

Publications

Ohio Board of Tax Appeals Reverses Course on Real Property Tax Exemptions for Permanent Supportive Housing Facilities

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On May 28, 2020, the Ohio Board of Tax Appeals (BTA) issued a decision in *Columbus City Schools Dis. Bd. of Edn. v. McClain, et al.* (May 28, 2020), BTA No. 2018-649 that reverses real property tax exemptions for permanent supportive housing facilities; exemptions that have been in place since at least 2007 when the BTA granted exemption for such properties in *88/96 LP and Community Housing Network v. Wilkins* (July 20, 2007), BTA Case No. 2005-A-55.

The BTA decision involves a 40-unit facility in central Ohio owned by Hawthorn Grove, LLC. Community Housing Network (CHN), as part owner of Hawthorn Grove, LLC and a 501(c)(3) organization formed in 1987 under the direction of the Alcohol, Drug and Mental Health Board of Franklin County (ADAMH), operates and manages the facility known as Hawthorn Grove. Hawthorn Grove's clients are low-income individuals who are disabled by substance addiction, mental illness, or individuals with a dual diagnosis and who have a history of homelessness. Supportive services, known as "wrap-around" services are provided free of charge to clients and include case management, mental health and chemical dependency counseling, medical, education and employment services, group activities and daily-living skills. CHN also employs on-site managers and social services staff to assist clients with "wrap-around" services and crisis intervention. Hawthorn Grove was constructed in 2014 using low-income housing tax credits and funding from ADAMH.

The Tax Commissioner granted real property tax exemption under R.C. 5709.12 as property used exclusively for charitable purposes. The Columbus City Schools Board of Education appealed the Tax Commissioner's Final Determination to the BTA. The BTA reversed the Tax Commissioner and denied the real property tax exemption on the basis that "the primary use of the subject property is as a private residence for tenants living there."

As support for its decision, the BTA cited to the Ohio Supreme Court's decision in *NBC-USA Hous., Inc.-Five v. Levin*, 125 Ohio St.3d 394, 2010-Ohio-1553, wherein the Court denied a real property tax exemption for

low-income government subsidized elderly housing. The BTA acknowledged the property owner's reliance on its decision in *88/96 LP v. Wilkins* (July 20, 2007), BTA No. 2005-A-55, but dismissed such reliance based upon *NBC-USA Housing*, which according to the BTA "made clear that where a property is used primarily for a private residential purpose, it cannot qualify for exemption based on a charitable use, despite the circumstances of the residents." The BTA failed to reconcile its factual finding in *88/96* that permanent supportive housing, like Hawthorn Grove in this case, was not primarily used as federally subsidized residential housing because of the services; it was more than housing.

The Tax Commissioner or the property owner may appeal the BTA's decision directly to the Ohio Supreme Court. Owners and operators of permanent supportive housing facilities, especially non-profit owners and operators, should be closely monitoring this case. The possible loss of real property tax exemptions for permanent supportive housing could have a sweeping and lasting negative effect throughout the State of Ohio.

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