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## STATE AND LOCAL TAX PROBLEMS

*The increasing emphasis being placed upon the federal tax implications of various financial transactions has tended to overshadow the importance of many state and local tax problems. Prominent among these problems is the taxation of real and personal property. Mr. Carlton B. Schnell reviews the types of real property which are exempt from the Ohio real property tax. He notes the inconsistencies which have marked the recent decisions in this area and urges that the Tax Study Commission make constructive recommendations to the legislature for changes in the tax exemption statutes. Mr. Kenneth Humer outlines several of the more important procedures relating to the Ohio personal property tax. After discussing the proper method of computing the tax, he briefly notes the procedure for claiming a deduction from book value and analyzes in detail the advantages available through the so-called federal election.*

### I

## Real Property Tax Exemptions in Ohio—A Review and Critique

*Carlton B. Schnell*

**T**HE REAL PROPERTY tax is well established in this country and is still one of the principal sources for financing local government. Despite its long history, each year there is a large volume of litigation involving real property taxation. The principal area of this litigation is in the exemption field. This article will review some of the ground rules on exemptions, explore the areas of current dispute, and suggest some possible solutions.<sup>1</sup>

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Initially, it is important to keep in mind that each time a determination is made that a particular parcel of property is exempt from taxation, the tax burden placed upon the other property in the community is increased proportionately. It is difficult, therefore, to sepa-

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<sup>1</sup> On February 16, 1966, the Ohio Supreme Court decided two cases of great importance in this area. *Philada Home Fund v. Board of Tax Appeals*, 5 Ohio St. 2d 135, 214 N.E.2d 431 (1966); *Jewish Hosp. Ass'n v. Board of Tax Appeals*, 5 Ohio St. 2d 179, 214 N.E.2d 441 (1966) (per curiam). In *Philada Home Fund*, Judge Schneider urged in a very strong dissenting opinion that:

We are not composed to determine policy and I have no doubt that the majority is as sincerely convinced that its view is in accord with the constitu-

rate the relevant policy arguments from the legal distinctions involved. In examining legal arguments, it is important not to lose sight of the fact that what is really being decided is whether or not the particular use to which property is being put should be supported by the community-at-large, rather than by the particular organization or institution making the exemption claim.

Historically, exemptions from taxation stemmed from the concept that property used by the public generally should not be taxed, since to do so would merely result in a return of public funds to the public. This concept, however, has been broadened to include uses which were not of a strictly public nature, but which arguably did involve some public benefit.<sup>2</sup>

The legislature may impose any tax it so desires, no matter how arbitrary, so long as the tax conforms to the general constitutional requirements of uniformity, due process, and equal protection.<sup>3</sup> Section 5709.01 of the Ohio Revised Code subjects all real property in the state to taxation, except that which is expressly exempted.

In Ohio, it is not clear whether there is any constitutional limitation on the power of the legislature to exempt real property from taxation.<sup>4</sup> The better view would seem to be that the legislature is not limited except by article I of the United States Constitution. Be-

tional and legislative policy of this state as I am that my view exemplified that policy. This is not a novel situation. If there is a reported case on tax exemption involving residential use of property within the last century which was decided without a division of this Court, I have yet to discover it. I dissent in order to record that which I believe is the import of today's decision so that the public and the General Assembly may be governed accordingly. *Philada Home Fund v. Board of Tax Appeals*, *supra* at 140, 214 N.E.2d at 434-35.

<sup>2</sup> For a discussion of the history and theory of real property tax exemption, see Note, *Exemption of Educational, Philanthropic and Religious Institutions From State Real Property Taxes*, 64 HARV. L. REV. 288 (1950).

<sup>3</sup> See generally OHIO CONST. art. XII, § 2.

<sup>4</sup> OHIO CONST. art. XII, § 2. The section states: "Without limiting the general power \* \* \* to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes and public property used exclusively for any public purpose."

The Ohio Supreme Court has held that this provision does not limit the power of the General Assembly to exempt personal property from taxation. *Struble v. Davis*, 132 Ohio St. 555, 9 N.E.2d 684 (1937). However, they have held that exemptions of real property are limited to those described in OHIO CONST. art. XII, § 2. *Youngstown Metropolitan Housing Authority v. Evatt*, 143 Ohio St. 268, 55 N.E.2d 122 (1944). This interpretation has been severely criticized. See Caren, *Constitutional Limitations on the Exemption of Real Property From Taxation*, 11 OHIO ST. L.J. 207 (1950). Perhaps the most important point to note is that there is no constitutional right to exemption; the state has the legal right to tax any and all property, including church and school property.

fore examining the specific exemption provisions, some consideration should be given to concepts which apply to each of the specific exemption provisions.

## I. BACKGROUND AND SCOPE OF EXEMPTIONS

### A. *Use of Land Test in Determining Eligibility for Exemptions*

An appropriate starting point is the proposition that it is the land itself and not the ownership of the land which is subject to taxation; accordingly, it is the use of the land that establishes an exemption and not the identity of the owner or the form of ownership of the land. The case of *National Headquarters D.A.V. v. Bowers*<sup>5</sup> is perhaps the best example of this principle. There, the property involved was used by the Disabled American Veterans (D.A.V.) to assemble and distribute the small plastic replicas of motor vehicle licenses which are sold to produce income for the organization. The supreme court conceded that the D.A.V. was organized for charitable purposes, but found that the property in question was not used exclusively for those purposes and therefore did not meet the constitutional test for exemption. Thus, the court stated: "The *use*, not the *ownership*, is the test. It is the property, not the institution, that is being taxed."<sup>6</sup> It, of course, makes no difference that the income generated from the use is itself used exclusively for charitable purposes.<sup>7</sup>

### B. *The Problem of Prospective Use*

Another problem that frequently arises in exemption cases is whether prospective use of property for an exempt purpose by an institution qualifies the property for exemption. It may generally be stated that if the property is acquired by a clearly exempt organization and no nonexempt use is made of the property, the exemption will apply so long as it remains abundantly clear that the ultimate use will be for an exempt purpose.<sup>8</sup> Illustrative of this proposition is *Carney v. Cleveland City School Dist.*,<sup>9</sup> which involved the acquisition by the Library Board of the City of

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<sup>5</sup> 171 Ohio St. 312, 170 N.E.2d 731 (1960).

<sup>6</sup> *Id.* at 314, 170 N.E.2d at 733.

<sup>7</sup> *Denison Univ. v. Board of Tax Appeals*, 173 Ohio St. 429, 440, 183 N.E.2d 773, 780 (1962); *Benjamin Rose Institute v. Myers*, 92 Ohio St. 252, 110 N.E. 924 (1915).

<sup>8</sup> *Carney v. Cleveland City School Dist.*, 169 Ohio St. 65, 157 N.E.2d 311 (1959); *Board of Educ. v. Board of Tax Appeals*, 149 Ohio St. 564, 80 N.E.2d 156 (1948).

<sup>9</sup> *Carney v. Cleveland City School Dist.*, *supra* note 8.

Cleveland of a building for the purpose of library expansion. Previously, the building had been used by a newspaper. The building was acquired in December of 1957 and the Library Board applied for an exemption for 1958. On tax listing day, the Library Board had not started alterations on the building nor was it actually using the building as a library facility. Nonetheless, the building was held exempt from taxation as public property used exclusively for public purposes, even though at that time there was no such use by the public.

Other cases involving prospective use have held that it is necessary to show a positive immediate intent to use the land for the exempt purpose; there must be some concrete evidence of this intent, or the exemption will not be allowed.<sup>10</sup>

### C. *Partial Exemptions*

According to section 5713.04 of the Ohio Revised Code, an organization may obtain a partial exemption from property taxation. The possible benefits of this provision should not be overlooked. In essence, the section provides that if a parcel of improved or unimproved realty has a single ownership and is so used that a part thereof, if a separate entity, would be exempt from taxation, the listing may be split and the part used exclusively for exempt purposes regarded as a separate entity, with the balance used for non-exempt purposes listed separately and taxed accordingly. The property may be split vertically, horizontally, or otherwise, but it may not be divided on a percentage of use basis.<sup>11</sup>

### D. *Construction of Exemption Statutes*

The Ohio Supreme Court has stated that exemption statutes are to be strictly construed against the one who is seeking the exemption.<sup>12</sup> However, in recent years this rule has been honored only where it has suited the court's purpose to do so. It is the writer's impression that in some areas the court is moving in the direction

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<sup>10</sup> *Philada Home Fund v. Board of Tax Appeals*, 5 Ohio St. 2d 135, 214 N.E.2d 441 (1966). *Holy Trinity Protestant Episcopal Church v. Bowers*, 172 Ohio St. 103, 173 N.E.2d 682 (1961).

<sup>11</sup> *Trustees of Church of God v. Board of Tax Appeals*, 159 Ohio St. 517, 112 N.E.2d 633 (1953); *Goldman v. L. B. Harrison Club*, 158 Ohio St. 181, 107 N.E.2d 530 (1952); *Welfare Fed'n v. Glander*, 146 Ohio St. 146, 64 N.E.2d 813 (1945).

<sup>12</sup> *Crown Hill Cemetery Ass'n v. Evatt*, 143 Ohio St. 399, 403, 55 N.E.2d 660, 662 (1944).

of those states which follow a rule of liberal construction of exemption statutes.<sup>13</sup>

## II. SPECIFIC EXEMPTIONS

### A. Charitable Use

The most important of the specific exemptions is contained in section 5709.12 of the Revised Code. This section grants an exemption for property which is owned by an institution and which is used exclusively for charitable purposes. The institution may be either public or private, so long as the property itself is used exclusively for charitable purposes.<sup>14</sup> However, if the institution is private, not only must the land itself be used for charitable purposes, but the institution must be charitable as well. For example, in a case in which the property in question was a playground owned by the American Legion, which the Legion permitted the general public to use, it was held that although the use itself was charitable, the exemption was not applicable since the institution itself was not primarily charitable in nature.<sup>15</sup>

If private property is leased to a charitable institution on something other than a perpetual lease, this will not entitle the property to exemption.<sup>16</sup> This is true even though the lease may require the lessee to pay taxes.

The fact that a charge is made for services rendered by an otherwise charitable organization does not in and of itself destroy the charitable nature of the use, so long as there is general availability of the property to any member of the public consistent with the continued economic operation of the institution.<sup>17</sup>

Despite the aforementioned rule of strict construction, the Ohio Supreme Court has liberally construed the statutory provision re-

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<sup>13</sup> See generally Caren, *supra* note 4, at 215.

<sup>14</sup> Denison Univ. v. Board of Tax Appeals, 2 Ohio St. 2d 17, 205 N.E.2d 896 (1965); Humphries v. Little Sisters of the Poor, 29 Ohio St. 201 (1876); Gerke v. Purcell, 25 Ohio St. 229 (1874).

<sup>15</sup> Euclid Post 343 Am. Legion, Ohio B.T.A. No. 45029 (1961).

<sup>16</sup> Columbus Youth League v. County Bd. of Revision, 172 Ohio St. 156, 174 N.E.2d 110 (1961); Humphries v. Little Sisters of the Poor, 29 Ohio St. 201 (1876). A conveyance to a charitable institution with an option to repurchase at a nominal amount has withstood attack. Zangerle v. State, 120 Ohio St. 139, 165 N.E. 709 (1929).

<sup>17</sup> College Preparatory School for Girls v. Evatt, 144 Ohio St. 408, 59 N.E.2d 142 (1945). However, if all are required to pay, the charitable purpose may become secondary. See Beerman Foundation, Inc. v. Board of Tax Appeals, 152 Ohio St. 179, 87 N.E.2d 474 (1949); Cleveland Branch of the Guild of St. Barnabas for Nurses v. Board of Tax Appeals, 150 Ohio St. 484, 83 N.E.2d 229 (1948).

quiring "exclusive" use. The best example of this construction is found in *Goldman v. Friars Club, Inc.*,<sup>18</sup> which involved a number of institutions including the Young Men's Christian Association (YMCA) and Young Women's Christian Association (YWCA). The property belonged to an admittedly nonprofit corporation whose objective was the spiritual and physical welfare of the people of Cincinnati. It consisted of a four-story building of which the top two floors were occupied as a place of residence by young men who paid low rentals. The rates varied according to ability to pay and type of room occupied. The club also operated snack bars and a restaurant as well as a bowling alley. The Board of Tax Appeals found that the dormitory, snack bar, bowling alley, and restaurant were not used exclusively for charitable purposes and therefore determined that only seventy-four per cent of the building should be exempt. The supreme court noted its many decisions to the effect that the use of land for low-rent housing for people of limited income does not entitle the owner to an exemption, and that even though the income from a commercial enterprise is devoted to charity, the property is not exempt. But the court, nevertheless, found this property exempt and adopted the following reasoning:

The board apparently did not give consideration to the character of these uses as connected with and incidental to the overall program carried on within the properties and the charitable nature of each institution as a whole. These overall programs carried on by these institutions devoted to charity without any commercial aspect or commercial profit, in the opinion of the court, differentiate the instant cases, as to the specific facts, from the cases hereinbefore cited.<sup>19</sup>

The test thus articulated has little to do with the specific use of the property.<sup>20</sup> It is submitted that the court really meant that, in its opinion, this property should be exempt regardless of the specific directive of section 5709.12 that the property be used *exclusively* for charitable purposes. In the opinion, the word "principally" was inserted in lieu of "exclusively."

A similar example of statutory interpretation is found in *Aultman Hosp. Ass'n v. Evatt*.<sup>21</sup> There the court held that a student nurses' home located near an exempt hospital was also exempt. The

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<sup>18</sup> 158 Ohio St. 185, 107 N.E.2d 518 (1952).

<sup>19</sup> *Id.* at 199, 107 N.E.2d at 524.

<sup>20</sup> On the same day, the court denied an exemption in a similar case where the only distinction was the difference in the overall program. *Goldman v. L. B. Harrison Club*, 158 Ohio St. 181, 107 N.E.2d 530 (1952).

<sup>21</sup> 140 Ohio St. 114, 42 N.E.2d 646 (1942).

charitable purpose was found in the fact that the home was "a necessary part of the hospital institution itself."<sup>22</sup> However, there are subsequent decisions which distinguish the *Aulman* case, although their factual patterns are quite similar.<sup>23</sup>

### B. Educational and Religious Use

Section 5709.07 of the Revised Code governs exemptions given to schools, churches, and colleges. The most recent pronouncement of the supreme court interpreting this section is *Denison Univ. v. Board of Tax Appeals*.<sup>24</sup> The university filed three separate applications for exemption from taxation. The first related to three parcels of land comprising a farm upon which were located certain buildings used for university maintenance and farming. The second concerned the president's home which was located upon the campus and occupied by the president and his family. The third related to a house and eight-acre tract located about a mile-and-a-half from the campus which was used for lodging official guests of the university. The Board of Tax Appeals denied all three applications on the ground that the use in each case was not exclusively for a charitable purpose. In its appeal to the Ohio Supreme Court, the university relied on section 5709.07, as well as section 5709.12. The former grants an exemption to "public colleges and academies and all buildings connected therewith, and all lands connected with public institutions of learning, not used with a view to profit . . ." Under this section, there is no requirement that the use be exclusively for a charitable or public purpose.<sup>25</sup> In upholding the exemptions, the court disregarded many prior decisions,<sup>26</sup> and instead relied principally on the case of *Kenyon College v. Schnebly*,<sup>27</sup> decided by a lower court in 1909 and affirmed by the supreme court

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<sup>22</sup> *Id.* at 117, 42 N.E.2d at 647.

<sup>23</sup> *Doctors Hosp. v. Board of Tax Appeals*, 173 Ohio St. 283, 286-87, 181 N.E.2d 702, 704-05 (1962) (concurring opinion); *Cleveland Branch of the Guild of St. Barnabas for Nurses v. Board of Tax Appeals*, 150 Ohio St. 484, 83 N.E.2d 229 (1948); *In the Matter of Jewish Hosp. Ass'n*, Ohio B.T.A. No. 551991 (April 15, 1965). See also Note, *Exemption from Taxation of Residences Owned by Charitable, Religious and Educational Institutions in Ohio*, 14 W. RES. L. REV. 549 (1963).

<sup>24</sup> 2 Ohio St. 2d 17, 205 N.E.2d 896 (1965).

<sup>25</sup> However, until the *Denison* case the court had always required that there be such exclusive charitable use, presumably because of the requirement in OHIO CONST. art. XII, § 2. See *Denison Univ. v. Board of Tax Appeals*, 173 Ohio St. 429, 183 N.E.2d 773 (1962); *Western Reserve Academy v. Board of Tax Appeals*, 153 Ohio St. 133, 91 N.E.2d 497 (1950).

<sup>26</sup> See Note, *supra* note 23 and cases cited therein.

<sup>27</sup> 8 Ohio N.P. (n.s.) 160 (1909), *aff'd*, 81 Ohio St. 514, 91 N.E. 1130 (1909).

in that same year without opinion. In distinguishing a number of prior cases which held that residence property could not be exempt,<sup>28</sup> the court referred to the fact that the statute governing here, unlike the statutes governing parish houses and other similar residence property, does not require that the use be exclusive, but only that the buildings involved be connected with the university and that there be a reasonable certainty that they are to be used in furthering and carrying out the necessary objects and purposes of the college. To arrive at this result, the court had to overrule, at least in part, two prior decisions.<sup>29</sup> It also had to recognize that its recent 1962 opinion in another *Denison Univ. v. Board of Tax Appeals* case,<sup>30</sup> which dealt with claims for exemption of college fraternity houses, contained statements that were inconsistent with its decision in the instant case.

The 1965 *Denison* decision and the recent case of *Philada Home Fund v. Board of Tax Appeals*<sup>31</sup> have further confused the status of residence property used by exempt organizations. Buildings occupied by priests or members of the ministry are not exempt, since they are not used exclusively for religious or charitable purposes, and they are not "houses used exclusively for public worship."<sup>32</sup> However, under the approach of the supreme court in *Denison* and the broadened interpretation of the statutes, it is possible that such results may be reversed. A claim could certainly be made under section 5709.12 that the occupancy of such property is a use for a charitable purpose. It must also be assumed that any residence property occupied by a faculty at a private school is probably exempt under the *Denison* decision despite an earlier case which held

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<sup>28</sup> *Denison Univ. v. Board of Tax Appeals*, 173 Ohio St. 429, 183 N.E.2d 773 (1962); *Western Reserve Academy v. Board of Tax Appeals*, 153 Ohio St. 133, 91 N.E.2d 497 (1950). The latter case may have overruled *Kenyon College v. Schnebly*, 81 Ohio St. 514, 91 N.E. 1130 (1909).

<sup>29</sup> *City of Cleveland v. Board of Tax Appeals*, 153 Ohio St. 97, 91 N.E.2d 480 (1950); *Western Reserve Academy v. Board of Tax Appeals*, *supra* note 28; *Ursuline Academy v. Board of Tax Appeals*, 141 Ohio St. 563, 49 N.E.2d 674 (1943).

<sup>30</sup> 173 Ohio St. 429, 183 N.E.2d 773 (1962).

<sup>31</sup> 5 Ohio St. 2d 135, 214 N.E.2d 431 (1966).

<sup>32</sup> OHIO REV. CODE § 5709.07. *Waterson v. Halliday*, 77 Ohio St. 150, 82 N.E. 962 (1907); *Gerke v. Purcell*, 25 Ohio St. 229 (1874). Similarly, it has been held that use by religious personnel other than ministers and priests will cause a loss of exempt status. *Mussio v. Glander*, 149 Ohio St. 423, 79 N.E.2d 233 (1948). However, where a portion of the building was used for housing of a caretaker, it was nevertheless held exempt. *In re Bond Hill-Roselawn Hebrew School*, 151 Ohio St. 70, 84 N.E.2d 270 (1949); *St. Paul's Evangelical Lutheran Church v. Board of Tax Appeals*, 114 Ohio App. 330, 182 N.E.2d 330 (1955).

to the contrary.<sup>33</sup> Arguably, property used for residence quarters for interns or residents of a hospital may now be exempt.<sup>34</sup> It is very difficult to justify a property tax exemption for a building which is occupied as a private residence, whether by a president of a university, a minister or priest, a hospital intern, nurses, or paying guests of the YMCA or YWCA, and on the basis of whether the occupancy is with or without a family.

### C. *Public Use*

Section 5709.08 of the Revised Code, which exempts government and public property, is similar to section 5709.12 in that both require the use of the property to be exclusively for a public purpose.<sup>35</sup> The results in the cases under this section again seem to depend upon the court's view of what is or is not a desirable public subsidy.<sup>36</sup> Logically, there is great difficulty in justifying the granting of an exemption to a municipal public utility<sup>37</sup> or municipally owned airport,<sup>38</sup> but denying it to a municipally owned stadium<sup>39</sup> or off-street parking facility.<sup>40</sup> There seems to be no rational distinction between the exemption of airport property owned and operated by a city and the denial of the exemption to that identical property when it is leased to a private corporation.<sup>41</sup> However, the case of

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<sup>33</sup> *Western Reserve Academy v. Board of Tax Appeals*, 153 Ohio St. 133, 91 N.E.2d 497 (1950).

<sup>34</sup> A contrary result was reached in *Doctors Hosp. v. Board of Tax Appeals*, 173 Ohio St. 283, 181 N.E.2d 702 (1962), where the court stated that residence in a dwelling with a family was a private use.

<sup>35</sup> OHIO REV. CODE § 5709.08. The section states: "Real or personal property belonging to the State or the United States used exclusively for a public purpose, and public property used exclusively for a public purpose, shall be exempt from taxation."

<sup>36</sup> Property is now held to be exempt under OHIO REV. CODE § 5709.08 regardless of whether the use is to carry on a proprietary as distinguished from a governmental function. *Carney v. Ohio Turnpike Comm'n*, 167 Ohio St. 273, 147 N.E.2d 857 (1958); *Cleveland v. Board of Tax Appeals*, 167 Ohio St. 263, 147 N.E.2d 663 (1958), *overruling* *Zangerle v. City of Cleveland*, 145 Ohio St. 347, 61 N.E.2d 720 (1945); *In re Application for Exemption of Real Property*, 164 Ohio St. 605, 132 N.E.2d 747 (1956). This was not always true; see *Cleveland v. Board of Tax Appeals*, 153 Ohio St. 97, 91 N.E.2d 480 (1950).

<sup>37</sup> *In re Exemption from Taxation*, 164 Ohio St. 605, 132 N.E.2d 747 (1956).

<sup>38</sup> *Toledo v. Jenkins*, 143 Ohio St. 141, 54 N.E.2d 656 (1944).

<sup>39</sup> *Board of Park Comm'rs v. Board of Tax Appeals*, 160 Ohio St. 451, 116 N.E.2d 725 (1954) (sports arena); *Cleveland v. Board of Tax Appeals*, 153 Ohio St. 97, 91 N.E.2d 480 (1950). *But cf.* *City of Cleveland v. Carney*, 172 Ohio St. 189, 174 N.E.2d 254 (1961) (municipal auditorium exempt).

<sup>40</sup> OHIO REV. CODE § 717.05.

<sup>41</sup> *City of Cleveland v. Perk*, 2 Ohio St. 2d 173, 207 N.E.2d 556 (1965); *Carney v. City of Cleveland*, 173 Ohio St. 56, 180 N.E.2d 214 (1962); *Toledo v. Jenkins*, 143 Ohio St. 141, 54 N.E.2d 356 (1944).

*City of Cleveland v. Perk*,<sup>42</sup> decided in 1965, held that property loses its identity as public property used exclusively for public purposes when it is leased to a private corporation. On the other hand, another recent decision by the Cuyahoga County Court of Appeals has held that parking lots owned and operated by a nonprofit organization are considered to be used exclusively for charitable purposes, even though the person using the lot is charged a fee.<sup>43</sup>

### III. CONCLUSION

With such conflicting decisions, it is understandably very difficult for municipalities to plan the development of public facilities when they are uncertain as to whether the property involved will or will not be subject to tax. It is similarly very difficult for many private institutions, such as hospitals, clinics, and other similar organizations to budget funds when there exists the possibility that a taxpayer's suit will be brought claiming that the organization or its use of the property is noncharitable. Such suits may very well be successful.<sup>44</sup> Even churches, which currently are opening more and more of their facilities for uses other than "religious worship," are in danger of losing their exempt status. It is unfortunate that each one of these cases must be decided upon a case-by-case approach; it is to be hoped that the current Tax Study Commission<sup>45</sup> will recommend to the legislature some constructive changes in the tax exemption statutes.

There is an arbitrary, but a very workable, solution to the current difficulty. The exemption statutes could be amended to provide exemptions for (1) all property owned by governmental units, regardless of use; and (2) all property owned by schools, colleges, and universities, whether public or private. All other property would be subject to tax.

The theory justifying the exemption of publicly owned property is that presumably no such property would be owned by a governmental unit unless it does in fact exist for the public benefit. This

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<sup>42</sup> 2 Ohio St. 2d 173, 207 N.E.2d 556 (1965).

<sup>43</sup> *University Circle Dev. Foundation v. Perk*, 200 N.E.2d 897 (Ohio Ct. App. 1964).

<sup>44</sup> A very recent example in the area of low-cost public housing is a suit now pending in the Court of Appeals of Cuyahoga County, claiming that the Cleveland Metropolitan Housing Authority property should not be tax exempt. See *Dayton Metropolitan Housing Authority v. Evatt*, 143 Ohio St. 10, 53 N.E.2d 896 (1944) (not exempt under this section).

<sup>45</sup> This Commission was created by House Bill 261 for the purpose of conducting a comprehensive study of the entire structure of Ohio taxation.

coincides with the historic concept of tax exemption. Similarly, the justification for exempting schools, colleges, and universities lies in the deeply rooted concept that every child is entitled to a free public education through high school; certainly the promotion of educational opportunity is a goal which is commonly accepted by all of society. As far as including private schools in the exempt category, the justification is that there is a benefit of a public nature to be served in fostering and promoting the continued existence and growth of private as well as public universities. By absorbing a portion of the educational burden, the private schools are relieving the public of the additional cost of expanding the public facilities.

It may be argued that there is no similar justification for the other exemptions currently recognized by the Ohio statutes.<sup>46</sup> The additional property added to the tax duplicates through the elimination of these exemptions would substantially broaden the tax base and thereby greatly relieve some of the financial pressures on local government. To the extent that it is necessary for such organizations and institutions to own real property, this added cost would be considered a part of the cost of their continued existence and would have to be supported by those who are interested in such existence. In order to avoid any undue hardship by virtue of a sudden imposition of tax, the legislature could provide for a scaling of the tax base over a period of time in order to permit those institutions that wish to do so to dispose of their property or to otherwise budget the increased cost.

Such a solution may be more drastic than the current confusion demands. However, in the author's opinion, it is critical that the legislature make a more deliberate choice of the type of activities and organizations which deserve public subsidy. If it fails to do so, and if the current liberalization of the exemption statutes by the court continues, there will be mounting financial and political pressure to curb all exemptions. The public has a right to a more precise delineation of those organizations which are being subsidized.

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<sup>46</sup> This is apart from the very general proposition that it is "good" to promote charitable purposes. Such proposition is, of course, recognized by the federal tax laws and amounts to a very substantial indirect subsidy for such organizations by the Government. Perhaps the real justification for indirect government subsidy is to avoid direct government subsidy. If private philanthropy does not meet the public's needs, the inevitable result will be increased government activity with its resultant bureaucratic deficiencies.