

IN THE SUPREME COURT OF OHIO

HealthSouth Corporation,)
) Case No. 2007-2281
 Appellee,)
)
 vs.)
)
 William W. Wilkins [Richard A. Levin],)
 Tax Commissioner of Ohio,)
)
 Appellant.) BTA Case No. 2005-A-1386

MERIT BRIEF OF APPELLEE HEALTHSOUTH CORPORATION

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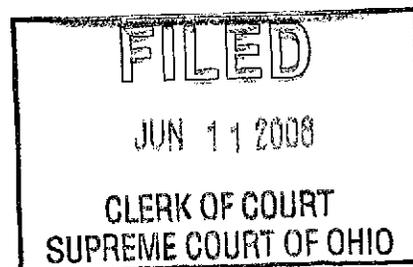


TABLE OF CONTENTS

TABLE OF AUTHORITIESii

APPENDIXiii

INTRODUCTION AND STATEMENT OF THE CASE.....1

FACTS2

LAW AND ARGUMENT.....8

 I. Ohio’s tangible personal property tax applies only to tangible personal property and the BTA correctly found that the items in question are not tangible personal property.8

 II. Appellant has failed to preserve the issues presented to this Court—the Ohio Supreme Court is not the Ohio Board of Tax Appeals.10

 III. Even if this Court were to allow Appellant’s to raise a new argument before this Court that had not been preserved below, there is no authority under Ohio law for the application of equitable estoppel to allow for the taxation of property that the facts establish never existed.....12

CONCLUSION14

APPENDIX

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

CASES

<i>A. Schulman, Inc. v. Levin</i> (2007), 116 Ohio St. 3d 105.	11
<i>Asphalt Indus., Inc. v. Commissioner</i> , (3d Cir. 1967), 384 F. 2d 229, 235.	12
<i>Castle Aviation, Inc v Wilkins</i> (2006), 109 Ohio St.3d 290, 296-298.	12
<i>Cincinnati Community Kolllel v. Levin</i> (2007), 113 Ohio St. 3d 138.	11
<i>DAK, PLL v. Franklin Cty. Bd. of Revision</i> (2005), 105 Ohio St.3d 84, ¶ 16.	11
<i>In re Application of County Collector v. Arizona Metro Corp.</i> (1977), 53 Ill. App. 3d 156, 159; 368 N.E. 2d 798, 800.	14
<i>Lenart v. Lindley</i> (1980), 61 Ohio St.2d 114.	12
<i>Osborne Bros Welding Supply, Inc v Limbach</i> (1988), 40 Ohio St.3d 175, 178.	12
<i>Queen City Valves v Peck</i> (1954), 161 Ohio St. 579.	12
<i>Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision</i> (2007), 112 Ohio St.3d 309.	11
<i>Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd. of Revision</i> (1981), 66 Ohio St.2d 398, 400.	11

STATUTES

Ohio Rev. Code Ann. § 5709.01(B)	8
Ohio Rev. Code Ann. § 5709.01(C).....	8
Ohio Rev. Code Ann. § 5709.03(A).....	8
Ohio Rev. Code Ann. § 5709.08(A).....	9

OTHER

Black's Law Dictionary, 6 th Edition.	13
---	----

APPENDIX

Ohio Rev. Code Ann. § 5709.01(B)1

Ohio Rev. Code Ann. § 5709.01(C).....1

Ohio Rev. Code Ann. § 5709.03(A).....2

Ohio Rev. Code Ann. § 5709.08(A).....3

INTRODUCTION AND STATEMENT OF THE CASE

The relevant facts in this matter are clear and undisputed. Simply stated, as a result of an accounting fraud for which the rouge employees have been fired by HealthSouth Corporation (hereafter "Taxpayer") and in many cases subject to federal prosecution, fictitious assets were created that were called AP Summary on the taxpayer's books. An asset called AP Summary does not exist and there is no tangible property that ever existed that corresponds to AP Summary. The forensic accounting report which was filed with the Securities and Exchange Commission which was reviewed and accepted by the Ohio Board of Tax Appeals ("BTA") confirms that these assets never existed. This is not a case were a taxpayer claims that assets once owned are no longer used in business—the record clearly established and the BTA found as a matter of fact that **these assets never existed.**

The Ohio Tax Commissioner, through counsel, presented no evidence at the BTA and raised no legal arguments before the BTA because it never filed a brief in this case. Once the taxpayer won before the BTA they now seek to have this Court function as a super BTA and given them another opportunity to present new, novel legal argument that were not presented below and to argue factual issues upon which the BTA has already ruled. The Ohio Supreme Court is not the Ohio Board of Tax Appeals and the Justices of this Court are not to function as Attorney Examiners and Members of the BTA. This Court has said many times that it will not function as a super BTA. The Tax Commissioner, the Tax Department and the Attorney General's Office seek to have this Court rescue them from themselves for its failure to act below.

This matter is before the Ohio Supreme Court on an appeal as of right by the State of Ohio from a decision of the BTA granting Taxpayer's request for refund for 2002. Such request had previously been denied by the Ohio Tax Commissioner for reasons totally unrelated to those now raised before this Court.

While many issues surround the accounting irregularities which occurred at HealthSouth Corporation, this case only concerns the proper taxation of only one specific thing—those items identified as AP Summary¹ on the Taxpayer's tangible personal property tax return. As the evidence in this case shows, these assets not only did not exist as of the tax lien date at issue but have never existed. This fact is supported not only by the testimony before the BTA but by the forensic accounting reports prepared and submitted to the Securities and Exchange Commission ("SEC") and the Taxpayer's own reporting to the SEC.

FACTS

"The accounting fraud at HealthSouth was by any standard both enormous and complex."² While this is undoubtedly true, for purposes of the matter before this Court this complexity is simplified by the need to only focus on one particular result and issue—is the item "AP Summary" which was reported on the Taxpayer's 2002 Ohio tangible personal property tax return tangible personal property subject to tax in Ohio? The answer is clearly that these "assets" never existed but were a product of the

¹ A review of the fixed asset schedules included in the statutory transcript indicates that the items in question are alternatively referred to as both "AP Summary" or "AP SUMMARY." Although the methods of capitalization vary, these are the same items at issue before the Board. For purpose of this brief they are collectively referred to as "AP Summary." Quoted materials may referred to these items as "AP SUMMARY."

² REPORT OF THE SPECIAL AUDIT REVIEW COMMITTEE OF THE BOARD OF DIRECTORS OF HEALTHSOUTH CORPORATION. Filed with Securities and Exchange Commission on Form 8-K on 6/1/04. Marked and entered into evidence at the evidential hearing in this matter, and hereinafter referred to, as "Exhibit 1" at page 12 of 49, Appellant's Supplement, p. 87.

fraudulent accounting which created these line items in order to inflate the Taxpayer's income. Quite simply they never existed although the Taxpayer reported and paid taxes on these items for several years. This fact was not disputed in the hearing before the BTA and the BTA correctly found that these assets never existed and, as such, the overpayment made by the Taxpayer for 2002 should be refunded.

In March of 2003, federal law enforcement executed a search warrant at the offices of the Taxpayer that began the process of uncovering the irregularities at HealthSouth.³ Mr. Michael Martin, Taxpayer's Vice-President of Taxation, testified that at the time the company filed the refund request currently before this Board, the company was only aware of a fictitious asset issue related to the classification called AP Summary.⁴ The refund request related to the 2002 return was made in June 2004.⁵ The statute of limitations had expired on the previous years. Since the fictitious assets were uncovered in early 2003, the 2003 and later returns were initially filed without the AP Summary line items and those returns have been accepted by the State of Ohio.⁶ The only issue remaining is the 2002 return and the removal of AP Summary. Although the final review of the accounting records identified other issues which impacted the tangible personal property of the Taxpayer, those issues were not known at the time the refund request was made and therefore not preserved for review by this Board.⁷

³ Exhibit 1, pg. 6 of 49. Appellant's Supplement, p. 80.

⁴ Record of the hearing before the Ohio Board of Tax Appeals on February 22, 2007 (hereinafter "H.R.") at pg. 12. Appellant's Supplement, p. 16.

⁵ Statutory Transcript (hereinafter "S.T.") at pg. 73. Appellant's Supplement, p. 1394.

⁶ *Id.*

⁷ H.R. at pg. 13. Appellant's Supplement, p. 17. This timing leads to difficulties in reconciling the refund request to the final, revised balance sheet issued by the Taxpayer; an issue on which counsel for the Tax Commissioner devoted almost his entire cross-examination during the hearing. Appellant's Supplement, p. 81.

How did these items originate and how could the BTA be sure that these assets never existed? Within a week after the execution of the search warrants mentioned above, the Taxpayer's Board of Directors established a Special Audit Review Committee to conduct an independent forensic investigation of the accounting irregularities.⁸ The report of independent forensic accountants and this special committee was filed with the SEC in June 2004 and is Exhibit 1 from the hearing before the BTA. The accounting issues, and specifically AP Summary, are directly addressed in this report.

The report states:

Stated most simply, the fraud was accomplished by making over \$2.7 billion in false or unsupported entries in the Company's accounting systems. These improper accounting entries, made for the purpose of inflating HealthSouth's earnings, took two principal forms: (1) exaggeration of reported revenue, primarily through reductions to contractual adjustment accounts, and (2) failure to properly characterize and record operating expenses.⁹

...

The alteration of HealthSouth's income statements also required balance sheet manipulations. Those manipulations resulted in unsupported entries that affected virtually all of the Company's balance sheet asset accounts. The following chart illustrates how the principal improper adjustments to the Company's balance sheets were distributed:

Improper Adjustments To Total Assets As Of December 31, 2002
(millions of dollars)

Property, Plant & Equipment	1,033
Cash	373
Horizon/CMS - IHS Transactions	414
Current Assets	703
Intangible Assets	118

	2,641

Although fraudulent entries were processed by HealthSouth's corporate accounting department and reflected in the Company's consolidated financial statements, the entries also affected both the reported operating

⁸ Exhibit 1 at page 7 of 49. Appellant's Supplement, p. 81.

⁹ *Id.* at page 13 of 49. Appellant's Supplement, p. 88.

results and the financial positions of many individual HealthSouth facilities.¹⁰

It is the fact that the results of these entries were not only maintained on the consolidated financial statements of the company but, rather, affected also the individual facilities with the result being that these fictitious assets were included in the tangible personal property tax returns. Individual facility fixed asset reports were included with Taxpayer's originally filed return and can be found starting on page 855 through page 1,581 of the Statutory Transcript detailing the AP Summary line items.

The report specifically discussed the creation of the AP Summary entry and its fictitious nature:

HealthSouth's accounting for fraudulent balance sheet entries also departed from customary bookkeeping conventions. Under ordinary circumstances, accounting entries that affect income statement accounts should result in corresponding entries to balance sheet accounts (e.g., contractual adjustment to contractual allowance, operating expense to accounts payable). The Committee found that such corresponding entries largely were absent from the accounting for fraudulent adjustments. Instead, improper income statement entries generally resulted in an increase to a corporate suspense account, which then was reduced by a series of inter-company transfers that increased the assets on various facilities' balance sheets. The allocation of false entries to balance sheet accounts was determined principally by considering the facilities and accounts to which additions would be least likely to attract attention. Consequently, changes on the income statement of a particular facility did not necessarily (or even usually) equate to changes on the same facility's balance sheet.¹¹

...

Nearly all of the fictitious assets added to the Company's books after "first run" consolidation were processed to the general ledger by external upload. For the most part they were identified only as "AP SUMMARY." Each AP SUMMARY entry into the general ledger accounting system was recorded as one or more assets in the fixed asset system. Given the method by which non-existent fixed assets were allocated to a particular facility's books, some AP SUMMARY entries had dollar values exceeding the cost of any asset the facility would have been

¹⁰ *Id.* from pp.16 – 17 of 49. Appellant's Supplement, pp. 90-91.

¹¹ *Id.* at pg. 20 of 49. Appellant's Supplement, p. 94.

likely to acquire. At times, therefore, AP SUMMARY assets reflected in the fixed asset system were separated into a number of assets with lesser dollar values. These and other assets sometimes retained the AP SUMMARY designation and sometimes were identified as furniture, computer equipment, or similar items that a facility would be expected to use.¹²

AP SUMMARY assets first appeared in the fixed asset system during the 1998 fiscal year by virtue of a January 1999 upload and an accompanying retroactive posting to preceding months. At or around the same time, the Company added additional property, plant and equipment general ledger accounts, designated as "New Cap" accounts, which for the most part contained only entries with an AP SUMMARY description. The cumulative amount by quarter of improper adjustments relating to the use of AP SUMMARY assets is as follows:

Improper Adjustments To The Fixed Asset System Assets Named Or Once Named AP SUMMARY (millions of dollars)

	<u>1Q</u>	<u>2Q</u>	<u>3Q</u>	<u>4Q</u>
1998	64.34	123.52	202.16	305.09
1999	302.77	307.07	302.05	448.87
2000	488.56	572.89	573.19	697.19
2001	754.64	716.02	796.46	854.20
2002	984.13	1035.07	1034.74	1032.95

13

There is no room for doubt based upon the forensic accounting that was performed that the item AP Summary is a fictitious asset. The report, on page 22 of 49 in a footnote, does address a difference between "AP SUMMARY" as referenced in the report and "AP Summary." The later being an entry used in the company's accounts payable system but, importantly, "replaced with a specific asset description when a purchase was posted to the general ledger."¹⁴ The description "AP Summary" would not be transferred to the fixed asset system. The issue before this Board focuses only on those items still identified as AP Summary on the fixed asset schedules.

¹² As discussed above, one of the reasons that the refund claim filed only on those items called AP Summary does not tie out to the final balance sheet—additional non-existent assets were identified by this review.

¹³ Exhibit 1 from pp. 22 – 23 of 49. Appellant's Supplement, pp. 96-97.

¹⁴ *Id.* at pg. 22 of 49. Appellant's Supplement, p. 95.

Revised financial statements including the period at issue in this case were filed with the SEC along with management comment and auditor's report in a revised 10-K filing. That entire document is included in the hearing record as Exhibit 5. The report significantly discussed above is cited on page 7 of this report. The timeline and steps related to resolve these issues are also discussed at the beginning of this report. The Taxpayer's settlement with the SEC is discussed on pages 14 to 15 of this document.

In either communication from the Tax Department or before the BTA, the Tax Commissioner has never contested that these assets never existed and has not contested the later returns in which the item AP Summary was removed—even before the restatement of the financial statements. The auditor reviewing the request simply requested a copy of the journal entry showing that these items had been written off the Taxpayer's books.¹⁵ Unfortunately, the resolution of the accounting in this case could not be solved by simply writing off a particular item and, as both Exhibit 1 and 5 indicate, the entire restatement of the Taxpayer's financial statements were necessary. Such restatement was not published in the revised 10-K, Exhibit 5 in this matter, until June 27, 2005. Eleven days after the final proposed audit results were released by the Department.¹⁶ Even then, the release of this information is the result of a complete restatement of the financial statements and not a journal entry simply writing off AP Summary.

While the fraud was “enormous and complex” when the review is focused on one particular issue, AP Summary, the complexity can be stripped away. These entries reflect

¹⁵ S.T. at pg. 37 (Appellant's Supplement, p. 1520), pg. 39 (Appellee's Supplement, p. 1), and pg. 45 (Appellant's Supplement, p. 1518). For some reason, unknown to Appellee, Appellant did not include the Statutory Transcript in Appellant's Supplement in the order it was presented to the BTA and did not include all the pages from the Statutory Transcript.

¹⁶ See Exhibit 5 (Appellant's Supplement, p. 157) and S.T. at pg. 39 (Appellee's Supplement, p. 1).

fictitious assets that never existed and Ohio law does not tax assets that never existed. There is nothing in the brief finally filed before this Court that would support taxing assets that never existed.

LAW AND ARGUMENT

I. Ohio’s tangible personal property tax applies only to tangible personal property and the BTA correctly found that the items in question are not tangible personal property.

All tangible personal property located and used in business in Ohio to the extent that the aggregate taxable value required to be listed by the taxpayer exceeds \$10,000 is subject to ad valorem tax unless specifically exempt.¹⁷ This general proposition of law raises two specific issues: (1) what is “tangible personal property”? and (2) what is “used in business”? The line items in question in this case fail to satisfy the definitions inherent in both two issues.

“Tangible personal property” includes every tangible thing that is the subject of ownership, animate or inanimate, including a business fixture, and that is not real property.¹⁸ Thus, the tax only applies to actual, not fictitious, assets. As the facts above establish and the BTA correctly found, these line items do not represent tangible personal property. There has never existed an item of tangible property that these entries represent—at the lien date at issue in this case or ever. This case is dissimilar to prior refunds filed by taxpayers related to non-existent or “ghost” assets. Taxpayer claims in those cases generally surround the continued inclusion of an asset on the taxpayer’s books that the taxpayer claims was previously disposed of and should not be subject to further tax. The key difference is that the asset existed at one time. That is clearly not

¹⁷ Ohio Rev. Code Ann. § 5709.01(B); Ohio Rev. Code Ann. § 5709.01(C).

¹⁸ Ohio Rev. Code Ann. § 5709.03(A).

the case here. Also, this Board and the Ohio courts have seen a fair share of cases related to asset values after or as a result of purchase price adjustments. Again, the focus is on assets that actually existed at one time. Again, in this case, these items are fictitious entries to conceal accounting fraud and bear no relationship to nor represent any item that ever was tangible personal property. There is not one case in the State of Ohio or statutory interpretation that would allow for a tangible personal property tax to be assessed against assets that never existed.

As indicated above, Ohio taxes tangible personal property used in business. The record demonstrates that these line items are not now and never have been tangible personal property. They cannot be subject to tax in Ohio.

Additionally, Ohio law provides that personal property is “used in business” when: (a) employed or utilized in connection with ordinary or special operations; (b) acquired or held as a means or instrument for carrying on the business; (c) kept and maintained as a part of a plant capable of operation; or (d) stored or kept on hand as material, parts, products or merchandise.¹⁹ Machinery and equipment classifiable upon completion as personal property, while under construction or installation to become part of a new or existing plant or other facility, is not considered to be used in business by the owner of such plant or other facility, until such machinery and equipment is installed and in operation or is capable of operation in the business for which it was acquired.²⁰ As the record demonstrates, these items did not exist. There was no way for these assets to be “used in business” as required by Ohio law. As a result, it would be improper to subject these line items to tangible personal property tax.

¹⁹ Ohio Rev. Code Ann. § 5709.08(A).

²⁰ *Id.*

In summary, the line items in question never were tangible personal property and never were used in business in the State of Ohio. The Taxpayer has presented considerable evidence to establish this fact. A fact, as discussed above that is not contested by the Tax Commissioner and, regarding which, the State has provided no evidence to rebut that presented by the Taxpayer. This evidence was reviewed by the BTA which agreed that the assets never existed and that Ohio does not impose a tangible personal property tax on non-existent assets. As a result, it would be improper to sustain the attempt of the Tax Commissioner to include these items in the Taxpayer's 2002 tangible personal property tax return.

II. Appellant has failed to preserve the issues presented to this Court—the Ohio Supreme Court is not the Ohio Board of Tax Appeals.

There were several points in time during the course of this matter for the Ohio Tax Commissioner to dispute the evidence presented by the Taxpayer and to raise the legal arguments raised in its brief concerning equitable estoppel—they never did. It is only upon appeal to this Court that such issues arise.

As discussed above, the Tax Commissioner in reviewing the refund request was only focused on getting an accounting journal entry writing off the non-existent assets and denied the claim only when such an entry could not be provided. Future years filed without AP Summary included, even before the financial statements were re-stated, were never challenged by the State. Question of equitable estoppel or even whether the refund should be allowed as a result of the actions of the Taxpayer, were never raised.

At the hearing before the BTA, the Tax Commissioner presented no witnesses to dispute that these assets never existed. At the conclusion of the hearing, Appellant was

provided an opportunity to file a brief before the BTA and make factual arguments and raise legal issues such as those raised before this Court. Even after requesting a continuance of the briefing schedule²¹—no brief was filed.

Now, using its appeal as of right, Appellant comes before this Court and asks it to allow Appellant to challenge factual determinations made by the BTA which are not clearly erroneous and to present legal arguments for the first time that are not the result of the decision of the BTA but go all the way back to the filing of the refund request and have never been raised below. If there is an estoppel to be applied it is against the Appellant who has not preserved these issues below and in favor of not forcing Appellee to respond to new and novel legal arguments whenever the State decides to get around to raising them.

The standard of review in this case is clear. This Court has repeatedly commented that it is not a super BTA or a trier of fact de novo.²² Additionally, the Ohio Supreme Court will only over-turn factual determination made by the BTA which are unreasonable and unlawful²³—such showing cannot be made here; the evidence is clear. Novel legal propositions of equitable estoppel in tangible personal property tax cases have never been recognized by the State of Ohio and were not preserved below.

Under a long and uniform line of this Court's precedent, appeals to the BTA from the Commissioner's final determinations must “specify” the errors complained of in the

²¹ See Appellee's Supplement, pg. 3.

²² *Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd. of Revision* (1981), 66 Ohio St.2d 398, 400; *DAK, PLL v. Franklin Cty. Bd. of Revision* (2005), 105 Ohio St.3d 84, ¶ 16; and *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (2007), 112 Ohio St.3d 309.

²³ *A. Schulman, Inc. v. Levin* (2007), 116 Ohio St. 3d 105; *Cincinnati Community Kolliel v. Levin* (2007), 113 Ohio St. 3d 138.

final determinations²⁴. Likewise, appeals to this Court are limited to those issues preserved before the BTA. These cases arise where the taxpayers are the appellants. A same and equal standard should be applied to the State when attempting to appeal a decision of the BTA to this Court—it must be preserved below. This Court is not a super BTA. The Appellant had every opportunity to raise legal issues related to equitable estoppel before the BTA but failed to file a brief in this case even after requesting and receiving a continuance of the due date for the brief.²⁵

Held against this standard, the arguments asserted by Appellant's merit brief related to equitable estoppel are not properly preserved before this Court. This position was never asserted until the appeal to this Court. This is not a legal issue arising from the improper application of the law by the BTA but inherent in the refund request made by the taxpayer and it should have been raised before the BTA in order to preserve it before this Court. It was not.

III. Even if this Court were to allow Appellant's to raise a new argument before this Court that had not been preserved below, there is no authority under Ohio law for the application of equitable estoppel to allow for the taxation of property that the facts establish never existed.

There is no basis for overturning the factual determination made by the BTA—items called AP Summary were fictitious entry and never existed as assets. Without a factual basis to support its denial of the refund requested, the Appellants raise for the first time an argument that equitable estoppel should be applied to deny the Taxpayer the refund request. There is no support for such position under Ohio law. If this Court were

²⁴ *Queen City Valves v Peck* (1954), 161 Ohio St. 579; *Lenart v. Lindley* (1980), 61 Ohio St.2d 114; *Castle Aviation, Inc v Wilkins* (2006), 109 Ohio St.3d 290, 296-298; *Osborne Bros Welding Supply, Inc v Limbach* (1988), 40 Ohio St.3d 175, 178.

²⁵ See Appellee's Supplement, pg. 3.

to create such a new and novel position of law, it would essentially be re-writing Ohio's personal property tax law to hold that ad valorem taxes could be collected and retained on non-existent property.

Simply stated, equitable estoppel is the doctrine by which a person may be precluded by his act or conduct from asserting a right he otherwise would have.²⁶ As for equitable estoppel in this case, the wrong-doers that such a remedy should be rarely used against have absolutely nothing to do with the matter before this Court. Those rouge employees were fired by the Taxpayer and in many cases faced federal prosecution. The true victims here are the thousands of innocent HealthSouth shareholders who have already suffered through the revelation of the accounting fraud. If this refund is granted, it is the shareholders that will benefit—not the fired employees responsible for the fraud. There is absolutely nothing in the record to establish that anyone associated with the fraud committed in this case will in anyway benefit if the requested refund is granted.

The ability of shareholders to avoid the double injury of suffering as a result of the actions of the company's employees and also through the erroneous payment of tax was long ago recognized at the federal tax level. In *Asphalt Indus., Inc. v. Commissioner*²⁷, the court noted that a stockholder

“was as much defrauded as was the Treasury and it would be piling additional injury upon [an] innocent stockholder to require that the corporation in which he invested should bear the burden of assessments based upon the fraud which Anderson [a corporate officer] committed in the name of the corporation as a subordinate element in his need to conceal his embezzlement of its funds.”

²⁶ Black's Law Dictionary, 6th Edition.

²⁷ (3d Cir. 1967), 384 F. 2d 229, 235.

As the facts recited above show²⁸, the creating of the AP Summary entries began in 1998. For 1998, 1999, 2000 and 2001, the Taxpayer reported significant personal property which did not exist; paid tax on that fictional property; and, the statute of limitations ran before those overpayments could be recovered. Likewise, the entries over-stated the Taxpayer's income and net worth for these periods and that inflated income would have been subject to Ohio's Corporate Franchise Tax. The taxing authorities of the State of Ohio realized a benefit from these unfortunate activities. To now claim that equitable estoppel should be applied to allow them to keep taxes paid on non-existent property rather than allowing that one overpayment to be refunded to the shareholders is unconscionable.

As might be expected, Ohio case law does not address taxation of assets that never existed. If they don't exist, how can then be tangible property subject to tax? The proper focus in this case should be on the legality of the taxes being retained. There is no reasonable basis to hold that these taxes at issue were properly paid. On state court that has addressed this issue is in Illinois. In Illinois court held that an assessment of taxes on nonexistent personal property was "void ab initio," "a nullity," and "ineffectual," "having no legal force or binding effect."²⁹ Such reasoning applies in this case.

CONCLUSION

It is uncontroverted that the items identified as AP Summary not only did not exist as of the tax lien date at issue but have never existed. This fact is supported not only by the testimony before the BTA but by the forensic accounting reports prepared and submitted to the SEC and the Taxpayer's own reporting to the SEC. This fact is

²⁸ *Supra*, pg. 6.

²⁹ *In re Application of County Collector v. Arizona Metro Corp.* (1977), 53 Ill. App. 3d 156, 159; 368 N.E. 2d 798, 800.

unchallenged by the Tax Commissioner. The State of Ohio taxes tangible personal property used in business. The items at issue here fail on both accounts—they are not and do not represent tangible personal property and could never have been used in business in the State of Ohio.

Now comes the Tax Commissioner seeking to make legal arguments not preserved below and challenging factual determinations made by the BTA which are not unreasonable and unlawful. The Ohio Supreme Court is not a super BTA. The Appellant's failure to preserve the issues below should not be corrected by essentially forcing this Court to act as a super BTA.

Even if this Court were to rescue the Appellants from themselves, the unique remedy of equitable estoppel should not be applied against the shareholders of the Taxpayer. Ohio law should follow the federal decision to not attribute to the shareholders the action of the employees to deny refunding the tax paid on property that never existed.

For these reasons, the Taxpayer respectfully requests that the decision of the BTA be affirmed.

Respectfully submitted,

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5709.01 Taxable property entered on general tax list and duplicate.

(A) All real property in this state is subject to taxation, except only such as is expressly exempted therefrom.

(B) Except as provided by division (C) of this section or otherwise expressly exempted from taxation:

(1) All personal property located and used in business in this state, and all domestic animals kept in this state and not used in agriculture are subject to taxation, regardless of the residence of the owners thereof.

(2) All ships, vessels, and boats, and all shares and interests therein, defined in section 5701.03 of the Revised Code as personal property and belonging to persons residing in this state, and aircraft belonging to persons residing in this state and not used in business wholly in another state, other than aircraft licensed in accordance with sections 4561.17 to 4561.21 of the Revised Code, are subject to taxation.

(C) The following property of the kinds mentioned in division (B) of this section shall be exempt from taxation:

(1) Unmanufactured tobacco to the extent of the value, or amounts, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof.

(2) Spirituous liquor, as defined in division (B)(5) of section 4301.01 of the Revised Code, that is stored in warehouses in this state pursuant to an agreement with the division of liquor control.

(3) Except as otherwise provided in section 5711.27 of the Revised Code, all other such property if the aggregate taxable value thereof required to be listed by the taxpayer under Chapter 5711. of the Revised Code does not exceed ten thousand dollars.

(a) If the taxable value of such property exceeds ten thousand dollars only such property having an aggregate taxable value of ten thousand dollars shall be exempt.

(b) If such property is located in more than one taxing district as defined in section 5711.01 of the Revised Code, the exemption of ten thousand dollars shall be applied as follows:

(i) The taxable value of such property in the district having the greatest amount of such value shall be reduced until the exemption has been fully utilized or the value has been reduced to zero, whichever occurs first;

(ii) If the exemption has not been fully utilized under division (C)(3)(b)(i) of this section, the value in the district having the second greatest value shall be reduced until the exemption has been fully utilized or the value has been reduced to zero, whichever occurs first;

(iii) If the exemption has not been fully utilized under division (C)(3)(b)(ii) of this section, further reductions shall be made, in repeated steps which include property in districts having declining values, until the exemption has been fully utilized.

(D) All property mentioned as taxable in this section shall be entered on the general tax list and duplicate of taxable property.

Effective Date: 07-01-1997

Appendix 1

5709.03 Fixing situs of certain classes of property within or without this state.

Property of the kinds mentioned in this section, when used in business, shall be considered to arise out of business transacted in a state other than that in which the owner resides, under the circumstances following:

(A) Accounts receivable resulting from the sale of property by an agent having an office in such other state or from a stock of goods maintained therein, or from services performed by an officer, agent, or employee connected with, sent from, or reporting to any officer or at any office located in such other state;

(B) Prepaid items, when the right acquired thereby relates exclusively to the business transacted in such other state, or to property used in such business;

(C) In the case of accounts payable, the proportion of the entire amount of accounts receivable, wherever arising, represented by those arising out of business transacted in such other state ascertained as provided in this section, shall be taken to represent the proportion of the entire amount of accounts payable arising out of the business transacted in such other state;

(D) Deposits, other than those used in business outside of such other state, when withdrawable in the course of such business by an officer or agent having an office in such other state; but deposits representing general reserves or balances of the owner thereof maintained for the purpose of his entire business wherever transacted, shall be considered located in the state in which the owner resides, if an individual, or in which its actual principal executive office is situated, if a partnership or association, or under whose laws it is organized, if a corporation, by whomsoever they may be withdrawable;

(E) Money kept on hand at an office or place of business in such other state;

(F) Investments not held in trust, when made, created, or acquired in the course of repeated transactions of the same kind, conducted from an office of the owner in such other state, when either:

(1) such investments represent obligations of persons residing in such other state or secured by property located therein;

(2) an officer or agent of the owner at the owner's office in such other state has authority, in the course of the owner's business, to receive or collect the income thereon, the principal, or both, when due, or to sell and dispose of the same.

This section shall be reciprocally applied, so that all property of the kinds mentioned in this section having a business situs in this state shall be taxed in this state, and no such property belonging to a person residing in this state and having a business situs outside of this state shall be taxed. The assignment of a business situs outside of this state to property of a person residing in this state, in any case and under any circumstances mentioned in this section, is inseparable from the assignment of such situs in this state to property of a person residing outside of this state in a like case and under similar circumstances. If any provision of this section is held invalid as applied to property of a nonresident person, such decision shall be deemed also to affect such provision as applied to property of a resident, but shall not affect any other provision hereof.

Effective Date: 10-01-1953

5709.08 Exemption of government and public property.

(A)(1) Real or personal property belonging to the state or United States used exclusively for a public purpose, and public property used exclusively for a public purpose, shall be exempt from taxation.

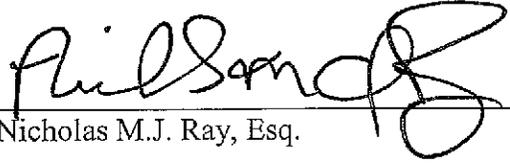
(2) For purposes of division (A)(1) of this section, real and personal property owned by the state, even when the property is leased or otherwise operated by a private party, and used as public service facilities described in section 1501.07 of the Revised Code, as concessions or other special projects described in division (F) of section 1531.06 of the Revised Code, as refuge harbors or marine recreational facilities described in section 1547.72 of the Revised Code, or areas described in section 1503.03 of the Revised Code, is hereby declared to be public property "used exclusively for a public purpose."

(B) Real and personal property, when devoted to public use and not held for pecuniary profit, owned by an adjoining state or any political subdivision or agency of such adjoining state, which would be exempt from taxation if owned by the state of Ohio or a political subdivision or agency thereof, shall be exempt from taxation providing that such adjoining state exempts from taxation real and personal property devoted to public use and not held for pecuniary profit, owned by the state of Ohio or any political subdivision or agency thereof, which would be exempt from taxation if owned by the adjoining state or political subdivision or agency thereof.

Effective Date: 11-02-1989; 03-30-2006

CERTIFICATE OF SERVICE

This is to certify that on this 11th day of June 2008, a copy of the Merit Brief of Appellee HealthSouth Corporation and Appendix was sent via regular U.S. mail, postage prepaid to Barton Hubbard, Assistant Attorney General, 30 East Broad Street, 25th Floor, Columbus, OH 43215-3428.



Nicholas M.J. Ray, Esq.