

IN THE SUPREME COURT OF OHIO

CHURCH OF GOD IN
NORTHERN OHIO, INC.,

Appellant,

vs.

WILLIAM W. WILKINS, TAX
COMMISSIONER OF OHIO

Appellee.

CASE NO.: 2008-2462

Appeal from the Ohio Board
of Tax Appeals

Board of Tax Appeals
Case No. 2007-R-102

REPLY BRIEF OF APPELLANT
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PRELIMINARY STATEMENT

The Commissioner improperly accuses the Church of God in Northern Ohio, Inc. ("COGNO") of attempting to "end run" around the General Assembly's will as expressed in R.C. 5709.07. Commissioner's Brief, 1, 26. The essence of the Commissioner's argument is that, since COGNO is a church, its only option was to apply as a "house of public worship" under R.C. 5709.07. But since the building is not used as a house of public worship, COGNO cannot qualify for exemption! This circular argument is illogical and inconsistent with the well settled precedent in this state.

The Commissioner's suggestion that COGNO is not using the property exclusively for charitable purposes is unwarranted by the facts in evidence. The requirement that the use be exclusively charitable "does not extend to unreasonable lengths, but merely requires that the real purpose of the use to which the property is put *should be in direct furtherance of the work carried out by the institution...*" *Elizabeth Gamble Deaconess Home Ass'n v. Schneider, Tax Commr.* (1965), 4 Ohio App.2d 267, 269 (emphasis added). The work carried out by COGNO is, plain and simple, the work of evangelism. Tr., p. 77, line 15 – p. 78, line 6; Supp. 043, 044. All the activities conducted on the subject premises are done in support of and in furtherance of this evangelistic purpose. The words, "charitable purposes," as used in Section 2 of Article XII of the Constitution and in Section 5353, General Code [now R.C. 5709.12], include, among other things, the lawful advancement of both education and religion. If operated without any view to profit, *an institution used exclusively for the lawful advancement of education or of religion or of both* is an institution used exclusively for charitable purposes, within the meaning of Section 2 of Article XII of the Constitution and of Section 5353, General Code [now R.C. 5709.12]. *Cleveland Bible College v. Bd. Of Tax Appeals* (1949), 151 Ohio St. 258 (emphasis added).

The Commissioner's arguments that it is only *member churches* that benefit from the use of the subject property and COGNO does nothing to serve the general public, Commissioner's Brief, 12-18, are inconsistent with the facts in evidence. There is ample evidence in the record that COGNO does much charitable work to "advance and benefit mankind in general", or to serve "those in need of advancement and benefit in particular." Moreover, all the cases cited by the Commissioner under this line of reasoning deal with institutions that *charge for their services*, such as fraternal organizations, social clubs and fitness centers. Since the record is clear that COGNO *does not charge for any of its services*, nor use its property to generate *any sort of income*, the Commissioner's reliance on this line of cases is misplaced.

This Court has long recognized that if operated without a view to profit, an institution using its real property exclusively *for the lawful advancement of religion* is an institution using its property exclusively for charitable purposes within the meaning of R.C. 5709.12. *Am. Comm't of Rabbinical College of Telshe, Inc. v. Bd of Tax Appeals* (1951), 156 Ohio St. 376, paragraph one of the syllabus (emphasis added). Moreover, real property owned by and used exclusively for the administrative offices of charitable institutions is exempt from taxation. *Girl Scouts-Great Trails Council v. Levin*, (2007), 118 Ohio St. 3d 25; *Community Health Professionals, Inc. v. Levin*, (2007), 113 Ohio St. 3d 432; and *Case W. Res. Univ. v. Tracy* (1999), 84 Ohio St.3d 316. The Appellant Church of God in Northern Ohio, Inc. (hereinafter "COGNO") falls squarely within this clear precedent. As such, it should be treated no differently than the other charitable institutions that have been granted exemption in this state.

The laws of Ohio do not provide for a double standard – one for *religious* institutions and another for *every other charitable* institution. In fact, *whether the institution is religious or charitable is not a relevant factor*. *True Christianity Evangelism v. Zaino* (2001), 91 Ohio St. 3d 117 at 118-19. There is no just or rational basis for this inconsistent double standard. The only

relevant factor for determining exemption under R.C. 5709.12 is whether the institution is using the property exclusively for charitable purposes, and without a view toward profit. *True Christianity, supra*.

In the case *sub judice*, the Board of Tax Appeals ignored the evidence before it as to how the property *is currently being used*, and reached its conclusion solely upon *speculation* as to how it *might be used*. As such, the BTA's decision was arbitrary, capricious, and patently unreasonable. Since there is simply no evidence to support the BTA's findings, its decision was unreasonable and unlawful and against the manifest weight of the evidence. This Court must therefore reverse and vacate the decision of the BTA and find that the COGNO administrative offices are properly exempt from taxation under R.C. 5709.12.

ARGUMENT

A. The Commissioner's reliance on R.C. 5709.07 is misplaced.

There is simply no merit to the Commissioner's accusation that COGNO is attempting to "end run" around R.C. 5709.07. Commissioner's Brief, 1, 26. The essence of the Commissioner's argument is that, since COGNO is a church, its only option was to apply as a "house of public worship" under R.C. 5709.07. But since the building is not used as a house of public worship, COGNO cannot qualify for exemption! This circular argument is illogical and inconsistent with the well settled precedent in this state.

Ohio courts have long held that it is the *use* of the property, not the nature of the property owner, that determines whether a property is entitled to exemption. *Gerke v. Purcell* (1874), 25 Ohio St. 229. The exemption of real property does not depend on the ownership of the property. "The use that such property subserves, constitute the grounds for its exemption." *Faith Fellowship Ministries, Inc. v. Limbach*, (1987), 32 Ohio St. 3d 432, 434; quoting from *Gerke, supra*. Therefore, since COGNO's building was not *used* as a house of public worship, it

appropriately sought exemption pursuant to R.C. 5709.12(B) *not* R.C. 5709.07. See Statutory Transcript, p. 4. The basis of COGNO's application for exemption was the provision set forth specifically in Ohio Revised Code 5709.12(B), which provides that "*real and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation.*"

The Commissioner continues to erroneously rely on the case of *Christian Church of Ohio v. Limbach* (1990), 53 Ohio St.3d 270, as controlling the present cause. This reliance is misplaced, as that case dealt exclusively with the application of R.C. 5709.07, not 5709.12. As the court noted in Footnote #1, "Although appellee contended before the BTA that it was entitled to exemption under R.C. 5709.12, no cross-appeal has been filed and that issue is not presented in this appeal. Accordingly, we lack jurisdiction to decide that issue." *Id.* at 271. The Court's decision was *expressly limited* to the applicability of R.C. 5709.07. Thus, the Commissioner's reliance on this case and the holdings of *Moraine Hts. Baptist Church v. Kinney* (1984) 12 Ohio St. 3d 134, and *Faith Fellowship Ministries, Inc. v. Limbach, supra*, is misplaced, as all these cases dealt exclusively with the application of R.C. 5709.07, not 5709.12.

The *Moraine Hts.* case involved a 49 acre church camp that sought exemption solely as a house of public worship under R.C. 5709.07. This Court exempted the camp chapel but denied exemption for the swimming pool, basketball and shuffleboard courts, and the remainder of the unimproved property. In doing so, this Court held that "unlike the exemption under R.C. 5709.12, * * * the exemption contained under R.C. 5709.07 * * * is *more restrictive*, exempting only "houses used exclusively for public worship * * * and the ground attached to such buildings necessary for the proper occupancy, use and enjoyment thereof * * *" (emphasis added). The use of this property as a church camp is clearly distinguishable from the use of the COGNO property. Moreover, as in *Christian Church of Ohio, supra*, the camp did not properly raise R.C.

5709.12 on appeal, so the court lacked jurisdiction to determine the applicability of this section of the Code.

While the *Faith Fellowship Ministries, Inc.* case, *supra*, also dealt exclusively with the application of R.C. 5709.07, its holding is nevertheless instructive to the instant cause. The applicant was the owner of a church complex that included seven buildings. It applied for exemption solely as a house of public worship under R.C. 5709.07. Building A included a sanctuary, *classrooms, church offices, and a counseling room*, which were exempted by the Tax Commissioner, but the remaining 6 buildings were denied exemption. On appeal, the BTA exempted Building B, which included more *classrooms, nurseries, restrooms, a storage room*, a chapel and quarters for guest speakers. On appeal, the Supreme Court affirmed the exemption of Buildings A & B, but reversed the denial of the "boiler building" and portions of Building C that included another chapel that was used for seasonal worship services, as well as the *pastor's offices and secretarial office*. The remaining buildings that were denied exemption included a cafeteria, sleeping rooms for retreats, a garage, a storage building, and a vacant residential building.

While this case was decided exclusively under R.C. 5709.07, it is noteworthy that the *use* of the rooms that were ultimately granted exemption are nearly identical to *use* of the rooms COGNO seeks to exempt under R.C. 5709.12. Moreover, the COGNO property does not include any rooms used for non-exempt purposes such as a cafeteria, sleeping rooms for retreats, a garage, storage buildings, or a residential building. Since an application for exemption under R.C. 5709.07 is "more restrictive" than an application under R.C. 5709.12, the cases interpreting R.C. 5709.07 are not applicable to the case at hand. *Moraine Hts., supra* at 137.

On the one hand, the Commissioner argues that this Court lacks jurisdiction to apply case law interpreting R.C. 5709.12 since COGNO only applied under R.C. 5709.12.

Commissioner's Brief, p. 20-23.¹ On the other hand, it insists on arguing case law interpreting R.C. 5709.07, a statute which is not properly before this Court on appeal. The Commissioner cannot have it both ways – If this Court lacks jurisdiction to hear arguments in favor of COGNO's application applying R.C. 5709.121; it must necessarily also lack jurisdiction the hear arguments against COGNO's application applying R.C. 5709.07.

B. The Commissioner's assertion that COGNO's property is not used to benefit "mankind in general" or "those in need of advancement and benefit in particular" is unfounded.

The Commissioner's arguments that it is only *member churches* that benefit from the use of the subject property and COGNO does nothing to serve the general public, Commissioner's Brief, 12-18, are inconsistent with the facts in evidence. The Commissioner falsely asserts that "it is manifest from the record that COGNO's property is used to benefit its members, and not "mankind in general" or "those in need of advancement and benefit in particular". Commissioner's Brief, 16.

On the contrary, there is ample evidence in the record that COGNO does much charitable work to "advance and benefit mankind in general", or to serve "those in need of advancement and benefit in particular."

COGNO is the regional governing body of the International Office of the Church of God in Cleveland, Tennessee. This Pentecostal Christian denomination has seven million members worldwide, one million in the United States and Canada. The denomination has 50,000 churches, missions and preaching stations in 168 countries. It operates 104 degree schools and institutions and supports over 68 orphanages worldwide. Tr. p. 17; Supp. 028; BTA Hearing Exhibit A-1. COGNO operates in conjunction with the approval, oversight and connectivity with

¹ COGNO disputes the Commissioner's position on this point; see COGNO Brief, Proposition of Law No. IV, p. 21-25.

the International Office. Tr. p 19, lines 6-8; Supp. 029. The COGNO bishop is "responsible for the spiritual well being, the growth, the oversight of all the ministries in Northern Ohio." Tr. p 22, lines 1-4; Supp. 030. He is directly responsible for 126 churches, seven missions, over 29,000 members, and over 400 credentialed ministers. Tr. p 18, lines 10-19; Supp. 029; BTA Hearing Exhibit B-1.

Bishop Childers summarized the charitable purpose or "mission" of COGNO as "we want to reach as many people as we can with the gospel and the message." Tr. p. 25, lines 18-19; Supp. 030. In other words, its stated purpose is an evangelistic one, to reach out and share with "as many people as we can" (i.e., the general public) the spiritual message of salvation in Jesus Christ. Later in the hearing, Bishop Childers testified, "Again, we are evangelism. We are ministry. And we have a passion about it. * * * We exist to serve the local church and our constituents. We want – we want ministry. We want evangelism. We want to be a positive presence in the community. And everything that – square inch we talked about in here and looked at again, we use that for resources to provide the materials for worship, for training, for care, for evangelism, for outreach, for benevolence. And in Fairlawn, where we are located and throughout our ministries in Northern Ohio, that is the reason we exist." Tr., p. 77, line 11 – p. 78, line 6; Supp. 043-044. This is clearly "a good-faith attempt to disseminate information to spiritually advance and benefit mankind in general", and "under the definition of charity followed by this court, applicant's activities constitute charitable purposes." *True Christianity, supra* at 120.

The seven core values that COGNO promotes through its charitable and evangelistic activities are Prayer, Pentecostal Worship, World Evangelization, Church Planting, Leadership Development, Care and Interdependence. Tr. p. 26, lines 2-8; Supp. 031; BTA Hearing Exhibit D-1. None of these are profit making motives or values. Rather, all of the activities conducted

on the premises are *a good faith attempt to disseminate information to spiritually advance and benefit mankind in general*. When the primary purpose of the property is "an evangelistic one" and "for the preparation and dissemination of a religious message", the property is exempt from taxation under R.C. 5709.12. *Id.* at 119.

COGNO is actively involved in promoting world evangelism. It fosters an outreach mentality among its pastors and churches. It encourages its local constituents to be a part of the global aspect, to be involved in world evangelism. It promotes youth missions to the 68 orphanages the International Office operates worldwide. "We are always trying to do strategic alliance of our local church with our world evangelization mission projects that we have." Tr., p. 27, line 21 through p. 28, line 16; Supp. 031.

COGNO operates 7 mission churches in northern Ohio. It considers church planting to be its "life blood". "[W]e continually are preparing and projecting where we want to plant churches in communities that will make an impact and a difference." Tr., p. 28, line 17 -- p. 29, line 2; Supp 031. To fulfill its evangelistic purpose and mission, it devotes much of its time and resources to leadership development and training of its pastors, ministry leaders, youth ministers, and student leaders. "[W]e have an ongoing base * * * that provides leadership on an ongoing basis as far as providing resources, and we love to give away as many resources as we can." Tr., p. 29, lines 3-24; Supp. 031. Also see BTA Hearing Exhibits G1-11; 16, 17. COGNO does not charge anything for its many leadership development courses or materials. Tr. p. 56-57; Supp. 028; Tr., p. 75 line 17 – p. 76, line 10; Supp. 043.

In the areas of Care and Interdependence, COGNO actively participates in a number of outreach programs directed to serve widows, the homeless, the needy, orphans and the poor. Included in these programs is the "Backpack to School" program, where 10,000 to 12,000 needy school children at 18 different sites across northern Ohio receive free backpacks stuffed with free

school supplies each summer. Tr., p. 48, line 12 – p. 52 line 6; Supp. 036 – 037. Another program is "The Great Toy Caper of Christmas", a program that provides toys for needy children at Christmastime. Tr., p. 106, lines 1-14, Supp. 051. When asked why COGNO would put so much time, effort and resources into projects like these, Bishop Childers responded: "You have to. Pure religion. The [bible], new [testament] and all through there it clearly states concerning the widows, the homeless, the needy, the orphans, the poor. It is just a passion. We believe that you are not going to be able to get your message to somebody unless you show them how much you care." Tr., p. 51, line 17 – p.52, line 2; Supp. 037; Appellant's Errata Sheet, attached hereto at Appendix p. App. 1.

While many of its adult leadership development programs are understandably conducted for those working toward a credentialed ministry degree or certificate within the Church of God, others, such as the Creative Leadership Training program, are open to others outside of the denomination. Tr., p. 98, lines 2-19; Supp. 049; BTA Hearing Exhibit G-7. Moreover, all of its community outreach programs such as "Backpack to School" and "The Great Toy Caper of Christmas", as well as summer camps, and multiple youth ministry programs, are open to the general public. Tr., p. 107, line 2 – p. 108, line 21, Supp. 051; Tr., p. 93, lines 7-14; Supp. 047. And unlike a traditional house of worship that may be used two to five hours a week, COGNO uses its building "five or six days a week * * * eight to 12 hours on a daily basis for worship, for training, for benevolence, evangelism, care * * *." Tr., p. 78, line 7 – p. 79, line 3; Supp. 044; BTA Hearing Exhibit I.

Thus, contrary to the Commissioner's false assertions, the record is full of reliable and probative support for the conclusion that COGNO uses its property primarily and exclusively for the preparation and dissemination of a religious message, and as such, fulfills the charitable

purpose of "advancing and benefiting mankind in general" and "serving those in need of advancement and benefit in particular." *True Christianity, supra* at 119.

C. The Commissioner's assertion that COGNO does not use its property for the primary purpose of disseminating a spiritual message is not supported by the record.

The Commissioner makes the unsupported argument that "COGNO is neither a college dedicated to advancing its spiritual message nor is COGNO using its property primarily for preparation or dissemination of a spiritual message." Commissioner's Brief, p. 18. Rather than looking to the record detailed in subsection B. above, the Commissioner takes one sentence from COGNO's brief out of context to conclude that COGNO uses its property as "purely an administrative office building* * *." Commissioner's Brief, 2, 16, 24. The complete sentence is "The building is purely an administrative office building used by regional church officials to oversee and assist its member congregations in carrying out their charitable purposes", and *is preceded by 8 sentences* detailing from the record how none of the property is used with a view toward profit. COGNO Brief, 4. Thus, read in context of the entire paragraph, the building is used "purely" in furtherance of the charitable purposes of COGNO *as opposed to* being used with a view toward profit. With this understanding, the Commissioner's lame attempt at distinguishing the facts of this case from those in *True Christianity, supra*, fails miserably.

D. The Commissioner's contention that COGNO is seeking a "vicarious exemption" through the activities of its member churches is unwarranted.

The Commissioner makes the clever but unpersuasive argument that COGNO cannot claim a "vicarious exemption" by virtue of the fact that its member churches are engaged in charitable activities. Commissioner's Brief, p. 13-14. He cites *Hubbard Press v. Tracey* (1993) 67 Ohio St. 3d. 564 and *OCLC Online Computer Library Center, Inc. v. Kinney* (1984) 11 Ohio St. 3d 198 as his authority for this argument. Unfortunately for the Commissioner, these cases are readily distinguishable.

The *Hubbard Press* case dealt with a commercial print shop that produced collection envelopes, for a fee, to be used by various churches and congregations. It sought exemption under R.C. 5709.12 and 5709.121, on the basis that its product was "used by churches and congregations in connection with their efforts to raise money for themselves and their benevolence, charitable, missionary and religious activities". *Id.* at 564. In denying the application for exemption, the Court held that "there was no showing that [the printing of offering envelopes] were themselves charitable." *Id.* at 566. COGNO is clearly distinguishable in that it sells no product that is used by its member churches. Moreover, it is not seeking a "vicarious exemption" from the charitable work done by its member churches. Rather, the Administrators and employees at the COGNO building are actively and directly involved in *the preparation and dissemination of a religious message*. These are charitable activities in and of themselves. *True Christianity, supra*. They are not about producing a product for sale at a fee.

The *OCLC Online Computer Library Center, Inc.* case is similarly distinguishable. OCLC was a non-profit corporation that created a vast data storage base that it shared with 184 academic and public libraries in Ohio and over 2600 libraries throughout North America. Member libraries were charged a membership fee to access its database on line. In addition, OCLC engaged in private research, for a fee, for various for-profit companies. It applied for exemption under both R.C. 5709.07 and 5709.12, arguing that "because it serves libraries, which in turn benefit the general public through the dissemination of knowledge for the edification and improvement of mankind, it qualifies as * * * a charitable institution." In rejecting this reasoning, this Court held that "this argument * * * simply constitutes an attempt by OCLC to obtain a vicarious charitable exemption by virtue of the activities of its customers." *Supra* at 200. As with the *Hubbard Press* case, COGNO is not about selling information to anyone.

COGNO has no "customers". The record is clear that all of the religious information and materials distributed by COGNO are distributed free of charge.

E. The Commissioner's attempt to characterize COGNO as a fraternal organization is misplaced.

The Commissioner continues his efforts to try to characterize COGNO as a fraternal organization or social club whose sole purpose is to benefit its members. His reliance on the *Socialer Turnverein, Olmstead Falls, Bethesda Healthcare, Inc, and Ohio Nurses Association, Inc. cases* is misplaced, as the use of the properties at issue in this line of cases is clearly distinguishable from COGNO's use of its property.

In the *Socialer Turnverein v. Bd. Of Tax Appeals (1942), 139 Ohio St. 622* case, the property in question belonged to a fraternal organization and was "equipped with kitchen facilities, rathskeller, dining room, locker rooms, auditorium, small meeting rooms, pool and billiard room, bowling alleys, and a large gymnasium." The society was a corporation not for profit and its stated purpose was the "physical, mental and moral advancement of its members." Its membership consisted of approximately one thousand men who paid dues of \$12 per year for the privileges of the society. It was denied exemption on the grounds that it was neither a "public institution of learning" nor an "institution used exclusively for charitable purposes." *Id.* at 623.

In *Olmsted Falls Bd. of Ed. v. Tracy (1997), 77 Ohio St. 3d 393*, the applicant owned and operated property which was comprised of "a small lake, several soccer fields, tennis courts, a picnic area, playground, several service buildings, and a building that [the applicant] calls the Cultural Center. The Cultural Center contained a bar and lounge, an outside patio or beer garden, an assembly room with stage, several other meeting rooms, a dance floor, a kitchen, offices, board room, restrooms, a bowling alley, maintenance rooms, and an indoor soccer field with locker rooms."

In *Bethesda Healthcare, Inc. v. Wilkins*, (2004) 101 Ohio St. 3d 420, the applicant was a Fitness Center that advertised itself as "Cincinnati's premier fitness center". *Id.* at 421. The property in question consisted of multiple state-of-the-art exercise facilities, including two indoor tracks; a free-weight area; machine weights; a group exercise area; a warm-water therapy pool; a six-lane lap pool; changing rooms; whirlpools; steam and sauna rooms; a sports arena; a nursery; a children's activity center; a children's gym; an exercise studio; a conference room that seats 120 people; a teaching kitchen; a café; a day spa that offers massages, facials, manicures, and pedicures; and a clothing shop. Outdoors, there was another track, another swimming pool, a sand volleyball court, a basketball court and a concession stand. *Id.* at 421-422. The Fitness Center charged members a one-time initiation fee of \$240, with a monthly fee of \$64. *Id.* at 422. Of 5,400 paying members, only 8 full scholarships were given to persons who could not otherwise afford the membership fees. In denying exemption, the Supreme Court held that "[w]hether an institution renders sufficient services to persons who are unable to afford them to be considered as making charitable use of property must be determined on the totality of the circumstances; there is no absolute percentage. Here, the small number of members able to use the Fitness Center *without payment of membership dues* does not indicate a charitable use under the fact of this case." *Id.* at 426.

While the applicant in *Ohio Nurses Association, Inc. v. Levin* (2008), 2008 Ohio Tax LEXIS 2154; Commissioner's Brief, Appx. 7. did not have the expansive social and recreational facilities as those noted above, it did consist of 8000 *dues paying members* who directly benefitted from the programs and materials offered by the Association. *Id.* at 2, 14. The membership also directly benefited from the association through its representation in the collective bargaining process. *Id.* at 4.

The administrative activities conducted by COGNO are entirely different from those social, fraternal or professional association activities which served as the predicate for denial in *Socialer Turnverein, Olmstead Falls, Bethesda Healthcare, Inc, or Ohio Nurses Association, Inc. cases*. COGNO is not a "country club" environment where members can come to fish; swim; bowl; play tennis or soccer; attend dinners, dances or balls; or socialize with friends over a drink at the bar and lounge or in the "beer garden".² Nor is it a fitness center where members can exercise, swim, play a multitude of sports, or receive massages, facials, manicures and pedicures. Moreover, all these cases deal with institutions that *charge membership fees for those using the property*. Since the record is clear that COGNO *does not charge for any of its materials or services*, nor use its property to generate *any sort of income*, the Commissioners reliance on this line of cases is clearly misplaced.

On the contrary, the COGNO building and grounds is used primarily as a ministry training center which serves the public, *in general* by its dedication to reaching as many people as possible with the gospel message, and *in particular* by its many outreach activities that it promotes and supports, such as world missions, summer camps, ministries for women, children and youth, the "Teen Challenge" program, the "Backpack to School" program, and the "Great Toy Caper of Christmas" program. All these are evangelistic activities that serve to spread a religious message. As such, these activities are purely and unequivocally charitable purposes. They are *a good faith attempt to disseminate information to spiritually advance and benefit mankind in general*. When the primary purpose of the property is "an evangelistic one" and "for the preparation and dissemination of a religious message", the property is exempt from taxation under R.C. 5709.12. *True Christianity, supra* at 119.

² As noted in its Merit Brief, the Court determined that the applicant in *Olmsted Falls* was not even a "charitable institution". In the case at bar, the Tax Commissioner has already conceded that COGNO is a charitable institution within the meaning of Revised Code §5709.12(B). COGNO Merit Brief, p. 29-30.

Certainly, the Girl Scout administrative offices provide services *primarily to those persons who are members of the Girl Scouts*. Yet since the purpose of the Girl Scouts is charitable, *and since they do not charge for any of their services*, the benefit of the services provided to its members naturally flows out to the general public *by and through the activities of its members*. This is precisely analogous to how the services provided to COGNO members benefit the general public.

F. The Commissioner's assertion that granting COGNO's application for exemption under R.C. 5709.12 would render R.C. 5709.07 meaningless is without merit.

The Commissioner's final proposition that granting COGNO's application for exemption under R.C. 5709.12 would "*render meaningless the General Assembly's enactment of the more specific statutory exemption applicable to property used for "public worship" purposes set forth in R.C. 5709.07*", Commissioner's Brief, 25-28, is simply nonsense. If a building is used for public worship, whether it be as a church, synagogue, mosque or temple, it falls within the specific confines of R.C. 5709.07. If, on the other hand, it is used by an institution exclusively for charitable purposes and without a view toward profit, it would qualify for exemption under R.C. 5709.12 or 5709.121. If there is some portion of the property that is used with a view toward profit, the property could appropriately be split-listed pursuant to R.C. 5713.04. *Faith Fellowship Ministries, Inc., supra*, at par. 3 of the syllabus. The Commissioner is quite capable of differentiating between *a house of public worship* and *a building used exclusively for charitable purposes* without a view toward profit.

Moreover, the Commissioner's fear that granting COGNO exemption would "drastically expand Ohio real property exemption law" is unwarranted. Commissioner's Brief, p. 5. Any institution that seeks exemption under R.C. 5709.12, whether religious or secular, must still prove that the subject property is 1.) owned by the institution, 2.) used exclusively in furtherance

of its charitable purposes, and 3.) operated without a view toward profit. Many church owned buildings across the state are already split-listed because some portions are either not used exclusively in furtherance of their charitable purposes, or are used with a view toward profit.³ Other church owned buildings would not qualify for exemption because title is held in the name of a bishop or board or trustees, and not in the name of the institution.

But when, as here, where a church owned property is 1.) *owned* by the religious institution, 2.) *used* in good faith exclusively and primarily in furtherance of an "evangelistic" purpose and for "the preparation and dissemination of a religious message", and 3.) *operated* without a view toward profit, then the property should be exempt from taxation under R.C. §5709.12. *True Christianity, supra* at 119.

G. The Commissioner is improperly imposing a double standard against COGNO.

The laws of Ohio do not provide for a double standard – one for *religious* institutions and another for *every other charitable* institution. In fact, *whether the institution is religious or charitable is not a relevant factor. True Christianity, supra* at 118-19. The Commissioner is improperly subjecting COGNO administrative offices to a much higher standard than it did the Girl Scouts administrative offices. In the Girl Scouts case, the Commissioner simply determined that "*Applicant, a nonprofit organization, uses the subject property for administrative offices and training. As such, a majority of the property qualifies for real property tax exemption under R.C. 5709.12.*" Merit Brief of Appellant, App. 020 (emphasis added). Here, the Commissioner and the BTA have determined that COGNO, a nonprofit organization, uses its property for administrative offices and training. As such, it *does not* qualify for real property tax exemption under R.C. 5709.12. There is no just or rational basis for this inconsistent double standard.

³ For example, see the discussion of the Faith Fellowship Ministries, Inc. case at Section B. above.

H. The BTA's decision was arbitrary, capricious, and patently unreasonable.

As noted in its First Proposition of Law, COGNO Merit Brief, p. 8-11, the BTA cited the stated purposes from COGNO's Articles of Incorporation from 1973 and concluded that "these purposes constitute both the spread of religion and the necessary business functions of operating a corporation, such as acquiring assets, borrowing money, and ... loaning money or guaranteeing indebtedness. Therefore, we find that appellant is not making *exclusive* charitable use of the property, as it uses the subject property to conduct administrative and corporate functions (emphasis by the BTA)." (See BTA Decision and Order pp. 9-11; Merit Brief of Appellant, Appendix at App. 013 – App. 015). This holding improperly assumes facts not in evidence and is therefore unlawful and unreasonable.

The Ohio Revised Code deals with *present use* of the property, *not* potential use. The subject property is used by COGNO exclusively in furtherance of its religious and charitable purposes, which are "to reach as many people with the gospel and the message." In simplistic terms, COGNO supports and oversees the work of 126 member churches in their coordinated efforts to more effectively and efficiently spread a religious message. Hence the appropriate question that the BTA should have considered is how, at the time of the application, was the subject property being used. In this case, the Board of Tax Appeals based its denial on its review of a 30 year old document without regard to any inquiry (and in stark contrast to the evidence submitted) of COGNO's present use of the property. The Board of Tax Appeals' denial was based on speculation as to what COGNO could *potentially do* rather than what it is *presently doing* with the subject property.

Moreover, it is perfectly permissible for a charitable organization such as COGNO to "*acquire assets, borrow money, loan money or guarantee indebtedness*" and not run afoul of its exempt status, provided that such activities are done *in furtherance of its charitable purposes*.

For example, a church may borrow money and mortgage its property to expand its sanctuary, or a homeless shelter may acquire a passenger van to transport the homeless to and from its shelter. Since there is no evidence in the record to indicate that COGNO is "*performing the necessary business functions of operating a corporation*" that are inconsistent with its charitable purposes, the holding by the Board of Tax Appeals is clearly contrary to the evidence and the plain language of the Revised Code.

CONCLUSION

The only evidence presented before the BTA established by reliable and probative evidence that the subject property is owned by an institution and is used exclusively in furtherance of its charitable purposes and without a view toward profit. When the primary purpose of the property is "an evangelistic one" and "for the preparation and dissemination of a religious message", the property is exempt from taxation under R.C. 5709.12. *True Christianity, supra* at 119. "A good-faith attempt to disseminate information to spiritually advance and benefit mankind in general" constitutes a charitable purpose "under the definition of charity followed by this court," *Id.* at 120. The BTA's reliance on extraneous verbiage in COGNO's 30 year old Articles of Incorporation as its sole basis for denial is unreasonable and unlawful. It improperly assumes facts not in evidence.

In an application for real property tax exemption under R.C. 5709.12, the Court must consider how the property is *currently being used*, rather than how *it might be used*. The Commissioner had the opportunity to cross-examine the witness about whether the property was being used for any of the discretionary activities permitted by its Articles of Incorporation, but chose not to do so. Therefore, the manifest weight of the evidence clearly indicates that COGNO does not use the property for any profit making activities, but rather in support of and in furtherance of its lawful charitable purposes.

If operated without a view toward profit, an institution using its real property exclusively for the lawful advancement of religion is an institution using its property exclusively for charitable purposes within the meaning of R.C. 5709.12. *Am. Commt of Rabbinical College of Telshe, Inc., supra*, paragraph one of the syllabus. The requirement that the use be exclusively charitable does not extend to unreasonable lengths, but merely requires that the real purpose of the use to which the property is put *should be in direct furtherance of the work carried out by the institution. Elizabeth Gamble Deaconess Home Ass'n, supra* at 269.

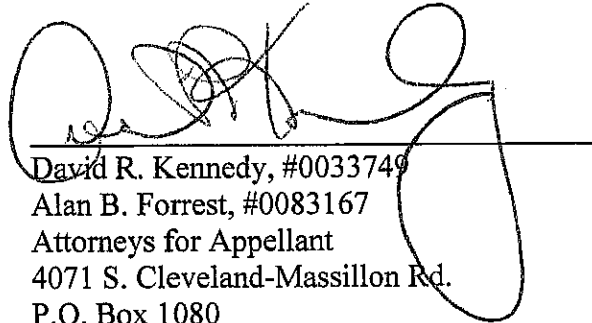
This Court has consistently recognized that real property owned by and used exclusively for the administrative offices of charitable institutions are exempt from taxation. *Girl Scouts-Great Trails Council, supra; Community Health Professionals, Inc., supra; and Case W. Res. Univ, supra*. COGNO should be treated no differently than the Girls Scouts, the Visiting Nurses, or Case Western Reserve University. The laws of this State do not provide for a double standard – one for *religious* institutions and another for *every other charitable* institution. *Whether the institution is religious or charitable is not a relevant factor*. The only relevant factor for determining exemption under R.C. 5709.12 is whether the institution is using the property exclusively for charitable purposes, and without a view toward profit. *True Christianity, supra* at 118-119.

Therefore, the BTA acted unreasonably and unlawfully in affirming the Tax Commissioner's denial of GOGNO's application for exemption. The BTA has thus erred by ruling that COGNO had not “proven by competent and probative evidence that it is entitled the requested exemption.” (See BTA Decision and Order p.12; Merit Brief of Appellant, Appendix at App. 016). On the contrary, the un-refuted testimony is that *not one square inch* of the subject property is being used with a view toward profit. There is no store, no rental income, no parking garages, no fund raising or profit making activities. Its only revenue comes from a small

percentage of the weekly tithe offerings from the congregations under its jurisdiction. As such, *COGNO is a charitable institution using its property exclusively in furtherance of its charitable purposes without a view toward profit*, and the Tax Commissioner's determination was clearly unreasonable and unlawful. Therefore, COGNO respectfully prays for this Court to reverse and vacate the decision of the BTA and find that the COGNO administrative offices are exempt from taxation under R.C. 5709.12.

Respectfully submitted,

KENNEDY & ASSOCIATES CO., LPA

A handwritten signature in black ink, appearing to read 'David R. Kennedy', is written over a horizontal line. The signature is stylized and somewhat cursive.

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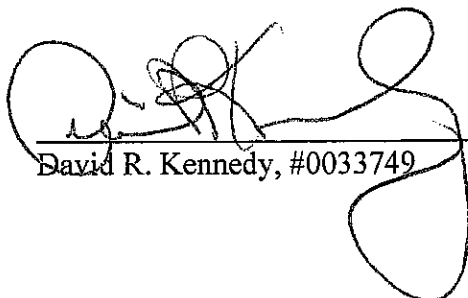
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief of Appellant Church of God in Northern Ohio, Inc. was served via regular U.S. Mail this 9th day of April, 2009 to:

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IN THE SUPREME COURT OF OHIO

CHURCH OF GOD IN
NORTHERN OHIO, INC.,

Appellant,

vs.

WILLIAM W. WILKINS, TAX
COMMISSIONER OF OHIO

Appellee.

CASE NO.

Appeal from the Ohio Board
of Tax Appeals

Board of Tax Appeals
Case No. 2007-R-102

APPELLANT'S ERRATA SHEET

Now comes Appellant, by and through counsel, and submits the following corrections to the transcript of proceedings of the July 8, 2008 hearing before the Board of Tax Appeals.

A. p. 51, line 21 – 24 was transcribed as:

You have to. Pure religion. The bylaws, new order and all through there it clearly states concerning the widows, the homeless, the needy, the orphans, the poor.

It should read:

You have to. Pure religion. The Bible, New Testament and all through there it clearly states concerning the widows, the homeless, the needy, the orphans, the poor.

B. p. 78, line 13 – 15 was transcribed:

***sometimes when we get to, quote, docks in the ditch, we may have to come in on Sunday ***

KENNEDY & ASSOCIATES

CO., L.P.A.

Attorneys at Law

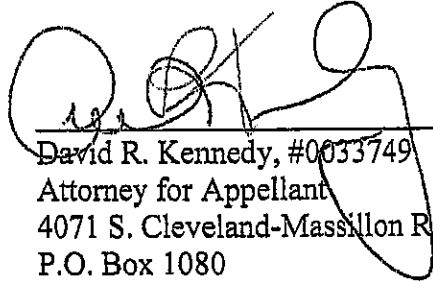
4071 S. CLEVELAND-MASSILLON RD. • P.O. BOX 1080 • NORTON, OH 44203 • (330) 825-2477

App. 001

It should read:

***sometimes when we get to, quote, "ox in the ditch", we may have to come in on Sunday ***

Respectfully submitted,



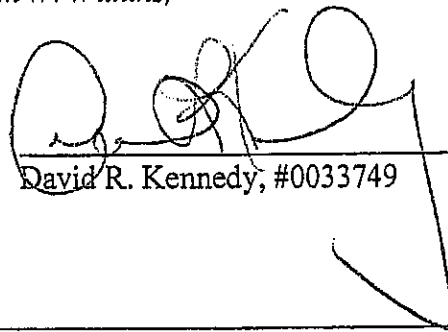
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appellant's Errata Sheet was served via certified U. S. Mail this 8th day of April, 2009 to:

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5713.04
TITLE [57] LVII TAXATION
CHAPTER 5713: ASSESSING REAL ESTATE

5713.04 Tracts to be valued separately - split listing for tax exemption - deductions.

Each separate parcel of real property shall be valued at its taxable value, excluding the value of the crops, deciduous and evergreen trees, plants, and shrubs growing thereon, and taking into account the diminution in value as the result of the existence of any conservation easement created under sections 5301.67 to 5301.69 of the Revised Code. The price for which such real property would sell at auction or forced sale shall not be taken as the criterion of its value. If the fee of the soil of a tract, parcel, or lot of land is in any person, natural or artificial, and the right to minerals therein in another, the land shall be valued and listed in accordance with such ownership in separate entries, specifying the interest listed, and be taxed to the parties owning the different interests.

If a separate parcel of improved or unimproved real property has a single ownership and is so used so that part thereof, if a separate entity, would be exempt from taxation, and the balance thereof would not be exempt from taxation, the listing thereof shall be split, and the part thereof used exclusively for an exempt purpose shall be regarded as a separate entity and be listed as exempt, and the balance thereof used for a purpose not exempt shall, with the approaches thereto, be listed at its taxable value and taxed accordingly.

The county auditor shall deduct from the value of each separate parcel of real property the amount of land occupied and used by a canal or used as a public highway at the time of such assessment.

Effective Date: 03-14-1980