

IN THE SUPREME COURT OF OHIO

Equity Dublin Associates and SHSCC#2 :  
Limited Partnership, :

Appellees, :

v. :

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, :

Appellants.

Case No. 2014 - 0168

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

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**MERIT BRIEF OF APPELLANTS BOARD OF EDUCATION OF THE  
COLUMBUS CITY SCHOOL DISTRICT AND BOARD OF EDUCATION OF THE  
DUBLIN CITY SCHOOL DISTRICT**

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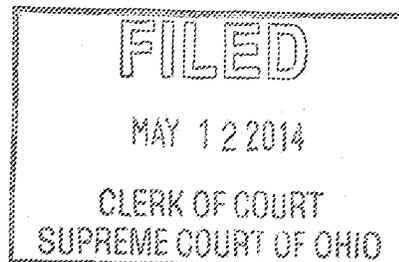
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## STATEMENT OF THE CASE AND FACTS

This is an appeal from the Ohio Board of Tax Appeals (BTA) involving exemption claims made by Equity Dublin Associates, aka Equity Dublin, an Ohio Limited Partnership (“EDA”) and SHSCC#2 Limited Partnership (“SHSCC”). EDA and SHSCC are both for-profit limited partnerships who lease a portion of their commercial office buildings to Columbus State Community College (“Columbus State”) under commercial, for-profit leases. EDA owns Parcel Number 273-001709 which is located at 6175–6190 Shamrock Court in the City of Dublin. During the tax years in question (tax years 2002, 2003, 2004 and 2005), EDA leased 13,545 sq. ft. of the 116,000 sq. ft. office building to Columbus State for use as classrooms, office space, labs and other related school activities. Columbus State was not contractually obligated to pay real property taxes on the portion of the property it leased from EDA.

SHSCC owns Parcel Number 010-215437 which is located at 4445–4455 Professional Parkway in the City of Columbus. During the tax years in question (tax years 2002, 2003, 2004 and 2005), SHSCC leased approximately 12,000 sq. ft. of its property to Columbus State for use as classrooms, office space, labs and other related school activities. Pursuant to the terms of this lease, Columbus State voluntarily assumed responsibility for payment of the portion of real property taxes owed on the property it leased from SHSCC.

On April 14, 2004, Columbus State filed applications for real property tax exemption with the Franklin County Auditor seeking exemption for the property it leased from EDA and SHSCC. Columbus State subsequently withdrew these applications, presumably because Columbus State lacked standing to file the exemption applications as it was not the owner of the

property for which exemption was claimed.<sup>1</sup> EDA and SHSCC subsequently filed applications for real property tax exemption with the Franklin County Auditor, seeking the same exemption previously claimed by Columbus State for tax years 2002, 2003, 2004 and 2005. The Boards of Education of the Dublin and Columbus City Schools timely entered objections to the respective exemption applications. The Tax Commissioner denied EDA and SHSCC's applications. EDA, SHSCC and Columbus State appealed the Commissioner's determinations. The BTA dismissed Columbus State as a party since it was not the owner of the subject properties, did not have standing to file the exemption applications which initiated the proceedings and could not have participated in the proceedings before the Commissioner. The Board of Tax Appeals reversed the Commissioner's determinations, holding that the for-profit owners could claim real property tax exemption for the portions of their properties leased to Columbus State under R.C. 5709.07(A)(4) because the properties leased by the private for-profit lessors to Columbus State were "connected with" Columbus State.

## LAW AND ARGUMENT

### Introduction

The fundamental principles governing real property tax exemption in this State have always been that real estate taxes are levied to serve the "public benefit" and a tax exemption must, likewise, provide "a benefit to the public generally commensurate with the loss of tax revenue." *Philada Home Fund v. Board of Tax Appeals* (1966), 5 Ohio St. 2d 135, 34 Ohio Op.

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<sup>1</sup> R.C. 5715.27 was amended by House Bill 160, effective June 20, 2008. The amendments were remedial in nature and applied to any exemption application pending with the Tax Commissioner, the Board of Tax Appeals, the Court of Appeals, or the Supreme Court on the effective date of the amendment. Accordingly, the owner, certain vendees, the beneficiary of a trust and lessees with an initial term of at least thirty years have standing to file exemption applications during the years in question. However, Columbus State lacked standing under the amended version of R.C. 5715.27, since the initial term of Columbus State's lease with both EDA and SHSCC was ten years.

2d 262, 214 N.E.2d 431. The principle was most recently cited by this Court in *First Baptist Church of Milford, Inc. v. Wilkins*, 110 Ohio St. 3d 496, 497; 2006-Ohio-4966, as follows at ¶10: “In *White Cross Hosp. Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199, 201, 67 O.O.2d 224, 311 N.E.2d 862, the court stated that when an exemption is granted by the General Assembly, “[t]he rationale justifying a tax exemption is that there is a present benefit to the general public from the operation of the charitable institution sufficient to justify the loss of tax revenue.” This is true because it is essential to maintain “equality in the burden of taxation.” *Lutheran Book Shop v. Bowers* (1955), 164 Ohio St. 359, 362, 58 O.O. 148, 131 N.E.2d 219.

The tax exemption of the properties involved in this appeal will provide no “present benefit to the general public sufficient to justify the loss of tax revenue” but, instead, will simply cause a loss of tax revenue and increase the tax burden on all other taxpayers. In this case, the only significant consequence of the tax exemption granted by the BTA is to relieve EDA and SHSCC, both private, for-profit commercial property owners, of their obligation to pay the real property taxes levied against their property, thereby creating a loss of tax revenue to the Columbus and Dublin City School Districts. What possible “benefit” does this provide to the general public?

**Proposition of Law No. 1:**

**Property Owned By A For-Profit Owner/Lessor And Leased To A Community College Does Not Qualify For Exemption Under R.C. 3354.15.**

R.C. 3354.15 provides a real property tax exemption to community college districts for property acquired, owned, or used by the community college district. That section provides:

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, or upon the income therefrom, and the bonds issued pursuant to provisions of such sections and the transfer of the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation within the state.

Both the Tax Commissioner and the Board of Tax Appeals determined that EDA and SHSCC were not entitled to claim exemption for the property leased to Columbus State under R.C. 3354.15. The BTA specifically held that “[a]s EDA and SHSCC are clearly not community college districts, they are not entitled to an exemption under R.C. 3354.15.” The BTA’s finding is well supported and should be affirmed by the Court.

In *Athens County Auditor v. Wilkins* (2005), 106 Ohio St.3d 293; 2005-Ohio-4986, a for-profit property owner sought exemption for privately owned dormitories used by the students of a technical college. The Court denied exemption under R.C. 3357.14, which contains language similar to R.C. 3354.15. R.C. 3357.14 provides a real property tax exemption for technical college districts for property acquired, owned, or used by the technical college district. Specifically, the Court determined that a for-profit property owner could not claim exemption under R.C. 3357.14, holding:

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.

In so holding, the Court analyzed the intent of the General Assembly in enacting provisions such as R.C. 3357.14, stating:

L&L has no education-related mission; it exists to earn a profit by renting temporary housing accommodations to students attending 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.

The Court compared the exemption provided in R.C. 3357.14 for technical college districts to the exemption provided in R.C. 3354.15 for community college districts<sup>2</sup>, stating:

None of these statutes, however, exempt private landowners from paying taxes on property located near, or even on, a college or university campus. *Id.*

Since the Court has specifically determined that the purpose of R.C. 3357.14 is not to shelter private property owners such as EDA and SHSCC from their tax liabilities, the subject property owned by EDA and SHSCC clearly does not qualify for exemption.

EDA and SHSCC claim that the subject properties are exempt because Columbus State, the lessee, is prohibited from paying real property tax under R.C. 3354.15. The BTA properly rejected this argument. First, there is nothing in EDA's lease with Columbus State requiring Columbus State to pay real property tax on the property leased from EDA. Columbus State did not voluntarily assume the obligation to pay real property tax on the property and, therefore, even under EDA's own argument, R.C. 3354.15 clearly does not provide an exemption for the property owned by EDA.

By virtue of the terms of the lease, SHSCC attempted to transfer its obligation to pay real property taxes to the Columbus State during the period in question. Under the terms of this lease, Columbus State voluntarily assumed the obligation to pay real property taxes on the subject property during the period in question. The BTA correctly determined that Columbus State's voluntary assumption of the real property tax obligation in the lease does not equate to a requirement that Columbus State pay the real property tax on the leased property, as contemplated by R.C. 3354.15. In Ohio, real property is taxed to the owner of the property. See R.C. 319.28 and R.C. 323.13. Therefore, the legal requirement for the payment of the real

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<sup>2</sup> The Court also compared the similar tax exemptions provided in R.C. 3345.17 (state universities), R.C. 3349.17 (municipal universities) and R.C. 3355.11 (university branch districts) in their analysis.

property taxes in question falls squarely on EDA and SHSCC as the owners of the property. Accordingly, the fact that Columbus State, as lessee, voluntarily assumed liability for real property taxes that it is statutorily relieved from paying does not render the leased property exempt from taxation. 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 the taxes would then revert to EDA and SHSCC, as owners of the properties.

Applying the rationale of the Court in *Athens County, supra*, EDA and SHSCC are for profit property owners, and are not entitled to claim the exemption provided for community colleges in R.C. 3354.15. Neither EDA nor SHSCC has an education-related mission. Both entities exist to earn a profit by leasing property pursuant to commercial leases. As the Court recognized in *Athens County, supra*, the General Assembly promulgated R.C. 3354.15's tax exemption to reduce the tax burden on community colleges; not to shelter private property owners who lease property to a community college for a profit pursuant to a commercial lease.<sup>3</sup>

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<sup>3</sup> The fact that the General Assembly did not intend to provide an exemption to community colleges for property leased from a for-profit lessor is further evidenced by the fact that the General Assembly did not provide an avenue for the community college to apply for exemption for property it leases from the for-profit lessor. As set forth above, under R.C. 5715.27, Columbus State lacked standing to file an exemption application and, therefore, was prohibited from participating in these proceedings. Clearly, the legislature did not intend to provide an exemption for community colleges for leased property, but then not provide an avenue for the community college to apply for this exemption.

**Proposition of Law No. 2:**

**R.C. 3354.15 Provides The Exclusive Exemption For Property Acquired, Owned Or Used By A Community College District And That Section Is Therefore The Only Appropriate Statutory Provision Under Which To Consider An Exemption Claim For Such Property.**

Despite the fact that neither EDA nor SHSCC claimed exemption under R.C. 5709.07(A)(4)<sup>4</sup>, the BTA determined that the properties owned by EDA and SHSCC were exempt under the more general provision of R.C. 5709.07(A)(4). For the reasons set forth below, the decision of the BTA was erroneous and must be reversed.

In order to qualify for exemption, EDA and SHSCC must establish that they are entitled to exemption pursuant to R.C. 3354.15, as that is the exemption statute specifically applicable to property acquired, owned or used by a community college district. In *Rickenbacker Port Auth. v. Limbach* (1992), 64 Ohio St.3d 628, 597 N.E.2d 494, Rickenbacker Port Authority's (RPA) exemption claim had previously been denied by the BTA under R.C. 4582.46, which provides an exemption for port authority property, provided that the property is not subject to any lease of a term of a year or more. RPA's land was subject to a seventy-year lease. Before the Court, RPA claimed exemption under R.C. 5709.08 (exemption of government and public property) and R.C. 5709.121 (exemption for property used exclusively for charitable purpose). The Court denied RPA's claimed exemption, stating that allowing a claim for exemption under the more general provisions of R.C. 5709.08 and/or R.C. 5709.121 would effectively negate the limitation set forth in R.C. 4582.46. Specifically, the Court stated:

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<sup>4</sup> Both EDA and SHSCC claimed exemption under R.C. 3354.15(a) and R.C. 3358.10 on their applications for exemption. The Commissioner similarly considered exemption under R.C. 5709.07(A)(4), despite the fact that neither property owner claimed exemption under this statute. The Commissioner determined that the subject properties did not qualify for exemption under this statute.

We interpret R.C. 4582.46 to provide the exclusive exemption for property owned by a port authority. On one hand, R.C. Chapter 4582 grants extensive powers to port authorities to develop their property. Yet, R.C. 4582.46 clearly denies the tax exemption for properties owned by port authorities what are leased for more than one year. If a port authority could exempt its property under a statute other than R.C. 4582.46, the one year limitation contained therein would have no effect. We decline to render meaningless such a clear legislative restriction concerning tax-exempt property. *Id.* at 631.

Citing *Rickenbacker*, the Court affirmed the “general principle that a property owner may not evade the limitations imposed with respect to a specific tax exemption by claiming exemption under a broad reading of other exemption statutes” in *Church of God in Northern Ohio, Inc. v. Levin* (2009), 124 Ohio St. 3d 36; 2009-Ohio-5939 at ¶ 30.

Similarly, R.C. 3354.15 provides an exclusive exemption for property acquired, owned or used by a community college district. R.C. Chapter 3354 grants a broad exemption prohibiting community college districts from paying real property tax on any property acquired, owned or used by the community college district. However, R.C. 3354.15 clearly provides the benefit of the exemption only to the community college district. The rationale for providing an exemption to community college districts fits squarely within the fundamental principles governing real property tax exemption which, as set forth above, have always been that real estate taxes are levied to serve the “public benefit” and a tax exemption must provide “a benefit to the public generally commensurate with the loss of tax revenue.” *Philada Home Fund, supra*. If property acquired, owned or used by a community college district could be exempt under a statute other than R.C. 3354.15, the limitation on the availability of the exemption to community college districts contained therein would have no effect. As it did in *Rickenbacker*, this Court should decline to render meaningless such a clear legislative limitation.

Subsequently, in *Athens County, supra*, the Court reaffirmed that a property owner must qualify for tax exemption under the statute specifically applicable to the property, stating:

We turn now to L & L's contention that it is entitled to property tax exemption pursuant to R.C. 5709.07(A)(4). In reviewing this claim below, the BTA, citing *Rickenbacker Port Auth. v. Limbach* (1992), 64 Ohio St.3d 628, 631, 597 N.E.2d 494, concluded that because "a property, to be exempt, must qualify under the criteria of the statute specifically applicable to that property" and because R.C. 3357.14 is the only statutory provision directly related to property-tax exemptions for technical colleges, R.C. 5709.07(A)(4) cannot provide L & L with a property-tax exemption. While we agree that R.C. 3357.14 is the only appropriate statutory provision under which to consider L & L's application for exemption, like the BTA, we will address L & L's argument regarding the applicability of R.C. 5709.07(A). *Id.* at ¶ 13.

Accordingly, the Court determined that the property owner had to satisfy the requirements of R.C. 3357.14, the specific statute granting exemption for property acquired, owned or used by a technical college district, not the more general provision of R.C. 5709.07(A)(4), in order to qualify for exemption.

In this case, EDA and SHCC filed exemption applications seeking a real property tax exemption for property used by a community college district and, therefore, R.C. 3354.15 is the only appropriate statutory provision under which to consider EDA and SHSCC's applications for exemption in this case. Based upon the clearly intended legislative limitation that only the community college districts, not private land owners, benefit from the exemption on property acquired, owned or used by the community college district, neither the property owned by EDA nor SHSCC qualifies for the exemptions claimed by EDA and SHSCC.

**Proposition of Law No. 3:**

**The Exemption Provided in R.C. 5709.07(A)(4) Is Not Available to Community College's Leasehold Estate in Real Property Pursuant To R.C. 5709.07(B).**

The BTA held that the properties in question are exempt from taxation under R.C. 5709.07(A)(4) because they are "connected with" a community college. However, in so holding, the BTA ignored the clear statutory limitation placed on R.C. 5709.07(A)(4)'s exemption by R.C. 5709.07(B). R.C. 5709.07(B) provides that the exemptions provided in R.C. 5709 shall not

extend to leasehold estates, except in certain limited circumstances, none of which are applicable herein.

R.C. 5709.07(A)(4) provides, in pertinent part:

(A) The following property shall be exempt from taxation:

(4) Public colleges and academics and all buildings connected with them, and all lands connected with public institutions of learning, not used with a view to profit, \*\*\*.

The exemption provided by this section, however, is limited by R.C. 5709.7(B), which provides<sup>5</sup>:

(B) This section shall not extend to leasehold estates or real property held under the authority of a college or university of learning in this state; but leaseholds, or other estates of property, real or personal, the rents, issues, profits and incomes of which is given to a municipal corporation, school district, or subdistrict in this state exclusively for the use, endowment, or support of schools for the free education of youth without charge shall be exempt from taxation as long as such property, or their rents, issues, profits, or income of the property is used and exclusively applied for the support of free education by such municipal corporation, district, or subdistrict.

Accordingly, the exemption provided in R.C. 5709.07(A)(4) for buildings connected with public colleges does not apply to leasehold estates, such as those held by Columbus State in this case.

The sole reason stated by the BTA for rejecting the plain language of R.C. 5709.07(B) is that “leased property has been found to be exempt when it use qualified under R.C. 5709.07(A)(4).”

As support, the BTA cites *Cleveland State Univ. v. Perl* (1971), 26 Ohio St.2d 1 and *Bexley Village, Ltd. v. Limbach*, 68 Ohio App.3d 306 (10<sup>th</sup> Dist. 1990). However, both *Cleveland State* and *Bexley Village* are distinguishable from this case and, therefore, the BTA’s reliance upon them is misplaced.

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<sup>5</sup> R.C. 5709.07(B) was amended, effective June 30, 2005, to provide that leasehold estates in certain state university property may qualify for exemption under R.C. 5709.07(A)(4). Even if that amendment was applicable to the tax years in question, the amendment would have no impact on whether the subject leasehold estates of a community college qualify for exemption.

In *Cleveland State Univ. v. Perk* (1971), 26 Ohio St.2d 1, 268 N.E.2d 577, Cleveland State University (“CSU”) leased seven relocatable buildings from Modulux, Inc. a for-profit corporation. The buildings were placed on CSU’s campus, used for classrooms and faculty offices and, at the end of the lease term, were removed and returned to Modulux. After finding that CSU had standing to file the underlying exemption application, the Court held:

We conclude, therefore, that under the provisions of R.C. 5709.07, exempting from taxation “public colleges and academies and all buildings connected therewith,” buildings located on the campus of a state university and used exclusively for classrooms and faculty offices are exempt from taxation, even though such buildings are not owned by the university, but are leased for a term of years, with provision for rental therefor, from a corporation for profit.” (Emphasis added.) *Id.* at 8.

In *Anderson/Maltbie Partnership v. Levin*, 127 Ohio St.3d 178, 2010-Ohio-4904, the Court considered the applicability of the public schoolhouse exemption in R.C. 5709.07(A)(1) to property leased to an Ohio community school. Therein, the Court recognized the restrictive nature of its holding in *Cleveland State*, stating:

First, *Cleveland State* involved temporary modular structures installed on the university’s land. Both the reasoning and the syllabus law of that case restrict *Cleveland State*’s holding to that particular situation. *Id.* at ¶ 24.

The Court went on to hold that the leased property did not qualify for exemption under R.C. 5709.07(A)(1). In so doing, the Court recognized the limitation imposed by R.C. 5709.07(B):

We note, however, that there may be situations in which an exemption could be allowed under R.C. 5709.07 even though the property generated rental income for the owner. See R.C. 5709.07(B) (possibility of exemption for leased property when income goes to municipal corporation or school district.). *Id.* at fn. 4.

Similarly, in *Case W. Reserve Univ. v. Wilkins*, 105 Ohio St. 3d 276; 2005-Ohio-1649, the Court again recognized R.C. 5709.07(B)’s limitation on the exemptions provided in R.C. 5709.07, stating:

Although it may not be necessary to the denial of the exemption in this case, we feel we would be remiss if we did not discuss R.C. 5709.07(B), which provides: “This section shall not extend to leasehold estates or real property held under the authority of a college or university of learning in this state. *Id.* at ¶ 46.

The Court determined that R.C. 5709.07(B) precluded an exemption in that case because the corporate lessee held the property under the authority of *Case Western Reserve*. In so holding, the Court stated:

Colleges and academies have been granted an extremely broad exemption by R.C. 5709.07. However, the General Assembly placed limits on that exemption by providing that it does not extend to leasehold estates or real property held under authority of a college or university. *Id.* at ¶ 48.

The BTA also relied upon the Tenth District Court of Appeals decision in *Bexley Village, Ltd. v. Limbach*, 68 Ohio App.3d 306 (10th Dist. 1990) in failing to apply the plain meaning of R.C. 5709.07(B). However, that case is distinguishable as well. In *Bexley Village*, the Court determined that vacant land leased by Capital was exempt pursuant to R.C. 5709.07. However, this case was distinguishable in that it involved the exemption of a parking lot leased by Capital and for which Capital applied for exemption.

In addition, both cases relied upon by the BTA were decided prior to the Court’s decision in *Athens County Auditor v. Wilkins* (2005), 106 Ohio St.3d 293, wherein the Court stated:

In examining the tax exemption now codified in R.C. 5709.07(A)(4), Ohio courts have repeatedly determined that the exemption must benefit the public college itself, not a separate private entity. \*\*\*

Although L & L has presented evidence that the college provides some administrative and marketing support to the dormitories, it cannot overcome its status as a private, for-profit company not engaged in the business of education. As indicated above, the General Assembly has never demonstrated any intent to provide private parties with such tax exemption and neither this court nor the BTA has ever interpreted these statutes in the manner suggested by L & L. *Id.* at ¶ 21-22.

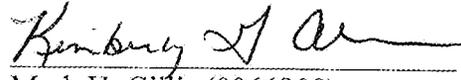
In both *Cleveland State* and *Bexley Village*, the universities applied for the claimed exemption and therefore received the benefit of the claimed exemption. This is in stark contrast to the facts in this case, where the exemption is sought by and would exclusively benefit the private, for-profit landowners.

Based upon the foregoing, the BTA clearly erred in failing to apply the plain meaning of R.C. 5709.07(B) as a limitation to the exemption provided in R.C. 5709.07(A)(4). Since Columbus State holds a leasehold estate in the subject properties, the exemption provided in R.C. 5709.07(A)(4) does not apply.

### CONCLUSION

For the reasons set forth herein, this Court is respectfully requested to affirm the decision of the Board of Tax Appeals that EDA and SHSCC, for-profit owners/lessors, cannot claim exemption under R.C. 3354.15 for the property they lease to Columbus State pursuant to a commercial, for-profit lease. In addition, the Boards of Education of the Columbus and Dublin City School Districts respectfully request this Court to determine that R.C. 3354.15 provides the exclusive exemption for property acquired, owned or used by a community college district and that section is therefore the only appropriate statutory provision under which to consider EDA and SHSCC's exemption claims. In the alternative, the Boards of Education of the Columbus and Dublin City School Districts respectfully request this Court to determine that the exemption provided in R.C. 5709.07(A)(4) is not available to Columbus State's leasehold estate in the subject properties pursuant to R.C. 5709.07(B).

Respectfully submitted,



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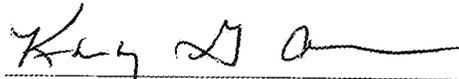
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing merit brief 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 regular mail, return receipt requested, with postage prepaid, this 12th day of May, 2014.



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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. 14-0168

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 THE BOARD OF EDUCATION OF THE COLUMBUS CITY  
SCHOOL DISTRICT

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**FILED**  
JAN 30 2014  
BOARD OF TAX APPEALS  
COLUMBUS, OHIO

**FILED**  
JAN 30 2014  
CLERK OF COURT  
SUPREME COURT OF 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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Board of Education of the Dublin

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.

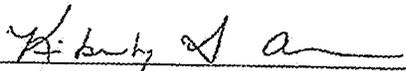
(5) The BTA erred in holding that for-profit property owners are entitled to claim exemption for properties leased by Columbus State Community College when Columbus State Community College was not obligated to pay the real property taxes at issue. In such a case, any tax exemption

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

OHIO BOARD OF TAX APPEALS

Equity Dublin Associates and SHSCC #2  
Limited Partnership,

Appellants,

vs.

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.

CASE NOS. 2011-Q-1792  
and 2011-Q-1795

(REAL PROPERTY TAX EXEMPTION)

DECISION AND ORDER

APPEARANCES:

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Entered DEC 3 1 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

<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.’

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“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

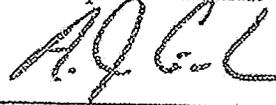
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<sup>11</sup> Specifically, the court found that *Carney v. Cleveland City School Dist. Pub. Library* (1959), 169 Ohio St. 65, and *Evans Investment Co. v. Limbach* (1988), 51 Ohio App.3d 104, were inapplicable.

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



provision directly related to property-tax exemptions for community colleges, the more general provision for 'public colleges' in R.C. 5709.07(A)(4) cannot provide the appellant commercial real property owners/lessors with a property-tax exemption," citing *Athens Cty. Auditor v. Wilkins*, 106 Ohio St.3d 293, 2005-Ohio-4986. Motion at 2. Second, the commissioner argues that this board could not have granted exemption under R.C. 5709.07(A)(4) because of the language of R.C. 5709.07(B). We proceed to consider the matter upon the commissioner's motion and appellants' response thereto.

The commissioner's first ground for reconsideration is hereby denied. As this board explained in its decision and order, R.C. 3354.15 is not applicable at all to the properties at issue in this matter, which are owned by private, for-profit corporations: "As EDA and SHSCC are clearly not community college districts, they are not entitled to an exemption under R.C. 3354.15." *Equity Dublin Assoc. v. Testa* (Dec. 31, 2013), BTA Nos. 2011-1792, 1795, unreported, at 7. Accordingly, the court's statement in *Athens*, supra at ¶13, that a property must qualify for exemption under the statute specifically applicable thereto, is inapposite; R.C. 3354.15 is not applicable.

The commissioner's second ground for reconsideration is also denied. While the commissioner argues that the directive in R.C. 5709.07(B) precludes any exemption of leased property under R.C. 5709.07(A)(4), leased property has been found to be exempt when it use qualified under R.C. 5709.07(A)(4).<sup>1</sup> See, e.g.,

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<sup>1</sup> Notably, while the language of other sections of R.C. 5709.07 contain language precluding exemption of property that is "leased or otherwise used with a view to profit," see R.C. 5709.07(A)(2),

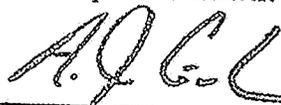
*Cleveland State Univ. v. Perk* (1971), 26 Ohio St.2d 1 (finding modular buildings leased by a university from a for profit corporation exempt); *Bexley Village, Ltd. v. Limbach*, 68 Ohio App.3d 306 (10<sup>th</sup> Dist. 1990) (finding land leased by a university from a for profit corporation for use as a parking lot exempt). Indeed, in *Cleveland State*, supra, the court specifically held:

“We conclude, therefore, that under the provisions of R.C. 5709.07, exempting from taxation ‘public colleges and academies and all buildings connected therewith,’ buildings located on the campus of a state university and used exclusively for classrooms and faculty offices are exempt from taxation, *even though such buildings are not owned by the university, but are leased for a term of years, with provision for rental thereof, from a corporation for profit.*” Id. at 12. (Emphasis added.)

As the commissioner notes in his motion, this board is bound by decisions of the Supreme Court as controlling authority.

Based upon the foregoing, the motion of the Tax Commissioner is hereby denied.

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

Footnote contd. \_\_\_\_\_  
R.C. 5709.07(A)(3), R.C. 5709.07(A)(4) only precludes exemption of property “used with a view to profit.”

### **3354.15 Exemption from taxes or assessments.**

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, or upon the income therefrom, and the bonds issued pursuant to provisions of such sections and the transfer of the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation within the state.

Effective Date: 10-20-1961

## **5709.07 Exemption of schools, churches, and colleges.**

(A) The following property shall be exempt from taxation:

(1) Real property used by a school for primary or secondary educational purposes, including only so much of the land as is necessary for the proper occupancy, use, and enjoyment of such real property by the school for primary or secondary educational purposes. The exemption under division (A)(1) of this section does not apply to any portion of the real property not used for primary or secondary educational purposes.

For purposes of division (A)(1) of this section:

(a) "School" means a public or nonpublic school. "School" excludes home instruction as authorized under section 3321.04 of the Revised Code.

(b) "Public school" includes schools of a school district, STEM schools established under Chapter 3326. of the Revised Code, community schools established under Chapter 3314. of the Revised Code, and educational service centers established under section 3311.05 of the Revised Code.

(c) "Nonpublic school" means a nonpublic school for which the state board of education has issued a charter pursuant to section 3301.16 of the Revised Code and prescribes minimum standards under division (D)(2) of section 3301.07 of the Revised Code.

(2) Houses used exclusively for public worship, the books and furniture in them, and the ground attached to them that is not leased or otherwise used with a view to profit and that is necessary for their proper occupancy, use, and enjoyment;

(3) Real property owned and operated by a church that is used primarily for church retreats or church camping, and that is not used as a permanent residence. Real property exempted under division (A)(3) of this section may be made available by the church on a limited basis to charitable and educational institutions if the property is not leased or otherwise made available with a view to profit.

(4) Public 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, including those buildings and lands that satisfy all of the following:

(a) The buildings are used for housing for full-time students or housing-related facilities for students, faculty, or employees of a state university, or for other purposes related to the state university's educational purpose, and the lands are underneath the buildings or are used for common space, walkways, and green spaces for the state university's students, faculty, or employees. As used in this division, "housing-related facilities" includes both parking facilities related to the buildings and common buildings made available to students, faculty, or employees of a state university. The leasing of space in housing-related facilities shall not be considered an activity with a view to profit for purposes of division (A)(4) of this section.

(b) The buildings and lands are supervised or otherwise under the control, directly or indirectly, of an organization that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended, and the state university has entered into a qualifying joint use agreement with the organization that entitles the students, faculty, or employees of the state university to use the lands or buildings;

(c) The state university has agreed, under the terms of the qualifying joint use agreement with the organization described in division (A)(4)(b) of this section, that the state university, to the extent applicable under the agreement, will make payments to the organization in amounts sufficient to maintain agreed-upon debt service coverage ratios on bonds related to the lands or buildings.

(B) This section shall not extend to leasehold estates or real property held under the authority of a college or university of learning in this state; but leaseholds, or other estates or property, real or personal, the rents, issues, profits, and income of which is given to a municipal corporation, school district, or subdistrict in this state exclusively for the use, endowment, or support of schools for the free education of youth without charge shall be exempt from taxation as long as such property, or the rents, issues, profits, or income of the property is used and exclusively applied for the support of free education by such municipal corporation, district, or subdistrict. Division (B) of this section shall not apply with respect to buildings and lands that satisfy all of the requirements specified in divisions (A) (4)(a) to (c) of this section.

(C) For purposes of this section, if the requirements specified in divisions (A)(4)(a) to (c) of this section are satisfied, the buildings and lands with respect to which exemption is claimed under division (A)(4) of this section shall be deemed to be used with reasonable certainty in furthering or carrying out the necessary objects and purposes of a state university.

(D) As used in this section:

(1) "Church" means a fellowship of believers, congregation, society, corporation, convention, or association that is formed primarily or exclusively for religious purposes and that is not formed for the private profit of any person.

(2) "State university" has the same meaning as in section 3345.011 of the Revised Code.

(3) "Qualifying joint use agreement" means an agreement that satisfies all of the following:

(a) The agreement was entered into before June 30, 2004;

(b) The agreement is between a state university and an organization that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended; and

(c) The state university that is a party to the agreement reported to the Ohio board of regents that the university maintained a headcount of at least twenty-five thousand students on its main campus during the academic school year that began in calendar year 2003 and ended in calendar year 2004.

Amended by 129th General Assembly File No.28, HB 153, §101.01, eff. 9/29/2011.

Effective Date: 05-31-1988; 06-30-2005

**Related Legislative Provision:** See 129th General Assembly File No.28, HB 153, §757.80.