

ORIGINAL

IN THE SUPREME COURT OF OHIO

Board of Education of the Dublin City :  
School District and Board of Education of :  
the Columbus City School District.

14-0168

Appellants,

FILED

Case No. \_\_\_\_\_

JAN 30 2014

v.

CLERK OF COURT

Appeal from the Ohio Board of  
Appeals - Case Nos. 2011-Q-1792  
and 2011-Q-1795

Joseph W. Testa, Tax Commissioner of  
Ohio, Equity Dublin Associates and  
SHSCC#2 Limited Partnership,

Appellees.

**NOTICE OF APPEAL OF THE BOARD OF EDUCATION OF THE DUBLIN CITY  
SCHOOL DISTRICT AND THE BOARD OF EDUCATION OF THE COLUMBUS CITY  
SCHOOL DISTRICT**

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FILED  
JAN 30 2014  
BOARD OF TAX APPEALS  
COLUMBUS, OHIO

IN THE SUPREME COURT OF OHIO

Board of Education of the Dublin City :  
School District and Board of Education of :  
the Columbus City School District :

Appellants, :

v. :

Joseph W. Testa, Tax Commissioner of :  
Ohio, Equity Dublin Associates and :  
SHSCC#2 Limited Partnership, :

Appellees. :

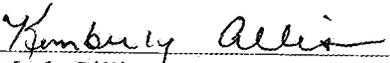
Case No. \_\_\_\_\_

Appeal from the Ohio Board of  
Appeals - Case Nos. 2011-Q-1792  
and 2011-Q-1795

NOTICE OF APPEAL OF THE BOARD OF EDUCATION OF THE  
DUBLIN CITY SCHOOL DISTRICT AND BOARD OF EDUCATION OF THE COLUMBUS  
CITY SCHOOL DISTRICT

Now come the Appellants, the Board of Education of the Dublin City School District and the Board of Education of the Columbus City School District, and give notice of appeal to the Supreme Court of Ohio from the decision of the Ohio Board of Tax Appeals in the case of *Equity Dublin Associates and SHSCC#2 Limited Partnership v. Joseph W. Testa, Tax Commissioner of Ohio, the Board of Education of the Dublin City School District and Board of Education of the Columbus City School District*, BTA Case Nos. 2011-Q-1792, 2011-Q-1795, rendered on December 31, 2013, a copy of which is attached hereto as Exhibit B. The Errors complained of therein are set forth herein as Exhibit A.

Respectfully submitted,

  
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City School District and Board of Education of the  
Columbus City School District

## EXHIBIT A - STATEMENT OF ERRORS

(1) The BTA erred in holding that the subject properties are entitled to exemption under R.C. 5709.07(A)(4) when R.C. 3354.15, the statute specifically applicable to property acquired, owned, or used by a community college, is the only appropriate statutory provision under which to consider the property owners' applications for exemption.

(2) The BTA erred in holding, and its decision is unreasonable and unlawful in this respect, that the properties in question are connected with a community college and therefore exempt from taxation under R.C. 5709.07(A)(4) merely because the properties are leased by for-profit lessors to a community college and used for classrooms and faculty offices. R.C. 5709.07(B) provides that the exemption set forth in R.C. 5709.07(A)(4) shall not extend to leasehold estates except in certain limited circumstances, none of which are applicable herein.

(3) The BTA erred in relying on the prior decision in *Cleveland State Univ. v. Perk* (1971), 26 Ohio St.2d 1 and *Bexley Village, Ltd. v. Limbach*, 68 Ohio App.3d 306 (10<sup>th</sup> Dist.1990), because those cases were properly distinguishable from the appeal before it.

(4) The BTA erred in relying on the prior decision in *Cleveland State Univ. v. Perk* (1971), 26 Ohio St.2d 1, because the holding in that case was specifically limited to the particular facts of that case, and those facts were properly distinguishable from those before the BTA. See *Anderson/Maltbie Partnership v. Levin*, 127 Ohio St.3d 178.

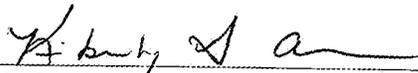
(5) The BTA erred in holding that for-profit property owners are entitled to claim exemption for properties leased by Columbus State Community College when Columbus State Community College was not obligated to pay the real property taxes at issue. In such a case, any tax exemption

directly and solely benefits the private lessors and provides no benefit to the general public sufficient to justify the loss of tax revenue. Such an exemption likewise violates the uniform rule requirement of Article XII, Section 2 of the Ohio Constitution in that real property tax exemptions cannot be used to subsidize the private uses of real property and such an exemption allows the private lessors of such property to unfairly and unconstitutionally escape real property taxation to the detriment of all similarly situated private property owners required to pay real property taxes on the property.

(6) The BTA erred in holding that the subject properties are entitled to exemption under R.C. 5709.07(A)(4) when the for-profit lessors did not claim exemption under R.C. 5709.07(A)(4) on their applications for exemption.

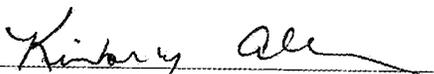
PROOF OF SERVICE ON THE OHIO BOARD OF TAX APPEALS

I hereby certify that a true and complete copy of the foregoing notice of appeal was served upon the Clerk of the Ohio Board of Tax Appeals, as is evidenced by its filing stamp set forth hereon.

  
Mark Gillis (0066908)  
Kimberly G Allison (0061612)  
Attorneys for Appellants

CERTIFICATE OF SERVICE BY CERTIFIED MAIL

I hereby certify that a true and complete copy of the foregoing notice of appeal was served on Matthew Anderson, Luper, Neidenthal & Logan, 50 West Broad Street, Suite 1200, Columbus, Ohio 43215 and on Michael DeWine, Attorney General, by service on Barton Hubbard, Assistant Attorney General, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215, by certified mail, return receipt requested, with postage prepaid, this 30th day of January, 2014.

  
Mark Gillis (0066908)  
Kimberly Allison (0061612)  
Attorneys for Appellants

IN THE SUPREME COURT OF OHIO

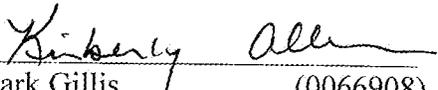
Board of Education of the Dublin City	:	
School District and Board of Education of	:	
the Columbus City School District	:	
	:	Case No. _____
Appellants,	:	
	:	
v.	:	
	:	Appeal from the Ohio Board of
Joseph W. Testa, Tax Commissioner of	:	Appeals - Case Nos. 2011-Q-1792
Ohio, Equity Dublin Associates and	:	and 2011-Q-1795
SHSCC#2 Limited Partnership,	:	
	:	
Appellees.	:	

REQUEST TO CERTIFY ORIGINAL PAPERS TO THE SUPREME COURT OF OHIO

TO: The Clerk of the Ohio Board of Tax Appeals:

The Appellants, who have filed a notice of appeal with the Supreme Court, make this written demand upon the Clerk and this Board to certify the record of its proceedings and the original papers of this Board and statutory transcript of the Board of Revision in the case of *Equity Dublin Associates and SHSCC#2 Limited Partnership v. Joseph W. Testa, Tax Commissioner of Ohio, the Board of Education of the Dublin City School District and Board of Education of the Columbus City School District*, BTA Case Nos. 2011-Q-1792, 2011-Q-1795, rendered on December 31, 2013, to the Supreme Court of Ohio within 30 days of service hereof as set forth in R.C. 5717.04.

Respectfully submitted,

  
\_\_\_\_\_  
Mark Gillis (0066908)  
Kimberly Allison (0061612)  
Rich & Gillis Law Group, LLC

Attorneys for Appellants  
Board of Education of the Dublin  
City School District and Board of Education  
of the Columbus City School District

**OHIO BOARD OF TAX APPEALS**

Equity Dublin Associates and SHSCC #2	)	CASE NOS. 2011-Q-1792
Limited Partnership,	)	and 2011-Q-1795
	)	
Appellants,	)	(REAL PROPERTY TAX EXEMPTION)
	)	
vs.	)	DECISION AND ORDER
	)	
Joseph W. Testa, Tax Commissioner of	)	
Ohio, Board of Education of the Columbus	)	
City School District, and Board of	)	
Education of the Dublin City School	)	
District,	)	
	)	
Appellees.	)	

APPEARANCES:

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 Dublin, Ohio 43017

Entered **DEC 31 2013**

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

Appellants appeals final determinations of the Tax Commissioner denying exemption from taxation for certain real property, i.e., parcel numbers 273-001709 and 010-215437-00, located in Franklin County, Ohio, for tax year 2005, and remission of taxes paid for tax years 2002, 2003, and 2004. The parties have

submitted these matters to the Board of Tax Appeals upon the notices of appeal, the statutory transcripts ("S.T.") certified by the commissioner, and their written legal arguments.

The subject parcels are owned by Equity Dublin Associates ("EDA") and SHSCC #2 Limited Partnership ("SHSCC"), respectively, both of which lease portions of the properties to Columbus State Community College ("CSCC"), which uses the properties for classrooms, offices, lab space, and related school activities.<sup>1</sup> The owners each filed applications for real property tax exemption seeking exemption under R.C. 3354.15, which provides that "[a] community college district shall not be required to pay any taxes or assessments upon any real or personal property acquired, owned, or used by it pursuant to provisions of sections 3354.01 to 3354.18, inclusive, of the Revised Code, \*\*\*."<sup>2</sup>

The commissioner denied both applications under both R.C. 3354.15, and under R.C. 5709.07(A)(4). As to the former, the commissioner found that, because the property is not owned by CSCC, but is rather leased to it, it does not qualify for exemption under R.C. 3354.15:

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<sup>1</sup> As indicated in the final determinations, CSCC leases "approximately 13,545 of the 116,000 total square feet available" of the building located on parcel number 273-001709, owned by EDA, and "12,000 square feet of building space and adjacent parking" of parcel number 010-215437-00, owned by SHSCC. The underlying applications for exemption further explain that the subject properties "are among [CSCC]'s nine (9) facilities located primarily in the Columbus suburban areas," at which "[a] full array of courses are offered and students \*\*\* can earn an Associate of Arts and Sciences Degree \*\*\*, and "[b]ookstore, academic counseling, and advising services are also provided." 2011-1792 S.T. at 15; 2011-1795 S.T. at 40.

<sup>2</sup> The owners also referenced R.C. 3358.10, which states that "Sections 3354.01, 3354.121, 3354.15, and 3354.16 of the Revised Code apply to state community college districts and their boards of trustees."

“\*\*\* R.C. 3354.15 does not exempt the property from taxation; it merely prevents the CSCC from having to pay any taxes on such property. Real property is taxed to the owner of that property, and lessees are not considered owners of property under a lease such as the one at hand. See, R.C. 319.28; R.C. 323.13; R.C. 323.43; *Cincinnati College v. Yeatman* (1876), 30 Ohio St. 276; *Performing Arts Schools [of Metro. Toledo, Inc. v. Wilkins]*, 104 Ohio St.3d 284, 2004-Ohio-6389]. Pursuant to R.C. 3354.15, since Equity Dublin Associates [and SHSCC] owns the property, it is responsible for paying the taxes and cannot force the college to pay them.”

The commissioner further noted that, under *Athens County Auditor v. Wilkins*, 106 Ohio St.3d 293, 2005-Ohio-4986, the owners “cannot claim a vicarious exemption for property owned by [them] and used by the college of its students.”

The commissioner therefore proceeded to consider the owners’ applications under R.C. 5709.07(A)(4), which exempts “[p]ublic colleges and academies and all buildings connected with them, and all lands connected with public institutions of learning, not used with a view to profit.” He noted that both properties are leased for profit – from EDA for approximately \$120,000 per year, and from SHSCC for approximately \$156,000 per year – and therefore not entitled to exemption under these statutes. Citing *Athens*, supra, the commissioner specifically noted that “the General Assembly promulgated a ‘tax exemption to reduce the tax burden on higher education facilities; not to shelter private property owners.’ *Id.* [at ¶11].” The applications were therefore denied, and the present appeals ensued.<sup>3</sup> Appellants raise

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<sup>3</sup> At this board’s hearing, the appellees moved to strike the “Memorandum in Support” attached to each notice of appeal that were submitted on behalf of CSCC, which was excluded as a party to these matters by order of this board. *Equity Dublin Associates, et al. v. Testa* (Interim Order, Aug. 21, 2013), BTA Nos. 2011-1792 and 2011-1795, unreported. The motion is granted.

two assignments of error on appeal – that, under both R.C. 3354.15 and R.C. 5709.07(A)(4), the commissioner erred in finding that CSCC must own the property for it to be exempt.<sup>4</sup>

In our review of these matters, we are mindful that the findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. Consequently, it is incumbent upon a taxpayer challenging a determination of the commissioner to rebut the presumption and to establish a clear right to the requested relief. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. In this regard, the taxpayer is assigned the burden of showing in what manner and to what extent the commissioner's determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213.

“All real property in this state is subject to taxation, except only such as is expressly exempted therefrom.” R.C. 5709.01(A). As a result, “in any consideration concerning the exemption from taxation of any property, the burden of proof shall be placed on the property owner to show that the property is entitled to exemption.” R.C. 5715.271. Thus, exemption from taxation remains the exception to the rule, and a statute granting an exemption must be strictly, rather than liberally, construed. See, e.g., *Faith Fellowship Ministries, Inc. v. Limbach* (1987), 32 Ohio

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<sup>4</sup> The final determinations also address the exemption of the subject properties under R.C. 5709.07(A)(1); however, appellants have not raised as errors the commissioner's decisions under that section on appeal.

St.3d 432; *Anderson/Maltbie Partnership v. Levin*, 127 Ohio St.3d 178, 2010-Ohio-4904.

The parties agree that the factual issues are not in dispute.<sup>5</sup> In their merit brief, EDA and SHSCC argue that the property must only be *used* by a community college to be exempt under R.C. 3354.15; because it is so used, they argue that the commissioner erred in denying exemption. The commissioner argues that the court's decision in *Athens*, supra, is dispositive in its favor. In that case, the court considered the exemption of two privately-owned dormitories located adjacent to Hocking Technical College under R.C. 3357.14 and R.C. 5709.07(A)(4). Finding that the dormitories were "used by" the students, and not the college itself, the court held: "because [the private owner's] property is not 'used by' the college within the meaning of the statute, [it] is prohibited from receiving a tax exemption pursuant to R.C. 3357.14."<sup>6</sup> *Id.* at ¶11. EDA and SHSCC argue that, by implication, the court suggested that property owned by a private entity and leased to a college, would qualify for exemption if it was used by the college, rather than its students.

The appellee boards of education ("BOE") disagree. With regard to exemption under R.C. 3354.14, the BOE notes the court's statement in *Athens*, supra,

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<sup>5</sup> However, the commissioner, in his brief, notes that, although appellants assert in their initial brief that, under both lease agreements, CSCC was contractually obligated to pay real property taxes on the subject properties, only the lease with SCSS imposes such an obligation; the EDA lease only obligates CSCC to pay taxes pertaining to its own fixtures, furniture, and other personal property. Commissioner Brief at 3-4. Our review of the leases included in the statutory transcript confirm this representation.

<sup>6</sup> The court further noted: "L&L has no education-related mission; it exists to earn a profit by renting temporary housing accommodations to students attending the college. The BTA reasonably determined that the General Assembly promulgated R.C. 3357.14's tax exemption to reduce the tax burden on higher education facilities; not to shelter private property owners who build and maintain student housing near college campuses." *Id.* at ¶11.

that the statute, in addition to similar ones in Chapter 33, do not “exempt private landowners from paying taxes on property located near, or even on, a college or university campus.” *Id.* at ¶11. The BOE argues that CSCC’s voluntary assumption of real property tax obligations does not render the leased property exempt.<sup>7</sup> The BOE also argues that the subject properties are not exempt under R.C. 5709.07(A)(4), as they must qualify for exemption under the statute specifically applicable to community college property – R.C. 3354.15. See *Rickenbacker Port Auth. v. Limbach* (1992), 64 Ohio St.3d 628; *Church of God in N. Ohio, Inc. v. Levin* (2009), 124 Ohio St.3d 36.

The appellee commissioner argues that the court’s decision in *Athens*, *supra*, is dispositive in his favor, as the court therein specifically stated that the exemption under R.C. 3354.15 does not exempt private landowners from paying taxes. *Id.* at ¶¶9, 11. Like the BOE, the commissioner’s position is that EDA and SHSCC must qualify for exemption under R.C. 3354.15, as the statute specifically applicable to community college property, and, therefore, cannot seek exemption under R.C. 5709.07(A)(4).<sup>8</sup>

We first address the subject properties’ exemption under R.C. 3354.15 – the statute under which EDA and SHSCC applied for exemption. The parties direct this board to the court’s decision in *Athens*, *supra*. Therein, the court noted that R.C.

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<sup>7</sup> The BOE further argues: “At most, the prohibition set forth in R.C. 3354.15 would render the provisions of the commercial lease obligating Columbus State to make the prohibited payments null and void. The obligation to pay taxes would then revert to Equity Dublin and SHSCC#2, as owners of the properties.” BOE Brief at 5.

<sup>8</sup> We find this position curious in light of the commissioner’s lengthy consideration of exemption under R.C. 5709.07(A)(4) in his final determination, despite the fact that appellants did not seek exemption under that statute in their applications.

3357.14,<sup>9</sup> the relevant statute in that matter, and R.C. 3354.15, among other similar statutes, do not “exempt private landowners from paying taxes on property located near, or even on, a college or university campus.” Id. at ¶11. The court specifically held:

“Accordingly, we agree with the BTA’s decision and hold that because R.C. 3357.14 grants a tax exemption only to ‘technical college districts,’ and because L & L’s property is not ‘used by’ the college within the meaning of the statute, L & L is prohibited from receiving a tax exemption pursuant to R.C. 3357.14.” Id. at ¶12.

Appellants seem to focus on the court’s discussion of the use of the property; however, we find the statute’s preceding statement more important. R.C. 3354.15 states that “[a] community college district shall not be required to pay any taxes or assessments on any real \*\*\* property acquired, owned, or used by it \*\*\*.” As the court acknowledged in *Athens*, supra, the owner of the property, alone, is responsible for paying taxes on property it owns. Id. at ¶9. While CSCC may have voluntarily assumed an obligation to pay real property taxes under the SHSCC lease, it is not *required* to pay any taxes on the subject properties.<sup>10</sup> As EDA and SHSCC are clearly not community college districts, they are not entitled to an exemption under R.C. 3354.15. We accordingly reject the appellees’ argument that the subject

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<sup>9</sup> R.C. 3357.14 states, in pertinent part: “A technical college district shall not be required to pay any taxes or assessments upon any real or personal property acquired, owned, or used by it pursuant to sections 3357.01 to 3357.19, inclusive, of the Revised Code \*\*\*.”

<sup>10</sup> As we noted in our order dismissing CSCC as an appellant in these matters, CSCC originally filed applications for exemption of the subject properties, but withdrew them in January 2005. *Equity Dublin Assoc. v. Testa* (Interim Order, Aug. 21, 2013), BTA Nos. 2011-1792, 1795, unreported, at fn. 1.

properties are only entitled to exemption under R.C. 3354.15 as the statute specifically applicable.

We therefore turn to the properties' exemption under R.C. 5709.07(A)(4). In doing so, we find the Tenth District's explanation of the statute, in *Bexley Village, Ltd. v. Limbach*, 68 Ohio App.3d 306 (10th Dist.1990), instructive:

"R.C. 5709.07 includes two separate and distinct clauses. First, public colleges and academies and all buildings connected therewith are exempt from taxation regardless of whether the property is used with a view towards profit. *Cleveland State Univ. v. Perk* (1971), 26 Ohio St.2d 1, \*\*\*; *Denison Univ. v. Bd. of Tax Appeals* (1965), 2 Ohio St.2d 17, \*\*\*. Second, all lands connected with public institutions of learning are exempted from taxation if they are not used with a view towards profit." *Id.* at 308.

The exemption of public college property under R.C. 5709.07(A)(4), where the property was not owned by the college, was specifically addressed by the Supreme Court in *Cleveland State Univ. v. Perk* (1971), 26 Ohio St.2d 1, which we find dispositive in this matter. In that case, the court found that property used solely for classrooms and faculty offices were buildings "connected with" a public college, and specifically rejected the argument that the property must be *owned* and used by the public college to be entitled to exemption. *Id.* at 7-8.

The Tenth District Court of Appeals reached the same conclusion in *Bexley Village*, supra. Rejecting the application of case law<sup>11</sup> under R.C. 5709.08 and R.C. 5709.12 that required a unity of ownership and use, the court stated:

“Neither of these cases are applicable to the statute at issue, because R.C. 5709.07 does not use the word ‘belonging,’ but instead uses the word ‘connected.’ The words ‘connected with,’ as used in R.C. 5709.07, clearly have a broader meaning than the words ‘belonging to.’

“\*\*\*

“We conclude that unity of ownership and use is not required to satisfy the ‘connected with’ element of R.C. 5709.07. Since the property was used in furtherance of the university’s educational purpose, it is connected with the university within the meaning of the statute.” Id. at 309-310.

See, also, *Anderson/Maltbie Partnership v. Levin*, 127 Ohio St.3d 178, 2010-Ohio-4904. We agree. As the parties do not dispute that the portions of the subject properties leased by CSCC are used for classrooms, offices, lab space, and related school activities, we find they are “connected with” the community college and therefore entitled to exemption under R.C. 5709.07(A)(4).

However, we must separately analyze the exemption of the parking lot space leased by CSCC and located on parcel number 010-215347-00, owned by SHSCC. Citing long-standing precedent, the court in *Cleveland State*, supra, held that, under R.C. 5709.07(A)(4), land connected with a public college, as opposed to buildings connected therewith, is only entitled to exemption if it is not “used with a

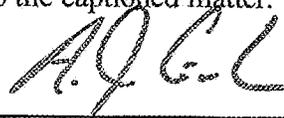
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<sup>11</sup> Specifically, the court found that *Carney v. Cleveland City School Dist. Pub. Library* (1959), 169 Ohio St. 65, and *Evans Investment Co. v. Limbach* (1988), 51 Ohio App.3d 104, were inapplicable.

view to profit.” Id. at 9-12 (citing *Denison Univ. v. Bd. of Tax Appeals* (1965), 2 Ohio St.2d 17, and *Kenyon College v. Schnebly* (1909), 12 Ohio C.C. (N.S.) 1): CSCC leases property from SHSCC pursuant to a for-profit lease, at a rate of \$11,000 per month. Appellants’ Brief at 2. Clearly the land is used with a view to profit; we therefore find that it is not entitled to exemption. Cf. *Bexley Village*, supra (holding that parking lot leased for \$1 per year to college was exempt).

Based upon the foregoing, we find that the portions of the buildings located on the subject parcels that are leased by CSCC, but not the land, are entitled to exemption under R.C. 5709.07(A)(4). Accordingly, we hereby reverse in part the final determinations of the Tax Commissioner, consistent with the decision announced herein.

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.



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A.J. Groeber, Board Secretary