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Real Property Tax Exemptions in Ohio--Fiscal Absurdity

Arnold W. Reitze Jr.
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Both the state and local governments in Ohio are in great need of additional revenue, while at the same time exemptions from the real property tax, the primary source of such revenue, are increasing. Professor Reitze suggests that no sound reasons exist for any real property tax exemptions; thus, they should be eliminated. Inasmuch as the Ohio Supreme Court has been relatively conservative in increasing the number of exempt properties, the author feels that any reform must be legislative. The historical basis for property tax exemptions is examined, followed by a detailed discussion of Ohio's five constitutionally permissible classes of property exemptions in order to illustrate the need for their abolition. Professor Reitze concludes that should public awareness of the cost and ineffectiveness of these exemptions become more widespread, property exemptions may still not be eliminated, but at least they will not be expanded.

TODAY, STATE AND LOCAL governments are fiscally emaciated. A glance at the daily newspaper reveals the constant preoccupation of government officials with the need for additional revenue, while a glance up from that newspaper at the urban area surrounding most of us reveals a gangrenous nucleolus within the wealthiest nation in the world. The undernourished public sector of the economy is in part the result of property tax exemptions. The much-criticized but nevertheless pragmatically effective property tax is still both the bulwark of local taxation and an important source of state revenue. Yet in spite of the pressing need

1 Most states have been able by one method or another to avoid a major fiscal crisis. Some have solved the problem by making significant overall revisions in their tax systems; others have postponed the crisis with patchwork modifications; still others have avoided the issue by placing the responsibility on the local governments. Those states which have postponed a fiscal crisis by temporary solutions will probably be faced with serious difficulties in the next decade if the past trend in state and local expenditures continues. OHIO TAX STUDY COMM., TAX REVISION ALTERNATIVES FOR THE TAX SYSTEM OF OHIO 4 (1962).


for revenue, the present property tax base is in danger of being further undercut by the continued granting of exemptions, some of which are being created by courts disposed to extend the scope of existing statutory exemptions. As the total extractable revenue from any tax is finite, any reduction of the tax base reduces the potential revenue. When the tax rate has already reached its political if not also its economic limit, any reduction in the tax base brings an immediate reduction in revenue. It is the purpose of this article to demonstrate that real property tax exemptions are unnecessary, unsound, and unfair. They should be eliminated.

I. THERE IS NO SOUND HISTORICAL BASIS FOR PROPERTY TAX EXEMPTIONS

Exemptions from property taxation are as venerable as the tax itself. This should not be surprising, for it is an empirical fact that when a tax is created those affected will try to shift it to someone else. Eleventh and twelfth-century ecclesiastical and military exemptions were an accepted part of the English tax system. Church property was exempted, as it was no longer considered to be under human control when devoted to God. Military exemption provisions performed what was considered a societal function, serving to encourage protection of the community. Whether this reasoning convinced the populace is not known; however, the two groups were the only ones with sufficient power to gain such exemptions.

In colonial America, revenue needs were small, and exemptions

AND LOCAL TAXATION 59 (2d ed. 1961); Walker, What's Ahead in County Finance, Tax Policy, March-April 1960, p. 3.

4 Groves, op. cit. supra note 3, at 84; Rolph & Break, Public Finance 328 (1961).


7 For a more orthodox recent article on this subject, see Schnell, Real Property Tax Exemptions in Ohio — A Review and Critique, 17 W. Res. L. Rev. 824 (1966).

8 For a discussion more favorable to exemptions, see Tax Policy League, Tax Exemptions Symposium (1939).

9 Stimson, The Exemption of Property From Taxation in the United States, 18 Minn. L. Rev. 411, 416-18 (1934).
were relatively more prevalent than they are today, as taxation was limited to but few types of property. Exemptions generally followed the church-military exemption tradition of Europe, but, in addition, colonial governments used tax exemptions to encourage immigration, to stimulate industrial undertakings, and to further other governmental policy objectives. After the nation was founded and began to grow, monetary demands on the government made the colonial tax system unsatisfactory. During the nineteenth century, the selective, non-uniform tax system evolved into a uniform property tax with all property, real and personal, in the tax base. Taxes on all classes of property were consolidated into a single general levy; "equal and uniform" tax provisions were placed in state constitutions; and provisions limiting exemptions were adopted. The traditional religious and governmental exemptions were continued, but others were either limited or abolished. By the end of the nineteenth century, half the exempt public domain had been added to the tax rolls, further expanding the tax base. Since that time, however, the concept of a universal property tax has been abandoned. Today, only eight states attempt to tax the greater part of intangible property, yet even these states fail to tax the bulk of intangible values. In 1961, eighty-three percent of local assessed property was real property, and at the same time the categories or classes of property exempt from taxation have been increased.

10 Jensen, op. cit. supra note 5, ch. 5.
14 Rolph & Break, op. cit. supra note 4, at 328-33.
15 Newcomer, supra note 13.
17 Walker, Loopholes in State and Local Taxes, Tax Policy, Feb.-March, 1963, p. 3. Cooley, Taxation §§ 726-87 (4th ed. 1924), lists the following subjects of property tax exemptions: agricultural land, agricultural societies, almshouses, banks, benevolent societies, bonds, buildings, building and loan associations, camp meeting associations, canal companies, cemeteries, chambers of commerce, charitable associations, churches and religious societies, parsonages, fraternal benefit societies, fraternity and sorority houses, gas property, hospitals and asylums, insurance companies, irrigation and water companies, libraries, literary and scientific institutions, manufacturing companies (often limited to new establishments), the property of Masons, Elks, Oddfellows, and other groups, medical societies, mines and mining claims, mortgages, public property,
Historically there have been overriding public policies favoring the allowance of some tax exemptions, the theoretical basis for granting them being that the advantage to society from the activity promoted by the exemption would outweigh the loss of revenue to the government. In the nineteenth century, few circumstances met the theoretical test for tax exemption; thus, most of our present exemptions are developments of this century. It would seem that exemptions are a function of either political power, economic power, or both. But under any theory, a means of continuous examination should exist as a matter of public right to determine whether the benefit to society justifies the lost revenue. Yet unless there is first a loss of private political power it would be unrealistic to expect a termination of an exemption privilege merely because a societal benefit commensurate with the loss does not exist. Obviously, therefore, one of the obligations of those living in a democracy is the privilege of subsidizing the majority's activities.  

Before ending this historical sketch of property tax exemptions, it should be noted that such exemptions are by no means devoid of evolution. Although charity has long been relieved of some tax burdens, "in the 1600's, charity included the encouragement of 'marriages of poor maids; supplication and help of young tradesmen, handicraftsmen and persons decayed and ease of any poor inhabitants concerning payments of . . . taxes.'" At an early stage in South Carolina's history, all teachers were tax exempt, as was the land of free Indians. Through tax exemptions, New Jersey encouraged canal building; New York encouraged immigration; and Massachusetts encouraged temperance societies.

The history of tax exemptions is thus one of government tax policy responding to political and economic pressures. As the pressures varied, so too did the nature and extent of the exemptions.
II. Ohio's Constitutional History Demonstrates A Conservative Approach to Real Property Exemptions

Ohio's constitutional provisions for tax exemptions evolved in a manner consonant with their development in the other states of the Union. The Ohio Constitution of 1802 placed few restrictions on the legislature which would limit its power to grant exemptions. Apparently, this liberal approach was unsatisfactory, for article XII, section 2 of the 1851 Constitution introduced a strict rule of uniformity that is very similar to today's exemption provisions. In 1912, the phrase, "institutions of purely public charity" in this section was amended to read, "institutions used exclusively for charitable purposes." This amendment expanded the class entitled to exemptions. In 1929, article XII, section 2 was again amended to provide for classification of property, thus ending the uniform treatment of all property. Such action was justified on the pragmatic basis that personal property and real property can not be accorded identical treatment. In 1933 the words "one per cent" were substituted for "one and one half per cent"—thus limiting the tax rate to ten mills. As a result of depression-born pressures, the tax rate was reduced; the consequent fiscal chaos sired the plethora of excise taxes which are now a part of Ohio's state tax system. The 1933 change is the last modification of article XII, section 2 to date.

This article of the Ohio Constitution provides:

[W]ithout 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 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, but all such laws shall be subject to alteration or repeal . . . .

The constitution therefore does not itself provide tax exemptions but merely gives the legislature authority to enact general laws necessary to implement its provisions. Exercising this authority, the legislature has enacted chapter 5709 of the Ohio Revised Code.

For some time there was doubt as to whether the enumerated

24 Fisher, supra note 19, at 229.
25 115 (pt. 2) Ohio Laws 446 (1933).
27 For a detailed historical discussion by the Ohio Supreme Court, see the dissent in Philada Home Fund v. Board of Tax Appeals, 5 Ohio St. 2d 135, 140, 214 N.E.2d 451, 455 (1966).
tax exemptions were an implied prohibition against the creation of new categories by the legislature. In Zangerle v. City of Cleveland, the court interpreted article XII, section 2 to mean that the General Assembly had the power to exempt only the kinds and classes of real property enumerated therein. The Zangerle interpretation was criticized for ignoring the phrase "without limiting the general power . . . to determine the subjects and methods of taxation or exemptions therefrom." This clause led the Ohio Supreme Court to overrule Zangerle and return to the General Assembly the power to determine exemptions from taxation, subject only to the limitations set forth in article I of the Ohio Constitution.

The decision to allow the legislature greater freedom in choosing subjects of tax exemption continues the general trend of expanding exemptions through generous interpretations of the meaning of existing statutory provisions modeled after and detailing those categories set forth in the constitution of Ohio. What classes of exemptions will be added by future legislation now that article XII, section 2 of the constitution is not a limitation — only time will tell.

III. Is There a Sound Reason for Any Real Property Tax Exemptions?

Five classes of property are constitutionally proper subjects for tax exemptions when relieved of such liability through appropriate legislation: (1) burying grounds, (2) public school houses, (3) houses used exclusively for public worship, (4) houses used exclusively for charitable purposes, and (5) public property used exclusively for any public purpose. Sections 5709.07 through 5709.14

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28 145 Ohio St. 347, 61 N.E.2d 720 (1945), overruled on other grounds, City of Cleveland v. Board of Tax Appeals, 167 Ohio St. 263, 147 N.E.2d 663 (1958).

29 On the other hand, the power to grant exemptions of personal property has long been limited only by the equal protection clauses of the state and federal constitutions. State ex rel. Struble v. Davis, 132 Ohio St. 555, 9 N.E.2d 684 (1937); Kroger Co. v. Schneider, 4 Ohio App. 2d 226, 212 N.E.2d 76 (1965).

30 Caren, Constitutional Limitations on the Exemption of Real Property From Taxation, 11 Ohio St. L.J. 207 (1950).

31 Denison Univ. v. Board of Tax Appeals, 2 Ohio St. 2d 17, 205 N.E.2d 896 (1965) (by implication).

32 Also overruling City of Cleveland v. Board of Tax Appeals, 153 Ohio St. 97, 91 N.E.2d 480 (1950).

33 OHIO CONST. art. XII, § 2. While Ohio continues to expand its property tax exemptions, the state, when compared with other jurisdictions, is conservative. See 51 AM. JUR. Taxation §§ 546-646 (1944). Note, 64 HARV. L. REV. 288 (1950) characterizes Ohio as having a judicial tradition of strict treatment.
of the Ohio Revised Code codify the five constitutional subjects. Four subsequent statutes, 5709.15-.18, provide minor exemptions; what is said concerning the constitutional subjects is equally applicable to them.

A. Burying Grounds

What reasons can be advanced for exempting burying grounds? The most obvious one is the fear that a deceased and forgotten individual will be unable to pay the tax and will thus be exhumed by the relentless tax collector. This, however, is an administrative problem and should not be a bar to taxation. Perpetual care of a grave is guaranteed by capitalizing the cost of such care and including it as part of the price of the burial plot; tax expenses could be handled in a similar manner.

The money paid for future tax liabilities could be placed in a separate state trust fund, and the increment in value of this investment should, over the years, approximate the increase in the value of land. Land presently used for cemeteries that does not meet its tax obligations could be taken by the government and used for parks. Even this would be unnecessary if burial plots were not considered permanent.

Another possible argument in favor of exemptions for burying grounds is that death should be a release from tax liability. However, death itself would not be taxed; only property would be subject to taxation. To the extent that burying grounds are tax exempt, a person can “take something with him” — a tax-free plot of ground in perpetuity.

To oppose tax exemptions is to oppose, as a member of the public, being forced to subsidize the tax-exempt activity. The exemption for burying grounds is regressive. The wealthy deceased, having purchased more expensive burying plots, receive larger tax benefits. The exemption encourages poor land utilization for it is hard to imagine a more useless dedication of land than using it to cover dead bodies.\(^{34}\) At a time when we are facing an unprecedented population explosion, it is going to be increasingly difficult to justify using prime urban and suburban land for so wasteful a practice.\(^{35}\) But to encourage it with tax exemptions is total derangement.

\(^{34}\) Western civilization burial practices need not be considered immutable. See MURDOCH, OUR PRIMITIVE CONTEMPORARIES (1934).

\(^{35}\) From 1840-1855 London churchyards were crammed with coffins placed tier above tier. To make room for fresh interments, surreptitious removal of remains took
B. Public School Houses and Public Property Used Exclusively for Any Public Purpose

This second constitutional category is not merely a subdivision of the fifth, for court decisions have held public school houses to mean something more than school houses owned by the public, that is, the government. The Public School House category thus overlaps the Public Property and the Charitable Purpose category. Here they can be discussed together, with Public School Houses being defined, for discussion purposes, literally.

Taxing public property would be the most difficult change to effectuate in the present system. One of the traditional arguments against such a change is that the government would be taxing itself. This contention is superficially sound, but, upon more careful reflection, it is clear that this is not always the situation. A county jail serves the county, yet its being exempted means that the city loses land otherwise taxable. The same is true of hospitals, county and state schools, and state health institutions. Moreover, any time an exempt public institution gives benefits to tax jurisdictions other than the one in which it is located, the taxpayers in the situs jurisdiction subsidize those in the other jurisdictions. The resulting benefit without burden is an especially common development in this era of parasitic "bedroom" towns encircling the urban core cities.

This type of inequity is but one deficiency inherent in the present system. A second justification for taxing public property is that it encourages sound land economics. A governmental unit is only indirectly aware that it loses rateable property through tax exemptions. A government is much less likely to waste land when it must justify its land utilization on the same basis as a business. Of course the weakness of this theory is that land must be valued in economic terms, as a function of its availability and its capability to earn money. The highest economic use determines its value and its tax. Aesthetics play a very small part in land valuation; thus, for example a city forced to utilize land purely on an economic basis could maintain hot dog stands but rarely flower gardens. This would be unacceptable. A governmental unit has obligations transcending those that can be valued in strict economic measuring units. It must place. This problem led to the Burial Act of 1855 and the removal of cemeteries from the limits of the cities. 5 ENCYC. BRITANNICA CEMETARY 111 (14th ed. 1934). STATISTICAL ABSTRACT OF THE UNITED STATES (1965), reports 1964 U.S. deaths at 1,801,000. With 50 square feet per grave, every year more than 2000 acres of land are needed for cemeteries. Most of this land is concentrated in the areas of high population density where the demand for land is great. We, too, may yet face England's problem.
be permitted to use property without justification in immediately perceivable economic terms. Why? In a society based upon individual economic gain from the exploitation of property, it cannot be expected that without governmental or other collective intervention property would ever be used to benefit the general public when this would entail sacrificing the greater individual benefits that would accrue from private activity (housing as well as business). This, then, is a general justification for all governmental activity, and even for such generally non-economic property uses as parks there is probably no more accurate measure of value than one expressed in economic terms. But the measurement must utilize a far longer perspective than is likely for those considering quick gain — even a perfectly legal one, such as from the sale of public parks in order to provide monetary benefit for the present generation. For this type of legal gain, the Romans had a phrase: *Non ome licitum honestum* — not everything legal is honest.

By taxing public property, the burden of supporting that property could be re-channeled more accurately, in many cases, to those having the use, and hence the benefit, of the land. Subsidies, of course, would often be necessary. Where the required subsidy was greater than the tax paid to the same governmental unit, the tax could simply be deducted, thereby creating a uniform absence of exemptions and eliminating the potential classification problem among various public properties. This suggestion would have the dual virtue of preventing the penetration of the sharp wedge of exemptions while serving to show the citizenry the cost to the city of such purely governmental activities.

A third justification for taxing public property relates to those public businesses which are presently immune from property taxes. A tax exemption-subsidy of public business has little relation to financial need, as even a millionaire can ride a tax-subsidized public transportation system. Moreover, a tax exemption of this nature shifts the tax onto other property, thus increasing the regressivity of the total tax burden. A business subsidy in the form of a tax exemption is a very imprecise economic tool and is politically difficult to remove after the need for the subsidy has passed.\(^\text{36}\)

**C. Houses Used Exclusively for Public Worship**

Attacks on the subsidization of religious institutions through tax

\(^{36}\) For a discussion of the virtues of tax exemptions as a subsidy, see *Tax Policy*, June 1939, p. 6.
exemptions have been continuous. It is an anomaly that although no state can directly subsidize a church, these indirect subsidies have been unassailable. This problem has been so well treated by other writers that the reader is advised to look to these sources.\footnote{37 See Van Alstyne, Tax Exemption of Church Property, 20 OHIO ST. L.J. 461 (1959). See also Murray v. Comptroller of the Treasury, 241 Md. 383, 216 A.2d 897 (1965), cert. denied, 382 U.S. 957 (1966). Van Alstyne, supra note 37, at 470 lists eleven states with acreage limitations.}

In addition, one previously mentioned economic argument is germane. This is the lack of any need for prudent land use by an organization free from the pressures of taxation. Perhaps this problem will not be resolved until a church attempts to build a rambling ranch-style house of worship covering several acres of downtown New York City. Some states anticipating this problem have placed acreage limitations on exempt church property.\footnote{38 Geppert, A Discussion of Tax Exempt Property in the State of Texas, 11 BAYLOR L. REV. 133, 140 (1959). Van Alstyne, supra note 37, at 470 lists eleven states with acreage limitations.}

In the foreseeable future, then, the large segment of the population not affiliated with any organized church can expect to continue to be coerced into supporting organized religion by their organized brethren.\footnote{39 The World Almanac for 1966 reports total membership in organized religious organizations in the United States at 123,307,449 persons or 64.4% of the total population. WORLD ALMANAC 488 (1966).}

\section*{D. Houses Used Exclusively for Charitable Purposes}

The arguments for land-use economics, the difficulty of determining need, the problems of ending antiquated subsidies, the regressive effect of the shifted incidence, and the propriety of the involuntary, indirect, and hidden charitable contribution all apply to exemptions granted land used exclusively for charitable purposes. Perhaps the most serious problem in this area is the lack of control exercisable by the public who ultimately absorb the cost of the tax exemption-subsidy. Except for a few amorphous requirements, virtually any organization not directly benefiting itself can qualify as charitable and gain substantial tax subsidies with no accounting made to the public. There is no requirement that the charity be efficient, that it have a demonstrated need for the exempted property, that the participants be needy, or even that the subsidizing taxpayers have the slightest interest in the activities of the exempt charity. Presumably a large building in the central part of the city belonging to the "Society for Development of the Herpetology of Tuva" would be tax exempt as would that of "Society for Fostering Baseball..."
Among the Sons of Millionaires.” If the public is to give substantial benefits, they should choose the recipients of their largesse. A direct subsidy would be much more subject to proper controls. In addition, the public could more easily determine what benefits they are bestowing and what benefits they are receiving in return.

IV. Ohio Case Law Demonstrates That Property Tax Exemptions Do Not Further Any Rational Public Policy

Chapter 5709 of the Ohio Revised Code gives the necessary legislative legitimization to exemptions made permissible, but not mandatory, by article XII, section 2 of the Ohio Constitution. Six primary categories of exemptions are set forth: schools, churches, colleges, public property, property used for charitable purposes, and air pollution control facilities. This last category gives exemption under the guise of defining real property, but will, for this article, be considered a category of exempt property.

A. Schools and Colleges

Cases involving educational institutions are decided under both section 5709.07, which exempts public schools, churches, and colleges which are not operated for profit, and section 5709.12, which exempts property used exclusively for charitable purposes. Regardless of the statutory provision chosen, the concept of exempt educational institutions encompasses a great deal more than the school which, by providing educational opportunities, relieves the public from supplying equivalent facilities. Very little, if any, benefit to the general public has been required to gain tax exemption. Specifically, then, what type of institutions is the public subsidizing?

There is no requirement of need. Charity can be used to care for the very wealthy as long as the institution does not lose its non-profit corporation status. In the case of College Preparatory School for Girls v. Evatt, a private school charging substantial tuition was held to be exempt. Only ten percent of the students paid no tuition.

In accordance with section 5709.12, there is no requirement of benefit to the public in general. In 1947, however, the Ohio Supreme Court rejected the contention that a private denominational school operated to train men for the ministry should be exempt.

40 144 Ohio St. 408, 59 N.E.2d 142 (1945).

41 American Comm. of Rabbinical College of Telshe, Inc. v. Board of Tax Appeals, 148 Ohio St. 654, 76 N.E.2d 719 (1947).
The court upheld the finding of the Board of Tax Appeals that the school was not public and not used exclusively for charitable purposes. Yet, in 1951, a case involving the same private institution again came before the Ohio Supreme Court.\textsuperscript{42} The court altered its reasoning and held such a school to be an institution used exclusively for charitable purposes and therefore exempt, for it was recognized that if an institution is operated without any view to profit it need not be open generally to the public in order to gain a tax exemption. Very recently the court held a Methodist theological seminary to be tax exempt,\textsuperscript{43} stating that the school was open to all qualified applicants, as there were no requirements with respect to race, creed, or nationality. The taxpayer subsidizing this activity should not meditate on the meaning of "qualified applicant."

There is no requirement that the property be used for the educational process as long as the property is related to the educational activity, no matter how remotely. In Denison Univ. v. Board of Tax Appeals,\textsuperscript{44} the court held exempt a carpenter shop, a lumber storage shed, a painting hut, a home for the university president and his family, a house for official guests, conferences, and seminars, and a 127-acre farm. Other cases have held as exempt landscaped areas,\textsuperscript{45} parking facilities,\textsuperscript{46} dormitories and apartment buildings for students,\textsuperscript{47} and athletic fields.\textsuperscript{48} The test is whether the property will be used with reasonable certainty in furthering or carrying out the necessary objects and purposes of the educational institution.\textsuperscript{49} The Supreme Court of Ohio will not allow a tax exemption for fraternity houses\textsuperscript{50} or faculty housing.\textsuperscript{51} Other states, however, exempt these

\textsuperscript{42} American Comm. of Rabbinical College of Telshe, Inc. v. Board of Tax Appeals, 156 Ohio St. 376, 102 N.E.2d 589 (1951).
\textsuperscript{43} Thomas v. Board of Tax Appeals, 5 Ohio St. 2d 182, 214 N.E.2d 231 (1966).
\textsuperscript{44} 2 Ohio St. 2d 17, 205 N.E.2d 896 (1965).
\textsuperscript{45} University Circle Dev. Foundation v. Auditor of Cuyahoga County, 190 N.E.2d 691 (Ohio Ct. App. 1963).
\textsuperscript{47} Thomas v. Board of Tax Appeals, 5 Ohio St. 2d 182, 214 N.E.2d 231 (1966).
\textsuperscript{48} College Preparatory School for Girls v. Evatt, 144 Ohio St. 408, 59 N.E.2d 142 (1945).
\textsuperscript{49} Denison Univ. v. Board of Tax Appeals, 173 Ohio St. 2d 17, 205 N.E.2d 896 (1965).
\textsuperscript{50} Denison Univ. v. Board of Tax Appeals, 173 Ohio St. 2d 17, 205 N.E.2d 896 (1965).
\textsuperscript{51} Western Reserve Academy v. Board of Tax Appeals, 153 Ohio St. 133, 91 N.E.2d 497 (1950).
facilities. The rather broad interpretation of exempt educational property would not seem unreasonable if it were not for the previously discussed lack of any requirement that the property be used for those in need of charity or that the property be used for a broad public purpose. Under this exemption, therefore, a plush, country club school to train experts in the flora of Tahiti would be tax exempt as long as the school was acting as a bona fide, nonprofit institution. The public has the right indirectly to pay the cost; it has no right to determine how or for what purpose its money will be used.

B. Churches

Ohio has traditionally construed its tax exemptions for churches very strictly. A parsonage or parish house is not exempt, nor are church parking lots. The only property entitled to the religious exemption is the house used exclusively for public worship and the ground surrounding the building that is necessary for its proper occupancy, use, and enjoyment. This judicial approach results in few church cases being brought before the court. Recent cases have established that vacant land is exempted from taxation while active work toward erection of a church is going on. Preparation of plans is sufficient. Another series of cases established that incidental use of a church for purposes other than worship does not destroy the tax-exempt character of the church. Ohio has tried through judicial interpretive restraint to limit the expansion of religious property exemptions. Many other states lose a much greater amount of revenue. Nevertheless, those taxpayers who do not enjoy paying for other people's

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84 Congregational Union v. Zangerle, 138 Ohio St. 246, 34 N.E.2d 201 (1941).
86 In re Ohave Sholom Congregation, 156 Ohio St. 183, 101 N.E.2d 767 (1951); Holy Trinity Protestant Episcopal Church v. Bowers, 172 Ohio St. 103, 173 N.E.2d 682 (1961).
87 Ibid.
89 See Van Alstyne, supra note 37, at 506.
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beliefs or who would at least like to vote on the expenditure, should not become sanguine. Churches are exempted in the same statutory provision as schools and colleges, both of which have seen an expansion of the uses which will result in exemption from taxation. Non-property tax cases can also give some indication of the court's attitude. A recent case involving exemption from succession taxes held the Board of Pensions of the United Presbyterian Church, a Pennsylvania corporation which managed pension and welfare funds, to be a religious organization. Another way of avoiding the strict limitations of the religious exemption is to utilize the more liberally interpreted charitable purpose exemption of Ohio Revised Code section 5709.12. This statute can be relied upon to permit tax exemption when the more rigid requirements of the other sections would be prohibitive.

C. Public Property

The Ohio Supreme Court has attempted to limit the exemption of public property by defining this property to include only that which is truly for public use, while excluding those categories of property which the government may own but not use for the benefit of the public. The active litigation in this area may imply that the court has had less than complete success in setting definitive guidelines, but it may also be the result of a changing position.

Some exempt public property is that owned or leased by the United States Government. Its exemption from taxation is largely the result of federal action — the state lacking the power to tax such property even if it so desired.

As to that property over which the state has discretionary power to tax, the court has set forth a test for determining its right to an exemption as public property. The property must be owned by the

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60 Statistics are difficult to find, but over thirty-six million dollars of religious real property is estimated to be exempt in the state of South Dakota. 11 S.D.L. Rev. 132 (1966). The value of property of religious societies exempted from taxation in New York in 1930 exceeded 670 million dollars. Stimson, The Exemption of Property From Taxation in the United States, 18 Minn. L. Rev. 411, 414 (1934); Ohio B.T.A. Representative Table 725 (1961) lists the value of property owned by religious institutions in Ohio as being in excess of 450 million dollars.

61 In re Morgan, 173 Ohio St. 89, 180 N.E.2d 146 (1962).

62 American Humanist Ass'n v. Board of Tax Appeals, 174 Ohio St. 545, 190 N.E. 2d 685 (1963).


64 Hellerstein, State and Local Taxation 592 (2d ed. 1961).
government, and it must be used exclusively for a public purpose.\textsuperscript{65} To be exempt, the public need not generally use the facilities but it must have the right to use those facilities if desired.\textsuperscript{66} Under this test, municipally owned property leased for long periods to private parties becomes taxable.\textsuperscript{67} Property can be split from the underlying land, thereby exempting the state-owned land whereas the privately owned structure is taxed.\textsuperscript{68} In so far as property for such truly governmental functions as bridges,\textsuperscript{69} housing for the activities of the state teachers retirement board,\textsuperscript{70} or the state capitol is exempt, the exemption provision is less validly open to criticism. However, even with these completely governmental activities, tax exemption can be objected to on the previously discussed grounds of poor government cost accounting, the encouragement of poor land utilization, and the inability of voters to control expenditures. This test for exemption creates a vague requirement for public purpose which leaves a hiatus between those cases involving a private use of public land and those cases involving a purely governmental activity. Cases falling between these extremes can not be decided with a simple governmental-versus-proprietary test. The overruling of \textit{Zangerle v. City of Cleveland}\textsuperscript{71} by \textit{City of Cleveland v. Board of Tax Appeals}\textsuperscript{72} ended that test. So, too, the reasoning in the 1950 case involving the Cleveland municipal stadium and parking lot can no longer be safely used as a guide,\textsuperscript{73} as the decision utilized a proprietary-use test combined with a test for exclusive-use-by-the-public. Perhaps the profit motive, used as a guide in \textit{State ex rel. Hepperla v. Glander},\textsuperscript{74} is still an important consideration, although the court subsequently held that a proprietary activity for which a charge is made is still capable of being exclusively for a public purpose. The primary requirements today for a property to be tax exempt are that it must be

\begin{thebibliography}{99}
\bibitem{65} Carney v. City of Cleveland, 173 Ohio St. 56, 180 N.E.2d 14 (1962).
\bibitem{67} Carney v. City of Cleveland, 173 Ohio St. 56, 180 N.E.2d 14 (1962).
\bibitem{68} Sandusky Bay Bridge Co. v. Fall, 41 Ohio App. 355, 181 N.E. 112 (1932).
\bibitem{69} Stratton v. Board of Tax Appeals, 172 Ohio St. 219, 174 N.E.2d 545 (1961).
\bibitem{70} State Teachers Retirement Bd. v. Board of Tax Appeals, 177 Ohio St. 61, 202 N.E.2d 418 (1964).
\bibitem{71} 145 Ohio St. 347, 61 N.E.2d 720 (1945).
\bibitem{72} 167 Ohio St. 263, 147 N.E.2d 663 (1958).
\bibitem{73} City of Cleveland v. Board of Tax Appeals, 153 Ohio St. 97, 91 N.E.2d 480 (1950).
\bibitem{74} 94 Ohio App. 187, 114 N.E.2d 753 (1952), \textit{aff'd}, 160 Ohio St. 59, 113 N.E.2d 357 (1953).
\end{thebibliography}
available to all persons who desire to partake of the activity and that profits should not accrue to a private group.  
This test results in a system of public finance which encourages incomplete disclosure and hidden subsidies. Tax money is indirectly allocated without the necessity of voter approval for such diverse activities as public mass transportation, turnpike restaurants and gas stations, and public golf courses.

D. Property Used for Charitable Purposes

The statutory category exempting property used for charitable purposes is the most general and therefore the most inclusive one. Although cases decided under this statute are legion, a detailed study of its limitations is not intended here. Rather, an attempt will be made to demonstrate some of the activities being supported, without choice, by all of the taxpayers of Ohio.

As was discussed previously in connection with college exemptions, there is no requirement that recipients of a charity be needy or that the benefits accrue to any broad spectrum of society, for, as stated earlier, a sectarian theological school is exempt. Under the doctrine recently announced in Bryan Chamber of Commerce v. Board of Tax Appeals, there is no requirement that the owning institution be exclusively charitable, but only that it be a charitable institution and that the property involved in the exemption be used exclusively for charitable purposes. In Bryan, an entire park was held to be exempt, including a portion leased for agricultural purposes, the rentals from which went to defray the park’s operating costs and expenses.

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75 Atwell v. Board of Park Comm’rs, 2 Ohio St. 2d 257, 208 N.E.2d 537 (1965).
76 City of Cleveland v. Board of Tax Appeals, 167 Ohio St. 263, 147 N.E.2d 663 (1958).
78 Atwell v. Board of Park Comm’rs, 2 Ohio St. 2d 257, 208 N.E.2d 537 (1965).
79 OHIO REV. CODE § 5709.12.
82 Thomas v. Board of Tax Appeals, 5 Ohio St. 2d 182, 214 N.E.2d 231 (1966).
84 This part of the Bryan decision violated a longstanding rule of the court that the property whose income is used for charitable purposes is not exempt. Heretofore, it has been the present use of the property, rather than the ultimate use of the proceeds, that determines exemption. See Lutheran Bookshop v. Bowers, 164 Ohio St. 359, 131 N.E.2d
To gain an appreciation of the limits of charitable exemptions, one type of charity frequently involved in litigation can be examined. A charitable hospital is exempt from real property taxes. It is exempt even if it treats patients who can and do pay for the services they receive, as long as it has as an important objective, the care of the needy who are unable to pay. Therefore, provided that a hospital does not designedly make a very substantial profit and services some charity patients, it would seem to be exempt. It may not, however, exhaust its accommodations with paying patients so as to be unable to serve indigent patients. These tests give a hospital substantial leeway, and no case has been discovered in which a nonprofit hospital was considered not to be tax exempt. The hospital need not have any particular medical philosophy to be exempt, but it must, however, be an operating entity and not just an equipment holding company. A residence hall for student nurses is exempt, as is the residence of a director of maintenance or of a caretaker when their immediate availability is of great value to the hospital and not just a form of compensation. Property acquired for student nurses' homes but not finished so as to be used by the student nurses has also been held to be exempt. Hospital property rented to doctors for offices is taxable, as is property rented to nurses. Property furnished without charge to married interns and residents is not exempt.

219 (1955); Columbus Youth League v. County Bd. of Revision, 172 Ohio St. 156, 174 N.E.2d 110 (1961). If the Ohio Supreme Court continues to use the Bryan reasoning, it will create a vast new area of exempt activity placing Ohio at variance with the general rule of non-exemption found in Howard Univ. v. District of Columbia, 155 F.2d 10 (D.C. Cir. 1946).

85 Vick v. Cleveland Memorial Medical Foundation, 2 Ohio St. 2d 30, 206 N.E.2d 2 (1965).
89 East End Hosp. v. Evatt, 139 Ohio St. 608, 41 N.E.2d 569 (1942).
90 Aultman Hosp. Ass'n v. Evatt, 140 Ohio St. 114, 42 N.E.2d 646 (1942).
91 Elizabeth Gamble Deaconess Home Ass'n v. Schneider, 4 Ohio App. 2d 267, 212 N.E.2d 183 (1965).
94 Cleveland Branch of Guild of St. Barnabas for Nurses v. Board of Tax Appeals, 150 Ohio St. 484, 83 N.E.2d 229 (1948).
nor are residences of hospital employees.\textsuperscript{96} Hospital service plans such as Blue Cross are not exempt from taxation in Ohio.\textsuperscript{97}

The treatment of hospitals by the Ohio courts is typical of their treatment of charities in general. Ohio courts have been relatively conservative in dealing with this type of exemption and have attempted to limit the exemption to that specifically set forth in the statute.\textsuperscript{98} The courts are particularly vigorous in attempting to prevent the expansion of property tax exemptions into the area of exemption subsidies for private residences.\textsuperscript{99} They have a long history of fighting such attempts, but the urge to obtain a hidden subsidy of such value drives litigants to constantly search for an opening in the courts' defenses.\textsuperscript{100}

Regardless of how rational and conservative the courts' position remains, as long as some charity is performed and profits are not sought, a hospital can concentrate on paying patients without sacrificing its tax-exempt status. It need not have any patients, but can be purely a research organization.\textsuperscript{101} The hospital, if ostensibly open to the public in general, can be sectarian in its administration and policies.

Regardless of the abuse of the charitable exemption by some hospitals, as a class of charity they have an almost universally admitted social utility. Charitable exemptions, however, are available to practically any nonprofit organization. The benefits that society is willing to bestow upon public hospitals are given to all organizations that forsake the profit motive. This does not mean that the organizations can not have substantial incomes, nor that in-

\begin{itemize}
\item \textsuperscript{96} Jewish Hosp. Ass'n v. Board of Tax Appeals, 5 Ohio St. 2d 179, 214 N.E.2d 441 (1966).
\item \textsuperscript{97} Hospital Serv. Ass'n v. Evatt, 144 Ohio St. 179, 57 N.E.2d 928 (1944). See also Annot., 88 A.L.R.2d 1414 (1963).
\item \textsuperscript{99} Thomas v. Board of Tax Appeals, 5 Ohio St. 2d 182, 214 N.E.2d 231 (1966). See also Goldman v. Friars Club, 158 Ohio St. 185, 192-93, 107 N.E.2d 518, 522-23 (1952). The court gives a long list of citations holding that low-rent housing for poor people is not entitled to tax exemption. This rationale is followed in the very recent case of Philada Home Fund v. Board of Tax Appeals, 5 Ohio St. 2d 135, 214 N.E.2d 431 (1966).
\item \textsuperscript{100} Walker, \textit{Increasing Clamor for Property Tax Exemptions}, Tax Policy, Oct. 1964, p. 3.
\item \textsuperscript{101} A research organization was denied a tax exemption for research which was primarily for the pecuniary advantage of those for whom the research was performed. Battelle Memorial Institute v. Dunn, 148 Ohio St. 53, 73 N.E.2d 88 (1947).
\end{itemize}
individuals running them can not have substantial incomes, but merely that the income derived through ownership must not inure to private benefit. Ohio cases involving tax exemptions thus have seen such diverse litigants as a cemetery flower shop, a religious bookshop, a fraternal benefit society, a planned parenthood association, and a temperance society. These organizations, if nonprofit, are entitled to an indirect government subsidy through property tax exemptions.

E. Air Pollution Control Facilities

Sections 5709.20 through 5709.26 of the Ohio Revised Code, effective in October of 1963, were enacted as a specific legislative approach to the grave social problem of air pollution. A recent Ohio Court of Appeals decision granted a tax subsidy to a manufacturer causing air pollution. The offending corporation had constructed a tall chimney to reduce the offensiveness of its dispersed pollutant. However, no gases were actually eliminated; they were only shifted. The court felt that the use of the word "pollution" instead of "pollutants" made their interpretation, allowing a tax exemption, mandatory. This interpretation was rejected by the Ohio Supreme Court. In reversing the lower court's decision, it was stated: "Notwithstanding that any given cubic foot of Ohio air in the Brilliant area contained fewer pollutants as a result of the claimed diffusion, a greater number of cubic feet of air 'within this state' contained pollutants." The Ohio Supreme Court thus continued to resist the spread of tax exemptions. In order to be granted an exemption under section 5709.20 of the Ohio Revised Code, the primary purpose of the facility for which exemption is sought must be to eliminate or reduce industrial air pollution which renders air harmful or inimical to the public health or to property within the state.

Hopefully, this exemption provision may encourage other manu-

\[105\] Planned Parenthood Ass'n v. Tax Comm'r, 5 Ohio St. 2d 117, 214 N.E.2d 222 (1966).
\[108\] Ohio Ferro-Alloys Corp. v. Donahue, 7 Ohio St. 2d 29, 218 N.E.2d 452 (1966).
\[109\] Id. at 31, 218 N.E.2d at 454.
facturers to reduce air pollution by the only way possible — eliminating air pollutants. Nevertheless, Ohio is now committed to having the public subsidize businesses that attempt to cease being public nuisances. A business should be required to operate so as not to harm the public, but the cost of safe operation should not be borne by society.

V. CONCLUSION

The long history of tax exemptions is that of the conflict between the forces of fiscal integrity and lobbyists for special privilege. The forces for exemption have greater motivation and tenacity, for their potential gain is more apparent and immediate. Over the centuries, legislatures have succumbed to these pressures and have allowed exemptions to infiltrate the tax system. Whether the legislative action was effectuated by political pressure, graft, a belief in a naive economic panacea, or even a conscious desire to subsidize a believed worthwhile private enterprise which would provide broad public benefits, the result is the same. Those who remain in the tax base must pay larger taxes, or the reduced base will provide reduced public revenue.\textsuperscript{110} The most serious evil of tax exemptions is that a benefit is given by the public for which no \textit{quid pro quo} need be given. Any nonprofit organization, however bizarre its purpose, is eligible.\textsuperscript{111} Tax exemptions are not related in any effective way to seeing that the benefit to the public of the exempt organization's activities are commensurate to the exemption. A city may have two boys' clubs — one with a small membership and plush facilities in a wealthy neighborhood, the other with few facilities and a large membership in a slum area. The per member tax subsidy is great for those who need it least, with little benefit going to those who need aid. The economic benefit of tax exemptions, thus bears no relation whatsoever to viable government policy.

Tax exemptions as subsidies also suffer from being indirect, which makes it difficult to determine precisely who is getting the benefits. Being indirect, they do not appear in any budget, and, therefore, no democratic process influences the exemption. It is permanent. Once exemption is granted, the need for the class of exemption can disappear, but the provision frozen in the law is


\textsuperscript{111} For a tax case involving the legal representative of an ancient religious order in the Philippines, see Trinidad v. Sagrada Order, 263 U.S. 578 (1964).
difficult to remove. As no one's ox is gored noticeably by not receiving potential revenues, no group fights with sustained vigor to end exemptions. Thus, there has not been any great psychological taxpayer reaction to the realization that not all property owners are expected to contribute equally to the maintenance of the government.

This inefficient method of using public resources has grown more serious in recent years as state and local government units scheme for needed revenue. But as the financial need increases, so do exemptions. The burden of increased taxes encourages those so burdened to seek relief. What can be done? The Ohio Supreme Court over the years has demonstrated a tendency to increase the class of exempt property, liberalizing their interpretation of the statute. However, this class expansion has been modest, and, when compared with other states, the Ohio court can be considered conservative. There can be no realistic expectation that property tax exemptions will be ended by judicial action. Even the indirect subsidy for churches has withstood the test of time.¹¹² The reform, then, must be legislative.

The long tradition of exemptions acts to give them the legitimization of time. The special interests benefited by the exemptions are not likely to renounce willingly their benefits, while the public in general is not apt to be highly motivated to end the tax exemptions. There is also the problem that if exemptions are ended, the hospital caring for the indigent loses its exemption along with the most useless nonprofit corporation. Given Ohio's history of support for its public institutions, no private institution would be willing to give up an indirect benefit in return for a possible direct one. If the public gave direct aid to private organizations carrying out public functions, the government would have great incentive to carry out these activities themselves and thereby maintain supervisory power and control. This is as it should be, but few private institutions will thereby be encouraged to give up tax-exempt status.

The chance of lessening Ohio's use of tax exemptions for real property seems small. The shifting to other forms of tax thus ensues. With other tax forms, the problem of keeping the ex-

¹¹² Taxpayers, however, continue to attack these exemptions. In General Fin. Corp. v. Archetto, 93 R.I. 392, 176 A.2d 73 (1961), appeal dismissed for want of a substantial federal question, 369 U.S. 423 (1962), the Rhode Island court held that tax exemptions for religious bodies do not violate either the Constitution of the United States or the laws of Rhode Island.
emptions from lessening the effectiveness of the tax continues. However, if the knowledge of the cost and ineffectiveness of prop-
erty tax exemptions becomes more widespread and if taxpayers
realize that by approving exemption provisions they are surren-
dering their right to know where their money is going and for
what it is being used, then these exemptions may still not be elimi-
nated, but at least they will not be expanded. The even more harm-
ful and less justifiable veterans' exemption,113 aged exemptions,114
homestead exemptions,115 and various exemptions theoretically de-
dsigned to encourage industry116 will not then become a part of our
tax system and further erode the property tax base.


114 Indiana, Maine, Massachusetts, New Jersey, and Oregon have adopted such leg-
