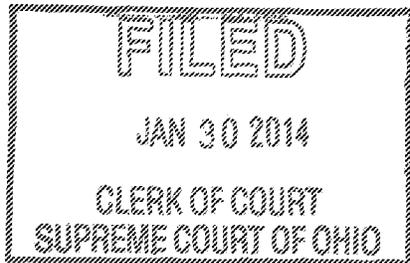


IN THE SUPREME COURT OF OHIO

HITACHI MEDICAL SYSTEMS)	No. <u>13-1627</u>
AMERICA, INC. and)	
HMSA PROPERTIES, LLC,)	On Appeal from the
)	Ohio Board of Tax Appeals
Appellants)	
v.)	BTA Case No. 2009-1576
)	(Real Property Tax Exemption)
JOSEPH W. TESTA (formerly Richard)	
A. Levin) TAX COMMISSIONER)	
OF OHIO, and SUMMIT COUNTY)	
FISCAL OFFICER,)	
Appellees.)	

MERIT BRIEF OF APPELLANTS
HITACHI MEDICAL SYSTEMS AMERICA, INC.
AND HMSA PROPERTIES, LLC



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TABLE OF CONTENTS

Table of Authorities iii

Statement of the Facts 1

A. Statement of the Case..... 1

B. Factual Background 1

Argument

Proposition of Law No. 1

Where an application for enterprise zone tax abatement on the Tax Commissioner’s prescribed form is signed and filed by an authorized representative acting on behalf of both the owner of the subject property and the owner’s sole limited liability company member and where both the owner and its sole member are identified on the form, the jurisdiction of the Tax Commissioner to consider the application is properly invoked6

Proposition of Law No. 2

R.C. 5715.27, as applied by the BTA to this case, violates appellants’ rights of equal protection under the Ohio and U.S. Constitutions by treating Hitachi Medical Systems America, Inc., a *for-profit* sole member of an LLC, differently, without a rational basis for doing so, from: (a) a *non-profit* member of a single-member LLC which is permitted by R.C. 5701.14 to file an exemption application, and/or (b) a beneficiary of a trust, a 30-year lessee or a vendee under a land contract which, while also not having a direct fee title interest in the property, are permitted to file an exemption application under R.C. 5715.27.....21

Conclusion27

Proof of Service29

Appendix

App. Pg.

Amended and Corrected Notice of Appeal to the Ohio Supreme Court
(Oct. 16, 2013)0001

Decision and Order of the Ohio Board of Tax Appeals (Sept. 16, 2013).....0015

Final Determination of the Tax Commissioner (Jun. 1, 2009)0022

Recommendation of the Ohio Department of Taxation Agent Examiner
(Aug. 6, 2007)0024

Constitutional Provisions; Statutes; Agency Regulations

Ohio Constitution, Article I, Section 20026
U.S. Constitution, Fourteenth Amendment, Section 10027
R.C. 718.01(A).....0028
R.C. 1705.250031
R.C. 5313.040033
R.C. 5701.140034
R.C. 5709.6710035
R.C. 5715.19(A).....0036
R.C. 5715.270038
R.C. 5733.01(F)0040
R.C. 5801.040041
2008 Sub. H.B. No. 1600043
Del. Code Ann., Title 6, 18-402.....0059
26 C.F.R. 301.7701-3(a)0060

TABLE OF AUTHORITIES

CASES:

Adamsky v. Buckeye Local School Dist., 73 Ohio St.3d 360, 653 N.E.2d 212 (1995).....22

Automatic Data Processing Community Urban Redevelopment Corporation v. Hamilton Cty. Bd. of Revision (July 23, 2004), BTA Case Nos. 2003-J-87 and 2003-J-8817

Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision, 80 Ohio St.3d 591, 687 N.E.2d 723 (1998).....18

Dayton Supply & Tool Company, Inc. v. Montgomery Cty. Bd. of Revision, 111 Ohio St.3d 367, 2006-Ohio-5852, 856 N.E.2d 92613, 26

Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision, 137 Ohio St.3d 266, 2013-Ohio-4627.....6, 19, 20

Maralgate, L.L.C. v. Greene County Board of Revision, 130 Ohio St.3d 316, 2011-Ohio-5448, 958 N.E.2d 153.....13, 14

Pack v. City of Cleveland, 1 Ohio St.3d 129, 438 N.E.2d 434 (1982)23

Pennell v. City of San Jose, 485 U.S. 1, 13, 108 S.Ct. 849, 99 L.Ed.2d 1 (1987).....22

Performing Arts School of Metro. Toledo, Inc. v. Wilkins, 104 Ohio St. 3d 284, 2004-Ohio-6389, 819 N.E.2d 649.....11, 12, 13

Pickaway County Skilled Gaming, L.L.C. v. Cordray, 127 Ohio St.3d 104, 2010-Ohio-4908, 936 N.E.2d 944.....21, 22

State ex rel. Doersam v. Industrial Com'n of Ohio, 45 Ohio St.3d 115, 543 N.E.2d 1169 (1989).....22

Sunrise Residential & Life Skills Center (Apr. 6, 2007), BTA No. 2006-A-103413

Toledo Pub. Schools Bd. of Edn. v. Lucas County Bd. of Revision, 124 Ohio St.3d 490, 2010-Ohio-253, 924 N.E.2d 3458, 9, 10, 11, 13

Zier v. Bur. of Unemp. Comp., 151 Ohio St. 123, 84 N.E.2d 746 (1949).....20

CONSTITUTIONAL PROVISIONS; STATUTES; REGULATIONS

Ohio Constitution, Article I, Section 2	21
U.S. Constitution, Fourteenth Amendment, Section 1	21
R.C. 718.01	14, 25
R.C. 1705.25	8, 26
R.C. 5313.04	26
R.C. 5701.14	13, 15, 21, 23, 24, 25
R.C. 5709.671	27
R.C. 5715.19	9, 12
R.C. 5715.27	4, 6, 8, 10, 11, 12, 15, 16, 19, 20, 21, 23, 24, 25, 27, 28
R.C. 5733.01	14, 25
R.C. 5801.04	26
2008 Sub. H.B. No. 160	11, 13, 16, 24
Ohio Adm. Code 122:4-1	15
Del. Code Ann., Title 6, 18-402	7, 8, 26
26 C.F.R. 301.7701-3(a)	14, 25

STATEMENT OF THE FACTS

A. Statement of the Case.

HMSA Properties, LLC, is a Delaware limited liability company which holds fee title to real property located at 1995 Summit Commerce Park in the City of Twinsburg, Summit County, Ohio. HMSA Properties, LLC, is a single member LLC. Its sole member is Hitachi Medical Systems America, Inc.

The City of Twinsburg and the County of Summit granted enterprise zone abatement to HMSA Properties, LLC and Hitachi Medical Systems America, Inc. for the Summit Commerce Park property. Thereafter, an authorized officer of Hitachi Medical Systems America, Inc., acting on behalf of both entities, filed an application with the Ohio Tax Commissioner on the Commissioner's prescribed form (DTE 24).

The Tax Commissioner dismissed the application because it listed HMSA Properties, LLC as the "title owner" on page 2 of DTE 24 instead of as the "applicant" on page 1 of the form. Instead, and fatally according to the Commissioner, appellants had listed Hitachi Medical Systems America, Inc. -- the sole member of HMSA Properties, LLC -- as the "applicant." The Ohio Board of Tax Appeals affirmed the decision of the Tax Commissioner. Appellants, HMSA Properties, LLC and Hitachi Medical Systems America, Inc., appeal to this Court.

B. Factual Background.

Hitachi Medical Corporation sells and services medical diagnostic equipment around the world. Its U.S. affiliate, co-appellant, Hitachi Medical Systems America, Inc., ("Hitachi America") is headquartered in Twinsburg, Ohio. (Supp. 14.) It employs roughly 170 people in two adjacent buildings located there. One of these two buildings is the subject of the exemption application at issue in this appeal. (Supp. 14.)

Originally, Hitachi America occupied a single building in Twinsburg but as its business and its services grew, it explored expansion opportunities. (Supp. 15.) In assessing the prospect of expanding, Hitachi America approached the City of Twinsburg and discussed the possibility of participating in the enterprise zone abatement program. The city's response was "very favorable" -- offering to give Hitachi America a ten-year tax abatement: 75 percent for real property and 50 percent for personal property. For its part, Hitachi America agreed to invest \$3,000,000 in real and personal property and to create new jobs at the Twinsburg facility. (Supp. 16.)

Given Twinsburg's offer for tax abatement, Hitachi America launched its plans to expand. The first step was to acquire the property adjacent to its existing building. (Supp. 19.) Hitachi America ultimately formed a Delaware limited liability company, HMSA Properties, LLC, to hold title to the property. (Supp. 21-22.)¹

There is a complete identity of interest between Hitachi America and HMSA Properties, LLC. Hitachi America is the sole member of HMSA Properties, LLC. (Supp. 22.) As its sole owner, Hitachi America controls HMSA Properties, LLC. (Supp. 18.) HMSA Properties, LLC does not have its own employees or officers; the officers of Hitachi America act on behalf of HMSA Properties, LLC in their capacity as officers of Hitachi America. No one else but Hitachi America acts for HMSA Properties, LLC. (Supp. 18-19.) Both entities use the same address; HMSA Properties, LLC owns nothing other than the subject property for which Hitachi America pays all of the bills. (Supp. 22-23, 30.)

¹ Title to the new property was initially taken for Hitachi America in the name of Alairis Properties, LLC ("Alairis") but was subsequently transferred to HMSA Properties, LLC. (Supp. 20-21, 56-59.)

HMSA Properties, LLC has no separate existence from a tax standpoint. (Supp. 22.) HMSA Properties, LLC does not file tax returns separate from those filed by Hitachi America. (Supp. 22.) The real estate taxes on the property are deducted by its sole member, Hitachi America, as are depreciation and insurance expenses. It was Hitachi America that entered into the enterprise zone agreement with the City of Twinsburg and Summit County in June of 2004. (Supp. 23-24.) As its sole member, Hitachi America, directs and takes all action on behalf of HMSA Properties, LLC. (Supp. 29.)

Both the Summit County Council and the Twinsburg City Council passed resolutions approving the grant of enterprise zone abatement to Hitachi America and HMSA Properties, LLC. (Supp. 45-46, 47-48.)

In October of 2006, Richard Kurz, an officer of Hitachi America, acting as the sole member of HMSA Properties, LLC, signed and filed with the Ohio Tax Commissioner an Application for Real Property Tax Exemption (DTE Form 24) for the property that was the subject of the enterprise zone agreement with Twinsburg and Summit County. (Supp. 25.) He did so representing both Hitachi America and HMSA Properties, LLC:

Q. Okay. And on whose behalf did you sign and file this application form with the State?

A. As officer of HMSA, Inc., I signed it as an officer representing Hitachi, HMSA Properties, LLC.

Q. Were you authorized to sign and file this on behalf of HMSA Properties, LLC?

A. It was my understanding as an officer of the sole member, I was.

Q. It [was] your understanding that's what you were doing?

A. Yes.

(Supp. 26.)

On the first page of the DTE 24, Mr. Kurz listed the applicant's name as Hitachi Medical Systems America, Inc. (a party to the enterprise zone agreement and HMSA Properties, LLC's sole member), and, on page 2, identified the fee title owner as HMSA Properties, LLC. The addresses listed for both entities were identical. (Supp. 25-27; 49-50).

On June 1, 2009, Appellee Tax Commissioner denied the application for exemption of the real estate from taxation. (App. 22-23.) His sole reason? While the application clearly and unambiguously represented that HMSA Properties, LLC was the fee title owner of the property at the time the application was filed (Supp. 50, line 4a), on the line next to "Applicant Name" -- instead of listing "HMSA Properties, LLC" -- it listed the name of its sole member, Hitachi Medical Systems America, Inc. (App. 22; Supp. 49.) The Tax Commissioner reasoned that since Hitachi America was not, itself, the fee title owner of the property, under R.C. 5715.27, it could not apply for the exemption. (App. 22.) In other words, the Commissioner insists that the exemption be denied based not on the information contained in the form, nor upon any claimed misrepresentations in it, but because HMSA Properties, LLC listed the name of its sole member as the name of the applicant rather than its own.

Hitachi America and HMSA Properties, LLC appealed the Commissioner's Final Determination to the Ohio Board of Tax Appeals. A hearing was held before an Attorney Examiner at the BTA on June 25, 2012. (Supp. 1-44.) Two witnesses testified on behalf of the appellants at the BTA hearing: Richard Kurz (who signed the DTE 24 application) and Larry Finch, the Director of Planning and Community Development for the City of Twinsburg. No witnesses were called by the Tax Commissioner. (Supp. 42.)

On September 16, 2013, the BTA issued its Decision and Order affirming the Final Determination of the Tax Commissioner. (App. 15.) Hitachi America and HMSA Properties, LLC filed their Notice of Appeal to this Court on October 15, 2013.²

ARGUMENT

Introduction

The decision of the BTA, affirming dismissal by the Tax Commissioner, misses the point. This case does *not* present a question of whether HMSA Properties, LLC is an entity entitled to claim an exemption from real property tax. Of course, it is entitled to do so. Rather, this is a case where the Tax Commissioner would have this Court exalt form over substance and deny enterprise zone abatement to an entity that applied for such exemption simply because its name was listed on line 4 of the application form (DTE 24), rather than on the first page of the form. Such a result is not supported by the evidence, logic or case law.

The BTA heard undisputed testimony that HMSA Properties, LLC was the entity applying for the tax exemption. (Supp. 26.) It also heard that HMSA Properties, LLC, having been granted that exemption by the City of Twinsburg and County of Summit, submitted its DTE 24 in the *only* manner it could – through the authority and signature of an officer of its sole member, Hitachi Medical Systems America, Inc. (Supp. 18-19.)

No one has suggested that HMSA Properties, LLC is using Hitachi Medical Systems America, Inc. as the “applicant” because HMSA Properties, LLC would otherwise not be eligible for the exemption. Instead, the Commissioner takes the position – in conflict with and unsupported by the instructions and pre-printed portions of the DTE 24 – that the failure to list

² On October 16, 2013, within the 30-day appeal period, appellants filed an Amended and Corrected Notice of Appeal in order to add the Summit County Fiscal Officer as an appellee. (App. 1.)

“HMSA Properties, LLC” on the first page of the form ends any and all discussion of the issue. That is not the case.

The Supreme Court reviews *de novo* the jurisdictional sufficiency of property tax forms. *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 137 Ohio St.3d 266, 2013-Ohio-4627, ¶ 8. For the reasons set forth herein, this Court should reverse the decision of the Ohio Board of Tax Appeals.

Proposition of Law No. 1

Where an application for enterprise zone tax abatement on the Tax Commissioner’s prescribed form is signed and filed by an authorized representative acting on behalf of both the owner of the subject property and the owner’s sole limited liability company member and where both the owner and its sole member are identified on the form, the jurisdiction of the Tax Commissioner to consider the application is properly invoked.³

A. The Application was filed by the “Owner.”

Jurisdiction was properly invoked and the Tax Commissioner should not have dismissed the enterprise zone exemption application of Hitachi America and HMSA Properties, LLC, since the application was filed by the “owner” as that term is used in R.C. 5715.27(A). R.C. 5715.27(A) reads:

Except as provided in division (A)(2) of this section and in section 3735.67 of the Revised Code, the owner, a vendee in possession under a purchase agreement or a land contract, the beneficiary of a trust, or a lessee for an initial term of not less than thirty years of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted from taxation and that taxes, interest, and penalties be remitted as provided in division (C) of section 5713.08 of the Revised Code.

R.C. 5715.27(A)(1).

³ Proposition of Law No. 1 addresses Appellants’ Assignments of Error Nos. 1–9 in their Amended and Corrected Notice of Appeal.

The exemption application in this case *was* filed by the owner of the property. The application was signed by Richard A. Kurz, an authorized representative of HMSA Properties, LLC and an officer of its sole member, Hitachi America. HMSA Properties, LLC is a single member Delaware limited liability company which, by its very nature, can act only through its sole member, Hitachi America. The members of a Delaware LLC have the rights of management of the entity in proportion to their ownership interests, and each member “has the authority to bind the limited liability company.” Del. Code Ann., Title 6, 18-402.

HMSA Properties, LLC does not have separate officers or directors. (Supp. 18.) It does not have its own employees. *Id.* No one acts -- or could act -- on behalf of HMSA Properties, LLC other than Hitachi America. *Id.* Such was the uncontroverted testimony of Mr. Kurz at the BTA hearing:

Q. Does anyone other than Hitachi Medical Systems America, Inc. act on behalf of HMSA Properties?

A. No.

Q. When you sign, have there ever been occasions where you sign documents on behalf of or acting on behalf of HMSA Properties?

A. *This abatement was the example.*

Q. When you signed documents on behalf of HMSA Properties?

A. *I always sign under my capacity as vice president of Hitachi Medical Systems America, Inc.*

(Supp. 18-19; emphasis added.)

It was the avowed intent of Mr. Kurz to sign the DTE 24 exemption application on behalf of HMSA Properties, LLC:

- Q. Okay. And on whose behalf did you sign and file this application form with the State?
- A. As officer of HMSA, Inc., I signed it as an officer representing Hitachi, HMSA Properties, LLC.
- Q. Were you authorized to sign and file this on behalf of HMSA Properties, LLC?
- A. It was my understanding as an officer of the sole member, I was.
- Q. It [was] your understanding that's what you were doing?
- A. Yes.

(Supp. 26.)

The DTE 24 form is the "form prescribed by the commissioner" for an enterprise zone exemption application. R.C. 5715.27(A)(1). The only instruction provided to an applicant regarding execution and submission of the DTE 24 appears on the first page of the Commissioner's form: "This application must be signed by the property owner *or the property owner's representative.*" (Supp. 49, emphasis added.) No one disputes that Mr. Kurz was the authorized representative of HMSA Properties, LLC, the fee title owner to the property.

Additionally, as it sole LLC member, Hitachi America "has the authority to bind" HMSA Properties, LLC. Del. Code Ann., Title 6, 18-402.⁴ "[T]he question of agency is determined by reference to whether the person filing the appeal was in fact authorized by its principal to file it." *Toledo Bd. of Educ. v. Lucas Cty. Bd. of Revision*, 124 Ohio St.3d 490, 2010-Ohio-253, 924 N.E.2d 345, ¶24.

⁴ The same is true under Ohio's limited liability company law. "Every member is an agent of the company for the purpose of its business, and the act of every member, including the execution in the company name of any instrument for apparently carrying on in the usual way the business of the company binds the company, unless the member so acting has in fact no authority to act for the company in the particular matter, and the person with whom he is dealing has knowledge of the fact that he does not have that authority." R.C. 1705.25(A)(1).

In *Toledo Bd. of Educ.*, Vistula Management Company filed a board of revision valuation complaint under R.C. 5715.19 on behalf of Michaelmas Manor, the owner of the property. R.C. 5715.19(A) permits a person “owning taxable real property in the county” and certain other persons to file a valuation complaint with a board of revision. Vistula listed itself as the “complainant” on the complaint form and listed Michaelmas as the title owner of the property on the line identifying the “owner.” On line 5 of the complaint, Vistula simply described its relationship with Michaelmas as “management company.” *Toledo Bd. of Educ.* at ¶3.

The Court acknowledged that the statute does not expressly permit a management company to file a valuation complaint and the school district argued that the statutory list of eligible complainants was exhaustive. *Id.* at ¶25. Nonetheless, it held that Vistula “raised the inference that it was acting on behalf of the owner which it identified on line one” of the valuation complaint. *Id.* at ¶20. The Court derived this inference solely “because a property manager or management company furnishes management services to the owner for a fee and performs those services on behalf of, and for the benefit of, the owner.” *Id.* at ¶17, citing Appraisal Institute, *The Appraisal of Real Estate* (13th Ed. 2008). Accordingly, this Court reversed the BTA’s decision that Vistula’s complaint was jurisdictionally defective. *Id.* at ¶31.

The same result should hold true here. In fact, in this case, the Tax Commissioner had better indications of the relationship between Hitachi America and HMSA Properties, LLC from which to draw an inference of agency than in *Toledo Bd. of Educ.* Hitachi America listed itself as “applicant” on page 1 of the DTE 24 and identified HMSA Properties, LLC as the title owner on line 4. (Supp. 49-50.) The same address – 1995 Summit Commerce Park – was listed for both Hitachi America and HMSA Properties, LLC. *Id.* “HMSA” are the initials of Hitachi Medical Systems America, Inc., its sole member. (Supp. 22.) Submitted with the exemption

application, as required by the instruction on page 1, was the Summit County property record card for the Twinsburg property. (Supp. 53-55.) While listing HMSA Properties, LLC as the property owner, the notes section on page 2 of the property record card also referenced the “*pending abatement for Hitachi Med Systems.*” (Supp. 54, emphasis added.)

The Tax Commissioner also had a copy of the resolutions of the Summit County Council and Twinsburg City Council indicating the Hitachi America was a party to the enterprise zone abatement agreement. (Supp. 45-48.) Further linking Hitachi America with HMSA Properties, LLC, was the deed to the subject property, which was provided to the Commissioner, and listed the title owner as “HMSA Properties, LLC, an Ohio (sic) limited liability company (“Grantee”) whose tax mailing address is *c/o Hitachi Medical Systems America, Inc.*” (Supp. 57, emphasis added.) All of these facts were indicia of the relationship between Hitachi America and HMSA Properties, LLC which “raised the inference” of authority on the part of Hitachi America to file the application. *Toledo Bd. of Educ.*, 124 Ohio St.3d 490, 2010-Ohio-253, 924 N.E.2d 345, at ¶20.

B. An exemption application by an LLC’s sole member suffers no jurisdictional defect under R.C. 5715.27, as retroactively amended in 2008.

In addition to permitting the “owner” to file an application for exemption, R.C. 5715.27 also states that “a vendee in possession under a purchase agreement or a land contract, the beneficiary of a trust, or a lessee for an initial term of not less than thirty years of any property may file an application with the tax commissioner.” R.C. 5715.27(A)(1). The statute, therefore, recognizes that other entities that possess an interest in the property and a legally cognizable relationship with the property owner may apply for an exemption.⁵

⁵ This version of R.C. 5715.27 was in effect as of the time of the Tax Commissioner’s June 2009 Final Determination, yet the Tax Commissioner cited the prior version of the statute

Hitachi America, as its sole member, has an interest in the property owned by HMSA Properties, LLC that is indistinguishable from – if not greater than – the interest held by a thirty year lessee, the beneficiary of a trust, or a vendee who possesses land under a purchase agreement. House Bill No. 160’s expansion of the list of persons who may file an exemption application evidences the General Assembly’s intent to allow entities like Hitachi America to apply for the exemption. If the statute is construed otherwise, as more fully discussed below, it runs afoul of the equal protection guarantees of the Ohio and United States Constitution.

The 2008 amendment to R.C. 5715.27 was in direct response to the decision of this Court in *Performing Arts School of Metro. Toledo, Inc. v. Wilkins*, 104 Ohio St. 3d 284, 2004-Ohio-6389, 819 N.E.2d 649. The amendment adopted the position put forth by Justice Lundberg Stratton in her dissenting opinion in the *Performing Arts* case. Justices Resnick and Pfeifer concurred. In *Performing Arts*, which predated the amendment to R.C. 5715.27, a tenant under a lease of only 39 months filed an application to exempt property owned by its landlord. The Tax Commissioner denied the application because the short-term tenant was not the owner; the BTA and this Court affirmed upon a strict reading that “owner” means only legal title owner. *Id.* at ¶14.

The dissent opined that R.C. 5715.27 did not require that the “owner” filing the application for tax exemption be the owner of the fee simple estate at issue in the application. Instead, the dissent read the term, “owner,” as referring to the owner of “any” property and invited the General Assembly to clarify the statute:

which only listed the “owner” as the applicant. Section 5715.27 was amended as part of 2008 Sub. H.B. No. 160, which became effective June 20, 2008. Section 3 of Sub. H.B. No. 160 stated that the revised version of R.C. 5715.27 applied to all exemption applications then pending before the Tax Commissioner, BTA or the courts. (App. 55.) As of June 20, 2008, the DTE 24 filed in October 2006 by Mr. Kurz was still pending before the Tax Commissioner.

By stating that the owner of “any” property may file for an exemption but not defining or limiting the term “owner,” I believe that the General Assembly has not limited the term to particular kind of owner, such as the owner of the legal title to the fee simple. If the General Assembly did not intend that only the owner of the legal title to the fee-simple estate file an exemption application, then I invite the General Assembly to clarify the statute.

Performing Arts, at ¶29 (Lundberg Stratton, J., dissenting). The dissent also acknowledged that a “user of the property may sometimes also be recognized as the owner.” *Id.* The General Assembly amended the statute to conform with the dissent’s reasoning.

In this case, Hitachi America was the occupant, possessor and user of the property which is the subject of the abatement. (Supp. 13-14.) No one else occupies the property, and Hitachi America does not sublease any of the space to third parties. (Supp. 14.) Additionally, as sole member of HMSA Properties, LLC, it is tantamount to the owner of the property. It is and will be the user of that property as long as HMSA Properties, LLC owns it. The General Assembly followed the suggestion of the dissent in *Performing Arts* and evinced its intent that the universe of applicants not be limited simply to fee title owners. As such, *even if* this Court determines that HMSA Properties, LLC was not the *technical* applicant, Hitachi America is the equivalent of those persons entitled to file an application under amended R.C. 5715.27.

The fact that R.C. 5715.27, as retroactively amended in 2008, lists the owner, a land contract vendee, a beneficiary of a trust and a long-term tenant as qualified to file an application for exemption does not mean that this is an *exclusive* list. Accordingly, this Court needs to construe R.C. 5715.27 in light of the legislative intent behind the amendment, thus limiting the continued precedential effect of the majority opinion in *Performing Arts*.

An analogous situation was addressed by this Court when the General Assembly, in 1998 Sub. H.B. No. 694, amended R.C. 5715.19(A) to expand the identity of persons authorized to file a board of revision complaint on behalf of an owner:

We disagree with the school board's reading of the statutory amendment. What the school board overlooks is that the General Assembly had a very precise purpose in enacting H.B. 694. That amendment was enacted in response to our decision in *Sharon Village Ltd.*, 78 Ohio St.3d 479, 678 N.E.2d 932, and the bill reflected a legislative intent to "undo the impact of that decision and thereby widen the pool of persons who may file a property-valuation complaint on behalf of a property owner." *Dayton Supply & Tool Co., Inc.*, 111 Ohio St.3d 367, 2006-Ohio-5852, 856 N.E.2d 926, ¶ 42 (Resnick, J., dissenting).

Toledo Bd. of Educ., 124 Ohio St.3d 490, 2010-Ohio-253, 924 N.E.2d 345, at ¶26 (emphasis added); see also *Maralgate, L.L.C.*, 130 Ohio St.3d 316, 2011-Ohio-5448, 958 N.E.2d 153, at ¶23-26 (subsequent amendments to R.C. 5713.30 rendered prior interpretations of little significance).

Any doubt that the General Assembly intended to permit the sole member of an LLC to apply for an exemption is quickly resolved by R.C. 5701.14 which states in relevant part:

A single member limited liability company that operates with a nonprofit purpose, as described in division (A) of this section, shall be treated as part of the same legal entity as its nonprofit member, and all assets and liabilities of that single member limited liability company shall be considered to be that of the nonprofit member. Filings or applications for exemptions or other tax purposes may be made either by the single member limited liability company or its nonprofit member.

R.C. 5701.14(B) (emphasis added).

The enactment of R.C. 5701.14 was also a part of 2008 Sub. H.B. No. 160. (App. 43-58.) The General Assembly enacted these new and amended code sections in direct response to the authority on which the Tax Commissioner cited in its Final Determination in the case at bar, *Performing Arts*, 104 Ohio St. 3d 284, 2004-Ohio-6389, 819 N.E.2d 649 and *Sunrise Residential & Life Skills Center* (Apr. 6, 2007), BTA No. 2006-A-1034, both of which involved non-profit corporations. In enacting Sub. H.B. No. 160, the General Assembly recognized the commonality of interest possessed by a single member liability company and its member and this Court should allow either the single member or the limited liability company to file for exemptions.

This Court has acknowledged the commonality of interest of an LLC and its sole member in tax cases. In *Maralgate, L.L.C. v. Greene County Board of Revision*, 130 Ohio St.3d 316, 2011-Ohio-5448, 958 N.E.2d 153, the issue before this Court was whether a parcel owned by an LLC (Maralgate) was under “common ownership” with a separate parcel owned by the LLC’s single member (Turner Family Partnership) for purposes of R.C. 5713.30, Ohio’s CAUV statute. *Id.* at ¶2. The Court rejected the county auditor’s strict interpretation that the parcels could not be under common ownership because the LLC and its sole member were separate entities:

Different corporate entities—such as Turner Family Partnership and Maralgate—are said to be under common ownership when they are parent and subsidiary, or when they each have the same members or shareholders. See, e.g., *Union Bldg. & Constr. Corp. v. Bowers* (1958), 110 Ohio App. 81, 86-87, 12 O.O.2d 254, 158 N.E.2d 386 (fact of “common ownership” of the two parties to a transaction did not avoid sales-tax obligation where the sales tax vendor was a wholly owned subsidiary of the sales-tax purchaser).

Maralgate, at ¶18-19.

A single member limited liability company is disregarded and its assets are treated as if they were owned by the single member unfit numerous tax contexts. For purposes of federal income tax, an entity not classified as a corporation with only a single member can be “disregarded as an entity separate from its owner.” 26 C.F.R. 301.7701-3. A disregarded entity for federal income tax purposes is also a disregarded entity for Ohio franchise tax purposes. R.C. 5733.01(F). “A person’s interest in a disregarded entity, whether held directly or indirectly, shall be treated as the person’s ownership of the assets and liabilities of the disregarded entity, and the income, including gain or loss, shall be included in the person’s net income under this chapter.” R.C. 5733.01(F)(1). In other words, the assets of the disregarded single member LLC — e.g. HMSA Properties, LLC -- are deemed to be the assets of the entity’s single member — Hitachi America. The same is true for Ohio municipal income taxes in Ohio, R.C. 718.01(A)(8),

and for property tax exemptions for non-profit single member limited liability companies, R.C. 5701.14.

As the sole member of HMSA Properties, LLC, Hitachi America is indistinguishable from the property owner. Hitachi America pays and deducts the unabated real estate taxes. (Supp. 23.) Hitachi America deducts on its own return the depreciation on the building which is the subject property in this case. *Id.* Hitachi America pays the insurance for the building. *Id.*

When Mr. Kurz signed the DTE 24 abatement application -- and identified HMSA Properties, LLC as the title owner of the property on line 4(a) -- he did so on behalf of both HMSA Properties, LLC and its sole member Hitachi America. (Supp. 26.) Thus, the uncontroverted testimony is that HMSA Properties, LLC filed the application, and it should not have been dismissed by the Tax Commissioner or the BTA.

C. Finding that HMSA Properties, LLC's application meets jurisdictional requirements is equitable under the facts of this case.

There is no legitimate public policy reason justifying the Tax Commissioner's dismissal of the application for enterprise zone abatement solely because the name "HMSA Properties, LLC" was not placed on page 1 of the application. There is nothing on the DTE 24 form or in the "general instructions" on page 1 of the form that advises the preparer that the name of the fee title owner must appear on page 1 as the "applicant." The only relevant instruction is that "this application must be *signed* by the property owner *or the property owner's representative*." (Supp. 49.) It was. Indeed, nothing in Ohio Revised Code Section 5715.27(A) or in Sections 5709.61 - .69 (dealing with Enterprise Zone abatement) or in Ohio Administrative Code Chapter 122:4-1 or in any other rules applicable to the enterprise zone program requires that the name of the record title owner be listed on the first page of the DTE 24 application.

If listing the name of the property owner on page 1 is so critical to the application process, the Tax Commissioner could have – and should have – included on its prescribed form a cautionary note to that effect in the general instructions to the DTE 24. Instead of providing such an instruction, the DTE 24 confuses the matter by including a separate line – line 4(a) – on which the name of the entity holding title to the property is to be listed. (Supp. 50.) And if that is not confusing enough, line 6 of the DTE 24 requests an explanation “if title holder is different from the applicant.” *Id.* If, according to the Tax Commissioner, the applicant *must* be the title owner, why ask for an explanation “*if the title holder is different from the applicant*”?

Further weakening the Commissioner’s position, the DTE 24 form in effect at the time of this application was the version revised in April 2005 – as stated in the upper left corner of page one of the form – a version promulgated well before 2008 Sub. H.B. No. 160’s revisions to R.C. 5715.27 permitted entities other than the title owner to file an application. (Supp. 49.) Therefore, prior to Sub. H.B. No. 160’s expansion of the list of potential applicants beyond simply the “owner” – including at the time Mr. Kurz completed and submitted the application in 2006 – there was no logical explanation for why it would be necessary to distinguish on the DTE 24 between the “applicant” and the “title owner” particularly if the applicant could only be the title owner as the Commissioner contends. R.C. 5715.27(A) requires an applicant to use the “forms prescribed by the Commissioner.” It is manifestly unfair under the circumstances of this case to penalize HMSA Properties, LLC because of the DTE 24’s blatantly confusing format.

Hitachi America and HMSA Properties, LLC share the same address, telephone and fax number. Both entities are expressly named in the Application; both participated in the application process, both received all notices relating to the Application; and both were represented in connection with the grant of Enterprise Zone abatement by the City of Twinsburg

and County of Summit. This is not a case where one party acted without the knowledge, consent, or authority of the other party, or where the owner failed to receive notices about the abatement proceedings.

Thus, this case is analogous to the situation in *Automatic Data Processing Community Urban Redevelopment Corporation v. Hamilton Cty. Bd. of Revision* (July 23, 2004), BTA Case Nos. 2003-J-87 and 2003-J-88, unreported (the "ADP" case). In *ADP*, a property valuation complaint was filed in the name of "Automatic Data Processing," when the correct name of the property owner was "Automatic Data Processing Community Urban Redevelopment Corporation." *Id* at 3. In *ADP*, the BTA considered whether the mistake in identifying the property owner presented a fatal jurisdictional impediment to considering the complaint. The Board concluded that it did not.

This board has previously discussed the need for a complainant to correctly identify the owner of a property whose valuation is being challenged, concluding that such need runs to the core jurisdiction of a county board of revision to consider the value of a given property. * * * The clear import of this requirement is to ensure that in those instances in which a complaint is filed by someone other than the owner, the owner receives the notices attendant with such filing. * * * In the present case, *although the incorrect owner was identified on the complaint, we consider such failure to be harmless given the fact that the actual owner was the complainant and said owner has participated throughout the proceedings before the BOR and this board.*

ADP, supra at 4, citing *Triple V's Holding v. Cuyahoga Cty. Bd. of Revision* (Apr. 24, 2000), BTA No. 1997-K-1701, unreported at 5-6.

Likewise, the BTA determined that "[t]here appears to be no prejudice resulting from the property owner's misnomer in this case, [and found] that the error in the listing of the property owner's name on the face of the complaint does not run to the core of procedural efficiency, and therefore, [it had] the requisite jurisdiction to consider the merits before [it]." *ADP, supra* at 4-5, citing *Cleveland Bluffs Development, LLC v. Cuyahoga Cty. Bd. of Revision* (Dec. 19, 2003),

BTA No. 2002-V-1632, unreported, at 6-7. Thus, even if one ignores the fact that Mr. Kurz signed the DTE 24 application as the representative of the Owner as instructed by the form, there was no reason to dismiss the abatement application on the basis that Hitachi America was listed on page 1 and HMSA Properties, LLC was listed on line 4(a). Such an "error" -- if that is how the Tax Commissioner would choose to characterize listing HMSA Properties, LLC on line 4(a) instead of page 1 -- did not spawn any prejudice to any affected parties. *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 80 Ohio St.3d 591, 593, 687 N.E.2d 723 (1998) (finding that a valuation complaint satisfied the core of procedural efficiency standard where there was "substantial compliance" with the statutory requirements).

Certainly the City of Twinsburg and Summit County -- the authorities which granted the enterprise zone abatement -- did not feel prejudiced by the manner in which the DTE 24 form was submitted. In fact, they have continued to support the grant of abatement to HMSA Properties, LLC. Mr. Larry Finch, Director of Planning and Community Development for the City of Twinsburg, attended and testified at the BTA hearing in support of the grant of abatement. Mr. Finch was directly involved in the grant of enterprise zone abatement to Hitachi. (Supp. 35.) He was also the interface between the City and the County in connection with the enterprise zone abatement granted in this case. (Supp. 37-38.) In addition to those roles, Mr. Finch serves as a delegate to the Summit County Tax Incentive Review Council and participates in the annual review of abatements granted to businesses in Twinsburg. (Supp. 38.)

Mr. Finch testified that the members of the Tax Incentive Review Council were aware of the Commissioner's decision, but that did not temper its support of the grant of abatement for this property.

Q. Has the fact that this matter is on appeal ever been mentioned [at] a council meeting?

A. Yes, it has.

Q. And has anybody at the City of Twinsburg suggested that the abatement be terminated?

A. No.

Q. How about have you ever heard anybody at the Board of Education say anything one way or the other about this?

A. Well, the Board of Education is actually represented on the Tax Incentive Review Council, and since this has been reviewed, I think it was first reviewed in 2006, every year it's been approved by unanimous approval.

(Supp. 39.) Given the particular facts of this case, it serves no legitimate public purpose to apply a hyper-technical interpretation to the requirements for the submission of Hitachi's enterprise zone exemption application.

D. HMSA Properties, LLC's application satisfies this Court's core of procedural efficiency standard and substantially complied with R.C. 5715.27.

In *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 137 Ohio St.3d 266, 2013-Ohio-4627, a trust filed a valuation complaint with a board of revision and identified itself thereon as the owner of the property. However, the property was actually owned by the "Hamilton-33 Partnership" in which the trust held a partnership interest. *Id.*, at ¶¶4, 6. The complaint did not identify anyone as the "complainant if not owner." *Id.* at ¶2. The Board of Education argued that the complaint did not satisfy a core procedural requirement because it did not identify the owner of the property. The BTA agreed and remanded the case to the Board of Revision with instructions to dismiss the complaint for lack of jurisdiction. *Id.* at ¶¶1, 6.

In reviewing the BTA's dismissal in the *Groveport* case, this Court began its analysis with a discussion of the core of procedural efficiency standard for testing the jurisdictional sufficiency of a complaint:

[T]he general rule [is] that the exercise of a right to appeal conferred by statute “is conditioned upon compliance with the accompanying mandatory requirements.” *Id.* at ¶ 17, quoting *Zier v. Bur. of Unemp. Comp.*, 151 Ohio St. 123, 84 N.E.2d 746 (1949), paragraph one of the syllabus. We went on to state that *Zier*’s reference to “mandatory requirements” points to *the importance of distinguishing a mandatory statutory requirement from a directory statutory requirement.* *Id.* To draw that distinction, courts ask whether the statutory requirement runs to the core of procedural efficiency. *Id.* If a statutory requirement runs to the core of procedural efficiency, then compliance is mandatory and is a jurisdictional prerequisite to pursuing the administrative case.

Groveport, at ¶20 (emphasis added). This Court then noted that there “because there is no statutory requirement that a complainant correctly name the property owner in a valuation complaint, [it] need not determine whether the failure to correctly name the property owner runs to the core of procedural efficiency.” *Groveport*, at ¶23.

Likewise, there is no statutory requirement in R.C. 5715.27 that the name of the owner be placed on a particular line of the DTE 24. At best, the language of the statute reading “the owner...*may file* an application with the tax commissioner on forms prescribed by the commissioner” is a “directory” statutory requirement instead of a “mandatory” one. In this case, unlike in *Groveport*, the owner of the property was identified on line 4 of the DTE 24 as directed by the “form prescribed by the commissioner.” R.C. 5715.27(A). Certainly, as in *Groveport*, a finding that the Tax Commissioner had jurisdiction to consider Hitachi’s application should “not hinge on complete, technical compliance with the ... form.” *Groveport*, at ¶14.

Proposition of Law No. 2

R.C. 5715.27, as applied by the BTA to this case, violates appellants' rights of equal protection under the Ohio and U.S. Constitutions by treating Hitachi Medical Systems America, Inc., a for-profit sole member of an LLC, differently, without a rational basis for doing so, from: (a) a nonprofit member of a single-member LLC which is permitted by R.C. 5701.14 to file an exemption application, and/or (b) a beneficiary of a trust, a 30-year lessee, or a vendee under a land contract which, while also not having a direct fee title interest in the property, are permitted to file an exemption application under R.C. 5715.27.⁶

Article I, Section II of the Ohio Constitution provides that the "government is instituted for [the] equal protection and benefit" of the people. Ohio Constitution, Article I, Section 2. Likewise, the Fourteenth Amendment to the U.S. Constitution provides that no "State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Constitution, Fourteenth Amendment, Section 1. The limitations placed upon governmental action by the equal protection clauses of the Ohio and U.S. Constitutions are "functionally equivalent" and "are to be construed and analyzed identically." *Pickaway County Skilled Gaming, L.L.C. v. Cordray*, 127 Ohio St.3d 104, 2010-Ohio-4908, 936 N.E.2d 944 ¶17.

There is no rational basis for the distinction in treatment between appellants and others who are permitted to file an exemption application. Under the rational basis test, a statute will not be upheld if it does not bear a rational relationship to a legitimate governmental interest. *Pickaway*, at ¶18. The rational basis test involves a two-step analysis: "We must first identify a valid state interest. Second, we must determine whether the method or means by which the state has chosen to advance that interest is rational." *Id.* at ¶19.

⁶ Proposition of Law No. 2 addresses Appellants' Assignment of Error No. 10 in their Amended and Corrected Notice of Appeal.

A statutory classification will be found to violate equal protection if it treats similarly situated people in a different manner based upon an arbitrary and unreasonable basis. *Pickaway*, at ¶31. Stated in another manner, a law will be struck down if the “varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that [a court] can only conclude that the legislature’s actions were irrational.” *Pennell v. City of San Jose*, 485 U.S. 1, 13, 108 S.Ct. 849, 99 L.Ed.2d 1 (1987).

This Court has found statutes violative of Ohio and federal equal protection rights in a variety of circumstances. In *State ex rel. Doersam v. Industrial Com’n of Ohio*, 45 Ohio St.3d 115, 543 N.E.2d 1169, 1173 (1989), this Court held that R.C. 4123.59(B) of Ohio’s workers’ compensation act that boosted the ceiling on death benefits only for those claimants whose claim was based upon injuries suffered after January 1, 1976, violated equal protection. *Doersam*, at 121. This Court noted that the equal protection clause “requires not only that there be fair and equal enforcement of laws, but also that the laws themselves be ‘equal.’” *Id.*, at 119.

Since R.C. 4123.59(B) treated claimants who were otherwise in similar circumstances differently based upon the date of injury, this Court had to consider whether the classification advanced any legitimate governmental purpose. After considering various arguments by the state as to possible legitimate governmental objective and finding them unpersuasive, this Court struck that portion of the statute which established the cutoff date. *Doersam*, at 122.

In *Adamsky v. Buckeye Local School Dist.*, 73 Ohio St.3d 360, 653 N.E.2d 212 (1995), this Court found that the two-year limitations statute for personal injury actions against a political subdivision was unconstitutional as applied to minors, since minors, who may not have two years to bring suit before reaching majority due to lack of standing, were denied equal

protection. *Id.* at 363. While, on its face, R.C. 2744.04(A) had a substantial relationship to the goal of preventing plaintiffs from sleeping on their legal rights to the detriment of defendants, this Court found that, as applied to minors, the statute “may also produce unfair results,” thus treating members of a class differently. *Id.* at 362-363.

Likewise, in *Pack v. City of Cleveland*, 1 Ohio St.3d 129, 438 N.E.2d 434 (1982), this Court analyzed an Ohio criminal statute that expressly exempted motion picture projectionists from prosecution for the showing of films alleged to be obscene and determined that the rational basis standard applied to its analysis. *Id.* at 132. The Court concluded that there was no rational basis, and no legitimate state purpose, to distinguish between projectionists and other non-managerial employees of a theater so as to justify the favored treatment secured by the statute. *Id.* at 133-34.

R. C. 5715.27(A) of the Revised Code, as interpreted and applied by the BTA to HMSA Properties, LLC and Hitachi America in this case, furthers no possible legitimate state purpose and irrationally discriminates against the filing of exemption applications by a for-profit single member of an LLC property owner.

The arbitrary and irrational distinctions drawn by the statute are two-fold:

(1) As interpreted by the BTA, R.C. 5715.27(A) does not permit Hitachi America as a for-profit single member of a limited liability company to file an exemption application while another provision of R.C. Chapter 57 expressly permits such an application to be filed by a nonprofit single member. “Filings or *applications for exemptions* or other tax purposes may be made either *by the single member limited liability company or its nonprofit member.*” R.C. 5701.14(B).

(2) Persons with diverse interests and more distant connections with a property owner than an owner's sole member -- e.g. a land contract vendee, a beneficiary of a trust, a 30-year tenant -- are permitted by R.C. 5715.27(A) to file an exemption application while, at least according to the BTA, the sole owner of an LLC property owner is not.

There is no legitimate state interest advanced by distinguishing between a nonprofit sole member and a for-profit sole member. It certainly *cannot* be out of recognition that a non-profit member of an LLC has different rights and responsibilities than a for-profit member. The General Assembly amended R.C. 5715.27(A) and enacted R.C. 5701.14(B) at the same time; both were part of 2008 Sub. H.B. No. 160. (App. 45, 47-49.) The ability to form a non-profit LLC was made simply by adding seven words to R.C. Chapter 1705, Ohio's Limited Liability Company Law:

A limited liability company may be formed for any purpose or purposes for which individuals lawfully may associate themselves, including for any profit or nonprofit purpose, except that, if the Revised Code contains special provisions for the formation of any designated type of corporation other than a professional association, a limited liability company shall not be formed for the purpose or purposes for which that type of corporation may be formed. At the request or direction of the government of the United States or any agency of that government, a limited liability company may transact any lawful business in aid of the national defense or in the prosecution of any war in which the United States is engaged.

R.C. 1705.02; 2008 Sub. H.B. No. 160. (App. 45.)

In fact, uncodified Section 6 of Sub. H.B. No. 160 explains that the amendment to R.C. 1705.02 and enactment of 5701.14, apply to "limited liability companies that were in existence prior to the effective date of this act and that assert to be nonprofit limited liability companies." (App. 56.) Thus, no distinction is drawn in Chapter 1705 between a nonprofit LLC and a for-profit one, or between a nonprofit member and for-profit member. Based on Section 6 of Sub. H.B. No. 160, the General Assembly intended R.C. 1705.02 and 5701.14 to apply to all existing

LLCs that purported to be nonprofit. There is no other expressed legislative intent for this dichotomy.

The distinction also cannot be due to the tax treatment of an LLC owned by a nonprofit member versus one owned by a for-profit member. Both LLCs are disregarded entities under Ohio and federal tax law and the other tax attributes of such a limited liability company are reported at the member level. 26 C.F.R. 301.7701-3 (federal income taxes), R.C. 5733.01(F) (corporate franchise taxes), R.C. 718.01(A)(8) (municipal income taxes).

Likewise, given the express authority for a nonprofit members of an LLC to file an exemption application under R.C. 5701.14, any interpretation that R.C. 5715.27 express excludes a for-profit member from applying for exemption on behalf of the LLC cannot be explained. Hitachi America, as HMSA Property, LLC's sole member, has an interest in the property owned by HMSA Properties, LLC that is indistinguishable from – *if not greater than* – the interest held by a 30-year lessee, the beneficiary of a trust or a vendee who possesses land under a purchase agreement. The General Assembly's 2008 expansion of the list of those who may file an exemption application to those other persons indicates its intent to allow entities like Hitachi America to apply for the exemption.

Why would a tenant or a land contract vendee or a beneficiary of a trust be qualified to file but not an entity's sole member? It *cannot* be because of a legislative desire to protect only those entities who have a unity of interest. Beneficiaries of a trust are certainly separate from the trust and have less (if any) fiduciary obligation to the trust than its own trustee. To the contrary, Hitachi America's obligation to its wholly owned LLC is greater than that of a trust beneficiary. A member of an LLC in Ohio owes the LLC a duty of loyalty and a duty of care. R.C. 1705.281.

While a *trustee* of a trust may have duties, a beneficiary is described as having “rights and interests.” R.C. 5801.04(A).

Likewise, a land contract vendee is simply a party in possession under a contract for the purchase of real property. As contracting parties, a land contract vendee and the property owner-vendor have *conflicting* interests. “Upon the failure of any vendor to comply with Chapter 5313. of the Revised Code, the vendee may enforce such provisions in a municipal court, county court, or court of common pleas.” R.C. 5313.04. As far as a 30-year lessee is concerned, the lessor-lessee relationship is just as ripe for conflicts as that of a vendor-vendee.

Conversely, there is a definite unity of interest between an LLC and its sole member. The LLC can operate only through that sole member. Del. Code Ann., Title 6, 18-402, R.C. 1705.25(A)(1). This Court has acknowledged that there is no issue of accountability between an entity and its sole owner. *Dayton Supply & Tool Co., Inc.*, 111 Ohio St.3d 367, 2006-Ohio-5852, 856 N.E.2d 926, ¶ 33 (“Woessner was the corporate vice-president of Dayton Supply & Tool. Moreover, he was the sole owner of the corporation. Thus, we find that Woessner’s accountability to the corporation is not an issue.”)

If the State has an interest to ensure that the property owner is aware of the filing for an exemption on its property by another entity, that interest is not going to be advanced in any rational way by prohibiting the sole owner of the company from filing the application. The sole member – Hitachi America – by definition owns the entity that owns the property. Anything done by the Hitachi America is automatically known by and attributed to HMSA Properties, LLC, and the converse is true. Interpreting R.C. 5715.27 to exclude the sole owner from those who may file an application serves to exclude the *best* person who can ensure knowledge by the

property owner of the proceedings. The property for which exemption is sought is property ultimately owned by the sole member.

Finally, there is no administrative purpose -- whether to track exempt parcels or otherwise -- that is advanced by prohibiting an LLC's sole member from applying for property tax exemption for the LLC's property. The DTE 24 form has required the name and address of the property owner to be identified on line 4 since at least April 2005 and contemplated that someone other than the owner could file an application -- long before R.C. 5715.27(A) was amended in 2008 to allow other non-owners to file the application. (Supp. 50, lines 4, 6.) It also requires the property's parcel number to be listed and, by doing so, can be sure that the exemption is applied to the right property. No changes have been made to the DTE 24 since the 2008 enactment of Sub. H.B. No. 160. Thus, the form contains all of the information that the Tax Commissioner has ever needed to notify the owner of the application and to properly record the grant of exemptions.

Thus, there is no rational basis justifying the disparate treatment of appellants from nonprofit LLC single members and other persons permitted to file an exemption application under the Revised Code, and both R.C. 5715.27(A) and R.C. 5701.14 violate appellants' equal protection rights.

CONCLUSION

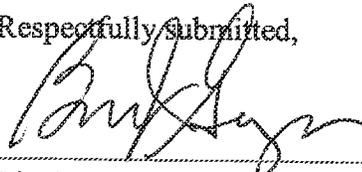
It has been the long-standing policy of the Ohio General Assembly to encourage municipalities and counties to create enterprise zones to retain and create employment opportunities, not to throw artificial road blocks in the path of employers like Hitachi America who look to remain and grow in their communities. R.C. 5709.671 reads in part:

By enactment of this act, the General Assembly expresses its policy of encouraging political subdivisions of this state to exercise the authority granted

under Chapters 725 and 1728 and under sections 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, and 5709.77 to 5709.81 of the Revised Code for the purposes stated therein, and for the purposes of retaining existing or creating new employment opportunities within the political subdivision to the extent the exercise of such authority is necessary to result in a net increase in employment in this state above that which would prevail in the absence of the use of such authority.

Reduced to its bare essentials, the decision of the Tax Commissioner and of the Board of Tax Appeals is that HMSA Properties, LLC should lose the benefit of the tax abatement granted by Summit County and the City of Twinsburg simply because it placed the name of the owner on line 4 of the DTE 24 instead of on the first page. This Court should not allow the BTA to elevate form over substance. The evidence is clear and uncontroverted that HMSA Properties, LLC, the owner of the subject property, filed the application in the only way legally possible -- through its sole member, Hitachi Medical Systems America, Inc. HMSA had no other officer or employees of its own who could submit or sign the application. The Tax Commissioner should not be inflexibly bound by "form" when the substance of the application is not in dispute. To do so would serve no legitimate public purpose. The decision of the Board of Tax Appeals affirmed an inflexible and untenable interpretation of R.C. 5715.27 by the Tax Commissioner which serves no legitimate public purpose given the specific facts of this case. That decision should be reversed.

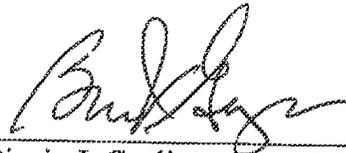
Respectfully submitted,



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I certify that a copy of this Merit Brief of Appellants was sent by certified U.S. mail to Daniel W. Fausey, Assistant Ohio Attorney General, counsel for the Tax Commissioner of Ohio, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, and to Regina VanVorous, Assistant Summit County Prosecutor, counsel for Summit County Fiscal Officer, 53 University Avenue, 7th Floor, Akron, Ohio 44308, on January 30, 2014.



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APPENDIX – SEE FOLLOWING PAGES

Amended and Corrected Notice of Appeal to the Ohio Supreme Court (Oct. 16, 2013).....	0001
Decision and Order of the Ohio Board of Tax Appeals (Sept. 16, 2013).....	0015
Final Determination of the Tax Commissioner (Jun. 1, 2009).....	0022
Recommendation of the Ohio Department of Taxation Agent Examiner (Aug. 6, 2007).....	0024
Constitutional Provisions; Statutes; Agency Regulations	
Ohio Constitution, Article I, Section 2	0026
U.S. Constitution, Fourteenth Amendment, Section 1	0027
R.C. 718.01(A).....	0028
R.C. 1705.25	0031
R.C. 5313.04	0033
R.C. 5701.14	0034
R.C. 5709.671	0035
R.C. 5715.19(A).....	0036
R.C. 5715.27	0038
R.C. 5733.01(F)	0040
R.C. 5801.04	0041
2008 Sub. H.B. No. 160.....	0043
Del. Code Ann., Title 6, 18-402.....	0059
26 C.F.R. 301.7701-3(a)	0060

IN THE SUPREME COURT OF OHIO

HITACHI MEDICAL SYSTEMS)
AMERICA, INC. and)
HMSA PROPERTIES LLC,)
Appellants)
v.)
JOSEPH W. TESTA (formerly Richard)
A. Levin) TAX COMMISSIONER)
OF OHIO, and SUMMIT COUNTY)
FISCAL OFFICER,)
Appellees.)

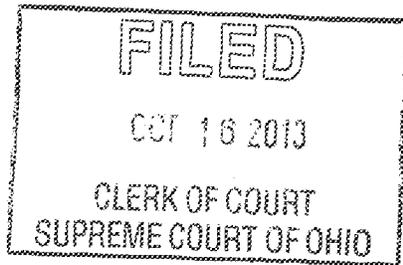
No. 13-1627

On Appeal from the
Ohio Board of Tax Appeals

BTA Case No. 2009-1576
(Real Property Tax Exemption)

2013 OCT 16 AM 11:44
CLERK OF COURT

AMENDED AND CORRECTED NOTICE OF APPEAL OF APPELLANTS
HITACHI MEDICAL SYSTEMS AMERICA, INC.
AND HMSA PROPERTIES LLC



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Attorneys for Appellee, Tax Commissioner of Ohio

Notice of Appeal of Appellants
Hitachi Medical Systems America, Inc. and HMSA Properties LLC

Appellants, Hitachi Medical Systems America, Inc. and HMSA Properties LLC, hereby give notice of appeal to the Supreme Court of Ohio from the Decision and Order of the Ohio Board of Tax Appeals entered in Ohio Board of Tax Appeals Case No. 2009-1576 on September 16, 2013. A copy of the Decision appealed from is attached hereto.

Claimed Errors Being Raised on Appeal

Assignment of Error No. 1

The Board of Tax Appeals (the "Board" or "BTA") erred in affirming the Decision of the Tax Commissioner dismissing the Application for Tax Exemption on the grounds that it was not "filed by" the fee title owner of the subject property, HMSA Properties LLC, but was instead "filed by" Hitachi Medical Systems America, Inc., which was listed as the "applicant," because:

A. The Application was filed by the "owner" of the subject real property, in that the application was signed by Richard A. Kurz, an officer and/or authorized representative of HMSA Properties LLC and of Hitachi Medical Systems America, Inc., the sole member of HMSA Properties LLC;

B. HMSA Properties LLC is a single-member limited liability company that is wholly owned by Hitachi Medical Systems America, Inc. HMSA Properties LLC, as a single member limited liability company, is therefore a disregarded entity for federal and state income tax purposes and all of its property is deemed at law to be owned by its sole member, Hitachi Medical Systems America, Inc. for such purposes. Hence, the Application was filed by the owner of the subject real property;

C. According to R.C. 1705.24, HMSA Properties LLC, as a member-managed limited liability company, can only act through its sole member, Hitachi Medical Systems America, Inc. In addition, pursuant to R.C. 1705.25(A)(1), Hitachi Medical Systems America, Inc. "is an agent of the company for the purpose of its business," and all of its actions "including the execution in the company name of an instrument for apparently carrying on in the usual way the business of the company binds the company." Therefore, for this reason, the Application was filed by the owner of the subject real property;

D. Hitachi Medical Systems America, Inc. and HMSA Properties LLC share the same address, telephone and fax numbers. Both entities were expressly named in the Application, both participated in the application process and both received all notices relating to the Application;

E. Nothing in R.C. 5715.27(A), or in R.C. 5709.61 - .69, in Ohio Adm. Code 122:4-1 or in any other rule applicable to the enterprise zone program requires that the name of the record title owner be listed on the first page of the Tax Commissioner's DTE Form 24 Application; and

F. The Decision of the Board affirming Tax Commissioner's Final Determination adopts a hyper-technical interpretation of R.C. 5715.27(A) which, under the circumstances of this case, serves no legitimate public purpose.

Assignment of Error No. 2

The Board erred in holding that the list of entities specifically identified in R.C. 5715.27(A) as parties who may file a tax exemption application is exhaustive, where the amendment to that section was adopted by the General Assembly in Sub. H.B. 160 (127th General Assembly) in direct response to this Court's decision in *Performing Arts School of*

Metro Toledo and was intended to widen the pool of persons who may file exemption applications. See *Toledo Pub. Schools Bd. of Edn. v. Lucas County Bd. of Revision*, 124 Ohio St.3d 490, 2010-Ohio-253, 924 N.E.2d 345, ¶ 26.

Assignment of Error No. 3

The Board's reliance on the *Bd. of Edn. Of the Columbus City School Dist.* and the *Performing Arts School of Metropolitan Toledo* cases, cited in the Decision and Order appealed from, was misplaced because:

A. Those cases relate to applications for a charitable or educational use property tax exemption, a benefit which can only be conferred by the State, while this case involves enterprise zone abatement which can only be awarded by the City of Twinsburg and the County of Summit in response to an application by the enterprise requesting the City and County to grant such abatement. The DTE Form 24 process was not such an application; rather that form was more of a ministerial step to implement the award of enterprise zone abatement that had already granted by the local authorities;

B. Enterprise zone abatement under R.C. 5709.61-.69 is available to any eligible "enterprise" wishing to enter into an abatement agreement with a board of county commissioners, and is broadly defined by statute to include any form of business organization. An "enterprise" eligible for enterprise zone abatement is not limited by R.C. 5709.61 to the "owner" of the real property;

C. The entities identified as "applicant" and "owner" in the *Performing Arts School of Metropolitan Toledo* case were unrelated entities linked only through a lessor-lessee relationship. In that case, the actions of one entity was not tantamount to the actions of the other entity; and/or

D. The strict interpretation of the word "owner" in the 2004 *Performing Arts School of Metropolitan Toledo* case and in the 2005 *Bd. of Edn. Of the Columbus City School Dist.* case was implicitly rejected by the Ohio General Assembly in 2008 by its enactment of Sub. H.B. 160, which act expanded the scope of entities that can file an exemption application.

Assignment of Error No. 4

The Decision and Order of the Board was unreasonable, erroneous and/or unlawful for the reasons set forth above.

Assignment of Error No. 5

The Decision and Order of the Board ignores the intent of the private and governmental parties to the enterprise zone agreement and is unreasonable, erroneous and/or unlawful.

Assignment of Error No. 6

The Decision and Order of the Board is contrary to R.C. 5709.671, which statute expresses the General Assembly's policy of encouraging political subdivisions to create enterprise zones for the purpose of creating and retaining new jobs.

Assignment of Error No. 7

The Decision and Order of the Board is against the manifest weight of the evidence.

Assignment of Error No. 8

The Decision and Order of the Board is arbitrary and capricious and manifestly inequitable.

Assignment of Error No. 9

The Board erred in concluding that R.C. 5715.27(A) sets forth an exclusive list of persons authorized to file a tax exemption application.

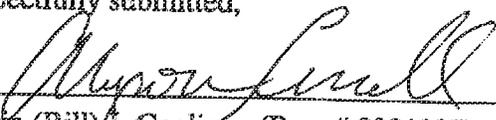
Assignment of Error No. 10

The Decision and Order of the Board and its interpretation of R.C. 5715.27 violates Appellants' right of "equal protection" under Article 1, Section 2, and Article II, Section 26, Ohio Constitution and the Fourteenth Amendment to the U.S. Constitution, Section 1, because:

A. The Board's interpretation of R.C. 5715.27 discriminates, without any rational basis for doing so, between different types of entities that act as the sole member of a limited liability company which is the fee title owner, namely, a *for-profit* entity such as Hitachi Medical Systems America, Inc. (which the Board determined has *no right* under R.C. 5715.27 to file an application for tax exemption in its own name) and a *non-profit* entity (which is expressly *permitted* by R.C. 5701.14 to file an application in its own name); and

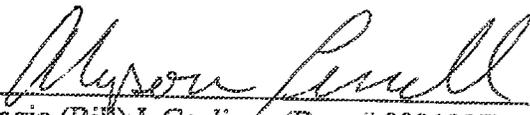
B. R.C. 5715.27 discriminates, without any rational basis for doing so, between, on the one hand, an owner, a vendee in possession under a purchase agreement or land contract, the beneficiary of a trust and a lessee for an initial term of not less than thirty years -- all of which are permitted to file an application for tax exemption -- and, on the other hand, the sole member of a member-managed limited liability company which, according to the Board, is not entitled file such an application.

Respectfully submitted,


Biagio (Bill) J. Gagliano (Reg. # 0021007),
Counsel of Record
and Alyson Terrell (Reg. #0082271)
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Attorneys for Appellants

Certificate of Service

I certify that a copy of this Notice of Appeal was sent by certified U.S. mail to Appellee, Tax Commissioner of Ohio, 30 East Broad Street, 22nd Floor, Columbus, Ohio 44035, and to Daniel W. Fausey, Assistant Ohio Attorney General, counsel for Tax Commissioner, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, and to Appellee, Summit County Fiscal Officer, 175 South Main Street, Akron, Ohio 44308, and Sherri Bevan Walsh, Summit County Prosecutor, counsel for Summit County Fiscal Officer, 53 University Avenue, 6th Floor, Akron, Ohio 44308, on October 16, 2013.


Biagio (Bill) J. Gagliano (Reg. # 0021007),
Counsel of Record
and Alyson Terrell (Reg. #0082271)
Ulmer & Berne LLP
Attorneys for Appellants
Hitachi Medical Systems America, Inc. and
HMSA Properties LLC

OHIO BOARD OF TAX APPEALS

Hitachi Medical Systems America, Inc. and)
HMSA Properties LLC,)
Appellants,)
vs.)
Richard A. Levin, Tax Commissioner)
of Ohio,)
Appellee.)

CASE No. 2009-1576
(REAL PROPERTY TAX
EXEMPTION)
DECISION AND ORDER

APPEARANCES:

For the Appellants - Ulmer & Berne LLP
Bill J. Gagliano
1660 West 2nd Street, Suite 1100
Cleveland, Ohio 44113

For the Appellee - Michael DeWine
Tax Commissioner Attorney General of Ohio
Daniel W. Fauscy
Assistant Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215

Entered SEP 16 2013

Mr. Williamson, Mr. Johrendt, and Mr. Harbarger concur.

This matter is before the Board of Tax Appeals upon a notice of appeal filed by appellants Hitachi Medical Systems America, Inc. ("Hitachi") and HMSA Properties LLC ("HMSA"). Appellants appeal from a final determination of the Tax Commissioner, in which the commissioner dismissed Hitachi's application for exemption of real property from taxation. This matter is submitted to the board upon the appellants' notice of appeal, the statutory transcript ("S.T.") certified to this board by the Tax Commissioner, the record of the hearing before this board ("H.R."), and the briefs of counsel.

In his final determination, the Tax Commissioner summarized the issue, now currently before this board, as follows:

"This application was filed by Hitachi Medical Systems America, Inc., a for profit corporation. According to the Limited Warranty Deed, HMSA Properties, LLC acquired title to the subject property on October 5, 2004. There is no evidence that title was subsequently transferred to Hitachi Medical Systems America, Inc. or that Hitachi Medical Systems America, Inc. held title to the subject property at the time this application was filed on October 27, 2006.

"The applicant has requested that the subject property be exempt from real property taxation pursuant to R.C. 5709.63, based on an enterprise zone agreement between the City of Twinsburg, the County of Summit, Hitachi Medical Systems America, Inc. and Alairis Properties, LLC executed on June 30, 2004. *** Resolution No. 2006-509 makes it clear that Hitachi Medical Systems America, Inc. and HMSA Properties, LLC are separate entities. Resolution No. 2006-509, which was adopted after the subject exemption application was filed, amends the enterprise zone agreement by transferring the real property tax incentive from Alairis Properties, LLC to HMSA Properties, LLC.

"The express language of the statute [R.C. 5715.27(A)] permits only an owner to apply for exemption from real property taxation. *** Therefore, Hitachi Medical Systems America, Inc. was not authorized under R.C. 5715.27(A) to file this application for exemption. Since Hitachi Medical Systems America, Inc. has not met the procedural requirements of the statute, then the Tax Commissioner does not have jurisdiction to consider this application." S.T. at 1-2.

In the notice of appeal filed with this board, appellants further elaborated upon the instant facts, stating in pertinent part:

"A. The Application was filed by the 'owner' of the Property, in that the application was signed by Richard A.

Kurz, an officer and/or authorized representative of HMSA Properties LLC and of Hitachi Medical Systems America, Inc.

"B. HMSA Properties LLC is a single-member limited liability company which is wholly owned by Hitachi Medical Systems America. HMSA Properties LLC, as a single member limited liability company, is a disregarded entity for federal and state income tax purposes and all property of that limited liability company is deemed the property of its sole member, Hitachi Medical Systems America, Inc. *** Therefore, the Application was filed by the Owner of the Property.

"C. HMSA Properties LLC, as a member-managed limited liability company, can only act through its sole member, Hitachi Medical Systems America, Inc. See Ohio Revised Code Section 1705.24. Moreover, Section 1705.25(A)(1) provides that 'every member is an agent of the company for the purpose of its business and the act of every member, including the execution in the company name of an instrument for apparently carrying on in the usual way the business of the company binds the company....' Therefore, the Application was filed by the Owner of the Property.

"D. Hitachi Medical Systems America, Inc. and HMSA Properties LLC share the same address, telephone and fax number. Both entities are expressly named in the Application, both participated in the application process, both received all notices relating to the Application and both were represented in connection with the grant of Enterprise Zone abatement by the City of Twinsburg and County of Summit. This is not a case where one party acted without the knowledge, consent or authority of the other party. Moreover, the City of Twinsburg and the County of Summit are supportive of the Enterprise Zone abatement granted with respect to this Property. ***

"E. Nothing in Ohio Revised Code Section 5715.27(A) or in Sections 5709.61 - .69 (dealing with Enterprise Zone abatement) or in Ohio Administrative Code Chapter 122.4-1 or in any other rules applicable to the enterprise zone program requires that the name of the record title owner be listed on the first page of the DTE Form 24 application. ***

"F. The Tax Commissioner's Final Determination adopts a hyper technical interpretation of Ohio Revised Code Section 5715.27(A) which, under the circumstances described above, serves no legitimate public purpose." Notice of Appeal at 2-3. (Emphasis sic.)

It is Hitachi's position that "[t]he decision of the Tax Commissioner, based on an inflexible and untenable interpretation of §5715.27 which serves no legitimate public purpose given the specific facts of this case, flies in the face of the public policy of the State of Ohio and must be reversed." Brief at 20. Specifically, Hitachi contends that "[f]rom a tax standpoint, HMSA *** does not exist. *** The real estate taxes on the property are paid by its sole member, Hitachi ***; depreciation on the property is deducted by Hitachi ***; insurance on the property is deducted by Hitachi ***; and it was Hitachi *** that entered into the enterprise zone agreement with the City of Twinsburg and Summit County in June of 2004. *** HMSA *** has no officers or directors. *** Its sole member is Hitachi *** which directs and takes action on behalf of HMSA ***. Brief at 3.

Hitachi contends that its filing of the exemption application was made "on behalf of" the fee owner. H.R. at 7; it completed the exemption application, however, listing itself as the applicant. The issue for the board is not whether Hitachi could act on behalf of HMSA, it is whether Hitachi could properly apply for the subject exemption.

In *Bd. of Edn. of the Columbus City School Dist. v. Wilkins*, 106 Ohio St.3d 200, 2005-Ohio-4556, ¶10, the court held that "[t]he requirements for filing an application for real-property tax exemption are found in R.C. 5715.27(A),¹ which

¹ The version of R.C. 5715.27(A) applicable to the instant matter, by virtue of uncodified language contained in H.B. 160, effective June 20, 2008, provided:

provides that "the *owner* of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted from taxation ****" (Emphasis added.) In *Performing Arts [School of Metro. Toledo, Inc v. Wilkins]*, 104 Ohio St.3d 284, 2004-Ohio-6389], we found that the word 'owner' as used in R.C. 5715.27 'refers only to a legal title holder of the real property for which a tax exemption is sought.' *Id.* at paragraph one of the syllabus." Further, the court went on:

"The holder of the legal title and the owner of the property for the purpose of filing an application for exemption under R.C. 5715.27 is 'Columbus State Community College District, Trustee.' The applicant filing the application for exemption in this case, 'Columbus State Community College District,' was not the owner of the property and therefore lacked standing to petition the Tax Commissioner for exemption under R.C. 5715.27. *Id.* at ¶12.

The court held that a "threshold question when considering an application for exemption filed under R.C. 5715.27 is whether the applicant has standing." *Id.* at ¶9. It went on to conclude that the applicant for exemption, Columbus State Community College District, constituted a different legal entity than the actual deeded owner, Columbus State Community College District, trustee, and as such, the applicant did not have standing to apply for an exemption. Thus, the failure to list the complete name of the applicant, albeit by one word, changed the nature and corporate identity of the applicant and rendered the exemption application in question ripe for dismissal.

"Except as provided in section 3735.67 of the Revised Code, the owner, a vendee in possession under a purchase agreement or a land contract, the beneficiary of a trust, or a lessee for an initial term of not less than thirty years of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted from taxation and that taxes, interest and penalties be remitted as provided in division (C) of section 5713.08 of the Revised Code."

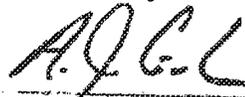
Herein, Hitachi, a corporation, is listed as the applicant on the exemption application. HMSA, however, the owner of the subject property, is a different legal entity, a limited liability company, which appellants argue is also a disregarded entity for income tax purposes. As this board has held previously, the fact that the owner is a disregarded entity "does not change the fact that the appellant is a legal entity separate and apart from its sole member ***." *Homes at Second Avenue, LLC v. Wilkins* (Nov. 30, 2010), BTA No. 2006-M-1069, unreported at 13. Hitachi and HMSA are not one and the same entity. The Supreme Court has held that only the owner can apply for exemption and Hitachi was not the owner; therefore, Hitachi did not have standing to apply for the exemption under consideration.

Appellants also contend that the commissioner's actions constitute "the taking of property without due process" and a violation of the taxpayers' equal protection rights. While the Ohio Supreme Court has authorized this board to accept evidence on constitutional points, it has clearly stated that we have no jurisdiction to decide constitutional claims. *Cleveland Gear Co. v. Limbach* (1988), 35 Ohio St.3d 229; *MCI Telecommunications Corp. v. Limbach* (1994), 68 Ohio St.3d 195, 198. Therefore, we acknowledge appellants' constitutional claims, but make no finding in relation thereto.

The Board of Tax Appeals has no express or implied equity jurisdiction. *Columbus Southern Lumber Co. v. Peck* (1953), 159 Ohio St. 564. As

a creature of statute, we have only the jurisdiction, power, and duties expressly given by the General Assembly. *Steward v. Evatt* (1944), 143 Ohio St. 547. See, also, *HealthSouth Corp. v. Levin*, 121 Ohio St.3d 282, 2009- Ohio-584, ¶ 24; *Gen. Motors Corp. v. Limbach* (1993), 67 Ohio St.3d 90, 93. Accordingly, we are constrained to affirm the commissioner's final determination, dismissing the taxpayers' application for exemption for lack of jurisdiction.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



A.J. Groeber, Board Secretary

OHIO BOARD OF TAX APPEALS

Hitachi Medical Systems America, Inc. and)
HMSA Properties LLC,)

Appellants,)

vs.)

Richard A. Levin, Tax Commissioner)
of Ohio,)

Appellee.)

CASE No. 2009-1576

(REAL PROPERTY TAX
EXEMPTION)

DECISION AND ORDER

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For the Appellants

- Ulmer & Berne LLP
Bill J. Gagliano
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Cleveland, Ohio 44113

For the Appellee
Tax Commissioner

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Attorney General of Ohio
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Entered SEP 18 2013

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"Except as provided in section 3735.67 of the Revised Code, the owner, a vendee in possession under a purchase agreement or a land contract, the beneficiary of a trust, or a lessee for an initial term of not less than thirty years of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted from taxation and that taxes, interest and penalties be remitted as provided in division (C) of section 5713.08 of the Revised Code."

Herein, Hitachi, a corporation, is listed as the applicant on the exemption application. HMSA, however, the owner of the subject property, is a different legal entity, a limited liability company, which appellants argue is also a disregarded entity for income tax purposes. As this board has held previously, the fact that the owner is a disregarded entity "does not change the fact that the appellant is a legal entity separate and apart from its sole member ***." *Homes at Second Avenue, LLC v. Wilkins* (Nov. 30, 2010), BTA No. 2006-M-1069, unreported at 13. Hitachi and HMSA are not one and the same entity. The Supreme Court has held that only the owner can apply for exemption and Hitachi was not the owner; therefore, Hitachi did not have standing to apply for the exemption under consideration.

Appellants also contend that the commissioner's actions constitute "the taking of property without due process" and a violation of the taxpayers' equal protection rights. While the Ohio Supreme Court has authorized this board to accept evidence on constitutional points, it has clearly stated that we have no jurisdiction to decide constitutional claims. *Cleveland Gear Co. v. Limbach* (1988), 35 Ohio St.3d 229; *MCI Telecommunications Corp. v. Limbach* (1994), 68 Ohio St.3d 195, 198. Therefore, we acknowledge appellants' constitutional claims, but make no finding in relation thereto.

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I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



A.J. Groeber, Board Secretary



790000264

FINAL DETERMINATION

Date: JUN 01 2009

Hitachi Medical Systems America, Inc.
1995 Summit Commerce Park
Twinsburg, OH 44240

Re: DTE No.: ME 4068
Auditor's No.: 10032
County: Summit
School District: Twinsburg School District
Parcel Number: 64-08678

This is the final determination of the Tax Commissioner on an application for exemption of real property from taxation filed on October 27, 2006.

The agent examiner in this matter issued a recommendation on August 6, 2007 recommending that the application be dismissed. The City of Twinsburg filed additional information regarding the subject property on August 15, 2007, and this information has been considered by this office.

This application was filed by Hitachi Medical Systems America, Inc., a for profit corporation. According to the Limited Warranty Deed, HMSA Properties, LLC acquired title to the subject property on October 5, 2004. There is no evidence that title was subsequently transferred to Hitachi Medical Systems America, Inc. or that Hitachi Medical Systems America, Inc. held title to the subject property at the time this application was filed on October 27, 2006.

The applicant has requested that the subject property be exempt from real property taxation pursuant to R.C. 5709.63, based on an enterprise zone agreement between the City of Twinsburg, the County of Summit, Hitachi Medical Systems America, Inc. and Alairis Properties, LLC executed on June 30, 2004. A copy of Resolution No. 2006-509, effective November 14, 2006, was included with the additional information provided to this office by the City of Twinsburg on August 15, 2007. Resolution No. 2006-509 makes it clear that Hitachi Medical Systems America, Inc. and HMSA Properties, LLC are separate entities. Resolution No. 2006-509, which was adopted after the subject exemption application was filed, amends the enterprise zone agreement by transferring the real property tax incentive from Alairis Properties, LLC to HMSA Properties, LLC. As stated above, HMSA Properties, LLC held title to the property at the time this application was filed, but it did not file the subject application.

R.C. 5715.27(A) provides in pertinent part as follows:

The owner of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted

from taxation and that taxes and penalties be remitted as provided in division (B) of section 5713.08 of the Revised Code.

The express language of the statute permits only an owner to apply for exemption from real property taxation. The Ohio Supreme Court has held that "[o]wner" as used in R.C. 5715.27 refers only to a legal title holder of the real property for which a tax exemption is sought." *Performing Arts School of Metro. Toledo, Inc. v. Wilkins* (2004), 104 Ohio St. 3d 284. The Court stated that "parties must meet strict standing requirements in order to satisfy the threshold requirement for the administrative tribunal to obtain jurisdiction". *Id.* citing to *State ex rel. Tubbs Jones v. Suster* (1998), 84 Ohio St. 70. An equitable owner, even if it is the real party in interest, does not have standing to file an application for real property tax exemption. *Sunrise Residential & Life Skills Center* (Apr. 6, 2007), BTA No. 2006-A-1034. Therefore, Hitachi Medical Systems America, Inc. was not authorized under R.C. 5715.27(A) to file this application for exemption. Since Hitachi Medical Systems America, Inc. has not met the procedural requirements of the statute, then the Tax Commissioner does not have jurisdiction to consider this application.

Therefore, this application is hereby dismissed.

THIS IS THE TAX COMMISSIONER'S FINAL DETERMINATION WITH REGARD TO THIS MATTER. NOTICE WILL BE SENT PURSUANT TO R.C. 5715.27 TO THE COUNTY AUDITOR. UPON EXPIRATION OF THE SIXTY-DAY APPEAL PERIOD PRESCRIBED BY R.C. 5717.02, THIS MATTER WILL BE CONCLUDED AND THE FILE APPROPRIATELY CLOSED.

I CERTIFY THAT THIS IS A TRUE AND ACCURATE COPY OF THE FINAL DETERMINATION RECORDED IN THE TAX COMMISSIONER'S JOURNAL

Richard A. Levin
RICHARD A. LEVIN
TAX COMMISSIONER

/s/ Richard A. Levin

Richard A. Levin
Tax Commissioner



RECOMMENDATION

Date: AUG 6 2007

Hitachi Medical Systems America, Inc.
Richard A. Kurz, Vice President
1995 Summit Commerce Park
Twinsburg, Ohio 44240

Re: DTE No.: ME 4068
Auditor's No.: 10032
County: Summit
School District: Twinsburg City S.D.
Parcel Number(s): 64-08678

This is a recommendation of the agent examiner in the matter of an application for tax exemption filed on October 27, 2006. It is not a final decision of the Tax Commissioner. The applicant has ten days from receipt of this recommendation to file written objections. Any written objections will be considered before a final decision is issued in this matter.

The procedure for applying for a property tax exemption is set forth in Ohio Revised Code Section 5715.27(A):

the owner of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted from taxation and that taxes and penalties be remitted as provided in division (B) of section 5713.08 of the Revised Code.

The Ohio Supreme Court has recently determined that the Tax Commissioner does not have the statutory authority to consider an application for exemption in cases where the owner did not file the application. This determination of jurisdiction was made by the Board of Tax Appeals in *Total Health Care Plan, Inc. v. Zaino* (Dec. 17, 2004), B.T.A. No. 2003-A-57, citing the Ohio Supreme Court in *Performing Arts School of Metropolitan Toledo Inc. v. Zaino* (2004), 104 Ohio St.3d 284, 2004-Ohio-6389.

In this case, title to the property is in the name of HMSA Properties LLC, therefore the applicant is not the owner of this property. Without ownership, the applicant does not have standing to file for tax exemption on the property, and accordingly the Tax Commissioner does not have jurisdiction to consider the application.

Based on the foregoing analysis and evidence presented, the agent examiner in this matter recommends that the application for real property tax exemption be dismissed.

INSTRUCTIONS FOR SUBMITTING OBJECTIONS

If you wish to object to this recommendation, submit your written objections to the Division of Tax Equalization, ATTN.: Anna Meeks, Department of Taxation, P.O. Box 530, Columbus, Ohio 43216-0530, or fax your objections to (614) 752-9822.

cc: The Honorable John A. Donofrio
Summit County Auditor

Ohio Constitution, Article 1 - Bill of Rights

§ 1.02 Right to alter, reform, or abolish government, and repeal special privileges

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.

U.S. Constitution: 14th Amendment

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

R.C. 718.01(A) Municipal Income Tax Rates

(A) As used in this chapter:

(1) "Adjusted federal taxable income" means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

(a) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.

(b) Add an amount equal to five per cent of intangible income deducted under division (A)(1)(a) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code;

(c) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

(d)

(i) Except as provided in division (A)(1)(d)(ii) of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

(ii) Division (A)(1)(d)(i) of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.

(e) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;

(f) In the case of a real estate investment trust and regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income;

(g) Deduct, to the extent not otherwise deducted or excluded in computing federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under section 4313.02 of the Revised Code.

If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted federal taxable income as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member shall not be allowed as a deductible expense; amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the

taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

Nothing in division (A)(1) of this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

Nothing in this chapter shall be construed as limiting or removing the ability of any municipal corporation to administer, audit, and enforce the provisions of its municipal income tax.

(2) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.

(3) "Schedule C" means internal revenue service schedule C filed by a taxpayer pursuant to the Internal Revenue Code.

(4) "Form 2106" means internal revenue service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

(5) "Intangible income" means income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701. of the Revised Code, and patents, copyrights, trademarks, tradenames, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings or other similar games of chance.

(6) "S corporation" means a corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.

(7) For taxable years beginning on or after January 1, 2004, "net profit" for a taxpayer other than an individual means adjusted federal taxable income and "net profit" for a taxpayer who is an individual means the individual's profit required to be reported on schedule C, schedule E, or schedule F, other than any amount allowed as a deduction under division (E)(2) or (3) of this section or amounts described in division (H) of this section.

(8) "Taxpayer" means a person subject to a tax on income levied by a municipal corporation. Except as provided in division (L) of this section, "taxpayer" does not include any person that is a disregarded entity or a qualifying subchapter S subsidiary for federal income tax purposes, but "taxpayer" includes any other person who owns the disregarded entity or qualifying subchapter S subsidiary.

(9) "Taxable year" means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.

(10) "Tax administrator" means the individual charged with direct responsibility for administration of a tax on income levied by a municipal corporation and includes:

(a) The central collection agency and the regional income tax agency and their successors in interest, and other entities organized to perform functions similar to those performed by the central collection agency and the regional income tax agency;

(b) A municipal corporation acting as the agent of another municipal corporation; and

(c) Persons retained by a municipal corporation to administer a tax levied by the municipal corporation, but only if the municipal corporation does not compensate the person in whole or in part on a contingency basis.

(11) "Person" includes individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, governmental entities, and any other entity.

(12) "Schedule E" means internal revenue service schedule E filed by a taxpayer pursuant to the Internal Revenue Code.

(13) "Schedule F" means internal revenue service schedule F filed by a taxpayer pursuant to the Internal Revenue Code.

Effective Date: 03-11-2004; 12-30-2004; 2007 HB119 06-30-2007; 2007 HB24 12-21-2007

R.C. 1705.25 Authority of Managers.

(A) If the management of a limited liability company is reserved to its members, all of the following apply:

(1) Every member is an agent of the company for the purpose of its business, and the act of every member, including the execution in the company name of any instrument for apparently carrying on in the usual way the business of the company binds the company, unless the member so acting has in fact no authority to act for the company in the particular matter, and the person with whom he is dealing has knowledge of the fact that he does not have that authority.

(2) Unless the act is authorized by the other members, an act of a member that is not apparently for the carrying on the business of a limited liability company in the usual way does not bind the company.

(3) Unless authorized by the other members or unless the other members have abandoned the business, one or more but less than all of the members of a limited liability company have no authority to do any of the following:

(a) Assign the property of the company in trust for creditors or on the assignee's promise to pay the debts of the company;

(b) Dispose of the good will of the business of the company;

(c) Do any other act that would make it impossible to carry on the ordinary business of the company;

(d) Confess a judgment;

(e) Submit a claim or liability of the company to arbitration or reference.

(B) Except as provided in the operating agreement, if the management of a limited liability company is not reserved to its members, all of the following apply:

(1) Every manager is an agent of the company for the purpose of its business, and the act of every manager, including the execution in the company name of any instrument for apparently carrying on in the usual way the business of the company binds the company, unless the manager so acting has in fact no authority to act for the company in the particular matter, and the person with whom he is dealing has knowledge of the fact that he does not have that authority.

(2) Unless it is authorized by the members, an act of a manager that is not apparently for the carrying on the business of a limited liability company in the usual way does not bind the company.

(3) Unless authorized by the members or unless the limited liability company has dissolved, managers of the company have no authority to engage in any of the conduct listed in divisions (A)(3)(a) to (e) of this section.

(C) Except as otherwise provided in the operating agreement, a person who is both a manager and a member of a limited liability company has the rights and powers of a manager, is subject to the restrictions and liabilities of a manager, and, to the extent of his membership interest, has the rights and powers of a member and is subject to the restrictions and liabilities of a member.

Effective Date: 07-01-1994

R.C. 5313.04 Vendee to enforce chapter provisions.

Upon the failure of any vendor to comply with Chapter 5313. of the Revised Code, the vendee may enforce such provisions in a municipal court, county court, or court of common pleas. Upon the determination of the court that the vendor has failed to comply with these provisions, the court shall grant appropriate relief.

Effective Date: 11-25-1969

R.C. 5701.14 Entity operating with nonprofit purpose defined - single member LLC

(A) In order to determine a limited liability company's nonprofit status, an entity is operating with a nonprofit purpose under section 1705.02 of the Revised Code if that entity is organized other than for the pecuniary gain or profit of, and its net earnings or any part of its net earnings are not distributable to, its members, its directors, its officers, or other private persons, except that the payment of reasonable compensation for services rendered, payments and distributions in furtherance of its nonprofit purpose, and the distribution of assets on dissolution permitted by section 1702.49 of the Revised Code are not pecuniary gain or profit or distribution of net earnings. In no event shall payments and distributions in furtherance of an entity's nonprofit purpose deprive the entity of its nonprofit status as long as all of the members of that entity are operating with a nonprofit purpose.

(B) A single member limited liability company that operates with a nonprofit purpose, as described in division (A) of this section, shall be treated as part of the same legal entity as its nonprofit member, and all assets and liabilities of that single member limited liability company shall be considered to be that of the nonprofit member. Filings or applications for exemptions or other tax purposes may be made either by the single member limited liability company or its nonprofit member.

Effective Date: 2008 HB160 06-20-2008

R.C. 5709.671 Policy of retaining existing or creating new employment opportunities.

By enactment of this act, the General Assembly expresses its policy of encouraging political subdivisions of this state to exercise the authority granted under Chapters 725. and 1728. and under sections 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, and 5709.77 to 5709.81 of the Revised Code for the purposes stated therein, and for the purposes of retaining existing or creating new employment opportunities within the political subdivision to the extent the exercise of such authority is necessary to result in a net increase in employment in this state above that which would prevail in the absence of the use of such authority. Such authority is not intended by the General Assembly to be exercised if not necessary to achieve such a result, nor is it intended to be exercised for the purpose of transferring employment from one political subdivision in this state to another if such exercise does not result in a net increase in or retention of employment in this state.

The Director of Development may adopt such rules as the Director determines will best effect the policy stated under this section. Such rules shall be adopted in accordance with Chapter 119. of the Revised Code, and shall apply only to agreements or actions executed on or after the effective date of such rules.

Effective Date: 07-22-1994

R.C. 5715.19(A) Complaint against valuation or assessment - determination of complaint --
tender of tax - determination of common level of assessment

(A) As used in this section, "member" has the same meaning as in section 1705.01 of the Revised Code.

(1) Subject to division (A)(2) of this section, a complaint against any of the following determinations for the current tax year shall be filed with the county auditor on or before the thirty-first day of March of the ensuing tax year or the date of closing of the collection for the first half of real and public utility property taxes for the current tax year, whichever is later:

(a) Any classification made under section 5713.041 of the Revised Code;

(b) Any determination made under section 5713.32 or 5713.35 of the Revised Code;

(c) Any recoupment charge levied under section 5713.35 of the Revised Code;

(d) The determination of the total valuation or assessment of any parcel that appears on the tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code;

(e) The determination of the total valuation of any parcel that appears on the agricultural land tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code;

(f) Any determination made under division (A) of section 319.302 of the Revised Code.

If such a complaint is filed by mail or certified mail, the date of the United States postmark placed on the envelope or sender's receipt by the postal service shall be treated as the date of filing. A private meter postmark on an envelope is not a valid postmark for purposes of establishing the filing date.

Any person owning taxable real property in the county or in a taxing district with territory in the county; such a person's spouse; an individual who is retained by such a person and who holds a designation from a professional assessment organization, such as the institute for professionals in taxation, the national council of property taxation, or the international association of assessing officers; a public accountant who holds a permit under section 4701.10 of the Revised Code, a general or residential real estate appraiser licensed or certified under Chapter 4763. of the Revised Code, or a real estate broker licensed under Chapter 4735. of the Revised Code, who is retained by such a person; if the person is a firm, company, association, partnership, limited liability company, or corporation, an officer, a salaried employee, a partner, or a member of that person; if the person is a trust, a trustee of the trust; the board of county commissioners; the prosecuting attorney or treasurer of the county; the board of township trustees of any township with territory within the county; the board of education of any school district with any territory in the county; or the mayor or legislative authority of any municipal corporation with any territory in the county may file such a complaint regarding any such determination affecting any real

property in the county, except that a person owning taxable real property in another county may file such a complaint only with regard to any such determination affecting real property in the county that is located in the same taxing district as that person's real property is located. The county auditor shall present to the county board of revision all complaints filed with the auditor.

(2) As used in division (A)(2) of this section, "interim period" means, for each county, the tax year to which section 5715.24 of the Revised Code applies and each subsequent tax year until the tax year in which that section applies again.

No person, board, or officer shall file a complaint against the valuation or assessment of any parcel that appears on the tax list if it filed a complaint against the valuation or assessment of that parcel for any prior tax year in the same interim period, unless the person, board, or officer alleges that the valuation or assessment should be changed due to one or more of the following circumstances that occurred after the tax lien date for the tax year for which the prior complaint was filed and that the circumstances were not taken into consideration with respect to the prior complaint:

(a) The property was sold in an arm's length transaction, as described in section 5713.03 of the Revised Code;

(b) The property lost value due to some casualty;

(c) Substantial improvement was added to the property;

(d) An increase or decrease of at least fifteen per cent in the property's occupancy has had a substantial economic impact on the property.

(3) If a county board of revision, the board of tax appeals, or any court dismisses a complaint filed under this section or section 5715.13 of the Revised Code for the reason that the act of filing the complaint was the unauthorized practice of law or the person filing the complaint was engaged in the unauthorized practice of law, the party affected by a decrease in valuation or the party's agent, or the person owning taxable real property in the county or in a taxing district with territory in the county, may refile the complaint, notwithstanding division (A)(2) of this section.

(4) Notwithstanding division (A)(2) of this section, a person, board, or officer may file a complaint against the valuation or assessment of any parcel that appears on the tax list if it filed a complaint against the valuation or assessment of that parcel for any prior tax year in the same interim period if the person, board, or officer withdrew the complaint before the complaint was heard by the board.

Effective Date: 03-04-2002; 09-28-2006

R.C. 5715.27 Application for exemption --
rights of board of education - complaint against exemption

(A)(1) Except as provided in division (A)(2) of this section and in section 3735.67 of the Revised Code, the owner, a vendee in possession under a purchase agreement or a land contract, the beneficiary of a trust, or a lessee for an initial term of not less than thirty years of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted from taxation and that taxes, interest, and penalties be remitted as provided in division (C) of section 5713.08 of the Revised Code.

(2) If the property that is the subject of the application for exemption is any of the following, the application shall be filed with the county auditor of the county in which the property is listed for taxation:

(a) A public road or highway;

(b) Property belonging to the federal government of the United States;

(c) Additions or other improvements to an existing building or structure that belongs to the state or a political subdivision, as defined in section 5713.081 of the Revised Code, and that is exempted from taxation as property used exclusively for a public purpose;

(d) Property of the boards of trustees and of the housing commissions of the state universities, the northeastern Ohio universities college of medicine, and of the state to be exempted under section 3345.17 of the Revised Code.

(B) The board of education of any school district may request the tax commissioner or county auditor to provide it with notification of applications for exemption from taxation for property located within that district. If so requested, the commissioner or auditor shall send to the board on a monthly basis reports that contain sufficient information to enable the board to identify each property that is the subject of an exemption application, including, but not limited to, the name of the property owner or applicant, the address of the property, and the auditor's parcel number. The commissioner or auditor shall mail the reports by the fifteenth day of the month following the end of the month in which the commissioner or auditor receives the applications for exemption.

(C) A board of education that has requested notification under division (B) of this section may, with respect to any application for exemption of property located in the district and included in the commissioner's or auditor's most recent report provided under that division, file a statement with the commissioner or auditor and with the applicant indicating its intent to submit evidence and participate in any hearing on the application. The statements shall be filed prior to the first day of the third month following the end of the month in which that application was docketed by the commissioner or auditor. A statement filed in compliance with this division entitles the district to submit evidence and to participate in any hearing on the property and makes the district a party for purposes of sections 5717.02 to 5717.04 of the Revised Code in any appeal of the commissioner's or auditor's decision to the board of tax appeals.

(D) The commissioner or auditor shall not hold a hearing on or grant or deny an application for exemption of property in a school district whose board of education has requested notification under division (B) of this section until the end of the period within which the board may submit a statement with respect to that application under division (C) of this section. The commissioner or auditor may act upon an application at any time prior to that date upon receipt of a written waiver from each such board of education, or, in the case of exemptions authorized by section 725.02, 1728.10, 5709.40, 5709.41, 5709.411, 5709.62, 5709.63, 5709.632, 5709.73, 5709.78, 5709.84, or 5709.88 of the Revised Code, upon the request of the property owner. Failure of a board of education to receive the report required in division (B) of this section shall not void an action of the commissioner or auditor with respect to any application. The commissioner or auditor may extend the time for filing a statement under division (C) of this section.

(E) A complaint may also be filed with the commissioner or auditor by any person, board, or officer authorized by section 5715.19 of the Revised Code to file complaints with the county board of revision against the continued exemption of any property granted exemption by the commissioner or auditor under this section.

(F) An application for exemption and a complaint against exemption shall be filed prior to the thirty-first day of December of the tax year for which exemption is requested or for which the liability of the property to taxation in that year is requested. The commissioner or auditor shall consider such application or complaint in accordance with procedures established by the commissioner, determine whether the property is subject to taxation or exempt therefrom, and, if the commissioner makes the determination, certify the determination to the auditor. Upon making the determination or receiving the commissioner's determination, the auditor shall correct the tax list and duplicate accordingly. If a tax certificate has been sold under section 5721.32 or 5721.33 of the Revised Code with respect to property for which an exemption has been requested, the tax commissioner or auditor shall also certify the findings to the county treasurer of the county in which the property is located.

(G) Applications and complaints, and documents of any kind related to applications and complaints, filed with the tax commissioner or county auditor under this section are public records within the meaning of section 149.43 of the Revised Code.

(H) If the commissioner or auditor determines that the use of property or other facts relevant to the taxability of property that is the subject of an application for exemption or a complaint under this section has changed while the application or complaint was pending, the commissioner or auditor may make the determination under division (F) of this section separately for each tax year beginning with the year in which the application or complaint was filed or the year for which remission of taxes under division (C) of section 5713.08 of the Revised Code was requested, and including each subsequent tax year during which the application or complaint is pending before the commissioner or auditor.

Amended by 129th General Assembly File No. 64, HB 225, §1, eff. 3/22/2012.

Effective Date: 09-26-2003; 2008 HB160 06-20-2008

R.C. 5733.01(F) Tax Charged Against Corporations

...

(F) For the purposes of this chapter, "disregarded entity" has the same meaning as in division (D) of section 5745.01 of the Revised Code.

(1) A person's interest in a disregarded entity, whether held directly or indirectly, shall be treated as the person's ownership of the assets and liabilities of the disregarded entity, and the income, including gain or loss, shall be included in the person's net income under this chapter.

(2) Any sale, exchange, or other disposition of the person's interest in the disregarded entity, whether held directly or indirectly, shall be treated as a sale, exchange, or other disposition of the person's share of the disregarded entity's underlying assets or liabilities, and the gain or loss from such sale, exchange, or disposition shall be included in the person's net income under this chapter.

(3) The disregarded entity's payroll, property, and sales factors shall be included in the person's factors.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General Assembly File No. 186, HB 510, §1, eff. 3/27/2013.

Amended by 128th General Assembly File No. 9, HB 1, §101.01, eff. 10/16/2009.

Effective Date: 06-05-2002; 06-30-2005; 06-05-2006; 06-30-2006; 04-04-2007

R.C. 5801.04 Trustee powers, duties, and relations - beneficiaries' rights.

(A) Except as otherwise provided in the terms of the trust, Chapters 5801. to 5811. of the Revised Code govern the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(B) The terms of a trust prevail over any provision of Chapters 5801. to 5811. of the Revised Code except the following:

- (1) The requirements for creating a trust;
- (2) The duty of a trustee to act in good faith and in accordance with the purposes of the trust;
- (3) The requirement that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;
- (4) The power of the court to modify or terminate a trust under sections 5804.10 to 5804.16 of the Revised Code;
- (5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Chapter 5805. of the Revised Code;
- (6) The power of the court under section 5807.02 of the Revised Code to require, dispense with, or modify or terminate a bond;
- (7) The power of the court under division (B) of section 5807.08 of the Revised Code to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;
- (8) Subject to division (C) of this section, the duty under divisions (B)(2) and (3) of section 5808.13 of the Revised Code to notify current beneficiaries of an irrevocable trust who have attained twenty-five years of age of the existence of the trust, of the identity of the trustee, and of their right to request trustee's reports;
- (9) Subject to division (C) of this section, the duty under division (A) of section 5808.13 of the Revised Code to respond to the request of a current beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;
- (10) The effect of an exculpatory term under section 5810.08 of the Revised Code;
- (11) The rights under sections 5810.10 to 5810.13 of the Revised Code of a person other than a trustee or beneficiary;
- (12) Periods of limitation for commencing a judicial proceeding;

(13) The power of the court to take any action and exercise any jurisdiction that may be necessary in the interests of justice;

(14) The subject-matter jurisdiction of the court for commencing a proceeding as provided in section 5802.03 of the Revised Code.

(C) With respect to one or more of the current beneficiaries, the settlor, in the trust instrument, may waive or modify the duties of the trustee described in divisions (B)(8) and (9) of this section. The waiver or modification may be made only by the settlor designating in the trust instrument one or more beneficiary surrogates to receive any notices, information, or reports otherwise required under those divisions to be provided to the current beneficiaries. If the settlor makes a waiver or modification pursuant to this division, the trustee shall provide the notices, information, and reports to the beneficiary surrogate or surrogates in lieu of providing them to the current beneficiaries. The beneficiary surrogate or surrogates shall act in good faith to protect the interests of the current beneficiaries for whom the notices, information, or reports are received. A waiver or modification made under this division shall be effective for so long as the beneficiary surrogate or surrogates, or their successor or successors designated in accordance with the terms of the trust instrument, act in that capacity.

Effective Date: 01-01-2007

(127th General Assembly)
(Substitute House Bill Number 160)

AN ACT

To amend sections 319.20, 1705.02, 5713.08, 5715.27, and 5815.36 and to enact section 5701.14 of the Revised Code to clarify and modify the law relating to disclaimers under the Ohio Trust Code, to provide that a limited liability company may be a nonprofit entity, and to make changes regarding certain tax exemptions.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 319.20, 1705.02, 5713.08, 5715.27, and 5815.36 be amended and section 5701.14 of the Revised Code be enacted to read as follows:

Sec. 319.20. After complying with sections 319.202, 315.251, and 319.203 of the Revised Code, and on application and presentation of title, with the affidavits required by law, or the proper order of a court, bearing the last known address of the grantee, or of any one of the grantees named in the title, and a reference to the volume and page of the recording of the next preceding recorded instrument by or through which the grantor claims title, the county auditor shall transfer any land or town lot or part thereof, minerals therein, or mineral rights thereto, charged with taxes on the tax list, from the name in which it stands into the name of the owner, when rendered necessary by a conveyance, partition, devise, descent, or otherwise. If by reason of the conveyance or otherwise, a part only of a tract or lot, minerals therein, or mineral rights thereto, as charged in the tax list, is to be transferred, the auditor shall determine the tax value of the part of a tract or lot of real estate, minerals therein, or mineral rights thereto, so transferred, and the value of the remaining part compared with the value of the whole.

Whenever a part only of a tract or lot of real estate has been transferred by the auditor and the tract or lot bears unpaid taxes, penalties, interest, or special assessments, the unpaid taxes, penalties, interest, or special assessments shall immediately be apportioned, upon demand or request by the transferee or remaining owner, in the following manner:

(A) The auditor shall allocate to the part so transferred, and to the remaining part, amounts of any current or delinquent taxes, interest, or

penalties that have accrued against the parcel as a whole, proportionate to their respective values.

(B) The lien of taxes, penalties, interest, and special assessments, as levied against the original tract, shall extend to the part so transferred and the part remaining only to the extent of the amounts so allocated to the respective parts.

This section does not change the total amount of taxes, special assessments, or other charges as originally levied, or the total amount of the balance due. The auditor shall certify such apportionments to the county treasurer.

Whenever the state acquires an entire parcel or a part only of a parcel of real property in fee simple, the county auditor, upon application of the grantor or property owner or the state, which application shall contain a description of the property as it appears on the tax list and the date of transfer of ownership, shall prepare an estimate of the taxes that are a lien on the property, but have not been determined, assessed, and levied for the year in which the property was acquired. The county auditor shall thereupon apportion the estimated taxes proportionately between the grantor and the state for the period of the lien year that each had or shall have had ownership or possession of the property, whichever is earlier. The county treasurer shall accept payment from the state for estimated taxes at the time that the real property is acquired. If the state has paid in full in the year in which the property is acquired that proportion of the estimated taxes that the tax commissioner determines are not subject to remission by the county auditor for such year under division ~~(C)~~(D) of section 5713.08 of the Revised Code, the estimated taxes paid shall be considered the tax liability on the exempted property for that year.

Section 319.42 of the Revised Code applies to the apportionment of special assessments.

Complaint against such values as determined by the auditor or the allocation of assessments by the certifying authority may be filed by the transferee or the remaining owner, and if filed, proceedings including appeals shall be had in the manner and within the time provided by sections 5717.01 to 5717.06 and 5715.19 to 5715.22 of the Revised Code, for complaints against valuation or assessment of real property.

The auditor shall endorse on the deed or other evidences of title presented to the auditor that the proper transfer of the real estate described in the deed has been made in the auditor's office or that it is not entered for taxation, and sign the auditor's name to the deed. The address of the grantee, or any one of the grantees, set forth in the deed or other evidences of title

shall be entered by the auditor on the transfer sheets and on the general tax list of real property prepared pursuant to section 319.28 of the Revised Code.

Sec. 1705.02. A limited liability company may be formed for any purpose or purposes for which individuals lawfully may associate themselves, ~~including for any profit or nonprofit purpose~~, except that, if the Revised Code contains special provisions for the formation of any designated type of corporation other than a professional association, a limited liability company shall not be formed for the purpose or purposes for which that type of corporation may be formed. At the request or direction of the government of the United States or any agency of that government, a limited liability company may transact any lawful business in aid of the national defense or in the prosecution of any war in which the United States is engaged.

Sec. 5701.14. For purposes of Title LVII of the Revised Code:

(A) In order to determine a limited liability company's nonprofit status, an entity is operating with a nonprofit purpose under section 1705.02 of the Revised Code if that entity is organized other than for the pecuniary gain or profit of, and its net earnings or any part of its net earnings are not distributable to, its members, its directors, its officers, or other private persons, except that the payment of reasonable compensation for services rendered, payments and distributions in furtherance of its nonprofit purpose, and the distribution of assets on dissolution permitted by section 1702.49 of the Revised Code are not pecuniary gain or profit or distribution of net earnings. In no event shall payments and distributions in furtherance of an entity's nonprofit purpose deprive the entity of its nonprofit status as long as all of the members of that entity are operating with a nonprofit purpose.

(B) A single member limited liability company that operates with a nonprofit purpose, as described in division (A) of this section, shall be treated as part of the same legal entity as its nonprofit member, and all assets and liabilities of that single member limited liability company shall be considered to be that of the nonprofit member. Filings or applications for exemptions or other tax purposes may be made either by the single member limited liability company or its nonprofit member.

Sec. 5713.08. (A) The county auditor shall make a list of all real and personal property in the auditor's county, ~~including money, credits, and investments in bonds, stocks, or otherwise, which that is~~ exempted from taxation. Such list shall show the name of the owner, the value of the property exempted, and a statement in brief form of the ground on which such exemption has been granted. It shall be corrected annually by adding

thereto the items of property which have been exempted during the year, and by striking therefrom the items which in the opinion of the auditor have lost their right of exemption and which have been reentered on the taxable list, but no property shall be struck from the exempt property list solely because the property has been conveyed to a single member limited liability company with a nonprofit purpose from its nonprofit member or because the property has been conveyed by a single member limited liability company with a nonprofit purpose to its nonprofit member. No additions shall be made to such exempt lists and no additional items of property shall be exempted from taxation without the consent of the tax commissioner as is provided for in section 5715.27 of the Revised Code or without the consent of the housing officer under section 3735.67 of the Revised Code. ~~When any personal property or endowment fund of an institution has once been held by the commissioner to be properly exempt from taxation, it is not necessary to obtain the commissioner's consent to the exemption of additional property or investments of the same kind belonging to the same institution, but such property shall appear on the abstract filed annually with the commissioner.~~ The commissioner may revise at any time the list in every county so that no property is improperly or illegally exempted from taxation. The auditor shall follow the orders of the commissioner given under this section. An abstract of such list shall be filed annually with the commissioner, on a form approved by the commissioner, and a copy thereof shall be kept on file in the office of each auditor for public inspection.

~~The commissioner shall not consider an~~ An application for exemption of property ~~unless the application has attached thereto~~ shall include a certificate executed by the county treasurer certifying one of the following:

(1) That all taxes, assessments, interest, and penalties levied and assessed against the property sought to be exempted have been paid in full to for all of the tax years preceding the date upon tax year for which the application for exemption is filed, except for such taxes, interest, and penalties that may be remitted under division ~~(B)(C)~~ of this section;

(2) That the applicant has entered into a valid delinquent tax contract with the county treasurer pursuant to division (A) of section 323.31 of the Revised Code to pay all of the delinquent taxes, assessments, interest, and penalties charged against the property, except for such taxes, interest, and penalties that may be remitted under division ~~(B)(C)~~ of this section. If the auditor receives notice under section 323.31 of the Revised Code that such a written delinquent tax contract has become void, the auditor shall strike such property from the list of exempted property and reenter such property on the taxable list. If property is removed from the exempt list because a written

delinquent tax contract has become void, current taxes shall first be extended against that property on the general tax list and duplicate of real and public utility property for the tax year in which the auditor receives the notice required by division (A) of section 323.31 of the Revised Code that the delinquent tax contract has become void or, if that notice is not timely made, for the tax year in which falls the latest date by which the treasurer is required by such section to give such notice. A county auditor shall not remove from any tax list and duplicate the amount of any unpaid delinquent taxes, assessments, interest, or penalties owed on property that is placed on the exempt list pursuant to this division.

(3) That a tax certificate has been issued under section 5721.32 or 5721.33 of the Revised Code with respect to the property that is the subject of the application, and the tax certificate is outstanding.

(B) If the treasurer's certificate is not included with the application or the certificate reflects unpaid taxes, penalties, and interest that may not be remitted, the tax commissioner shall notify the property owner of that fact, and the applicant shall be given sixty days from the date that notification was mailed in which to provide the tax commissioner with a corrected treasurer's certificate. If a corrected treasurer's certificate is not received within the time permitted, the tax commissioner does not have authority to consider the tax exemption application.

(C) Any taxes, interest, and penalties which have become a lien after the property was first used for the exempt purpose, but in no case prior to the date of acquisition of the title to the property by the applicant, may be remitted by the commissioner, except as is provided in division (A) of section 5713.081 of the Revised Code.

~~(C)~~(D) Real property acquired by the state in fee simple is exempt from taxation from the date of acquisition of title or date of possession, whichever is the earlier date, provided that all taxes, interest, and penalties as provided in the apportionment provisions of section 319.20 of the Revised Code have been paid to the date of acquisition of title or date of possession by the state, whichever is earlier. The proportionate amount of taxes that are a lien but not yet determined, assessed, and levied for the year in which the property is acquired, shall be remitted by the county auditor for the balance of the year from date of acquisition of title or date of possession, whichever is earlier. This section shall not be construed to authorize the exemption of such property from taxation or the remission of taxes, interest, and penalties thereon until all private use has terminated.

Sec. 5715.27. (A) Except as provided in section 3735.67 of the Revised Code, the owner, a vendee in possession under a purchase agreement or a

land contract, the beneficiary of a trust, or a lessee for an initial term of not less than thirty years of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted from taxation and that taxes, interest, and penalties be remitted as provided in division ~~(B)~~(C) of section 5713.08 of the Revised Code.

(B) The board of education of any school district may request the tax commissioner to provide it with notification of applications for exemption from taxation for property located within that district. If so requested, the commissioner shall send to the board ~~for the quarters ending on the last day of March, June, September, and December of each year,~~ on a monthly basis reports that contain sufficient information to enable the board to identify each property that is the subject of an exemption application, including, but not limited to, the name of the property owner or applicant, the address of the property, and the auditor's parcel number. The commissioner shall mail the reports ~~on or about~~ by the fifteenth day of the month following the end of the quarter ~~month in which the commissioner receives the applications for exemption.~~

(C) A board of education that has requested notification under division (B) of this section may, with respect to any application for exemption of property located in the district and included in the commissioner's most recent report provided under that division, file a statement with the commissioner and with the applicant indicating its intent to submit evidence and participate in any hearing on the application. The statements shall be filed prior to the first day of the third month following the end of the quarter month in which that application was docketed by the commissioner. A statement filed in compliance with this division entitles the district to submit evidence and to participate in any hearing on the property and makes the district a party for purposes of sections 5717.02 to 5717.04 of the Revised Code in any appeal of the commissioner's decision to the board of tax appeals.

(D) The commissioner shall not hold a hearing on or grant or deny an application for exemption of property in a school district whose board of education has requested notification under division (B) of this section until the end of the period within which the board may submit a statement with respect to that application under division (C) of this section. The commissioner may act upon an application at any time prior to that date upon receipt of a written waiver from each such board of education, or, in the case of exemptions authorized by section 725.02, 1728.10, 5709.40, 5709.41, 5709.411, 5709.62, or 5709.63, 5709.632, 5709.73, 5709.78,

5709.84, or 5709.88 of the Revised Code, upon the request of the property owner. Failure of a board of education to receive the report required in division (B) of this section shall not void an action of the commissioner with respect to any application. The commissioner may extend the time for filing a statement under division (C) of this section.

(B) A complaint may also be filed with the commissioner by any person, board, or officer authorized by section 5715.19 of the Revised Code to file complaints with the county board of revision against the continued exemption of any property granted exemption by the commissioner under this section.

(F) An application for exemption and a complaint against exemption shall be filed prior to the thirty-first day of December of the tax year for which exemption is requested or for which the liability of the property to taxation in that year is requested. The commissioner shall consider such application or complaint in accordance with procedures established by the commissioner, determine whether the property is subject to taxation or exempt therefrom, and certify the commissioner's findings to the auditor, who shall correct the tax list and duplicate accordingly. If a tax certificate has been sold under section 5721.32 or 5721.33 of the Revised Code with respect to property for which an exemption has been requested, the tax commissioner shall also certify the findings to the county treasurer of the county in which the property is located.

(G) Applications and complaints, and documents of any kind related to applications and complaints, filed with the tax commissioner under this section, are public records within the meaning of section 149.43 of the Revised Code.

(H) If the commissioner determines that the use of property or other facts relevant to the taxability of property that is the subject of an application for exemption or a complaint under this section has changed while the application or complaint was pending, the commissioner may make the determination under division (F) of this section separately for each tax year beginning with the year in which the application or complaint was filed or the year for which remission of taxes under division ~~(B)~~(C) of section 5713.08 of the Revised Code was requested, and including each subsequent tax year during which the application or complaint is pending before the commissioner.

Sec. 5815.36. (A) As used in this section:

(1) "Disclaimant" means any person, any guardian or personal representative of a person or estate of a person, or any attorney-in-fact or agent of a person having a general or specific authority to act granted in a

written instrument, who is any of the following:

(a) With respect to testamentary instruments and intestate succession, an heir, next of kin, devisee, legatee, donee, person succeeding to a disclaimed interest, surviving joint tenant, surviving tenant by the entireties, surviving tenant of a tenancy with a right of survivorship, beneficiary under a testamentary instrument, or person designated to take pursuant to a power of appointment exercised by a testamentary instrument;

(b) With respect to nontestamentary instruments, a grantee, donee, person succeeding to a disclaimed interest, surviving joint tenant, surviving tenant by the entireties, surviving tenant of a tenancy with a right of survivorship, beneficiary under a nontestamentary instrument, or person designated to take pursuant to a power of appointment exercised by a nontestamentary instrument;

(c) With respect to fiduciary rights, privileges, powers, and immunities, a fiduciary under a testamentary or nontestamentary instrument. This Division (A)(1)(c) of this section does not authorize a fiduciary who disclaims fiduciary rights, privileges, powers, and immunities to disclaim cause the rights of beneficiaries any beneficiary to be disclaimed unless the instrument creating the fiduciary relationship authorizes the fiduciary to make such a disclaimer.

(d) Any person entitled to take an interest in property upon the death of a person or upon the occurrence of any other event.

(2) "Personal representative" includes any fiduciary as defined in section 2109.01 of the Revised Code and any executor, trustee, guardian, or other person or entity having a fiduciary relationship with regard to any interest in property passing to the fiduciary, executor, trustee, guardian, or other person or entity by reason of a disclaimant's death.

(3) "Property" means all forms of property, real and personal, tangible and intangible.

(B)(1) A disclaimant, other than a fiduciary under an instrument who is not authorized by the instrument to disclaim the interest of a beneficiary, may disclaim, in whole or in part, the succession to any property by executing and by delivering, filing, or recording a written disclaimer instrument in the manner provided in this section.

(2) A disclaimant who is a fiduciary under an instrument may disclaim, in whole or in part, any right, power, privilege, or immunity, by executing and by delivering, filing, or recording a written disclaimer instrument in the manner provided in this section.

(3) The written instrument of disclaimer shall be signed and acknowledged by the disclaimant and shall contain all of the following:

(a) A reference to the donative instrument;

(b) A description of the property, part of property, or interest disclaimed, and of any fiduciary right, power, privilege, or immunity disclaimed;

(c) A declaration of the disclaimer and its extent.

(4) The guardian of the estate of a minor or an incompetent, or the personal representative of a deceased person, whether or not authorized by the instrument to disclaim, with the consent of the probate division of the court of common pleas, may disclaim, in whole or in part, the succession to any property, or interest in property, that the ward, if an adult and competent, or the deceased, if living, might have disclaimed. The guardian or personal representative, or any interested person may file an application with the probate division of the court of common pleas that has jurisdiction of the estate, asking that the court order the guardian or personal representative to execute and deliver, file, or record the disclaimer on behalf of the ward ~~or, estate, or deceased person~~. The court shall order the guardian or personal representative to execute and deliver, file, or record the disclaimer if the court finds, upon hearing after notice to interested parties and such other persons as the court shall direct, that:

(a) It is in the best interests of those interested in the estate of the person and of those who will take the disclaimed interest;

(b) It would not materially, adversely affect the minor or incompetent, or the beneficiaries of the estate of the decedent, taking into consideration other available resources and the age, probable life expectancy, physical and mental condition, and present and reasonably anticipated future needs of the minor or incompetent or the beneficiaries of the estate of the decedent.

A written instrument of disclaimer ordered by the court under this division shall be executed and be delivered, filed, or recorded within the time and in the manner in which the person could have disclaimed if the person were living, an adult, and competent.

(C) A partial disclaimer of property that is subject to a burdensome interest created by the donative instrument is not effective unless the disclaimed property constitutes a gift that is separate and distinct from undisclaimed gifts.

(D) The disclaimant shall deliver, file, or record the disclaimer, or cause the same to be done, ~~not later than nine months~~ prior to accepting any benefits of the disclaimed interest and at any time after the latest of the following dates:

(1) The effective date of the donative instrument if both the taker and the taker's interest in the property are finally ascertained on that date;

(2) The date of the occurrence of the event upon which both the taker and the taker's interest in the property become finally ascertainable;

(3) The date on which the disclaimant attains ~~twenty-one~~ eighteen years of age or is no longer an incompetent, without tendering or repaying any benefit received while the disclaimant was under ~~twenty-one~~ eighteen years of age or an incompetent, and even if a guardian of a minor or incompetent had filed an application pursuant to division (B)(4) of this section and the probate division of the court of common pleas involved did not consent to the guardian executing a disclaimer.

(E) No disclaimer instrument is effective under this section if either of the following applies under the terms of the disclaimer instrument:

(1) The disclaimant has power to revoke the disclaimer.

(2) The disclaimant may transfer, or direct to be transferred, to self the entire legal and equitable ownership of the property subject to the disclaimer instrument.

(F)(1) Subject to division (F)(2) of this section, if the interest disclaimed is created by a nontestamentary instrument, the disclaimer instrument shall be delivered personally or by certified mail to the trustee or other person who has legal title to, or possession of, the property disclaimed.

(2) If the interest disclaimed is created by a testamentary instrument, by intestate succession, by a transfer on death deed pursuant to section 5302.22 of the Revised Code, or by a certificate of title to a motor vehicle, watercraft, or outboard motor that evidences ownership of the motor vehicle, watercraft, or outboard motor that is transferable on death pursuant to section 2131.13 of the Revised Code, the disclaimer instrument shall be filed in the probate division of the court of common pleas in the county in which proceedings for the administration of the decedent's estate have been commenced, and an executed copy of the disclaimer instrument shall be delivered personally or by certified mail to the personal representative of the decedent's estate.

(3) If no proceedings for the administration of the decedent's estate have been commenced, the disclaimer instrument shall be filed in the probate division of the court of common pleas in the county in which proceedings for the administration of the decedent's estate might be commenced according to law. The disclaimer instrument shall be filed and indexed, and fees charged, in the same manner as provided by law for an application to be appointed as personal representative to administer the decedent's estate. The disclaimer is effective whether or not proceedings thereafter are commenced to administer the decedent's estate. If proceedings thereafter are commenced for the administration of the decedent's estate, they shall be filed under, or

consolidated with, the case number assigned to the disclaimer instrument.

(4) If an interest in real estate is disclaimed, an executed copy of the disclaimer instrument also shall be recorded in the office of the recorder of the county in which the real estate is located. The disclaimer instrument shall include a description of the real estate with sufficient certainty to identify it, and shall contain a reference to the record of the instrument that created the interest disclaimed. If title to the real estate is registered under Chapters 5309. and 5310. of the Revised Code, the disclaimer interest shall be entered as a memorial on the last certificate of title. A spouse of a disclaimant has no dower or other interest in the real estate disclaimed.

(G) ~~Unless the~~ If a donative instrument expressly provides that, if there is for the distribution of property, part of property, or interest in property if there is a disclaimer, there shall not be any acceleration of remainders or other interests; the property, part of property, or interest disclaimed shall be distributed or disposed of, and accelerated or not accelerated, in accordance with the donative instrument. In the absence of express provisions to the contrary in the donative instrument, the property, part of property, or interest in property disclaimed, and any future interest that is to take effect in possession or enjoyment at or after the termination of the interest disclaimed, shall descend, be distributed, or otherwise be disposed of, and shall be accelerated, in the following manner:

(1) If intestate or testate succession is disclaimed, as if the disclaimant had predeceased the decedent;

(2) If the disclaimant is one designated to take pursuant to a power of appointment exercised by a testamentary instrument, as if the disclaimant had predeceased the donee of the power;

(3) If the donative instrument is a nontestamentary instrument, as if the disclaimant had died before the effective date of the nontestamentary instrument;

(4) If the disclaimer is of a fiduciary right, power, privilege, or immunity, as if the right, power, privilege, or immunity was never in the donative instrument.

(H) A disclaimer pursuant to this section is effective as of, and relates back for all purposes to, the date upon which the taker and the taker's interest have been finally ascertained.

(I) A disclaimant who has a present and future interest in property, and disclaims the disclaimant's present interest in whole or in part, is considered to have disclaimed the disclaimant's future interest to the same extent, unless a contrary intention appears in the disclaimer instrument or the donative instrument. A disclaimant is not precluded from receiving, as an alternative

taker, a beneficial interest in the property disclaimed, unless a contrary intention appears in the disclaimer instrument or in the donative instrument.

(J) The disclaimant's right to disclaim under this section is barred if, ~~before the expiration of the period within which the disclaimant may disclaim the interest;~~ the disclaimant does any of the following:

(1) Assigns, conveys, encumbers, pledges, or transfers, or contracts to assign, convey, encumber, pledge, or transfer, the property or any interest in it;

(2) Waives in writing the disclaimant's right to disclaim and executes and delivers, files, or records the waiver in the manner provided in this section for a disclaimer instrument;

(3) Accepts the property or an interest in it;

(4) Permits or suffers a sale or other disposition of the property pursuant to judicial action against the disclaimant.

(K) ~~A~~ Neither a fiduciary's application for appointment or assumption of duties as a fiduciary does not waive nor a beneficiary's application for appointment as a personal representative or fiduciary waives or bars the disclaimant's right to disclaim a right, power, privilege, or immunity as a personal representative or fiduciary or the beneficiary's right to disclaim property.

(L) The right to disclaim under this section exists irrespective of any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

(M) A disclaimer instrument or written waiver of the right to disclaim that has been executed and delivered, filed, or recorded as required by this section is final and binding upon all persons.

(N) The right to disclaim and the procedures for disclaimer established by this section are in addition to, and do not exclude or abridge, any other rights or procedures ~~existing that exist or formerly existed~~ under any other section of the Revised Code or at common law to assign, convey, release, refuse to accept, renounce, waive, or disclaim property.

(O)(1) No person is liable for distributing or disposing of property in a manner inconsistent with the terms of a valid disclaimer if the distribution or disposition is otherwise proper and the person has no actual knowledge of the disclaimer.

(2) No person is liable for distributing or disposing of property in reliance upon the terms of a disclaimer that is invalid because the right of disclaimer has been waived or barred if the distribution or disposition is otherwise proper and the person has no actual knowledge of the facts that constitute a waiver or bar to the right to disclaim.

(P)(1) A disclaimant may disclaim pursuant to this section any interest in property that is in existence on September 27, 1976, if either the interest in the property or the taker of the interest in the property is not finally ascertained on that date.

(2) No disclaimer executed pursuant to this section destroys or diminishes an interest in property that exists on September 27, 1976, in any person other than the disclaimant.

(Q) This section may be applied separately to different interests or powers created in the disclaimant by the same testamentary or nontestamentary instrument.

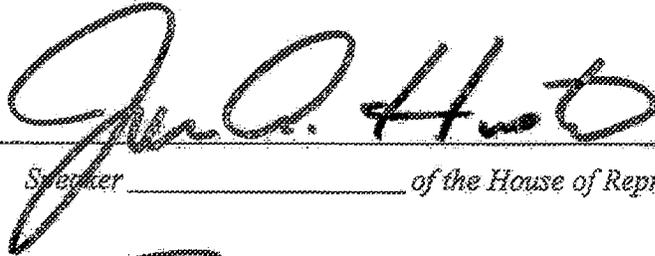
SECTION 2. That existing sections 319.20, 1705.02, 5713.08, 5715.27, and 5815.36 of the Revised Code are hereby repealed.

SECTION 3. Sections 319.20, 5713.08, and 5715.27 of the Revised Code, as amended by this act, are remedial in nature and apply to the tax years at issue in any application for exemption from taxation pending before the Tax Commissioner, the Board of Tax Appeals, the Court of Appeals, or the Supreme Court on the effective date of this act and to that property that is the subject of any application.

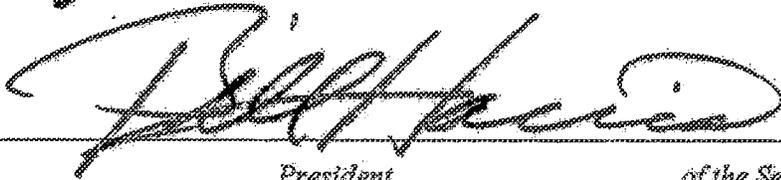
SECTION 4. The amendments to divisions (A), (B), (G), (K), (N), and (Q) of section 5815.36 of the Revised Code contained in Section 1 of this act are intended to clarify and be declaratory of the law as it existed prior to the enactment of this act and shall be construed accordingly.

SECTION 5. The General Assembly recognizes that section 2518 of the Internal Revenue Code defines a qualified disclaimer, in part, as a written refusal by a person to accept an interest in property that is received by the transferor of the interest within nine months after the later of the date on which the transfer creating the interest is made and the date on which the person attains twenty-one years of age. By amending division (D) of section 5815.36 of the Revised Code to eliminate a reference to the nine-month period, the General Assembly intends to create the possibility that some disclaimers governed by the law of this state will be qualified under section 2518 of the Internal Revenue Code and some will not be qualified under that section.

SECTION 6. Section 1705.02 of the Revised Code, as amended by this act, and section 5701.14 of the Revised Code, as enacted by this act, apply to limited liability companies that were in existence prior to the effective date of this act and that assert to be nonprofit limited liability companies.



Speaker _____ of the House of Representatives.



President _____ of the Senate.

Passed March 11, 2008

Approved March 21, 2008



Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Mark C. Flanders

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 21st day of March, A. D. 2008.

John A. ...

Secretary of State.

File No. 52

Effective Date 6/20/08

TITLE 6

Commerce and Trade

SUBTITLE II

Other Laws Relating to Commerce and Trade

CHAPTER 18. LIMITED LIABILITY COMPANY ACT

Subchapter IV. Managers

§ 18-402 Management of limited liability company.

Unless otherwise provided in a limited liability company agreement, the management of a limited liability company shall be vested in its members in proportion to the then current percentage or other interest of members in the profits of the limited liability company owned by all of the members, the decision of members owning more than 50 percent of the said percentage or other interest in the profits controlling; provided however, that if a limited liability company agreement provides for the management, in whole or in part, of a limited liability company by a manager, the management of the limited liability company, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement. The manager shall also hold the offices and have the responsibilities accorded to the manager by or in the manner provided in a limited liability company agreement. Subject to § 18-602 of this title, a manager shall cease to be a manager as provided in a limited liability company agreement. A limited liability company may have more than 1 manager. Unless otherwise provided in a limited liability company agreement, each member and manager has the authority to bind the limited liability company.

68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, § 24; 70 Del. Laws, c. 75, § 19; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 341, § 12; 72 Del. Laws, c. 129, § 11.;

26 CFR 301.7701-3 - CLASSIFICATION OF CERTAIN BUSINESS ENTITIES.

§ 301.7701-3 Classification of certain business entities.

- (a) *In general.* A business entity that is not classified as a corporation under § 301.7701-2(b) (1), (3), (4), (5), (6), (7), or (8) (an *eligible entity*) can elect its classification for federal tax purposes as provided in this section. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner. Paragraph (b) of this section provides a default classification for an eligible entity that does not make an election. Thus, elections are necessary only when an eligible entity chooses to be classified initially as other than the default classification or when an eligible entity chooses to change its classification. An entity whose classification is determined under the default classification retains that classification (regardless of any changes in the members' liability that occurs at any time during the time that the entity's classification is relevant as defined in paragraph (d) of this section) until the entity makes an election to change that classification under paragraph (c)(1) of this section. Paragraph (c) of this section provides rules for making express elections. Paragraph (d) of this section provides special rules for foreign eligible entities. Paragraph (e) of this section provides special rules for classifying entities resulting from partnership terminations and divisions under section 708(b). Paragraph (f) of this section sets forth the effective date of this section and a special rule relating to prior periods.