

45 Ohio St.3d 253  
Supreme Court of Ohio.

COLUMBUS COLONY **HOUSING**, INC.,  
Appellee,  
v.  
LIMBACH, Tax Commr., Appellant.

No. 88-477.  
|  
Submitted June 7, 1989.  
|  
Decided Aug. 23, 1989.

Nonprofit charitable corporation protested assessment of sales and use tax. The Board of Tax Appeals held that sales and use tax was erroneously assessed. Appeal was taken as of right. The Supreme Court, Herbert R. Brown, J., held that corporation's provision of private **housing** for the **deaf** (even at reduced rates) did not, standing alone, demonstrate charitable purpose required for exemption from sales and use tax.

Reversed.

Holmes, J., filed a dissenting opinion in which Wright, J., concurred.

West Headnotes (1)

[1] **Taxation**  
🔑 **Subjects and Exemptions in General**

Nonprofit charitable corporation's provision of private **housing** to meet the special needs of the **deaf**, including the **deaf** multihandicapped, (even at reduced rates), did not, standing alone, demonstrate charitable purpose required for exemption from sales and use tax. [R.C. § 5739.02\(B\)\(12\)](#).

[Cases that cite this headnote](#)

**\*\*235** *Syllabus by the Court*

**\*253** The provision of private **housing** (even at reduced rates) does not, standing alone, demonstrate the charitable purpose required for exemption under [R.C. 5739.02\(B\)\(12\)](#).

The issue before us is the taxability of purchases by a nonprofit corporation that operates a residential apartment complex with the goal of enhancing the living conditions for elderly **deaf** people.

The taxpayer-appellee, Columbus Colony **Housing**, Inc., is a nonprofit corporation organized for charitable purposes and exempt from federal taxation under [Section 501\(c\)\(3\) of the Internal Revenue Code](#). Its purpose is to provide **housing** facilities and services to meet the special needs of the **deaf**, including the **deaf** multi-handicapped.

The taxpayer operates a four-story, one-hundred-six-unit apartment facility. Thirty-five percent of the residents are **deaf** and blind. Approximately ten percent of the residents are physically handicapped in that they use either wheelchairs or crutches. Twenty percent are hearing-capable. **\*\*236** A majority of the residents are sixty-two years or older.

The apartment facility was built with a direct loan from the Federal **Housing** and Urban Development ("HUD") Section 202 program as well as with assistance from the taxpayer's parent corporation, the Ohio School for the **Deaf** Alumni Association. Residents in the apartment facility are tenants with written leases. Thirty-two percent of the annual operating money for the facility comes from the residents and sixty-eight percent comes from the HUD Section 8 program. Residents who satisfy the Section 8 qualifications pay only thirty percent of their average monthly gross adjusted income. Residents who are not qualified to participate in the Section 8 program pay the normal market rent for a one or two bedroom unit.

The rent for a one bedroom apartment is \$540, and for a two bedroom apartment, \$642. The amount of the rent subsidy (for those who qualify) varies for each tenant. However, the taxpayer receives full rent for each unit whether it comes entirely from the tenant, or in part from the tenant and in part from HUD.

The apartments are equipped with appliances and carpeting. If the resident is **deaf**, a strobe light

communication system is installed. The taxpayer provides a van to take residents to shopping areas and banks. The taxpayer \*254 sponsors recreational activities such as crafts, ceramics, and gardening classes. For an additional fee, tenants may obtain meal service four times per week. In its leases, the taxpayer reserves the right to evict residents who fail to pay their rent on time or who otherwise violate the lease.

The Tax Commissioner assessed sales and use tax on purchases by the taxpayer. On appeal, the Board of Tax Appeals held that the taxpayer was a nonprofit organization operated exclusively for charitable purposes within the meaning of R.C. 5739.02(B)(12), that all the requirements for exemption under R.C. 5739.02(B)(12) had been satisfied, and that the commissioner had erroneously assessed sales and use tax.

The cause is before this court upon an appeal of right.

#### Attorneys and Law Firms

Fred J. Milligan, Jr., Westerville, for appellee.

Anthony J. Celebrezze, Jr., Atty. Gen., and Martha Jane Cooper, Columbus, for appellant.

#### Opinion

HERBERT R. BROWN, Justice.

The taxpayer is a nonprofit corporation, exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code. Further, the taxpayer and the volunteers who participate in the programs at the taxpayer's apartment complex are engaged in a praiseworthy endeavor. However, our task is one of statutory interpretation. The statute which controls our decision is R.C. 5739.02(B)(12).

R.C. 5739.02(B)(12) exempted the following from sales tax:

“Sales of tangible personal property [or services] to churches and to nonprofit organizations operated exclusively for charitable purposes in this state, no part of the net income of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation.” Am.Sub.H.B. No. 355 (138 Ohio Laws, Part II, 2612, 2614); bracketed material added by Am.Sub.H.B. No. 694 (139 Ohio Laws, Part II, 3460,

4025). (R.C. 5741.02[C][2] provides a concomitant use tax exception.)

“Charitable purposes” is defined in this subsection as:

“ \* \* \* [T]he relief of poverty, the improvement of health through the alleviation of illness, disease, or injury, \* \* \* [or] the operation of a home for the aged, as defined in section 5701.13 of the Revised Code \* \* \*.”

The taxpayer does not raise “relief of poverty” as a ground for its claim of exemption. Thus our decision turns on the question of whether the taxpayer's apartment complex is operated exclusively for the improvement of health through the alleviation of illness, disease, or injury.

\*\*237 The question must be answered in the negative. The record establishes that the primary function of the taxpayer's apartment complex is to provide residential housing. Indeed, the taxpayer's apartment complex is essentially similar to facilities inhabited by tenants who have no hearing impairment. Admittedly there are social, and perhaps even therapeutic, advantages where those who have a hearing impairment are provided a facility in which they can live together. The services provided by the taxpayer enhance the effectiveness of this community concept. The apartments contain some features which are beneficial to the hearing impaired. But health and alleviation of illness are not the exclusive purposes of the taxpayer's business. The provision of ordinary shelter is also a purpose—clearly the most important. The provision of \*255 shelter is a service for which the taxpayer is compensated in full (either by HUD or by the residents).

This court has consistently held that the provision of private housing (even at reduced rates) does not, standing alone, demonstrate the charitable purpose required for exemption under R.C. 5739.02(B)(12). *Ohio Children's Society, Inc. v. Porterfield* (1971), 26 Ohio St.2d 30, 55 O.O.2d 17, 268 N.E.2d 585; *Quaker Apartments of Wilmington, Inc. v. Kosydar* (1974), 38 Ohio St.2d 20, 67 O.O.2d 36, 309 N.E.2d 863; *National Church Residences of Chillicothe v. Lindley* (1985), 18 Ohio St.3d 53, 18 OBR 87, 479 N.E.2d 870.

The General Assembly may choose to expand the exemption granted in R.C. 5739.02(B)(12) to provide relief for nonprofit organizations engaged in such worthwhile projects as the one undertaken by the taxpayer herein. However, our duty is to apply the statutory law as it is written. Accordingly, we find that the taxpayer is not entitled to exemption from sales and use tax on the purchases made by the taxpayer to operate its residential facility. The decision of the Board of Tax Appeals is

reversed.

*Decision reversed.*

MOYER, C.J., and SWEENEY, DOUGLAS and RESNICK, JJ., concur.

HOLMES and WRIGHT, JJ., dissent.

HOLMES, Justice, dissenting.

In view of the facts of this case, where it is clear in the record that the premises have been constructed by a handicapped group for a number of its alumni, and that such facility, and its use, show the special purpose for such handicapped, I must take the position that the exemption per [R.C. 5739.02\(B\)\(12\)](#) does apply.

I believe, as did the Board of Tax Appeals, that this nonprofit organization was operated exclusively for charitable purposes, and that such charitable purpose, in this instance “the improvement of health,” may not technically be in “alleviation of illness, disease, or injury” here, but reasonably may be read to accomplish a similar purpose within the legislative purview.

I would affirm the Board of Tax Appeals.

WRIGHT, J., concurs in the foregoing dissenting opinion.

**All Citations**

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