. 185 (holding that under the Ohio Constitution and the applicable statute, property used to produce income to be used exclusively for charitable purposes is not exempt

from taxation); *Lutheran Book Shop v. Bowers* (1955), 164 Ohio St. 259 (holding that a small bookstore located in a church is not tax exempt because it operated at a profit); *Ohio Masonic Home v. Bd. Of Tax Appeals* (1977), 52 Ohio St.2d 127 (finding that land used for farming that generated an income to be used for the institutional care of the elderly is not tax exempt); *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186 (holding that a school's "clothing exchange" does not qualify for tax exemption because it operates at a profit); *Hubbard Press v. Tracy* (1993), 67 Ohio St.3d 564 (holding that the subject property used for the printing of envelopes to be used by churches and congregations is not tax exempt).

In the past this board has also determined that property used for profit by an institution did not qualify for tax exemption. See *Jewish Community Center v. Limbach* (June 30, 1992), BTA No. 1988-A-124, unreported, *Youngstown Area Jewish Federation v. Limbach* (June 30, 1992), BTA No. 1988-G-117, unreported (finding that a gift shop that produced a profit and was operated by a charitable institution is not tax exempt); *Humane Society Foundation of Hancock County v. Tracy* (Oct. 15, 1999), BTA No. 1998-J-884, unreported (holding that the use of a multi-purpose building by a charitable institution to conduct bingo sessions for profit defeats property tax exemption); *Thomaston Woods Limited Partnership v. Lawrence* (June 15, 2001), BTA No. 1999-L-551, unreported (finding that property that is leased by an institution for \$3000 a year to a Head Start program is not tax exempt).

It is clear from a review of the record and the applicable law that the store in question does not meet the second prong of the test established by the Ohio Supreme Court,

and thus the subject property should not be entitled to exemption from taxation.

Accordingly, I would affirm the final determination of the Tax Commissioner.

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