

IN THE SUPREME COURT OF OHIO

CHURCH OF GOD IN NORTHERN OHIO, INC., : Case No. 2008-2462
: :
: :
Appellant, : :
: :
v. : Appeal from Ohio Board of
: Tax Appeals Case No. 2007-N-102
WILLIAM W. WILKINS :
[RICHARD A. LEVIN], :
TAX COMMISSIONER OF OHIO, :
: :
Appellee. :

TAX COMMISSIONER'S MERIT BRIEF

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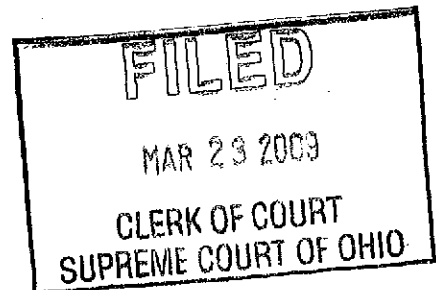


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I. Introduction.

This appeal is from the Tax Commissioner's and BTA's denial of an application for the exemption of real property taxes filed by the appellant, Church of God in Northern Ohio, Inc. ("COGNO"). In its exemption application, COGNO sought to exempt its administrative office building for the 2002¹ and 2003 tax years. This appeal constitutes COGNO's attempted end-run around this Court's previously settled law under the "house of public worship" exemption set forth in R.C. 5709.07. Under well-established precedent, administrative office buildings used to support church activities have never qualified for real property tax exemption. *Christian Church of Ohio v. Limbach* (1990), 53 Ohio St.3d 270 (holding that the regional administrative headquarters of a church failed to properly qualify as property "facilitating public worship" within the meaning of R.C. 5709.07) (citing *Faith Fellowship Ministries v. Limbach* (1987), 32 Ohio St.3d 432).

Instead of basing its claim on the "house of public worship" exemption granted under R.C. 5709.07, however, COGNO advances the novel contention that its administrative office building somehow qualifies for exemption as real property "used exclusively for charitable purposes" within the meaning of R.C. 5709.12. COGNO claims that the administrative functions performed on the premises for the sole benefit of COGNO's own member churches constitute an "exclusively charitable" use. Unfortunately for COGNO, under this Court's established case law defining "charitable use," the BTA and the Commissioner reasonably and lawfully rejected this unprecedented assertion.

The administrative functions performed at COGNO's administrative headquarters are not

¹ For jurisdictional reasons unrelated to its appeal for the 2003 tax year, COGNO has since abandoned any claim for exemption with respect to the 2002 tax year. Consequently only the 2003 tax year is at issue here. See BTA Decision and Order 12, fn. 2; COGNO Br. Appx. 5.

exclusively charitable. Namely, the purpose of these functions is not to “advance and benefit mankind in general,” or to serve “those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources * * *.” *Planned Parenthood Assn. of Columbus, Inc. v. Tax Commr.* (1966), 5 Ohio St.2d 117, paragraph one of the syllabus. Rather, the functions performed at COGNO’s administrative headquarters are for the specific and exclusive benefit of its member churches, rather than for the general public or a particularized needy subset of that general public. See BTA Decision and Order 8-12; COGNO Br. Appx. 12-16 (citing *Planned Parenthood*, supra; and *Bethesda Healthcare, Inc. v. Wilkins*, 2004-Ohio-1749). As the BTA correctly found, the property is used primarily for such things as “employee and church member training, board of director’s [sic] meetings, employee oversight, treasury duties, secretarial support, and training support.” BTA Decision and Order 11; COGNO Br. Appx. 15. As such, the property is used in much the same way as any other office building in Ohio—in fact, COGNO readily admits that the property at issue is “purely an administrative office building * * * .” COGNO Br. 4.

Moreover, acceptance of COGNO’s novel construction of the “charitable” exemption granted under R.C. 5709.12 would render meaningless the General Assembly’s long-standing exemption under R.C. 5709.07 for real property used to facilitate public worship. Under the appellant’s misguided view, the real property at issue here, at best, merely *indirectly* supports public worship, but, nonetheless, would qualify as “used exclusively for charitable purposes.” Thus, if such indirect support of public worship were to qualify as “exclusively charitable,” then, under COGNO’s erroneous view, COGNO’s “houses of public worship”—which *directly* support public worship—necessarily would qualify as “exclusively charitable” as well.

Consequently, if COGNO's construction of R.C. 5709.12 were correct, there would be no purpose for the General Assembly to have enacted the R.C. 5709.07 exemption. COGNO's expansive reading of R.C. 5709.12 would "swallow up," and render a nullity, the entire R.C. 5709.07 exemption.

This Court has long rejected similar attempted end-runs around the express requirements of statutory exemptions delineating a specific kind of exempt use or exempt property. *Rickenbacker Port Authority v. Limbach* (1992), 64 Ohio St.3d 628, 630-31; *Toledo Business & Professional Women's Retirement Living, Inc. v. Bd. of Tax Appeals* (1971), 27 Ohio St.2d 255, paragraph one of the syllabus (holding that "[a]fter the General Assembly has marked a specific use of property for exemption and has established the criteria therefor, the function of the judicial branch is limited to interpreting and applying those criteria."). Here, this established principle should have particular force, because, as noted above, under the construction of R.C. 5709.12 advanced by COGNO, the specific criteria enacted by the General Assembly in R.C. 5709.07 would never have any significance. Not only would the specific requirements of R.C. 5709.07 be limited in some fashion, they would be rendered meaningless.

Finally, as the BTA and Commissioner properly recognized, of no help to COGNO is this Court's decision holding that real property that is primarily or exclusively used "for the preparation and dissemination of a religious message" to the general public qualifies under the R.C. 5709.12 exemption. BTA Decision and Order 11-12 (distinguishing the use of the property at issue in *True Christianity Evangelism v. Zaino* (2001), 91 Ohio St.3d 117, 120 from the use of the property at issue here); COGNO Br. Appx. 15-16. By contrast to the real property in *True Christianity*, in this case, COGNO does not primarily or exclusively use the real property at

issue, even indirectly, for the purpose of preparing or disseminating a religious message to the general public. The evidentiary record is silent as to the extent, if any, to which COGNO's administrative headquarters is used, even indirectly, to prepare and disseminate religious material, whether to the general public or to a particularized subset of the general public who could not afford such religious materials if they were not provided by COGNO. BTA Decision and Order 11-12; COGNO Br. Appx. 15-16. Thus, the primary administrative activities undertaken on the premises of COGNO's property for the sole benefit of its member churches are far different from the activities of preparing and disseminating religious materials to the public at large that were conducted on the premises of the real property exempted in *True Christianity*.

Indeed, the administrative functions performed on COGNO's premises in support of its member churches are of the very kind that this Court has expressly held not to be "charitable." *Hubbard Press v. Tracy* (1993), 67 Ohio St.3d 564, 566 (holding that printing envelopes for use by churches is not in itself a charitable activity). See also *Socialer Turnverein v. Bd. of Tax Appeals* (1942), 139 Ohio St. 622 (exemption denied under prior iteration of R.C. 5709.12 for property used primarily to benefit the property owner's members); *Olmsted Falls Bd. of Ed. v. Tracy* (1997), 77 Ohio St.3d 393 (exemption denied under R.C. 5709.12 for property used primarily to benefit the property owner's members). These decisions squarely refute COGNO's erroneous reliance on *True Christianity*. As these decisions instruct, the administrative support activities engaged in on the premises of COGNO's headquarters to support garden variety church activities for the sole benefit of its member churches are simply not, in themselves, charitable activities.

In sum, in rejecting the appellant's novel claim the Commissioner and the BTA acted reasonably and lawfully by applying this Court's established precedent. Not only does COGNO's view contravene the principle that exemption statutes must be strictly construed against the claim of exemption, it would drastically expand Ohio real property exemption law. If this extraordinary proposition were accepted by this Court, then every administrative building in Ohio used to support church activities by its members would qualify for exemption. Suddenly, the property tax revenues from all church administrative buildings in Ohio would be lost, to the substantial detriment of our school districts and other local government recipients, who must depend on real property taxes to fund their vital services.

II. Statement of the Facts.

COGNO is an Ohio corporation organized as a non-profit corporation under R.C. Chapter 1702 to support the Pentecostal denomination and operates in conjunction with the international office of the Church of God. Tax Commissioner's Statutory Transcript ("S.T.") 10-11; BTA Hearing Transcript ("Tr.") 17; Joint Supp. 12-13. The administrative office of COGNO provides the central hub in which oversight of COGNO's 126 local churches, 29,000-plus members, and 400-plus ministers takes place. Tr. 18; Joint Supp. 29. The authority to oversee the churches, members, and ministers is vested with the ordained Bishop of COGNO, Bishop John D. Childers. Tr. 16; Joint Supp. 28. There is a staff of several paid employees that work on-site at the property to assist Bishop Childers in carrying out the various administrative tasks associated with COGNO. Tr. 22-24; Joint Supp. 30. The employees are paid by funds that are collected from COGNO's local churches. Tr. 24; Joint Supp. 30. As explained by Bishop Childers, COGNO receives a portion of its money from the "tithes" fund and another portion from the

“evangelism” fund. Tr. 24, 88; Joint Supp. 30, 46. On average, the total amount of funding that COGNO receives on a monthly basis is approximately \$70,000. Tr. 88; Joint Supp. 46.

The property itself is situated in Summit County, and consists of a parking lot and an administrative office building. S.T. 1; Tr. 33-35; Joint Supp. 3, 32-33; Exs. E1-E3; Second Supp. 3-5. With respect to the building, the first floor contains several administrative offices that are occupied by COGNO’s employees and also a mail room/copy room/work room. The downstairs area consists of conference rooms that are used for such things as holding meetings for members of COGNO. Tr. 34, 62; Joint Supp. 33, 40. At the BTA hearing in this matter, Bishop Childers explained the various types of tasks that are carried out in each of the rooms contained in COGNO’s administrative office building. The uses of the various rooms will be addressed in turn.

A. Receptionist and Credentialing Room.

This is the first room that is visible upon entering COGNO’s administrative office building. Tr. 37; Joint Supp. 33; Exs. F2-F3; Second Supp. 8-9. It is akin to any other secretarial office. Bishop Childers explained that this room is used for such tasks as answering phone calls, filing documents, and performing data entry. Tr. 37; Joint Supp. 33. It is also used to send out correspondence to individuals that have expressed a desire to become licensed or ordained with COGNO. Tr. 83; Joint Supp. 45.

B. Council Chambers Conference Room.

Meetings of the board of directors are held here. Tr. 38-39; Joint Supp. 34; Exs. F4-F6; Second Supp. 10-12. In other words, this room is used to “take care of the business for the state of the Church of God in Northern Ohio * * *.” Tr. 39; Joint Supp. 34. Bishop Childers

explained that “the main oversight, financial, accountability, responsibility is conducted * * * in this room.” Tr. 39; Joint Supp. 34.

C. Bishop Childers’ Office and the Fireside Room.

Bishop Childers’ office provides him space to not only oversee the programs that COGNO administers, but also to counsel members of COGNO. Tr. 40; Joint Supp. 34; Exs. F7-F8; Second Supp. 13-14. Members of the general public have never been counseled by Bishop Childers in his office. Tr. 92; Joint Supp. 47. The Fireside Room is also used by Bishop Childers to counsel members of COGNO, but it provides a more informal setting. Tr. 41; Joint Supp. 34.

D. Administrative Assistant’s Office.

This room is used by Bishop Childers’ administrative assistant. Tr. 42-43; Joint Supp. 35; Ex. F9; Second Supp. 15. According to Bishop Childers, his assistant “keeps track of my schedule, keeps me out of trouble by booking two conferences at the same time. She has oversight of all of that.” Tr. 43; Joint Supp. 35. The assistant also schedules appointments throughout the various meeting rooms in the building. Tr. 43; Joint Supp. 35.

E. Secretary’s/Treasurer’s Office.

This room is used to handle the financial affairs of COGNO. Tr. 43-46; Joint Supp. 35-36; Ex. F10; Second Supp. 16. Payroll and accounts payable are dealt with in this room, as well as coordinating training programs for the finance committees of the local churches. Tr. 44-45; Joint Supp. 35. Money that is received from local churches is processed through this office. Tr. 45; Joint Supp. 35.

F. Youth and Christian Education Director’s Office.

The individual that uses this room is responsible for coordinating such events as the summer camp program, the teen talent program, the ministry training conference, and the Backpack to School program. Tr. 47-53; Joint Supp. 36-37; F11; Second Supp. 17. None of these events occur on the property that is at issue in this appeal. The summer camp program takes place on property that COGNO leases. Tr. 61; Joint Supp. 39. The camp is for COGNO members and a fee is required to participate; however, some scholarships are made available to the needy. Tr. 61-62, 93; Joint Supp. 39-40, 47. The backpack for school program is an event that distributes free backpacks with school supplies to school children throughout the region. Tr. 48-50; Joint Supp. 36-37. The most recent event was held at eighteen different locations throughout the region. Tr. 49; Joint Supp. 36. There is no fee to participate in the program. Tr. 50; Joint Supp. 37. The teen talent program, as described by Bishop Childers, is akin to a "Christian American Idol." Tr. 52; Joint Supp. 37. It occurs once every two years and is attended by approximately 3,000 to 5,000 youth from the region. Tr. 52; Joint Supp. 37. The ministry training conference focuses on presenting aspects of ministry that occur at the local churches. Tr. 53; Joint Supp. 37. It is attended by approximately 400 to 500 people. Tr. 53; Joint Supp. 37. COGNO's administrative office is not large enough to accommodate a group of that size, so the conference is held off-site at another church in Canton. Tr. 53; Joint Supp. 37.

G. Office of the Administrative Assistant to the Youth and Christian Education Director.

As its title suggests, this room is used to support the events that are coordinated by the Youth and Christian Education Director. Tr. 54; Joint Supp. 38; Ex. F12; Second Supp. 18. Bishop Childers explained that this room ensures "that the proper documents are prepared and ready to be sent to our production coordinator * * * ." Tr. 54; Joint Supp. 38.

H. Administrative Assistant's Office for Evangelism and Home Missions.

As stated by Bishop Childers, the administrative assistant that occupies this room takes “care of the home missions of the church planting, and smaller churches, working with our pastors as we do new field works.” Tr. 54-55; Joint Supp. 38; Ex. F13; Second Supp. 19. She also sends get-well cards and makes phone calls on behalf of Bishop Childers, as well as coordinating production efforts. Tr. 55; Joint Supp. 38.

I. Office of the Women's Ministries Director.

The person that occupies this room “has the oversight of working with the pastors' wives, and working with the ministers' wives.” Tr. 56-57; Joint Supp. 38; Ex. F14; Second Supp. 20. This room is solely directed towards benefiting women who are members of COGNO's local churches. Tr. 94; Joint Supp. 48.

J. Office of the Girls Club Director.

This room is used to develop the training and curriculum for COGNO's young ladies. Tr. 57; Joint Supp. 38; Ex. F15; Second Supp. 21. Oversight of the Fusion program occurs in here too—the Fusion program is an element of COGNO's youth ministry program. Tr. 58; Joint Supp. 39.

K. Copier Room, Mail Room, and Work Room.

The uses of these rooms are essentially self-explanatory. Bishop Childers explained that the copier room is analogous to what could be found at a “Kinko's copy center.” Tr. 59; Joint Supp. 39; Exs. F16-F17; Second Supp. 22-23. The mail room and work room are used to handle correspondence, as well as to produce and package materials to be sent out. Tr. 59; 39.

L. Downstairs Conference Rooms.

The downstairs area consists of a series of conference rooms in which various meetings are held. Tr. 62-63; Joint Supp. 40. For example, the Call and Affirmation Ministry Study (“CAMS”) program is held for COGNO members that “feel the call of God in their life * * * ” and want to become “Exhorters, Ordained, [or] Ordained Bishop * * * .” Tr. 63; Joint Supp. 40; Ex. G2; Second Supp. 26. A background check and an application are required to participate in CAMS. Tr. 63; Joint Supp. 40. Additionally, COGNO attendees of the CAMS program must purchase a series of materials from the Church of God’s Cleveland, Tennessee office. Tr. 64; Joint Supp. 40. Upon successful completion of the CAMS program, the COGNO attendees move on to what is called the Ministerial Internship Program (“MIP”). Tr. 65; Joint Supp. 40; Ex. G3; Second Supp. 27. Much like the CAMS program, members of COGNO that attend the MIP seminar must also purchase books through the Church of God’s Cleveland, Tennessee office. Tr. 66; Joint Supp. 41.

A smaller conference room in the downstairs area is used by COGNO’s credentialing committee. Tr. 66; Joint Supp. 41; Ex. G4; Second Supp. 28. This committee is responsible for reviewing background checks and for administering exams to members of COGNO. Tr. 67; Joint Supp. 41.

An area known as the “breakout room” is used to conduct Pastoral Covenant Group Training (“PCGT”). Tr. 68-69; Joint Supp. 41; Exs. G5-G6; Second Supp. 29-30. PCGT is a program designed to train COGNO’s pastors, it also provides the pastors with a forum to discuss a variety of issues. Tr. 69; Joint Supp. 69.

Other events that are held in the basement include Creative Leadership Training (“CLT”) and Church Treasurer’s Training (“CTT”). Tr. 72-74; Joint Supp. 42-43; Exs. G7-G9; Second

Supp. 31-33. CLT is “the next level of leadership training” that COGNO provides—it is open to all of COGNO’s ministers. Tr. 71; Joint Supp. 42. The CTT is a program designed to teach COGNO members how to operate a software application that manages accounting and financial data. Tr. 74; Joint Supp. 43. Local churches must purchase the software through a third party if they decide they want to use it. Tr. 75; Joint Supp. 43.

The last room in the downstairs area is the “break room.” Tr. 75; Joint Supp. 43. As the name suggests this room is used as a place to eat and prepare food, as evidenced by the existence of refrigerators, a crock pot, and a table. Ex. G10-G11; Second Supp. 34-35. This room is also used to compile paper copies and electronic copies of the training seminars that are conducted for COGNO’s members. Tr. 75-77; Joint Supp. 43.

III. Law and Argument.

Proposition of Law No. 1:

A religious organization that does not use its property to “advance and benefit mankind in general” or to serve “those in need of advancement or benefit in particular,” but instead uses its property solely to benefit its member congregations through the fulfillment of corporate and administrative duties is not using its property exclusively for charitable purposes as prescribed by R.C. 5709.12(B).

A. Statutes granting exemptions from taxation must be strictly construed.

In the area of real property taxation, this Court has held that “[w]e are to strictly construe statutes granting exemption, and the burden rests on the one claiming an exemption to demonstrate that the property qualifies.” *True Christianity* at 117 (citing *OCLC Online Computer Library Ctr. v. Kinney* (1984), 11 Ohio St.3d 198). The Tax Commissioner’s “findings are presumptively valid absent a showing that they are clearly unreasonable or unlawful.” *Shiloh Automotive, Inc. v. Levin*, 2008-Ohio-68, ¶16. The taxpayer bears the burden

of demonstrating the “manner and extent of the error with the Tax Commissioner’s final determination.” *Id.* “The BTA is responsible for determining factual issues and, if the record contains reliable and probative support for these BTA determinations, [this Court] will affirm.” *American Natl. Can Co. v. Tracy* (1995), 72 Ohio St.3d 150, 152. “In all doubtful cases exemption is denied.” *A. Schulman, Inc. v. Levin*, 2007-Ohio-5585, ¶7 (quoting *Youngstown Metro. Hous. Auth. v. Evatt* (1944), 143 Ohio St. 268, 273).

B. The touchstone of the term “charity” embodies the attempt to “advance and benefit mankind in general” or to serve “those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources.”

As will be detailed below, COGNO does not fall within the sweep of R.C. 5709.12(B) because the administrative office building and accompanying parking lot that it owns are not being used exclusively for charitable purposes. To prevail on a claim for exemption brought under R.C. 5709.12(B), the applicant must show “that the property belongs to an institution and that it is used exclusively for charitable purposes.” *Girl Scouts-Great Trail Council v. Levin*, 2007-Ohio-972, ¶12. It has been recognized that the phrase “used exclusively for charitable purposes” equates to a “primary use” test. See *Girl Scouts* at ¶19; *True Christianity* at 120.

The General Assembly has never expressly defined what constitutes a “charitable purpose.” See *Bethesda Healthcare* at ¶31-32; *True Christianity* at 119. Nonetheless, this Court has previously defined what the term “charity” means:

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. (Emphasis added.)

Planned Parenthood at paragraph one of the syllabus. The *Bethesda Healthcare* decision provides further guidance as to the meaning of what constitutes a “charitable use.” In that case, this Court explained 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 * * * .” *Bethesda Healthcare* at ¶39.

C. The decisional law from this Court and the BTA persuasively demonstrate that COGNO falls outside the ambit of R.C. 5709.12.

This Court’s decisions in *Hubbard Press*, *supra*, *Socialer Turnverein*, *supra*, and *Olmsted Falls*, *supra*, provide cogent illustrations of the foregoing principles and amply demonstrate why COGNO’s claim for exemption should be denied. In *Hubbard Press*, the applicant was a not-for-profit corporation organized:

‘to manufacture, print, publish, sell and distribute offering envelopes, pledge cards, forms for accounts, financial records, statements and other supplies for use by churches and congregations in connection with their efforts to raise money’ for themselves and their ‘benevolence, charitable, missionary and religious activities.’

Id. At the time the applicant sought exemption under R.C. 5709.12, the property was used only to print offering envelopes. This Court denied the exemption, explaining that the applicant “utilized the subject property only for printing envelopes to be used by churches and congregations. There is no showing that those activities were themselves charitable.” *Id.* at 566. Moreover, the Court rejected the applicant’s attempt to claim a vicarious exemption through the users of its envelopes: “Whether the users of Hubbard’s production of church envelopes (churches and congregations) were, through the use of such material, engaged in charitable

activities or whether the money collected through the use of such material was employed in some charitable way is immaterial.” Id. This Court declined to adopt a similar theory of vicarious exemption in *OCLC Online Computer Library Ctr.* at 200 (rejecting applicant’s attempt “to obtain a vicarious charitable exemption by virtue of the activities of its customers.”).

This Court has also previously rejected claims for exemption under R.C. 5709.12 where the property was used primarily to benefit the property owner’s members and not “mankind in general” or “those in need of advancement and benefit in particular.” See *Planned Parenthood*. For example, in *Socialer Turnverein*, this Court denied exemption under a prior iteration of R.C. 5709.12² for property owned by a not for profit applicant with an open membership policy. The property itself was “equipped with kitchen facilities, rathskeller, dining room, locker rooms, auditorium, small meeting rooms, pool and billiard room, bowling alleys, and a large gymnasium.” Id. at 623. The stated purpose of the applicant was the “physical, mental, and moral advancement of its members.” The members paid dues, but some of the needy children could participate in the gymnasium classes. In denying the exemption, the Court noted that while some of the applicant’s work may be designated as charitable, this was merely “incidental” to the overall non-exempt use of the property. Id.

This Court followed the reasoning of *Socialer Turnverien* more than fifty years later in the *Olmsted Falls* case. There, exemption was denied solely under R.C. 5709.12 to an applicant that owned property consisting of a “small lake, several soccer fields, tennis courts, a picnic area, playground, several service buildings, and * * * a Cultural Center.” Id. at 393. The applicant’s

² The applicant also claimed the property should be held exempt because it was being used as a “public institution of learning not used with a view to profit.” *Socialer Turnverein* at 622. Nonetheless, the Court denied exemption relative to this basis as well.

members were generally required to pay a nominal fee to use the Cultural Center or to join one of the many interest groups. At times, non-members were permitted to use the applicant's property. For example, the applicant made its property available to the public on a limited basis for social events, as well as fundraisers, banquets, and weddings. Occasionally, government agencies used the property too. The Court observed that the applicant's property was not being used exclusively for charitable purposes for two reasons. First, the primary beneficiaries of the property were the applicant's "members." *Id.* at 398. Thus, in direct contravention of *Planned Parenthood*, the property was not being used to "advance and benefit mankind in general" or to serve "those in need of advancement and benefit in particular." Second, the Court observed that the activities conducted on the property were not inherently charitable. Rather, the activities were chiefly social and fraternal in nature. *Id.* In sum, though the Court commended the applicant for "some of its charitable and civic activities," the request for exemption was ultimately denied. *Id.*

The BTA's recent decision in *Ohio Nurses Assn., Inc. v. Levin* (Nov. 4, 2008), BTA No. 2007-N-148, unreported, provides yet another trenchant illustration of why COGNO can not prevail under R.C. 5709.12. Tax Commr. Br. Appx. 7-12. In that case, the BTA denied exemption under R.C. 5709.12 to an applicant that was both an Ohio non-profit corporation and a 501(c)(3) organization. The property was used primarily to serve "the professional development and general welfare of nurses, professional nursing standards, relationships between nurses of different organizations, economic concerns of nurses * * * ." *Id.*; Tax Commr. Br. Appx. 11. The BTA also noted that "in some circumstances [the applicant] provide[d] nursing and care information to the general public * * * ." *Id.*; Tax Commr. Br.

Appx. 12. While acknowledging that the use of the property was a “noble” one, the BTA denied the exemption. *Id.*; Tax Commr. Br. Appx. 12. First, the BTA explained that the property was primarily used to benefit the interests of the applicant’s “members,” as opposed to “mankind in general or those in need of advancement and benefit in particular.” Thus, just as in *Socialer Turnverein* and *Olmsted Falls*, the applicant’s use of the property was incongruent with the pronouncement from *Planned Parenthood*. Second, the BTA rejected the notion that the applicant’s advancement of the general purpose of the nursing profession was sufficient for the purposes of R.C. 5709.12. Finally, the BTA found that the property was not used to render a sufficient amount of services to those unable to afford them. See *Bethesda Healthcare*, *supra*.

The foregoing decisions amply demonstrate why COGNO’s request for exemption should be denied. First, it is manifest from the record that COGNO’s property is primarily used to benefit its members, and not “mankind in general” or “those in need of advancement and benefit in particular.” See *Planned Parenthood*. As COGNO readily concedes in its brief, the property is “used **solely** for purposes of carrying out its administrative duties for its **member** congregations.” See COGNO Br. 3. (Emphasis added.) Moreover, the BTA found that the general public does not use COGNO’s property; rather, the property is used by COGNO’s staff and members. BTA Decision and Order 11; COGNO Br. Appx. 15. This type of use plainly contravenes this Court’s pronouncement from *Planned Parenthood*.

Second, it is equally plain that COGNO is attempting to claim a vicarious exemption through the activities of the local churches that it oversees. As COGNO admits in its brief: “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.**” See COGNO

Br. 4 (Emphasis added). As a threshold matter, the activities conducted on the property of COGNO's member congregations are not at issue in this matter. COGNO simply assumes facts not in evidence when it baldly asserts that its member congregations are engaged in charitable purposes—neither the Tax Commissioner nor the BTA made such a finding. Moreover, even assuming *arguendo* that COGNO's member congregations are engaged in charitable purposes, this would be irrelevant. This Court's decision in *Hubbard Press* rejected a similar theory of vicarious exemption and the same logic applies here with equal force. See also *OCLC Online Computer Library Ctr.*, *supra*. In short, COGNO is barred from claiming an exemption under R.C. 5709.12 based upon the activities of its local churches.

Finally, the activities conducted on COGNO's property are not charitable in nature. As COGNO freely admits, its office building is “used **solely** for purposes of carrying out its **administrative duties** for its **member** congregations.” See COGNO Br. 3. (Emphasis added.) This type of administrative use mirrors that found in *Hubbard Press*, where the Court found that the simple task of printing an offering envelope for the benefit of local churches was not entitled to an exemption under R.C. 5709.12. In fact, the BTA rightly concurred with COGNO's very own characterization of the activities conducted on the property. The BTA found that the property was primarily used to conduct administrative and corporate functions such as “employee and church member training, board of director's meetings, employee oversight, treasury duties, secretarial support, and training support.” BTA Decision and Order 11; COGNO Br. Appx. 15. COGNO suggests that *Socialer Turnverien* and *Olmsted Falls* are inapposite because the activities at issue there were primarily fraternal and social, whereas here the activities are primarily administrative—but this is merely a distinction without a difference.

They all share a common element insofar as they benefited their members, and not “mankind in general” or “those in need of advancement in particular.” As will be detailed below, COGNO’s use of the property does not resemble the types of uses that have previously been granted exemption in accordance with R.C. 5709.12.

D. COGNO does not use its property for the primary purpose of preparing or disseminating a spiritual message.

This Court’s decisions in *Am. Comm. of Rabbinical College of Telshe, Inc. v. Bd. of Tax Appeals* (1951), 156 Ohio St. 376 and *True Christianity Evangelism*, are particularly instructive in this regard. For example, in *Am. Comm. of Rabbinical College of Telshe*, the Court explained: “If operated without any view to profit, an institution used exclusively for the lawful advancement of **education and of religion** is an institution used exclusively for charitable purposes * * * .” *Id.* at paragraph one of the syllabus (Emphasis added.) Here, COGNO is neither a college dedicated to advancing its spiritual message nor is COGNO using its property primarily for the preparation or dissemination of a spiritual message. Rather, as COGNO readily admits, the property is “used solely for purposes of carrying out [COGNO’s] administrative duties for its member congregations.” COGNO Br. 3.

A similar result obtained in *True Christianity*, *supra*. There, the property at issue was used, in the words of the applicant, to “inspire, enthuse, or to badger people into actually reading the Bible * * * . Or even apart from that, just encourage them to seek the highest moral standards they can from whatever source they will accept.” *Id.* at 119. The applicant also stated that he engaged in “distribution of the literature, influencing **everyone** I can, in any way, to live up to the better moral standards of the Bible * * * .” *Id.* (Emphasis added.) This Court granted the exemption under R.C. 5709.12, observing that the applicant’s “efforts are a good-faith attempt to

disseminate information to spiritually advance and benefit **mankind in general.**” *Id.* at 120 (Emphasis added.) Here, COGNO’s use of the property is irreconcilable with that of the applicant’s in *True Christianity*. Whereas in *True Christianity* the applicant sought to benefit “everyone” in a manner consistent with the pronouncement from *Planned Parenthood*, COGNO’s admitted use of the property is “solely” to benefit its member congregations. Moreover, unlike the applicant in *True Christianity*, the primary use of COGNO’s office building is not to prepare or disseminate a spiritual message. Rather, as the BTA found, the primary use of the property is to fulfill administrative and corporate duties. In fact, COGNO failed to present any evidence establishing that it distributed literature explaining its spiritual message to the general public or to a needy subset of the general public that could not afford such materials if they were not offered by COGNO.

COGNO fares no better under this Court’s decision in *Girl Scouts*, *supra*. There, the central issue was whether the applicant’s store was being operated with a view to profit, and, if so, whether this was a sufficient basis to deny exemption under R.C. 5709.12. The Court concluded that the store was not being operated with a view to profit because the store simply offered a means of covering the applicant’s operational costs. *Id.* at ¶18-19. As COGNO concedes, there is no store being operated on its property. Tr. 11; Joint Supp. 27. Thus, *Girl Scouts* offers no guidance in this regard. Moreover, the *Girl Scouts* decision is completely devoid of any discussion relating to the activities performed in the applicant’s administrative office or whether the applicant’s administrative office should receive an exemption under R.C. 5709.12(B). Put simply, the taxable status of the applicant’s administrative office was not at issue before this Court.

As a final point, COGNO laments that acceptance of the Tax Commissioner’s argument would bar entities such as the United Way or the American Red Cross from receiving an exemption under R.C. 5709.12. COGNO Br. 26. This contention is unpersuasive. Unlike COGNO, these entities unquestionably fall squarely within the sweep of this Court’s pronouncement in *Planned Parenthood*. Specifically, these entities are organized to benefit “mankind in general” and, more particularly, “those in need of advancement and benefit in particular.” COGNO simply fails in this regard—the beneficiaries of COGNO’s activities are neither mankind in general nor a particularized needy subset of the general public. As COGNO repeatedly affirms throughout its brief, the beneficiaries of its administrative activities are its member churches.

Proposition of Law No. 2:

COGNO failed to raise the applicability of R.C. 5709.121 in the proceedings below, thus COGNO is barred from invoking its applicability now.

A. This Court can not consider issues that were not raised before the Tax Commissioner or the BTA.

COGNO failed to raise, as an issue, the applicability of R.C. 5709.121 both in its exemption application to the Tax Commissioner (S.T. 4; Joint Supp. 6) and in its notice of appeal to the BTA. Tax Commr. Br. Appx. 1-4. Thus, when COGNO cited to decisions in its BTA brief that considered R.C. 5709.121, the BTA concluded that it lacked jurisdiction to consider the applicability of R.C. 5709.121 because COGNO had failed to raise it as an issue in the proceedings below. BTA Decision and Order 6, fn. 1; COGNO Br. Appx. 10. Under the well-settled law of this Court, the BTA’s conclusion should be affirmed as reasonable and lawful.

The mechanism for initiating an appeal from a final determination of the Tax

Commissioner is set forth in R.C. 5717.02, which provides in relevant part that: “The notice of appeal shall * * * also specify the errors therein complained of * * * .” This Court in *Lenart v. Lindley* (1980), 61 Ohio St.2d 110, 114 explained that “adherence to the conditions and procedure set forth in [R.C. 5717.02] is essential.” Thus, “a notice of appeal does not confer jurisdiction upon the [BTA] to resolve an issue, unless that issue is clearly specified in the notice of appeal.” *Cleveland Electric Illuminating Co. v. Lindley* (1982), 69 Ohio St.2d 71, 75. Moreover, where the BTA lacks jurisdiction to consider an issue, this Court too lacks jurisdiction to consider that same issue. See *GMC v. Wilkins*, 2004-Ohio-1869, ¶76. A review of the decisional law from this Court confirms that the foregoing legal principles are firmly-rooted in the jurisprudence of this State. See e.g. *Northeast Ohio Psychiatric Inst. v. Levin*, 2009-Ohio-583, ¶13; *Satullo v. Wilkins*, 2006-Ohio-5856, ¶23; *Kern v. Tracy* (1995), 72 Ohio St.3d 347, 349; *Moraine Heights Baptist Church v. Kinney* (1984), 12 Ohio St.3d 134, 138; *Gochneaur v. Kosydar* (1976), 46 Ohio St.2d 59, 66; *Queen City Valves, Inc. v. Peck* (1954), 161 Ohio St. 579, syllabus; *American Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147, 150.

A quick illustration from *Moraine Heights*, supra, should crystallize the Tax Commissioner’s second proposition of law. There, the applicant solely argued for exemption pursuant to R.C. 5709.07 while the matter was before the BTA. On appeal to this Court, the applicant added two additional arguments concerning the applicability of R.C. 5709.12 and R.C. 5709.121. This Court held that it lacked jurisdiction to consider the applicant’s arguments with respect to R.C. 5709.12 and R.C. 5709.121 because these statutes were not specified in the notice of appeal to the BTA. *Id.* at 137-138. The same reasoning applies with equal force to this matter. Here, COGNO’s sole basis for exemption as argued before the Tax Commissioner and in

its notice of appeal to the BTA rested on the applicability of R.C. 5709.12. Because COGNO failed to raise the applicability of R.C. 5709.121 in the proceedings below, this Court is divested of jurisdiction to consider its application at this stage in the appeal.

COGNO does not attempt to grapple with this overwhelming weight of authority mentioned above, nor can it. Instead, it suggests that R.C. 5709.12 should be considered in conjunction with R.C. 5709.121 because the legal standards set forth in both statutes are “identical.” COGNO Br. 23. In fact, quite the opposite is true—the statutes are markedly different in terms of their operational language and this Court should resist COGNO’s attempt to blur this distinction. While R.C. 5709.12 applies to any institution “irrespective of its charitable or noncharitable character * * * , R.C. 5709.121, however, applies only to property ‘belonging to,’ *i. e.*, *owned by*, a charitable or educational institution, or the state or a political subdivision.” *White Cross Hospital Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199, 203 (Stern, J., concurring) (emphasis in original). In summing up the distinction between R.C. 5709.12 and R.C. 5709.121, Justice Stern explained that “[t]he net effect of this is that R.C. 5709.121 has no application to noncharitable institutions seeking tax exemption under R.C. 5709.12.” *Id.* As evidenced by this Court’s repeated citations to Justice Stern’s delineation between the operative effects of R.C. 5709.12 and R.C. 5709.121, his concurrence has now become the settled law of this Court. See e.g. *Community Health Professionals v. Levin*, 2007-Ohio-2336; *First Baptist Church of Milford, Inc. v. Wilkins*, 2006-Ohio-4966; *Case W. Reserve Univ. v. Wilkins*, 84 Ohio St.3d 316; *Bethesda Healthcare*, *supra*; *True Christianity*, *supra*; *Olmsted Falls*, *supra*.

In sum, COGNO’s status as a charitable institution is not the issue that is before this Court; rather, the sole issue is whether COGNO is using its property exclusively for charitable

purposes. This Court should apply its well-settled precedent and find that it is divested of jurisdiction to consider the applicability of R.C. 5709.121 to this matter.

B. Even assuming arguendo that the construction of R.C. 5709.121 can be considered, COGNO's claim for exemption still fails.

COGNO relies heavily on *Community Health Professionals*, supra—a case that was limited solely to the consideration of R.C. 5709.121.³ Yet, even assuming arguendo that COGNO could rely on *Community Health Professionals*' construction of R.C. 5709.121, COGNO's claim for exemption would fare no better. One of the central concerns there was whether the property was made available “not with the view to profit.” That issue is simply not before this Court. Moreover, in that case, the applicant's stated purpose was to provide “in-home nursing services for the ill, disabled, injured and impaired.” *Id.* at ¶2. The Court also found that the applicant provided its “services without regard to a patient's ability to pay, and that no patients have been denied services due to their inability to pay.” *Id.* at ¶23. Thus, the applicant's activities benefited a needy subset of the general public—put another way, the applicant's activities were consonant with the teaching of *Planned Parenthood*. Here, COGNO's services do not benefit a needy subset of the general public; rather, COGNO's services solely benefit its member congregations through the fulfillment of administrative duties. There has been no showing that the member congregations of COGNO are comprised of a needy subset of the general public, and thus, *Community Health Professionals* is inapposite.

COGNO also submits that its administrative office building should be granted an exemption pursuant to R.C. 5709.12 based upon this Court's reasoning in *Case W. Res. Univ.*,

³ As explained by the Court: “On this appeal, then, the question presented for our review is whether the Board of Tax Appeals reasonably and lawfully concluded that CHP's property is exempt from real estate taxation in accordance with R.C. 5709.121.” *Id.* at ¶12.

supra. There, the applicant sought to have its property “exempted from real property taxation under R.C. 5709.12 and R.C. 5709.121.” Id. at 319. Exemption was ultimately granted via the Court’s application of the operative language set forth in R.C. 5709.121(A)(2)⁴—a statute that COGNO disavowed any reliance on both in its exemption application to the Tax Commissioner and in its notice of appeal to the BTA. However, even assuming arguendo that COGNO could rely on *Case W. Res. Univ.*’s construction of R.C. 5709.121, COGNO’s claim for exemption would still fail.

There, exemption was granted to two 501(c)(3) organizations who received funding from the State pursuant to the Thomas Alva Edison Grant Program. The Court found that the goal of these two organizations was “to promote and develop emerging technologies and emerging companies in order to provide jobs for people and to strengthen the economy of the state, especially in northeastern Ohio.” Id. at 320. To be sure, the Court exempted property that was characterized as an “administrative area.” Yet, a comparison of the activities conducted in the “administrative area” at issue in *Case W. Res. Univ.* with those found in COGNO’s administrative office reveals a stark contrast. As the Court recognized, the “administrative area” in *Case W. Res. Univ.* was being used “to encourage the development of technology in Ohio in order to promote economic growth.” Id. at 321. Such broad-based efforts to promote the overall economic well-being of Ohio’s citizenry are fully consistent with the admonition from *Planned Parenthood*. Here, as COGNO admits, its property is “purely an administrative office building used by regional church officials to oversee and assist member congregations * * *.” COGNO

⁴ Holding that: “We find the BTA’s determination that EDI’s and EBTC’s use of the property falls ‘within the gambit [sic] of charitable, educational and/or public purposes’ as set forth in R.C. 5709.121(A) to be supported by the evidence and to be reasonable and lawful.” Id. at 321.

Br. 4. COGNO's fulfillment of administrative and corporate functions through the processing of phone calls, payroll, and filing is far removed from the functions in *Case W. Res. Univ.* which involved benefiting the overall economic well-being of Ohio citizens through the creation of jobs and emerging technologies. Moreover, the beneficiaries of COGNO's activities are much more narrowly circumscribed than of those found in *Case. W. Res. Univ.* To wit, COGNO's property is used to benefit its members, not Ohio citizens in general. See *Planned Parenthood*.

Proposition of Law No. 3:

In direct contravention of this Court's precedent, COGNO's erroneous expansion of the R.C. 5709.12 exemption for property "used exclusively for charitable purposes" unreasonably and unlawfully 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.

Not only would COGNO's novel expansion of the R.C. 5709.12 exemption contravene the plain, settled meaning of "charitable" activities as established in this Court's decisions, including such cases as *Planned Parenthood*; *Hubbard Press*; *Olmsted Falls*; and *Socialer Turnverein*, it would render meaningless the General Assembly's enactment of a separate and more specific statutory exemption for property used for purposes of public worship granted in R.C. 5709.07. Namely, under R.C. 5709.07(A)(2), the General Assembly has set forth the following criteria that must be met:

(A) The following property shall be exempted from the taxation:

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

Application of the foregoing criteria plainly excludes COGNO's property. *Christian Church of Ohio*, supra (holding that the regional administrative headquarters of a church failed to properly

qualify as property “facilitating public worship” within the meaning of R.C. 5709.07(A)(2)). Under the specific criteria in R.C. 5709.07(A)(2), the real property must be used primarily to facilitate public worship. *Id.* at 271. Thus, just as the absence of public worship conducted on the premises in *Christian Church of Ohio* doomed the R.C. 5709.07 exemption claim for the regional church administrative building at issue in that case, so, too, that same absence renders the R.C. 5709.07 exemption unavailable to COGNO’s regional church administrative building at issue here.

By failing to seek exemption under R.C. 5709.07, COGNO implicitly has recognized the futility of pursuing an exemption claim under that statute. In other words, by seeking exemption under R.C. 5709.12, instead of R.C. 5709.07, COGNO asks this Court to endorse its end-run around the General Assembly’s express legislative will. By urging this Court to grant exemption under a more general statutory exemption for property “used exclusively for charitable purposes,” COGNO asks the Court to disregard the specific criteria for exemption set forth in R.C. 5709.07 for the kinds of property used to support public worship.

COGNO’s approach truly would render meaningless the entire R.C. 5709.07(A)(2) exemption. Under the appellant’s misguided view, the real property at issue here, at best, merely *indirectly* supports public worship, but, nonetheless, would qualify as “used exclusively for charitable purposes.” Thus, if such indirect support of public worship were to qualify as “exclusively charitable,” then, under COGNO’s erroneous view, COGNO’s “houses of public worship”—which *directly* support public worship—necessarily would qualify as “exclusively charitable” as well. Consequently, if COGNO’s construction of R.C. 5709.12 were correct, there would be no purpose for the General Assembly to have enacted the R.C. 5709.07 exemption.

COGNO's expansive reading of R.C. 5709.12 would "swallow up," and render a nullity, the entire R.C. 5709.07 exemption. This position is not irreconcilable with *True Christianity*. In that case, the applicant was not using its property, even in an *indirect* sense, to support public worship as this Court has defined it in *Faith Fellowship*, *supra*. See *Faith Fellowship* at paragraph one of the syllabus (explaining that "'public worship' means the open and free celebration or observance of the rites and ordinances of a religious organization."). Rather, the applicant was using his property "to disseminate information to spiritually advance and benefit mankind in general." *True Christianity* at 120.

This Court has long rejected similar attempted end-runs around the express requirements of statutory exemptions delineating a specific kind of exempt use or exempt property. *Rickenbacker Port Authority v. Limbach* (1992), 64 Ohio St.3d 628, 630-31; *Toledo Business & Professional Women's Retirement Living, Inc. v. Bd. of Tax Appeals* (1971), 27 Ohio St.2d 255, paragraph one of the syllabus (holding that "[a]fter the General Assembly has marked a specific use of property for exemption and has established the criteria therefor, the function of the judicial branch is limited to interpreting and applying those criteria"). Here, this established principle should have particular force, because, as noted above, under the construction of R.C. 5709.12 advanced by COGNO, the specific criteria enacted by the General Assembly in R.C. 5709.07 would never have any significance.

In fact, such disregard of the General Assembly's enactments should be avoided if at all possible. As this Court held in *D.A.B.E., Inc. v. Toledo-Lucas County Bd. of Health*, 2002-Ohio-4172, ¶26:

Statutory language 'must be construed as a whole and given such interpretation as will give effect to every word and clause in it. No

part should be treated as superfluous unless that is manifestly required, and the court should avoid that construction which renders a provision meaningless or inoperative.’ (quoting *State ex rel. Myers v. Spencer Twp. Rural School Dist. Bd. of Edn.* (1917), 95 Ohio St. 367, 372-373) (Emphasis added.)

See also *Beckwith & Associates, Inc. v. Kosydar* (1977), 49 Ohio St.2d 277, 278 (holding that “[i]n this state, it is presumed that, in enacting a law, the General Assembly intended for the statute to be effective in its entirety”) (citing R.C. 1.47(B)); *Van Dyne Crotty Co. v. Limbach* (1990), 53 Ohio St.3d 3, 5-6 (same).

IV. Conclusion.

For the foregoing reasons, the BTA’s decision and order upholding the Tax Commissioner’s denial of COGNO’s request for exemption under R.C. 5709.12 should be affirmed as reasonable and lawful.

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The Ohio Supreme Court has held that whether the institution is religious or charitable is not a relevant factor; the relevant factor for determining exemption is *whether the institution is using the property exclusively for charitable purposes*. *True Christianity Evangelism v. Zaino* (2001), 91 Ohio St. 3d 117 at 118 (*emphasis added*). The Commissioner correctly cites *Planned Parenthood Assn of Columbus, Inc. v. Tax Commissioner* (1966), 5 Ohio St. 2d 117, paragraph one of the syllabus, for the proposition that “[I]n the absence of a legislative definition, ‘charity’, in a 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”. Cited in *True Christianity, Supra*, at 119 (*emphasis by the court*).

If operated without any view to profit, an institution used exclusively for the lawful advancement of education *and of religion* is an institution used exclusively for charitable purposes, within the meaning of [now R.C. 5709.12]. *Cleveland Bible College v. Bd. Of Tax Appeals* (1949), 151 Ohio St. 258, paragraph one of the syllabus (*emphasis added*). 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. When the real property is used primarily “to encourage people to read the Bible and live up to its moral standards”, these efforts are “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.” *Id.* at 120 (*emphasis added*).

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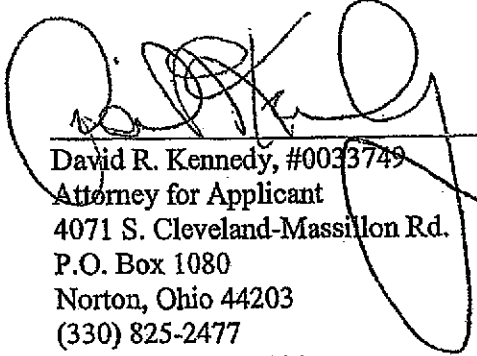
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The Ohio Supreme Court has clearly and concisely stated a simple two-prong test for determining exemption under R.C. 5709.12. The Commissioner has chosen not to apply that test. Thus, his unsupported conclusion that "the administrative headquarters for a church or congregation is taxable", regardless of the charitable use of the property, is inconsistent with Ohio law and is clearly in error.

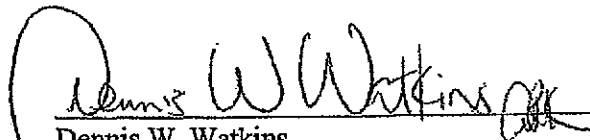
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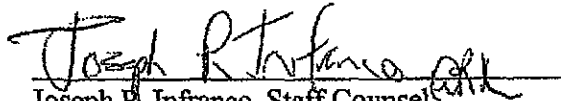
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ALLIANCE DEFENSE FUND



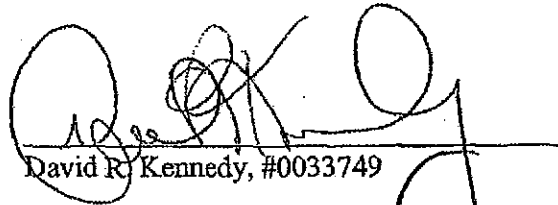
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was served via Federal Express Delivery this 5th day of February 2007 to:

Ohio Board of Tax Appeals
Rhodes State Office Tower
30 E. Broad Street, 24th Floor
Columbus, OH 43215

William W. Wilkins, Tax Commissioner
Rhodes State Office Tower
30 East Broad Street, 22nd Floor
Columbus, OH 43215



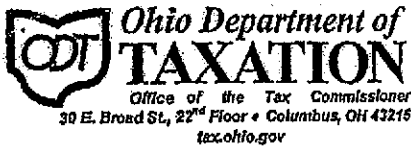
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FINAL DETERMINATION

Date: DEC 08 2006

Church of God in Northern Ohio, Inc.
Attn: David R. Kennedy, Esq.
P. O. Box 1080
Norton, OH 44203-9480

Re: DTE No.: JE 3480
Auditor's No.: 9053
County: Summit
School District: Bath Township/Fairlawn School District
Parcel Number: 0500262

This is the final determination of the Tax Commissioner on an application for exemption of real property from taxation filed on November 3, 2003.

The applicant, the Church of God in Northern Ohio, Inc., seeks exemption of the above-described property for tax year 2003 and remission of taxes and penalties for tax year 2002. The subject property is the location of the state executive offices and ministry training center for the applicant. It includes office space for the support staff for the administrative bishop, who oversees 121 member congregations in the northern half of Ohio. It also contains offices for various ministries administered by the applicant, as well as conference and training rooms. According to the applicant, its activities relate to "[f]acilitating the proclamation of the Gospel of Jesus Christ and supporting public worship."

The applicant seeks exemption under R.C. 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." In order to be entitled to exemption under this section, two requirements must be met: the property must belong to an institution, and the property must be used exclusively for charitable purposes. *Highland Park Owners, Inc. v. Tracy* (1994), 71 Ohio St. 3d 405. The applicant is an institution. Therefore, the first requirement of this section is satisfied.

The issue is whether the property is used for a charitable purpose. The Ohio Supreme Court has defined "charity" in the following manner: "[I]n 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." *In re Estate of Weiler: The Planned Parenthood Ass'n of Columbus, Ohio Inc. v. Tax Commissioner* (1966), 5 Ohio St. 2d 117. The applicant uses the subject property as the location of administrative offices and classrooms, related to operation and oversight of its member congregations. The record reflects that the applicant uses the facility to facilitate the spread of the gospel and to support public worship, at each of its member congregations.

DEC 08 2006

Whether the applicant seeks exemption pursuant to R.C. 5709.07 or R.C. 5709.12, property used as the administrative headquarters for a church or congregation is taxable. In this case, the property is being used for purposes that are merely supportive of public worship. The Ohio Supreme Court reiterated its view on similarly used property in *Christian Church of Ohio v. Limbach* (1990), 53 Ohio St.3d 270 at 271:

The activities conducted at the property consisted of general supervision of member churches and cooperative programs for religious training, the establishment of new churches, staff training, counseling, and providing Christian ministry on college campuses. No public worship services were conducted on the subject property.

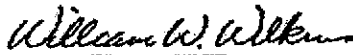
It is not enough that property is used only in support of public worship. We held in *Faith Fellowship Ministries v. Limbach* (1987), 32 Ohio St. 3d 432, 513 N.E. 2d 1340, at paragraph two of the syllabus: "To qualify for exemption from real property taxation as a house used exclusively for public worship under R.C. 5709.07, such property must be used in a principal, primary, and essential way to facilitate the public worship." In *Faith Fellowship, supra*, we dealt with multiple use of a complex of buildings and approved exemption for the parts of those buildings which were used in connection with the public worship being conducted within the complex. Thus, the property under review, to be entitled to exemption, must facilitate the public worship occurring on the premises.

Following the directives of the Supreme Court, only that part of the applicant's property used for public worship on the premises qualifies for tax exemption. Property used for administrative offices for other churches does not qualify for exemption.

Based on the information available to the Tax Commissioner, the Commissioner finds that the property described in the application is not entitled to be exempt from taxation pursuant to R.C. 5709.12 and the application is therefore denied for tax year 2003, and orders that the request for the remission of taxes and interest for tax year 2002 be denied. The Tax Commissioner further orders that penalties charged through the date of this determination be remitted.

THIS IS THE TAX COMMISSIONER'S FINAL DETERMINATION WITH REGARD TO THIS MATTER. NOTICE WILL BE SENT PURSUANT TO R.C. 5715.27 TO THE COUNTY AUDITOR. UPON EXPIRATION OF THE SIXTY-DAY APPEAL PERIOD PRESCRIBED BY R.C. 5717.02, THIS MATTER WILL BE CONCLUDED AND THE FILE APPROPRIATELY CLOSED.

I CERTIFY THAT THIS IS A TRUE AND ACCURATE COPY OF THE FINAL DETERMINATION RECORDED IN THE TAX COMMISSIONER'S JOURNAL


WILLIAM W. WILKINS
TAX COMMISSIONER

/s/ William W. Wilkins

William W. Wilkins
Tax Commissioner



2 of 5 DOCUMENTS

Ohio Nurses Association, Inc., Appellant, vs. Richard A. Levin, Tax Commissioner of
Ohio, Appellee.

CASE NO. 2007-N-148 (REAL PROPERTY TAX EXEMPTION)

STATE OF OHIO -- BOARD OF TAX APPEALS

2008 Ohio Tax LEXIS 2154

November 4, 2008

[*1]

APPEARANCES:

For the Appellant - Jones Law Offices, Robyn R. Jones, 175 S. Third Street, Suite 800, Columbus, Ohio 43215

For the Appellee - Nancy H. Rogers, Attorney General of Ohio, Damion M. Clifford, Assistant Attorney General,
30 East Broad Street, 25th Floor, Columbus, Ohio 43215

OPINION:

DECISION AND ORDER

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

On February 27, 2007, appellant, Ohio Nurses Association, Inc., filed an appeal from a final determination of the Tax Commissioner, in which the commissioner denied appellant's application for real property exemption. The commissioner further ordered that appellant was not responsible for all penalties incurred related to tax years 2003, 2004, and 2005.

In denying appellant's application for real property tax exemption, the commissioner made the following pertinent findings:

"The applicant is requesting exemption pursuant to R.C. 5709.12 for a one story office building and real property totaling approximately 1.547 acres. The applicant is a nonprofit organization, and it is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code. Its active members are registered nurses and students throughout [*2] Ohio. The applicant is an affiliate of the American Nursing Association. According to its bylaws, its purposes include promoting the professional and educational advancements of nurses to elevate the standards of nursing, to promote the welfare of nurses, to foster high standards of nursing care, to promote effective nursing care for all people, to disseminate information on nursing and to foster and promote cordial relations between the registered professional nurses of Ohio and those of other states.

"The applicant may act as a collective bargaining representative for registered nurses. To this end, its bylaws include a restriction prohibiting members from participating in or giving assistance to any other labor organizations that are in direct competition with it, the American Nurses Association and any other state nursing associations. According to its website, the majority of its 8,000 members are unionized nurses throughout the state, although being a bargaining unit member is not a prerequisite for membership.

"Information provided in the application indicates that the applicant uses the property to increase nursing standard[s] [sic] and to foster quality nursing care for [*3] the public. According to the applicant, the property is used to administer various programs, including nursing practice consultation, various professional practice position statements and papers, and continuing nursing education and mentoring. Additionally, the applicant administers the Ohio Nursing Foundation at the subject property. The Ohio Nurses Foundation was organized to advance nursing as a profession by assisting nurses with their continuing education, research and scholarship." Statutory transcript ("S.T.") at 1.

In determining whether appellant should be granted an exemption pursuant to R.C. 5709.12, the commissioner found that while appellant was an institution, the subject property was not used for a charitable purpose:

"R.C. 5709.12 provides that 'real and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation.' In order to be entitled to exemption under this section, two requirements must be met: the property must belong to an institution, and the property must be used exclusively for charitable purposes. *Highland Park Owners, Inc. v. Tracy* (1994), 71 *Ohio St.3d* 405. [*4] The applicant is an institution. Therefore, the first requirement of this section is satisfied.

"The issue is whether the property is used for a charitable purpose. The Ohio Supreme Court has defined 'charity' in the following manner: 'In the absence of a legislative definition, 'charity', [sic] 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.' *In re Estate of Weiler: The Planned Parenthood Ass'n of Columbus, Ohio Inc. v. Tax Commissioner* (1966), 5 *Ohio St. 2d* 117.

"The applicant is a professional organization of registered nurses. It uses the subject property to prepare programs and materials, to conduct classes and conferences, and to provide various resources to its members. This is similar to other professional organizations, such as the American Medical Association and the American Bar Association, which also provide educational opportunities for their members. The applicant's members receive the direct and primary benefit of the services offered at the subject property to [*5] enhance their professional careers in nursing. Additionally, the property is used by the applicant in its role in representing its membership through the collective bargaining process. Although the use of this property to cultivate the professionalism of its members is commendable, it is not a charitable use of the property. *Columbus Board of Education v. Limbach* (Jun. 26, 1992), BTA No. 86-H-566. The public may receive an indirect benefit from improved nursing services provided by nurses as a result of the applicant's activities. Nevertheless the applicant can not [sic] obtain a vicarious exemption based on improved nursing services by its members. *OCLC Online Computer Library Center, Inc. v. Kinney* (1984), 11 *Ohio St. 2d* 153. Therefore, the subject property is not used for a charitable purpose and does not satisfy the requirements of R.C. 5709.12." S.T. at 2.

In response to the commissioner's final determination, the appellant specified the following errors in its appeal to this board:

- "1. [T]he Commissioner erred in finding that the property is not used for charitable purposes.
- "2. [T]he Commissioner erred in finding that the property does [*6] not meet the requirements for exemption under R.C. 5709.12."

Both parties elected to waive their right to a hearing before this board. We therefore remind the parties that our duty is to conduct a de novo review of the record and to "determine the value of the property." R.C. 5717.03. Where the parties elect to present no additional evidence on appeal, we will independently review the record developed by the parties before the county board of revision and render a determination regarding value that is consistent with the existing information. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 *Ohio St.3d* 13, 15 (quoting *Black v. Cuya-*

hoga Cty. Bd. of Revision (1985), 16 Ohio St.3d 11, 14, and holding that this board "'has a duty on appeal to independently weigh and evaluate all evidence properly before it.'" We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified to this board by the tax commissioner, and the briefs submitted by the parties.

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. [*7] Consequently, it is incumbent upon a taxpayer challenging a determination of the commissioner to rebut the presumption and to establish a clear right to the requested relief. *Belgrade Gardens v. Kosydar (1974)*, 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield (1968)*, 13 Ohio St.2d 138. In this regard, 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.

The issue presented in this appeal is whether the commissioner erred in denying tax exempt status to certain real property. The authority to exempt property from ad valorem taxation emanates initially from Section 2, Article XII, of the Ohio Constitution:

"Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt *** institutions used exclusively for charitable purposes ***."

While the General Assembly has exercised its authority to enact legislation [*8] to exempt qualifying property from taxation, it has also expressed the limited scope of the grant, acknowledging that "all 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, "in 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. Therefore, apparent from the preceding, "exemption is the exception to the rule and statutes granting exemption are strictly construed." *Seven Hills Schools v. Kinney (1986)*, 28 Ohio St.3d 186.

In the present case, appellant sought exemption for the subject property pursuant to R.C. 5709.12. n1 R.C. 5709.12(B) provides, in pertinent part:

"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 [*9] purposes shall be exempt from taxation."

n1 Before we proceed to the merits of this case, we must note that appellant only sought exemption under R.C. 5709.12, and did not specify R.C. 5709.121 in its notice of appeal or in the application for exemption. Notice of appeal at 1, S.T. at 38. It is well settled that the Board of Tax Appeals has jurisdiction to consider only the applicability of those sections of the Revised Code raised by an appellant before the Tax Commissioner. See *Moraine Hts. Baptist Church v. Kinney (1984)*, 12 Ohio St.3d 134. Cf. *CNG Development Co. v. Limbach (1992)*, 63 Ohio St.3d 28. Likewise, "a notice of appeal does not confer jurisdiction upon the Board of Tax Appeals to resolve an issue, unless that issue is clearly specified in the notice of appeal." *Cleveland Elec. Illum. Co. v. Lindley (1982)*, 69 Ohio St.2d 71, 75. See, also, *Kern v. Tracy (1995)*, 72 Ohio St.3d. In *Queen City Valves, Inc. v. Peck (1954)*, 161 Ohio St. 579, the court determined that the term "specify" means to "'mention specifically, to state in full and explicit terms.'" *Id.* at 583. Thus, we consider only R.C. 5709.12 in reviewing this matter. See *Oikos Community Dev. Corp. v. Zaino (Nov. 9, 2001)*, BTA No. 2000-T-2037, unreported.

[*10]

In *White Cross Hosp. Assn. v. Bd. of Tax Appeals (1974)*, 38 Ohio St.2d 199, at 203, the court held that "Any institution, irrespective of its charitable or noncharitable character, may take advantage of a tax exemption if it is making exclusive charitable use of its property." Therefore, to grant an exemption under R.C. 5709.12, it must first be determined that the property belongs to an institution, and that the property is being used exclusively for charitable purposes. *Highland Park Owners Inc. v. Tracy (1994)*, 71 Ohio St.3d 405, 406-407. Additionally, to qualify for exemption under R.C. 5709.12, real property must not be used with a view to a profit, and cannot be in competition with commercial enterprises. *Am. Soc. for Metals v. Limbach (1991)*, 59 Ohio St.3d 38; *Lutheran Book Shop v. Bowers (1955)*, 164 Ohio St.

359. See, also, *Seven Hills Schools, 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; [*11] *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.

We first address the requirement that the property must be owned by an institution. In *True Christianity Evangelism v. Tracy* (1999), 87 Ohio St.3d 48, the court held, "When considering a request for exemption under the portion of R.C. 5709.12(B) ***, the first point of inquiry must be whether the property belongs to an 'institution.'" *Id.* at 50.

In *Highland Park Owners Inc. v. Tracy* (1994), 71 Ohio St.3d 405, the court defined the term "institution" as:

"An establishment, especially one of eleemosynary or public character or one affecting a community. An established or organized society or corporation. It may be private in its character, designed for profit to those composing the organization, or public and charitable in its purposes, or educational (e.g. college or university). ***" *Id.* at 407.

Under this definition of "institution," there is no specific requirement for an entity [*12] to have corporate status in order to be an institution, but it may be any organization or organized society. See, e.g., *Thomaston Woods L.P. v. Lawrence* (June 15, 2001), BTA No. 1999-L-551, unreported (holding that a for-profit limited partnership qualifies as an institution under R.C. 5709.12). Here, the commissioner does not contest that appellant is an institution, finding that under *Highland Park Owners, supra*, appellant qualifies as an institution. S.T. at 2. We agree. As an incorporated association formed to further the professional development of nurses in Ohio, and to represent the interests of nurses, appellant is an institution based upon the definition set forth in *Highland Park Owners*.

We must now consider whether appellant was "making exclusive charitable use" of the subject property. *White Cross* and *Highland Park Owners, supra*. While the General Assembly has not defined what activities of an institution constitute charitable purposes, 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 [*13] the syllabus, that:

"[I]n 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."

The phrase "used exclusively" has been interpreted by the Ohio Supreme Court to mean primary use. *True Christianity, supra*. The court commented further in regard to what constitutes charitable use in *Bethesda Healthcare, Inc., 101 Ohio St.3d 420, 2004-Ohio-1749*, at 39, stating,

"Whether 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 ***."

It must be emphasized that the burden rests with appellant to prove by competent and probative evidence that the subject property [*14] was used exclusively for charitable purposes. We first restate the articles of incorporation of appellant found in the commissioner's findings, which, in a 1956 amendment changing the purpose clause of the corporation, provide:

"The purpose for which this corporation is formed is:

"To promote the professional and educational advancements of nurses to elevate the standards of nursing;

"To continuously evaluate and maintain a code of ethics among nurses;

"To promote the welfare of nurses;

"To foster high standards of nursing services;

"To promote effective nursing care for all people;

"To disseminate information on nursing;

"To foster and promote cordial relations between the registered professional nurses of Ohio and those of other states and countries; ***." S.T. at 5.

Second, an overview of appellant's bylaws provides us with the governing aspects of appellant. Initially, the purpose of appellant is restated in article one of the bylaws. Other pertinent articles describe who may become a member, the disciplinary action and rights of members, assessments and dues, meetings and voting, duties of the board of directors, committees, councils on practice and health [*15] policy, representation of nurses at meetings of the American Nurses Association, and the official publication of appellant.

The statutory transcript also contains information from appellant's webpage, which relates to frequently asked questions, including what the mission of appellant is and licensure information. Further, information related to continuing education, events, the Ohio Nurses Foundation, and economic and general welfare questions is contained in the webpage printouts.

At the outset, we note appellant's non-profit status, and the fact that the record does not indicate that appellant is in competition with commercial enterprises. However, a review of the purpose clause of the articles of incorporation, the bylaws, and the webpage material reveals that appellant's use of the subject property is primarily devoted to the nursing profession. This includes the professional development and general welfare of nurses, professional nursing standards, relationships between nurses of different organizations, economic concerns of nurses, and other interests that are germane to the nursing profession. Appellant also declares that effective nursing care for all people is a stated purpose. [*16]

While we agree that the public is served by high levels of nursing care, and that the purpose for which appellant was created is a noble one, we cannot agree that the subject property is used exclusively by appellant for charitable purposes. Appellant's primary use of the property is to advance the interests of the nursing profession, providing several important services to its members. *True Christianity, supra*. Furthermore, the record does not indicate that the subject property is exclusively used to provide services to those who cannot afford them, as contemplated by the decision in *Bethesda, supra*, which provides additional guidance as to what constitutes charitable use of a property. An examination of appellant's bylaws plainly shows that appellant is organized to carry out the aforementioned services to its members. The functions of appellant, which relate to the daily activities of appellant and represent more fully how appellant implements its general purpose, strongly support the finding that appellant is primarily devoted to its members. These functions include:

"a. To promote through appropriate means standards [*17] of nursing practice, nursing education, nursing services, and nursing research, as defined by the American Nurses Association, hereinafter referred to as ANA.

"b. To promote adherence to the Code of Ethics For Nurses established by ANA.

"c. To initiate and influence legislation, governmental programs, and state health policy.

"d. To promote and protect the economic and general welfare of nurses.

"e. To provide for the continuing professional development of nurses.

"f. To represent nurses and serve as their state spokesperson with allied health groups, community and governmental groups, and with the public.

- "g. To promote the recruitment and retention of members.
- "h. To provide for representation in the ANA House of Delegates.
- "i. To promote relationships with the Ohio Nursing Students' Association.
- "j. To recruit students for nursing.
- "k. To provide service to individual nurses and to their employers regarding employment opportunities and available personnel.
- "l. To comply with all provisions of ANA bylaws and policies.
- "m. To promote and support ANA's associate organizational members (AOMs)." S.T. at 10.

While appellant may indirectly impact the public by [*18] increasing the level of care provided by nurses, and, in some circumstances, provide nursing and care information to the general public, it is clear that this is not the primary use of the subject property. Appellant, as evidenced by the record as a whole, and, specifically, its functions as outlined in its bylaws, does not use the subject property primarily and exclusively for charitable purposes. *White Cross, Highland Park Owners, and True Christianity*, supra. Its primary purpose is to use the subject property to advance the interests of its members, and therefore, appellant does not qualify for an exemption under R.C. 5709.12. See *Am. Soc. for Metals, supra*.

While we recognize the social importance of the service provided, we must apply the law to the facts before us. Cf. *Rickenbacker Port Auth. v. Limbach* (1992), 64 Ohio St.3d 628, quoting *Toledo Business & Professional Women's Retirement Living, Inc. v. Bd. of Tax Appeals* (1971), 27 Ohio St.2d 255.


Therefore, we find the final determination of the Tax Commissioner to be according to law, and affirm such determination.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the Tax Commissioner's Merit Brief was sent by regular U.S. mail on this 23rd day of March, 2009 to the following:

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