

Summary from Ohio Supreme Court Web Site

Does Girl Scout Store That Earned ‘Slight Profit’ Disqualify Part of Property From Tax Exemption?

Girl Scouts-Great Trail Council v. J. Patrick McAndrew [William W. Wilkins], Tax Commissioner of Ohio, Case no. 2006-0266
Ohio Board of Tax Appeals (Stark County)

ISSUE: Does the provision of Ohio law granting property tax exemption for property “used exclusively for charitable purposes” allow exemption for the portion of a property used by a girl scout council to operate a store that earns a “slight profit” by selling scouting-related materials at prices that are marked up from the price paid by the council for those materials.

BACKGROUND: In 2002, the Great Trail Girl Scout Council, a non-profit organization, built a 12,000-square-foot “service center” building on approximately three acres of donated land in North Canton. The council uses a small portion of that property, approximately 256 square feet or 3 percent, to operate a store that sells scout uniforms and other materials and supplies directly related to scouting.

The state tax commissioner granted exemption from property taxes for all of the council's land and building except the portion occupied by the store under R.C. 5709.12, a provision of state law that exempts property “used exclusively for charitable purposes.” In determining that the portion of the property occupied by the store was not eligible for exemption, the commissioner noted that the council marks up items sold at the store by roughly 20 to 30 percent from its cost of acquisition and realized a small profit from the store's operations. The commissioner cited prior court decisions holding that any property or portion of a property used “with a view to a profit” was not used exclusively for charitable purposes and therefore not entitled to tax exemption under R.C. 5709.12.

The council appealed the denial of tax exemption for the store area, and the State Board of Tax Appeals (BTA) reversed the commissioner's ruling. In a divided decision, the BTA majority noted that, although the store had turned a small profit of \$2,363 in its first year of operation at the new service center location, it had recorded net losses for the previous 11 years at the council's prior headquarters. Because the store was operated solely as a service to scouts, and its price mark-ups were intended only to recover operating costs, not with the intention of generating a profit, the majority held that the store was entitled to the same tax exemption applicable to the rest of the service center facility and land.

The office of the tax commissioner has exercised its right to appeal the BTA's ruling to the Supreme Court. Attorneys for the commissioner argue that the BTA majority in this case abandoned the clear standard set forth in earlier court decisions that, when non-profit organizations operate revenue-generating activities, the portion of their property devoted

to revenue-generating activity is not entitled to tax exemption because the use of that property is not “exclusively charitable.” By setting a new and uncertain standard that allows charitable-use exemption where there is a “small profit,” the state asserts, the BTA ruling could open the door for a flurry of new litigation by non-profit groups claiming exemption for their revenue producing properties based on the same ambiguous small-profit standard.

Attorneys for the girl scout council assert that the BTA applied the law correctly by recognizing that their store is not and never has been a profit-seeking commercial enterprise that offers goods to the general public, but is rather an integral part of the council's tax-exempt charitable mission to encourage and facilitate participation in scouting. They note that the “mark-ups” the store adds to its cost of acquiring scout uniforms and supplies are not discretionary, but rather are specified in their contractual agreement with the national girl scout organization that supplies those materials to local councils. In any case, they argue, the store's eligibility for tax exemption should be based on a long-term view of the charitable mission and intended use of the property, not on a single year's positive cash flow following 11 straight years of operating losses.

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