Supreme Court of Ohio Clerk of Court - Filed January 28, 2015 - Case No. 2014-1798

IN THE SUPREME COURT OF OHIO

TALAWANDA CITY SCHOOL DISTRICT BOARD OF EDUCATION	:	**CASE NO. 2014-1798**
Appellant,	:	
vs.	:	**ON APPEAL FROM THE OHIO BOARD OF TAX APPEALS**
OHIO DEPARTMENT OF TAXATION, ET AL.	:	**BTA CASE NO. 2012-A-1224**
Appellees	:	

MERIT BRIEF OF APPELLANT TALAWANDA CITY SCHOOL DISTRICT BOARD OF EDUCATION

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STATEMENT OF FACTS

This case concerns the Board of Education of the Talawanda City School District's (the "Board of Education") attempt to obtain a real property tax exemption under R.C. 3313.44. The Board of Education purchased the subject property in 2009 after it successfully passed a bond issue for the construction of a new high school. (Supp. 4, (Tr. 12-13))[1] The Board of Education acquired five separate parcels that total approximately 154 acres. (Supp. 4, (Tr. 12-13)) The Board of Education filed an Application for Real Property Tax Exemption and Remission (the "Application") with the Butler County Auditor on January 26, 2010 seeking tax exemption under R.C. 3313.44, 5709.07, and 5709.08 beginning with the 2010 tax year for the five parcels. (Supp. 16) The five parcels were eventually consolidated into one parcel, specifically Butler County Auditor Parcel No. H4100-134-000-015. (Supp. 5, 6 (Tr. 14, 20))

As part of its purchase, the Board of Education allowed the prior owner to remain on a portion of the property pursuant to a lease that was originally for one year with a rental rate of $500 per month. (Supp. 6, (Tr. 18)) The Board of Education invoked an early termination clause in the lease causing the prior owner to vacate the property in September, 2009 so that construction of the new high school could commence. (Supp. 6, (Tr. 18)) That lease is not relevant to the facts of this case because it was terminated prior to the 2010 tax lien date.

The Board of Education later entered into a lease with Jim Gifford, a local farmer.[2] (Supp. 6, 7 (Tr. 20-22), Supp. 16) This lease permitted Mr. Gifford to farm 34 acres of Butler County Parcel H3410-038-000-012 at the yearly rate of $65.00 per acre ($2,210). (Supp. 6, 7 (Tr. 20-22)) Mr. Gifford planted corn and soybeans and farmed the property for a short period of

[1] The Supplement to Appellant's Brief will hereinafter be referred to as "Supp".
[2] The Tax Commissioner's Final Determination of March 14, 2012 incorrectly stated that the property in question was leased to Mr. Erik for farming purposes. The property was leased for farming purposes to Jim Gifford. (Supp. 6, (Tr. 21))

time. (Supp. 7, (Tr. 22)) Mr. Gifford and the Board of Education agreed to terminate the lease early because 34 acres was not enough land for Mr. Gifford to farm and there had been some encroachment onto the land in question by the crew that was constructing the new high school. (Supp. 7, (Tr. 24))

The Board of Education then entered into a new lease with another local farmer, Adam Smith. (Supp. 7, (Tr. 24-25)) Mr. Smith's lease began in June, 2010 and allowed him to farm 17 acres at the yearly rate of $65.00 per acre. (Supp. 7, 8 (Tr. 25-26), Supp. 18) This was a two year lease that expired but was continued with on a holdover basis. (Supp. 11, (Tr. 39)) The Board of Education and Mr. Smith then entered into a new lease in April, 2013 for a three year period of time. (Supp. 11, (Tr. 38-39), Supp. 22)

The Tax Commissioner granted in part and denied in part the Board of Education's Application. (Appx. 8) The Tax Commissioner's Final Determination denied exempt status to the portion of the subject property that was subject to the farm leases and was not being used for a public or school purpose. (Appx. 8)

The Board of Education appealed the Tax Commissioner's decision to the Ohio Board of Tax Appeals (the "BTA") and argued that it was entitled to exemption pursuant to the plain language of R.C. 3313.44. (Appx. 5) The Board of Education argued that the Tax Commissioner wrongly ignored a 1931 Constitutional amendment and subsequent Ohio Supreme Court decisions when it insisted that the property must be used for a public purpose in order to be entitled to exemption. (Appx. 5) The BTA affirmed the decision of the Tax Commissioner on September 26, 2014. (Appx. 5) The BTA concluded that "not only must title to a subject property be vested in a school board, but also that the property be used for school purposes."

(Appx. 5) The Board of Education filed a timely appeal with this Court on October 17, 2014. (Appx. 1)

ARGUMENT

This Court reviews BTA decisions to determine whether they are reasonable and lawful. R.C. 5717.04; *Columbus City School District Board of Education v. Zaino*, 90 Ohio St.3d 496, 497, 739 N.E.2d 783 (2001). This Court "will not hesitate to reverse a BTA decision that is based on an incorrect legal conclusion." *Gahanna-Jefferson Local School District Board of Education*, 93 Ohio St.3d 231, 232, 754 N.E.2d 789 (2001). As will be demonstrated, the BTA's decision was unreasonable and unlawful as it was contrary to the plain language of R.C. 3313.44.

Proposition of Law No. 1:

Section 3313.44 of the Ohio Revised Code exempts from taxation all real property owned by a board of education regardless of its use.

Section 5709.01 of the Revised Code provides that "[a]ll real property in this state is subject to taxation, except only such as is expressly exempted therefrom." Section 3313.44 of the Ohio Revised Code provides a property tax exemption specifically for property owned by a public board of education. No other qualifications or limitations are included in the statute. Nonetheless, the Tax Commissioner and BTA denied exemption for 34 acres of property owned by the Board of Education.

The terms of R.C. 3313.44 are quite simple:

> Real or personal property owned by or leased to any board of education for a lease term of at least fifty years shall be exempt from taxation.

Section 3313.44 of the Revised Code was amended by Senate Bill 181 effective September 13, 2010. 2010 Am.Sub.S.B. No. 181. The prior version of R.C. 3313.44 read:

> Real or personal property vested in any board of education shall be exempt from taxation and from sale on execution or other writ or order in the nature of an execution.

The Board of Education's Application for tax exemption was filed on January 26, 2010, prior to the effective date of Senate Bill 181. (Supp. 16) However, Senate Bill 181 provided that the amendment is remedial in nature and applies to any tax years at issue in pending applications for exemption. Section 5 of Senate Bill 181 reads:

> SECTION 5. That section 3313.44 of the Revised Code, as amended by this act, is remedial in nature and applies to tax years at issue in any application for exemption from taxation pending before the Tax Commissioner, Ohio Board of Tax Appeals, any Court of Appeals, or the Supreme Court on the effective date of this act and to the property that is the subject of the application. 2010 Am.Sub.S.B. No. 181, Section 5.

The Board of Education's Application for tax exemption was pending before the Tax Commissioner on the effective date of Senate Bill 181. Accordingly, the amended version of R.C. 3313.44 clearly applies in this case. Even if the prior version of R.C. 3313.44 applied, the Board of Education's argument would be no different because the subject property was "vested in" the Board of Education when it acquired title to the property in 2009.

The General Assembly, even after the 2010 amendment, clearly has decided not to include a public purpose requirement in R.C. 3313.44. It merely requires that a board of education own real property in order for the tax exemption to apply. It is improper for the Tax Commissioner and BTA to usurp the General Assembly's intent and require a specific use that is not supported by the plain language of R.C. 3313.44.

A. The 1931 amendment to Section 2 of Article XII of the Ohio Constitution and this Court's 1965 decision in *Denison University v. Board of Tax Appeals* gave the General Assembly broad authority to determine tax exemptions regardless of the use of property.

There is no longer a constitutional requirement that real property must be utilized exclusively for a public purpose in order to be entitled to exemption from real property taxes. That requirement was eliminated in 1931 by an amendment to Section 2 of Article XII of the Ohio Constitution.

The Ohio Supreme Court's 1965 decision in *Denison University v. Board of Tax Appeals*, 2 Ohio St.2d 17, 205 N.E.2d 896 (1965) thoroughly explains the history concerning the power to tax and provide exemptions from taxation. This Court noted that the entire matter of taxation was committed to the sole discretion of the General Assembly until the adoption of Ohio's present Constitution in 1851. *Id.* at 23. The General Assembly's power to tax and provide exemptions was limited by the Constitution of 1851 in Section 2 of Article XII, which the *Denison* court quoted:

> Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments …, and also all real and personal property according to its true value in money …; but burying grounds, public schoolhouses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose … may, by general laws, be exempted from taxation …. *Id.* (Emphasis sic.)

The *Denison* court noted that this constitutional language provided for only certain specified exemptions from taxation. It had previously been held by this Court that the General Assembly had no power to provide for any other tax exemptions because this section of the Constitution required the taxation of "all" property but for the few stated exemptions from

taxation. *Exchange Bank of Columbus v. O.P. Hines, Treasurer of Franklin County*, 3 Ohio St. 1 (1853).

Section 2 of Article XII was amended in 1931 to read, in relevant part:

> No property, taxed according to value, shall be so taxed in excess of one and one-half [later reduced, effective in 1934, to one] per cent of its true value in money ... [with specified exceptions where voter or municipal charter approval]. Land and improvements thereon shall be taxed by uniform rule according to value. [Certain specified public] bonds ... shall be exempt from taxation, and without limiting the general power, subject to the provisions of article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose .... *Denison,* 2 Ohio St.2d at 24.

Prior to *Denison*, some courts (including this Court) continued to read a public or charitable purpose requirement into all tax exemption statutes. For instance, in *City of Cleveland v. Board of Tax Appeals*, 153 Ohio St. 97, 91 N.E.2d 480 (1950), this Court stated in paragraph two of the syllabus:

> Section 2, Article XII of the state Constitution, providing that 'without limiting the general power, subject to the provisions of Article I of this Constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt ... public property used exclusively for any public purpose,' is a limitation upon the legislative power to enact laws exempting property, and the General Assembly may not exempt from taxation publicly owned property not used exclusively for any public purpose. (Emphasis added.)

In *Denison*, this Court noted that the above-quoted statement from *City of Cleveland*, holding that the General Assembly could not exempt public property not used exclusively for a public purpose, ignored the words "without limiting the general power ... to determine ... exemptions therefrom" found in Section 2 of Article XII. *Denison,* 2 Ohio St.2d at 27. The

Denison court noted that the words "exemptions therefrom" must mean exemptions from taxation since no other reasonable meaning can be given to them. *Id.* The *Denison* court then made a landmark change and stated the following concerning the 1931 amendment:

> It is significant that the word 'all' does not now appear before the words 'land and improvements thereon.' The presence of the word 'all' before 'property' in the 1851 version of this constitutional provision was always given by this court as the reason why the General Assembly had no power to provide for any exemptions from taxation not specifically authorized by Section 2 of Article XII. The removal of the specific requirement that 'all' real or personal property be taxed fortifies our conclusion that the people intended, as they stated, to return to the General Assembly as part of its legislative power 'the general power ... to determine ... exemptions' from taxation subject only to the limitation set forth in Article I of the Ohio Constitution, the so-called Bill of Rights. *Id.*

For the first time, this Court held in *Denison* that the 1931 amendment to Section 2 of Article XII of the Ohio Constitution empowered the General Assembly to grant any tax exemption it pleased, as long as the exemption did not violate Article I of the Ohio Constitution. *Id.* Article I of the Ohio Constitution is the Bill of Rights and is not implicated in this case. The *Denison* court then proceeded to overrule and distinguish its prior decisions that were inconsistent with its holding. *Id.* at 28.

Perhaps the most thorough judicial explanation of the evolution of tax exemptions is found in the 8th District Court of Appeals decision of *Chase v. Board of Tax Appeals*, 10 Ohio App.2d 75, 227 N.E.2d 234 (8th Dist. 1967). The *Chase* court traced the history of taxation and exemptions from 1802 through *Denison* and described the 1931 amendment as the "classification amendment." *Id.* at 78. The court noted that the amendment was intended to provide for a more flexible system of taxation. *Id.* The *Chase* court referenced the history of Ohio Supreme Court decisions through *Denison* and stated that "it is apparent that it is now established in Ohio that

the General Assembly has plenary power to select subjects for exemption." *Id.* at 79. The court further wrote that the General Assembly is limited

> only by the provisions of Article I of the Ohio Constitution [the Bill of Rights] and it is not confined to the specified classes enumerated in the proviso of Article XII, Section 2, i.e. '... burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose.' *Id.*

The Ohio Attorney General has even recognized that all real property owned by a board of education is exempt from taxation pursuant to R.C. 3313.44 "regardless of the purpose for which the property is used, consistent with the principle that a school district is empowered to acquire property only for school purposes and not for the purpose of undertaking a business enterprise." 1999 Op. Atty Gen. No. 99-007.

B. This Court's decisions subsequent to *Denison* support the Board of Education's argument.

After *Denison*, this Court was unequivocal that the actual use of property no longer had any significance as to whether an exemption applied unless the General Assembly included a specific use requirement in an exemption statute. This is demonstrated in the holdings concerning the tax exempt status of park district property.

A prior version of R.C. 5709.10 read, in relevant part: "[P]roperty belonging to park districts, created pursuant to section 1545.01 of the Revised Code, shall be exempt from taxation." Former R.C. 5709.10, (1953 HB 1). *Montgomery Cty. Park Dist. v. Kinney,* 61 Ohio St.2d 88, 90-91, 399 N.E.2d 556 (1980). As can be seen, this statute had very similar language to the current language of R.C. 3313.44, as both statutes merely require ownership in order to be entitled to an exemption.

In at least three decisions, this Court repeatedly recognized that the real property tax exemption applicable to park district property required only ownership, and that the purpose for which the property was used was of no legal significance. See, *Atwell v. Bd. Of Park Commrs.*, 2 Ohio St.2d 257, 208 N.E.2d 541 (1965); *Muskinghum v. Walton*, 21 Ohio St.2d 240, 257 N.E.2d 392 (1970); and *Montgomery Cty. Park Dist. v. Kinney*, 61 Ohio St.2d 88, 399 N.E.2d 556 (1980). In all three cases it was argued that the use of property had to be considered in addition to ownership. In every case that argument failed based on the plain language of the statute.

In *Atwell*, this Court addressed whether a golf course owned by a park district was entitled to tax exempt status. The Court quickly dispensed with any notion that the property was not entitled to exemption by simply stating:

> Section 2 of Article XII of the Ohio Constitution provides that the General Assembly shall have 'the general power ... to determine the ... exemptions' from 'taxation.' Section 5709.10, Revised Code, provides that 'property belonging to park districts, created pursuant to section 1545.01 of the Revised Code, shall be exempt from taxation.' The decision of the Board of Tax Appeals is affirmed on authority of Denison University v. Board of Tax Appeals. *Atwell*, 2 Ohio St.2d at 258.

Notably, one of the justices in *Atwell* concurred in order to clarify that his vote was "solely" on the ground that the land was used exclusively for a public purpose. *Id.* (Schneider, J., concurring).

In *Muskinghum*, this Court addressed a tax exemption sought by the Muskinghum Watershed Conservancy District under R.C. 5709.08 where it was alleged that the property may have been used for a private benefit. *Muskinghum*, 21 Ohio St.2d at 240. In concluding the *Muskinghum* decision, this Court stated that the issue of whether the land in *Atwell* was used for

an exclusively public purpose was completely irrelevant because ownership of the land by the park district "is the sole criterion for tax exemption under R.C. 5709.10." (Emphasis added.) *Id.* at 244. Thus, *Muskinghum* completely settled what might have otherwise been an open question from the *Atwell* case.

In *Kinney*, the Tax Commissioner once again attempted to persuade this Court that consideration of the actual use of property is required even when it is owned by a park district. *Kinney*, 61 Ohio St.2d 88. The property in question involved three residential facilities that were located on park district property that were rented to park district employees. *Id.* at 88. The Tax Commissioner acknowledged that the exemption based on ownership alone was validated in the *Denison* decision and that the public purpose requirement of Section 2, Article XII of the Constitution was not applicable. *Id.* at 89. Nonetheless, the Tax Commissioner argued that R.C. 5709.10 "implicitly includes an exclusive public use requirement." *Id.* The argument was based, at least in part, on the idea that R.C. 5709.10 was first adopted prior to the 1931 Constitutional amendment that removed the public purpose requirement from all tax exemptions. *Id.* This Court rejected the Tax Commissioner's argument, finding that the General Assembly was "aware" of and had "in mind" the Constitutional amendment at the time of the "reenactment" of R.C. 5709.10. *Id.* at 90. In light of this, this Court held that the language of R.C. 5709.10 is "unequivocal in its requirement that a park district *merely own* the subject property" and "there is no basis for reading into it stricter requirements." (Emphasis added.) *Id.*

Here, R.C. 3313.44 is "unequivocal" in its requirement that a board of education "merely own" property in order to qualify for exemption. Like in *Kinney*, "there is no basis for reading into it stricter requirements" as the Tax Commissioner and BTA did. The Tax Commissioner's argument has failed in the past on multiple occasions, and it should fail again here.

C. The decisions relied upon by the Tax Commissioner and BTA occurred before *Denison* or failed to consider it.

The Final Determination of the Tax Commissioner cited the 1983 BTA decision in *Gallipolis City Schools v. Kinney*, BTA No. 81-D-377, 1983 Ohio Tax LEXIS 495 (April 5, 1983).[3] That case involved property purchased by a school district in November of 1980. The school district bought the property with the intent to raze a residential structure and construct a parking lot. The school district permitted the occupant of the residence to remain at a rate of $75 per month until January 12, 1981. At the time of this decision, R.C. 3313.44 stated "Real or personal property vested in any board of education shall be exempt from taxation." Despite the fact that the board of education held title to the property, and ignoring the common understanding of the meaning of the word "vested," the Tax Commissioner denied the exemption request supposedly because the house was not "vested in" the school district as of the 1981 tax lien date. Rather, the Tax Commissioner found that it was "vested in" a private person who used the property for private purposes. The BTA in *Gallipolis* affirmed the Tax Commissioner's decision and based its holding on the Ohio Supreme Court's 1925 decision in *Boss v. Hess*, 113 Ohio St. 52, 148 N.E. 347 (1925).

There are several major issues with placing any reliance whatsoever on the *Gallipolis* opinion. First, as has been discussed above, a major change in the Ohio Constitution occurred in 1931, rendering the 1925 *Boss* decision and its absolute requirement for a public purpose invalid. Second, the *Boss* decision addressed an exemption under former General Code Section 5349 (now R.C. 5709.07). *Boss* did not consider R.C. 3313.44 (former General Code Section 4834-16). Third, the *Gallipolis* decision quoted language from this Court's decision in *Board of Education of City School District of City of Cincinnati v. Board of Tax Appeals*, 149 Ohio St.

[3] A copy of this decision is included in the Supplement. (Supp. 27).

564, 80 N.E.2d 156 (1948), which was a case decided in 1948 prior to this Court's seminal 1965 decision in *Denison*. *Denison* was this Court's first decision that removed the implicit public use requirement for tax exemption purposes. Fourth, the BTA decision in *Gallipolis* clearly did not consider the Supreme Court's 1965 *Denison* decision or any of the other decisions mentioned above. Fifth, R.C. 3313.44 has been amended since *Gallipolis* and no longer contains the "vested in" language that it did when *Gallipolis* was decided. It now refers to property "owned by" a board of education. These issues completely undermine the *Gallipolis* holding, which should not have been relied upon by the Tax Commissioner

The Tax Commissioner and the BTA both cited *London City Schools Board of Education v. Zaino*, BTA No. 2000-B-1478, 2001 WL 46382 (Jan. 12, 2001)[4] in their decisions denying the Board of Education's Application for exemption. *London City* is another BTA decision that, like *Gallipolis*, relied on this Court's 1948 decision in *Board of Education of the City School District of the City of Cincinnati v. Board of Tax Appeals*. Most importantly, the *Cincinnati* decision is no longer valid for the purposes cited by the Tax Commissioner and BTA. It was not until the 1965 *Denison* decision that this Court concluded that the 1931 Constitutional amendment removed the public purpose limitation from exemptions adopted by the General Assembly.

Moreover, the *Cincinnati* decision involved the question of whether property that was purchased with an intent to be developed for a school purposes was entitled to exemption prior to the construction of a school. *Cincinnati*, 149 Ohio St. at 566. It did not involve the exact question at issue in this case. In addition to failing to consider the fact that *Cincinnati* was decided prior to *Denison*, the BTA's decision in *London City* selectively pulled language concerning the supposed need for a public purpose from the *Cincinnati* decision, which

[4] A copy of this decision is included in the Supplement. (Supp. 64).

supported the BTA's misunderstanding of the current state of the law at the time. However, it is important to note that the *Cincinnati* decision also stated:

> The property in question was purchased by the board of education, a public entity engaged in a governmental function for the benefit of the public. Under a clear interpretation of Section 4834-16, General Code, the property became subject to exemption from taxation when title vested in the board of education. The board was without authority or power to purchase it for any other purpose than a public use. *Cincinnati*, 149 Ohio St. at 568.

The quoted language directly supports the Board of Education's position and does not mention the need for a public purpose! In fact, this language implies that property purchased by a board of education is necessarily purchased for a public purpose because boards of education lack the authority to purchase property for any other purpose.

It is an established rule of statutory interpretation that a court must first look to the language of the statute itself to determine the legislative intent. See, e. g., *Katz v. Department of Liquor Control*, 166 Ohio St. 229, 141 N.E.2d 294 (1957). If the statute conveys a meaning that is clear, unequivocal, and definite the interpretative effort is over, and the statute must be applied accordingly. *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944). "Where the language itself clearly expresses the legislative intent, the courts need look no further." *Katz*, 166 Ohio St. at 231.

Section 3313.44 of the Revised Code is clear, unequivocal, and definite. It exempts all real property owned by boards of education. It clearly does not include a requirement that the property must be used for a public or school purpose. If the General Assembly wanted to impose a public or school use requirement it could have easily done so. In fact, the General Assembly had a chance to do so in 2010 when it amended R.C. 3313.44. It chose not to do so. It is not for

the Tax Commissioner, the BTA, or even this Court to usurp the power that the Constitution has reserved for the General Assembly.

Proposition of Law No. 2

> **Sections 3313.44 and 5709.07(A) of the Revised Code can be read in harmony and are not irreconcilable.**

The Tax Commissioner and BTA both cited *Boss* in support of their decisions, which dealt with exemption pursuant to R.C. 5709.07. The Board of Education believes it is clearly entitled to exemption pursuant to R.C. 3313.44, which is a much more specific statute applicable only to property owned by boards of education. Section 5709.07(A) has a much broader application that permits the exemption of private property that is merely used as a school in a variety of circumstances.

The former version of R.C. 5709.07(A)(1) stated that "[p]ublic schoolhouses, the books and furniture in them, and the ground attached to them necessary for the proper occupancy, use, and enjoyment of the schoolhouses, and not leased or otherwise used with a view to profit" shall be exempt from taxation. This language existed until 2011 when it was amended by House Bill 153.

The current version of section 5709.07(A)(1) provides a property tax exemption for:

> 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.

...

Section 757.80 of House Bill 153 states that the amendment to R.C. 5709.07 "applies to tax years 2011 and thereafter." 2011 Am.Sub.H.B. No. 153. The Board of Education's Application for tax exemption was filed on January 26, 2010 for the 2010 tax year. Regardless of which version of the statute applies, this Court has always held that the language in R.C. 5709.07(A) is applicable to privately owned property. The 2011 amendment does not change that conclusion since the exemption still applies to real property "used by a school" and the word "school" is even defined to include both public and non-public schools.

This Court has held since at least 1874 that the reference in R.C. 5709.07 to "public schoolhouses" was "not used in the sense of ownership" but rather of the "uses to which the property is devoted," with the result that the exemption applies to private property used to support instruction that is "for the benefit of the public." *Gerke v. Purcell*, 25 Ohio St. 246-247 (1874), See also, *Anderson/Maltbie Partnership v. Levin*, 127 Ohio St.3d 178, 2010-Ohio-4904, 937 N.E.2d 547. This Court has also stated that the term "public" has been construed to make sense of the statute's limitation that schoolhouse grounds may not be "leased or otherwise used with a view to profit." *Id.* at 247. The Court noted that public school districts are inherently

nonprofit so that condition did not seem "appropriate if intended to apply only to institutions established by the public." *Id.* In contrast, the prohibition against profiting from the property had "marked significance when applied to private property" so that the statute has been construed to reach private property. *Id.* As such, when private property is used to support education for the benefit of the public without a view to profit, it constitutes a charity which is purely public. *Id.*

Section 5709.07(A), as effective for the 2010 tax year, applies to private property that is used as a public schoolhouse and is not leased or otherwise used with a view for profit. This provision exempts property that is owned by and used as a private, non-public school without a view to profit. Additionally, because the words "public schoolhouses" do not refer to ownership, but rather to the use of the property, this provision also permits a tax exemption for property that is owned by a private entity or individual who permits it to be used, without a view to profit, in support of education for the benefit of the public. The entity or person using the property might be a private, non-public school. It could also be a public board of education who uses (but does not own) the property for school purposes, in which case R.C. 5709.07(A) would be the statutory vehicle to obtain a tax exemption. After all, boards of education are permitted to lease property for school purposes pursuant to R.C. 3313.37(A)(1).

In contrast, R.C. 3313.44 applies only to property owned by boards of education. A private, non-public school could not utilize R.C. 3313.44 to obtain tax exemption on property it owns or uses. Moreover, R.C. 5709.07(A)(1) does not apply to the facts of this case because the Board of Education does not simply "use" the subject property – it owns the subject property, which clearly makes R.C. 3313.44 applicable. This conclusively demonstrates that the two statutes are capable of co-existing and can be construed to give effect to both statutes. R.C. 1.51.

Related statutes must be read *in pari materia* to give a reasonable construction that provides the proper effect to each statute. *Maxfield v. Brooks*, 110 Ohio St. 566, 144 N.E. 725 (1924), paragraph two of the syllabus. All similar provisions of the Revised Code "should be construed harmoniously unless they are irreconcilable." *State ex rel. Cordray v. Midway Motor Sales, Inc.*, 122 Ohio St.3d 234, 238, 2009-Ohio-2610, 910 N.E.2d 432.

The Board of Education admits that R.C. 3313.44 is unique. However, the statute's broad grant of a tax exemption based solely on ownership is logical, especially when one considers the fact that school district taxes make up the bulk of all real property taxes that are paid. It would seem to be an absurd result to tax property that is owned by a board of education only to have the vast majority of the tax returned right back to the board of education. The two statutes clearly can be read in harmony and there is no reason whatsoever to ignore the plain language in R.C. 3313.44 for the much broader language in R.C. 5709.07(A).

Proposition of Law No. 3

Changes to the subject property that occurred in 2010 were relevant to the Tax Commissioner's decision and the Board of Education's appeal to the BTA.

The BTA's Decision and Order noted that changes to the subject property took place in 2010 so that approximately 17 of the 34 acres were thereafter subject to a farm lease. (Appx. 6.) The BTA then stated "[a]s these changes took place after the 2010 tax lien date they are not relevant to the instant appeal, which only concerns tax years 2008 through 2010." *Id.* The Board of Education believes that these changes should have been considered when the BTA issued its Decision and Order.

Section 5715.27(H) of the Revised Code provides:

> 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 ... 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. (Emphasis added.)

The Tax Commissioner is clearly able to consider additional facts during the pendency of an application for tax exemption. The Tax Commissioner may also make a determination concerning the taxability of property for tax years after the tax year in which the application was filed. Thus, changes that occurred in 2010 after the Board of Education's Application was filed may be considered by the Tax Commissioner and the taxability of property can be determined for subsequent tax years while an application is pending.

Although the Tax Commissioner has the authority to conduct hearings on tax exemption applications, it elected not to hold a hearing on the Board of Education's Application. R.C. 5715.27. Therefore, the first opportunity that the Board of Education had to explain the changes that occurred to the property in 2010 occurred at the BTA hearing, which was held on July 30, 2013.

The Board of Education's Treasurer, Michael Davis, testified about the changes that occurred. Mr. Davis testified that the Board of Education and Mr. Giffords agreed to terminate the lease of 34 acres of land at some point in 2010. (Supp. 7, (Tr. 24)) The Board then entered into a new lease with another local farmer, Adam Smith. (Supp. 7, (Tr. 24-25)) Mr. Smith's lease began in June, 2010 and permitted him to farm only 17 acres of property at the yearly

rental rate of $65.00 per acre. (Supp. 7-8, (Tr. 25-26)) The Smith lease was a two year lease that expired and the parties continued with on a holdover basis. (Supp. 11, (Tr. 39)) The Board and Mr. Smith later entered into a new lease in April, 2013 for a three year period of time. (Supp. 11, (Tr. 38-39))

Mr. Davis testified that most of the land formerly farmed by Mr. Giffords that was not farmed by Mr. Smith (approximately 17 acres) was either encroached upon by construction of the new high school, being used for baseball, football, or cross country, or became part of a conservation program that used grant money to create a nature preserve that restored the land to a more natural condition. (Supp. 8, 10 (Tr. 27-29, 34-37)) Mr. Davis also testified that Mr. Smith is required as part of his lease to cut trails around the leased property and throughout the adjacent nature preserve. (Supp. 8, (Tr. 27-28)) The trails are used by the science classes at the high school and a conservation group from Miami University. (Supp. 8, (Tr. 28-29))

The foregoing changes to the property occurred after the Board of Education filed its Application for tax exemption but before the Tax Commissioner issued its final decision. The Board of Education was not provided with the opportunity for a hearing with the Tax Commissioner. The first opportunity to explain what happened to the subject property during the pendency of the Board of Education's Application for exemption occurred at the BTA hearing.

Section 5717.02 of the Revised Code governs appeals to the BTA from Tax Commissioner decisions. It provides that the BTA may hear the appeal on the record and evidence before the Tax Commissioner or it may order the hearing of additional evidence upon the application of an interested party. R.C. 5717.02(E). The Board of Education presented additional evidence to the BTA that could have been presented to the Tax Commissioner had the Tax Commissioner conducted a hearing on the Board of Education's Application. The Board of

Education should not be prejudiced by the Tax Commissioner's unilateral decision to dispense with a hearing on its Application.

Moreover, this Court has held that the BTA hearing is *de novo* and that the BTA is "statutorily authorized to conduct full administrative appeals in which the parties are entitled to produce evidence in addition to that considered by the Tax Commissioner." *Key Servs. Corp. v. Zaino*, 95 Ohio St.3d 11, 16, 764 N.E.2d 1015 (2002), citing *Higbee Co. v. Evatt*, 140 Ohio St. 325, 332, 43 N.E.2d 273 (1942).

In this case, additional evidence was submitted in the form of Mr. Davis' testimony. Accordingly, the BTA was wrong to conclude that changes to the property after the 2010 tax lien date were not relevant. Those changes were certainly relevant. Even accepting *arguendo* the BTA's holding that the property in question must be utilized for a public or school purpose despite the clear language of R.C. 3313.44, the 17 acres of property that was no longer farmed by Mr. Giffords after 2010 should have been granted exempt status since it was utilized for both public and school purposes. Therefore, in the event the Board of Education's position concerning R.C. 3313.44 is not adopted by this Court, the 17 acres of property that was no longer subject to the Gifford's farm lease should be entitled to tax exempt status beginning with the 2011 tax year pursuant to R.C. 5715.27(H) and (F).

Proposition of Law No. 4

Section 5709.07(B) provides a tax exemption to leased property when the rental income is exclusively used for the support of a school district.

Although the Board of Education adamantly maintains that it is entitled to a tax exemption on the subject property pursuant to R.C. 3313.44, division (B) of R.C. 5709.07 does

provide authority for a tax exemption even when property is leased so long as the rental income goes to a school district. Section 5709.07(B) 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; 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.

This Court recognized this in footnote four of its decision in *Anderson/Maltbie*. "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)." *Anderson/Maltbie*, 127 Ohio St.3d at fn. 4.

In addressing whether a joint vocational school district would jeopardize its tax exempt status if it received proceeds from the provision of internet access, the Attorney General recognized that the exemption under R.C. 5709.07 extends to leased property "as long as the property or income 'is used and exclusively applied for the support of free education.'" Thus, it was held that the joint vocational school district would continue to qualify for tax exemption "provided that proceeds received from the provision of Internet access services are used for purposes of the vocational school district." 1999 Op. Atty Gen. No. 99-007.

A similar argument was made to the BTA in *London City*. The appellant in *London City* argued that it was entitled to exemption under R.C. 5709.07(B) because the rent it received from the property in question was deposited into the school district's general fund, which was

exclusively used for educational purposes. In dispensing with this argument, the BTA "considered the constitutionality and application of R.C. 5709.07(B)" and cited this Court's 1925 decision in *Boss*, which held that the statutory language now found in R.C. 5709.07(B) was "in conflict with Section 2 of Article XII of the Constitution of Ohio, in so far as it applies to property, real and personal, not used for a public schoolhouse or other exclusively public school purposes." The BTA then denied the appellant's exemption because the property was not used as a public schoolhouse or other exclusively public purpose.

The *London City* decision was issued in 2001. In rendering its decision the BTA ignored the 1931 amendment to the Ohio Constitution discussed in detail above. *Boss* was decided in 1925 and its continued application is certainly within doubt given this Court's 1965 decision in *Denison*. Accordingly, the BTA's decision in *London City* interpreting R.C. 5709.07(B) certainly appears to have been in error, especially when you consider this Court's recent statement in *Anderson/Maltbie* concerning this statute.

In the case at hand, the farm lease and minimal rent received is certainly used for the support of free education. The small amount of rent received is used by the school district to further its educational purpose and the Treasurer testified that the property itself is used by the science classes at the high school and a conservation group from Miami University. He also testified that the Board of Education has a very strong Future Farmers of America (FFA) program in which about ten percent of its students participate. (Supp. 7, (Tr. 23)) Having an active farm on the high school site allows the FFA students to interact with the farmer, understand crop rotation, as well as the growing of corn and soybeans. (Supp. 7, (Tr. 23))

The Treasurer also testified that the Board of Education decided to lease the subject property because it was more cost effective to have someone farm the land as opposed to the

Board of Education itself maintaining the land and purchasing the equipment to do so. (Supp. 7, (Tr. 22)) Purchasing the equipment and maintaining the land would have resulted in increased costs to the Board and taxpayers. The lease arrangement allowed the land to be utilized for a purpose that benefited the Board of Education's students and allowed the Board to avoid equipment and maintenance costs, both of which additionally support the schools. Accordingly, even if the Board of Education is somehow not entitled to exemption under R.C. 3313.44, it should receive exemption under R.C. 5709.07(B) since the property and rent received therefrom is exclusively used for the support of the school district.

CONCLUSION

The BTA's decision was unreasonable and unlawful as it was contrary to the plain and unequivocal language of R.C. 3313.44. The Board of Education requests that this Court overturn the BTA's decision and order that the subject property be exempted pursuant to R.C. 3313.44 for the 2010 and subsequent tax years. In the alternative, if the plain language of R.C. 3313.44 is ignored, the Board of Education believes it is entitled to exemption on the 17 acres that was no longer farmed and was used for public and school purposes beginning with the 2011 tax year because its Application for exemption was pending when the change in use occurred. As an additional alternative, the Board of Education claims it is entitled to exemption pursuant to R.C. 5709.07(B) since the property and rental income derived from the lease is used exclusively for the support of the school district.

Respectfully submitted,

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Attorney for the Talawanda City School District Board of Education

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served by certified mail to: **David D. Ebersole**, 30 East Broad Street, 25th Floor, Columbus, OH 43215 on this the 28th day of January, 2015.

Gary T. Stedronsky (0079866)

APPENDIX TO APPELLANT'S MERIT BRIEF

ORIGINAL

IN THE SUPREME COURT OF OHIO

TALAWANDA CITY SCHOOL DISTRICT BOARD OF EDUCATION	:	CASE NO. 14-1798
Appellant,	:	
vs.	:	ON APPEAL FROM THE OHIO BOARD OF TAX APPEALS
OHIO DEPARTMENT OF TAXATION	:	
and	:	BTA CASE NO. 2012-1224
JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO	:	
Appellees.	:	

NOTICE OF APPEAL OF APPELLANT TALAWANDA CITY SCHOOL DISTRICT BOARD OF EDUCATION

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COUNSEL FOR APPELLEES,
Ohio Department of Taxation and
Joseph W. Testa, Tax Commissioner of
Ohio

FILED/RECEIVED
BOARD OF TAX APPEALS
2014 OCT 17 PM 12:03

FILED
OCT 17 2014
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL OF APPELLANT, TALAWANDA CITY SCHOOL DISTRICT BOARD OF EDUCATION

Appellant, the Talawanda City School District Board of Education (the "Board of Education"), by and through counsel, hereby gives notice of its appeal as of right, pursuant to Ohio Revised Code Section 5717.04, to the Supreme Court of Ohio, from a Decision and Order of the Board of Tax Appeals, journalized in Case No. 2012-1224 on September 26, 2014. A true copy of the Decision and Order of the Board of Tax Appeals being appealed is attached hereto and incorporated herein as Exhibit A.

Appellant complains of the following errors in the Decision and Order of the Board of Tax Appeals:

1. The Ohio Board of Tax Appeals erred and abused its discretion when it concluded that Section 3313.44 of the Revised Code did not exempt from real property taxation the 34 acres of parcel number H3510-038-000-012 that is leased for farming purposes.

2. The Ohio Board of Tax Appeals erred and abused its discretion when it ignored the Ohio Constitution (specifically Section 2 of Article XII) and relevant Ohio Supreme Court precedent interpreting a 1931 amendment to Section 2 of Article XII of the Ohio Constitution, and improperly imposed a specific use component to Section 3313.44 of the Revised Code that is contrary to the plain language of the statute and the holdings of this Court.

3. The Ohio Board of Tax Appeals erred and abused its discretion when it concluded that the subject property was not used for school purposes or entitled to real property tax exemption pursuant to Sections 5709.07 or 5709.08 of the Ohio Revised Code.

4. The Ohio Board of Tax Appeals erred and abused its discretion when it concluded that changes to the property that occurred in 2010 were not relevant to the instant appeal.

5. The Ohio Board of Tax Appeals erred and abused its discretion when it concluded that the Board of Education's appeal only concerned tax years 2008 through 2010.

Respectfully submitted,

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Attorney for the Talawanda City School District Board of Education

PROOF OF SERVICE UPON OHIO BOARD OF TAX APPEALS

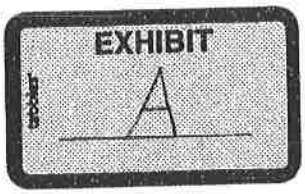
I certify that a true and accurate copy of the foregoing Notice of Appeal of Appellant Talawanda City School District Board of Education was filed with the Ohio Board of Tax Appeals, State Office Tower, 30 East Broad Street, 24th Floor, Columbus, Ohio 43215 as evidenced by the date stamp set forth hereon.

Gary T. Stedronsky (0079866)

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served by certified mail to: **David D. Ebersole**, 30 East Broad Street, 25th Floor, Columbus, OH 43215 on this the 17th day of October, 2014.

Gary T. Stedronsky (0079866)



OHIO BOARD OF TAX APPEALS

TALAWANDA CITY SCHOOL DISTRICT BOARD OF EDUCATION, (et. al.), Appellant(s), vs. JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO, (et. al.), Appellee(s).	CASE NO(S). 2012-1224 (EXEMPTION) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TALAWANDA CITY SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
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For the Appellee(s) - JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO
Represented by:
DAVID D. EBERSOLE
ASSISTANT ATTORNEY GENERAL
30 EAST BROAD STREET, 25TH FLOOR
COLUMBUS, OH 43215

Entered Friday, September 26, 2014

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

Appellant appeals from a final determination of the Tax Commissioner, in which he denied exemption of approximately 34 acres of certain real property, i.e., parcel number H3510-038-000-0012, located in Butler County, Ohio, for tax year 2010, and remitted penalties charged against the unexempted portion of the parcel for tax years 2008 and 2009. This matter is now considered upon the notice of appeal, the statutory transcript certified by the commissioner, the record of this board's hearing, and the parties' briefs.

The subject property consists of approximately 34 acres that are part of a larger parcel acquired by the appellant in 2009 to build a new high school. The seller was permitted to remain on a portion of the land, though appellant exercised an early termination clause that required him to vacate the property in September 2009 so that construction could begin. In order to avoid the cost to maintain the portion of the property at issue in the instant appeal, the 34 acres were leased to a local farmer at an annual rate of $65 per acre. This lease was terminated early and appellant entered into a new lease with Adam Smith, allowing him to farm a 17-acre portion of the subject property, on which he farms soybeans and corn.

The portion of the 34 acres not being farmed by Mr. Smith was restored to its natural state and functions as a nature preserve. As part of Mr. Smith's lease, he is required to maintain trails that were created around the farm and through the preserve area. These trials provide access for students from the high school and nearby Miami University to study the plants and trees along the trails.

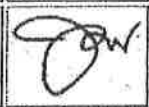
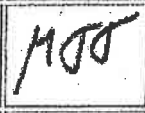
Appellant applied for exemption from real property exemption under R.C. 3313.44, which provides that "[r]eal or personal property owned by or leased to any board of education for a lease term of at least fifty years shall be exempt from taxation." The commissioner granted exemption for the portion of the property used for the school and grounds, but determined that the 34 acres leased for farming purposes should remain on the tax list. Appellant asserts that the Tax Commissioner improperly imposed a specific use component to the statute that does not comport with its plain language.

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 extend the commissioner's determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213.

This board has previously considered whether land owned by a school board but leased for farming qualifies for exempt status. See *London City Schools Board of Education v. Zaino* (Jan. 12, 2001), 2000-B-1478, unreported. After a review of relevant Supreme Court precedent as well as this board's previous decisions on the issue, we held that "not only must title to a subject property be vested in a school board, but also that the property be used for school purposes." Id. at 9. Thus, we reject appellant's argument against application of the use requirement and consider whether the subject property was used for school purposes.

In the instant appeal, there is no dispute as to the ownership of the subject property. Thus, we look to the use of the property to determine whether it should be granted an exemption. The record shows that in 2009 and up until some point in 2010, 34 acres were leased to a farmer for the cultivation of corn and soybeans. Although appellant asserts that it leased this property to avoid the cost of maintenance and not for the rental income, the ultimate user of the property, the farmer, presumably did so intending to earn a profit. We note that the changes that took place in 2010, i.e., the restoration of a portion of the area to a nature preserve and the addition of the trails, changed the use of a portion of the property such that only 17 acres were farmed commercially. As these changes took place after the 2010 tax lien date, they are not relevant to the instant appeal, which only concerns tax years 2008 through 2010.

Based upon the foregoing, we find that the commissioner's determination was reasonable and lawful. Accordingly, the final determination must be, and hereby is, affirmed.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Mr. Johrendt		
Mr. Harbarger		

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 Department of TAXATION
Office of the Tax Commissioner
30 E. Broad St., 22nd Floor • Columbus, OH 43215
tax.ohio.gov

FINAL DETERMINATION

Date: MAR 14 2012

Talawanda CSD Board of Education
c/o Mike Davis, Treasurer
131 West Chestnut Street
Oxford, OH 45056

Case No.:	SE 0445
Auditor's No.:	10-001
County:	Butler
Parcel No(s).:	H3510-038-000-013, H3510-038-000-012, H3510-038-000-009, H3510-038-000-015, H3610-038-000-037

This is the final determination of the Tax Commissioner on an application for exemption of real property from taxation filed on January 26, 2010.

I. Factual Background

The applicant, Talawanda CSD Board of Education, is requesting exemption from taxation for property owned by a Board of Education for tax year 2010 and remission for tax years 2008 and 2009. The subject property consists of approximately 154.0487 acres of land. A portion of the subject property will be used for a school. Approximately 34 acres of parcel number H3510-038-000-012 is being leased to Leo Erik for farming purposes from April 15, 2009 through April 15, 2012 for $65.00 per acre or $2,210.00 annually. Mr. Erik resided on property located on parcel number H3510-038-000-012 until September 26, 2009.

II. Ohio Revised Code Section 3313.44

Ohio Revised Code 3313.44 exempts property vested in a board of education. There are, however, limitations on the availability of this exemption, as noted in *Gallipolis City Schools v. Kinney* (Apr. 5, 1983), B.T.A. No. 81-D-397. That case involved school-owned property that was being used as a private residence. Following *State, ex rel. Boss v. Hess* (1925), 113 Ohio St. 52, the Board of Tax Appeals stated that "the subject property must be used exclusively for a public schoolhouse or other exclusively public school purpose before public-owned property is entitled to real property exemption." (Emphasis theirs.)

Another such limitation is noted in *London City Schools Bd. of Educ. v. Zaino* (January 12, 2001), B.T.A. No. 2000-B-1478. The London case involved school-owned property that was rented as farmland. The Board held that in order to qualify for real property tax exemption, R.C. 3313.44 requires that (1) title to the property must be vested in a school board; and (2) the property must be used for school purposes. The Board further held that

R.C. 5709.07, which provides exemption for school houses, "clearly provides that property leased or used with a view to profit is excluded from exempt status." In the instant case, the applicant uses the subject property for farming. Even if applicant did not charge any money to the farmer, the farmer reaped a pecuniary benefit, and as such, the property was not used for school purposes.

In this case, a portion of the subject will be used exclusively for school purposes, and therefore satisfies the statutory requirements and is eligible for exemption. However, a portion of the subject property is being used for farming purposes and, therefore does not satisfy the statutory requirements and is not eligible for exemption.

III. Conclusion

R.C. 5713.04 provides that portions of property used exclusively for exempt purposes shall be regarded as separate entities and listed as exempt while the balance thereof used for a non-exempt purpose shall be listed at its taxable value. Accordingly, the agent examiner in this matter recommends split-listing the applicant's property as follows:

Property to be exempted from taxation:

The balance of the property not listed as taxable below to be used as school and grounds.

The agent examiner recommends that the portion of real property described above be entered upon the list of property in the county, which is exempt from taxation for tax year 2010. The agent examiner further recommends that taxes, penalties and interest for tax years 2008 and 2009 be remitted in the manner provided by R.C. 5712.22. The subject property shall remain on the exempt list until either the county auditor or the Tax Commissioner restores the property to the tax list.

Property to remain on tax list:

The 34 acres of parcel number H3510-038-000-012, being leased to Leo Erik for farming purposes.

The agent examiner recommends that penalties charged against this part of the property for these tax years be remitted.

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

JOSEPH W. TESTA
TAX COMMISSIONER

/s/ Joseph W. Testa

Joseph W. Testa
Tax Commissioner

Baldwin's Ohio Revised Code Annotated
Constitution of the State of Ohio (Refs & Annos)
Article XII. Finance and Taxation (Refs & Annos)

OH Const. Art. XII, § 2

O Const XII Sec. 2 Property taxation by uniform rule; ten-mill limitation; homestead valuation reduction; exemptions

Currentness

No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value, except that laws may be passed to reduce taxes by providing for a reduction in value of the homestead of permanently and totally disabled residents, residents sixty-five years of age and older, and residents sixty years of age or older who are surviving spouses of deceased residents who were sixty-five years of age or older or permanently and totally disabled and receiving a reduction in the value of their homestead at the time of death, provided the surviving spouse continues to reside in a qualifying homestead, and providing for income and other qualifications to obtain such reduction. Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

CREDIT(S)

(1990 HJR 15, am. eff. 1-1-91; 1974 HJR 59, am. eff. 1-1-75; 1970 SJR 8, am. eff. 1-1-71; 115 v Pt 2, 446, am. eff. 1-1-34; 113 v 790, am. eff. 1-1-31; 107 v 774, am. eff. 1-1-19; 1912 constitutional convention, am. eff. 1-1-13; 97 v 652, am. eff. 1-1-06; 1851 constitutional convention, adopted eff. 9-1-1851)

Notes of Decisions (378)

Const. Art. XII, § 2, OH CONST Art. XII, § 2
Current through Files 1 to 146, 148 to 157, 159 to 161, 164 to 178, 181 to 185, 187 to 190, 192 to 195 and Statewide Issue 1 of the 130th GA (2013-2014).

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Baldwin's Ohio Revised Code Annotated
General Provisions
Chapter 1. Definitions; Rules of Construction (Refs & Annos)
Statutory Provisions

R.C. § 1.51

1.51 Special or local provision prevails over general; exception

Currentness

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

CREDIT(S)

(1971 H 607, eff. 1-3-72)

Notes of Decisions (109)

R.C. § 1.51, OH ST § 1.51
Current through Files 1 to 146, 148 to 157, 159 to 161, 164 to 178, 181 to 185, 187 to 190, 192 to 195 and Statewide Issue 1 of the 130th GA (2013-2014).

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Baldwin's Ohio Revised Code Annotated
Title XXXIII. Education--Libraries
Chapter 3313. Boards of Education (Refs & Annos)
Schoolhouses and Lands; Equipment

R.C. § 3313.44

3313.44 School property exempt from taxation

Effective: September 13, 2010

Currentness

Real or personal property owned by or leased to any board of education for a lease term of at least fifty years shall be exempt from taxation.

CREDIT(S)

(2010 S 181, eff. 9-13-10; 1953 H 1, eff. 10-1-53; GC 4834-16)

Notes of Decisions (20)

R.C. § 3313.44, OH ST § 3313.44
Current through Files 1 to 146, 148 to 157, 159 to 161, 164 to 178, 181 to 185, 187 to 190, 192 to 195 and Statewide Issue 1 of the 130th GA (2013-2014).

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Baldwin's Ohio Revised Code Annotated
Title XXXIII. Education--Libraries
Chapter 3313. Boards of Education (Refs & Annos)
Schoolhouses and Lands; Equipment

R.C. § 3313.37

3313.37 Acquisition of real estate, buildings or other facilities, and office equipment; methods available

Effective: September 24, 2012

Currentness

(A)(1) The board of education of any city, local, or exempted village school district may build, enlarge, repair, and furnish the necessary schoolhouses, purchase or lease sites therefor, or rights-of-way thereto, or purchase or lease real estate to be used as playgrounds for children or rent suitable schoolrooms, either within or without the district, and provide the necessary apparatus and make all other necessary provisions for the schools under its control.

(2) A governing board of an educational service center may acquire, lease or lease-purchase, or enter into a contract to purchase, lease or lease-purchase, or sell real and personal property and may construct, enlarge, repair, renovate, furnish, or equip facilities, buildings, or structures for the educational service center's purposes. The board may enter into loan agreements, including mortgages, for the acquisition of such property.

(3) A board of county commissioners may issue securities of the county pursuant to Chapter 133. of the Revised Code for the acquisition of real and personal property or for the construction, enlargement, repair, or renovation of facilities, buildings, or structures by an educational service center, but only if the county has a contract with the educational service center whereby the educational service center agrees to pay the county an amount equal to the debt charges on the issued securities on or before the date those charges fall due. For the purposes of this section, "debt charges" and "securities" have the same meanings as in section 133.01 of the Revised Code.

(B)(1) Boards of education of city, local, and exempted village school districts may acquire land by gift or devise, by purchase, or by appropriation. Lands purchased may be purchased for cash, by installment payments, with or without a mortgage, by entering into lease-purchase agreements, or by lease with an option to purchase, provided that if the purchase price is to be paid over a period of time, such payments shall not extend for a period of more than five years. A special tax levy may be authorized by the voters of the school district in accordance with section 5705.21 of the Revised Code to provide a special fund to meet the future time payments.

(2) For the purposes of section 5705.21 of the Revised Code, acquisition of land under the provisions of this division shall be considered a necessary requirement of the school district.

(3) Boards of education of city, local, and exempted village school districts may acquire federal land at a discount by a lease-purchase agreement for use as a site for the construction of educational facilities or for other related purposes. External administrative and other costs pertaining to the acquisition of federal land at a discount may be paid from funds available to the school district for operating purposes. Such boards of education may also acquire federal land by lease-purchase agreements, by negotiation, or otherwise.

(4) As used in this division:

(a) "Office equipment" includes but is not limited to typewriters, copying and duplicating equipment, and computer and data processing equipment.

(b) "Software for instructional purposes" includes computer programs usable for computer assisted instruction, computer managed instruction, drill and practice, and problem simulations.

A board of education or governing board of an educational service center may acquire the necessary office equipment, and computer hardware and software for instructional purposes, for the schools under its control by purchase, by lease, by installment payments, by entering into lease-purchase agreements, or by lease with an option to purchase. In the case of a city, exempted village, or local school district, if the purchase price is to be paid over a period of time, the contract setting forth the terms of such purchase shall be considered a continuing contract pursuant to section 5705.41 of the Revised Code. Payments shall not extend for a period of more than five years. Costs relating to the acquisition of necessary apparatus may be paid from funds available to the school district or educational service center for operating purposes.

(5) A board of education or governing board of an educational service center may acquire the necessary equipment for the maintenance or physical upkeep of facilities and land under its control by entering into lease-purchase agreements. If payments under the lease-purchase agreement are to be made over a period of time, the agreement shall be considered a continuing contract pursuant to section 5705.41 of the Revised Code, and such payments shall not extend for a period of more than five years.

CREDIT(S)

(2012 S 316, eff. 9-24-12; 2001 H 405, eff. 3-14-02; 2001 H 94, eff. 9-5-01; 1999 H 220, eff. 11-2-99; 1995 H 117, eff. 9-29-95; 1993 S 76, eff. 7-30-93; 1980 S 261; 1979 S 59; 129 v 463; 1953 H 1; GC 4834-10)

Notes of Decisions (69)

R.C. § 3313.37, OH ST § 3313.37
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Baldwin's Ohio Revised Code Annotated
Title LVII. Taxation (Refs & Annos)
Chapter 5709. Taxable Property--Exemptions (Refs & Annos)
General Provisions

R.C. § 5709.01

5709.01 Taxable property entered on general tax list and duplicate; exemptions

Currentness

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CREDIT(S)

(1995 S 162, eff. 7-1-97; 1985 H 274, eff. 3-6-86; 1985 S 130; 1984 H 379; 1983 H 291; 132 v H 480; 126 v 166; 1953 H 1; GC 5328)

Notes of Decisions (114)

R.C. § 5709.01, OH ST § 5709.01
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Baldwin's Ohio Revised Code Annotated
Title LVII. Taxation (Refs & Annos)
Chapter 5709. Taxable Property--Exemptions (Refs & Annos)
Miscellaneous Exemptions

R.C. § 5709.07

5709.07 Exemption of schools, churches, and colleges

Effective: September 29, 2011

Currentness

(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.

CREDIT(S)

(2011 H 153, eff. 9-29-11; 2005 H 66, eff. 6-30-05; 1988 S 71, eff. 5-31-88; 1953 H 1; GC 5349)

Notes of Decisions (247)

R.C. § 5709.07, OH ST § 5709.07
Current through Files 1 to 146, 148 to 157, 159 to 161, 164 to 178, 181 to 185, 187 to 190, 192 to 195 and Statewide Issue 1 of the 130th GA (2013-2014).

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Baldwin's Ohio Revised Code Annotated
Title LVII. Taxation (Refs & Annos)
Chapter 5709. Taxable Property--Exemptions (Refs & Annos)
Miscellaneous Exemptions

R.C. § 5709.08

5709.08 Exemption of government and public property

Currentness

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

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

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

CREDIT(S)

(2006 H 530, eff. 3-30-06; 1989 S 72, eff. 11-2-89; 1983 H 260; 1982 H 379; 1976 H 920; 1953 H 1; GC 5351)

Notes of Decisions (118)

R.C. § 5709.08, OH ST § 5709.08
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Title LVII. Taxation (Refs & Annos)
Chapter 5709. Taxable Property--Exemptions (Refs & Annos)
Miscellaneous Exemptions

R.C. § 5709.10

5709.10 Exemption of public property used exclusively for public purpose; examples

Currentness

Market houses and other houses or halls, public squares, or other public grounds of a municipal corporation or township used exclusively for public purposes or erected by taxation for such purposes, land and multi-level parking structures used exclusively for a public purpose and owned and operated by a municipal corporation under section 717.05 of the Revised Code that charges no fee for the privilege of parking thereon, property used as a county fairgrounds that is owned by the board of county commissioners or by a county agricultural society, and property of housing authorities created and organized under and for the purposes of sections 3735.27 to 3735.50 of the Revised Code, which property is hereby declared to be public property used exclusively for a public purpose, notwithstanding that parts thereof may be lawfully leased, shall be exempt from taxation.

CREDIT(S)

(1981 H 293, eff. 3-15-82; 1978 H 184; 1953 H 1; GC 5356)

Notes of Decisions (19)

R.C. § 5709.10, OH ST § 5709.10
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Baldwin's Ohio Revised Code Annotated
Title LVII. Taxation (Refs & Annos)
Chapter 5715. Boards of Revision; Equalization of Assessments (Refs & Annos)
Tax Commissioner

R.C. § 5715.27

5715.27 Application for and complaint against exemption; remittance; notice to school board; hearing

Effective: March 22, 2012

Currentness

(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.

CREDIT(S)

(2011 H 225, eff. 3-22-12; 2008 H 160, eff. 6-20-08; 2003 H 95, eff. 9-26-03; 2000 H 493, eff. 10-27-00; 1990 S 332, eff. 1-10-91; 1990 S 257; 1985 H 321; 1983 H 260; 1982 S 262; 1976 H 920; 1953 H 1; GC 5616)

Notes of Decisions (67)

R.C. § 5715.27, OH ST § 5715.27
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(C) A notice of appeal shall contain a short and plain statement of the claimed errors in the determination or redetermination of the tax commissioner, county auditor, or director showing that the appellant is entitled to relief and a demand for the relief to which the appellant claims to be entitled. An appellant may amend the notice of appeal once as a matter of course within sixty days after the certification of the transcript. Otherwise, an appellant may amend the notice of appeal only after receiving leave of the board or the written consent of each adverse party. Leave of the board shall be freely given when justice so requires.

(D) Upon the filing of a notice of appeal, the tax commissioner, county auditor, or the director, as appropriate, shall certify to the board a transcript of the record of the proceedings before the commissioner, auditor, or director, together with all evidence considered by the commissioner, auditor, or director in connection with the proceedings. Those appeals or applications may be heard by the board at its office in Columbus or in the county where the appellant resides, or it may cause its examiners to conduct the hearings and to report to it their findings for affirmation or rejection.

(E) The board may order the appeal to be heard upon the record and the evidence certified to it by the commissioner, county auditor, or director, but upon the application of any interested party the board shall order the hearing of additional evidence, and it may make an investigation concerning the appeal that it considers proper. An appeal may proceed pursuant to section 5703.021 of the Revised Code on the small claims docket if the appeal qualifies under that section.

CREDIT(S)

(2013 H 138, eff. 10-11-13; 2011 H 225, eff. 3-22-12; 2002 S 200, eff. 9-6-02; 2000 S 287, eff. 12-21-00; 2000 H 612, eff. 9-29-00; 1994 S 19, eff. 7-22-94; 1985 H 321, eff. 10-17-85; 1985 S 124; 1983 H 260; 1981 H 351; 1977 H 634; 1976 H 920; 1973 S 174; 1953 H 1; GC 5611)

Notes of Decisions (425)

R.C. § 5717.02, OH ST § 5717.02
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Title LVII. Taxation (Refs & Annos)
Chapter 5717. Appeals (Refs & Annos)

R.C. § 5717.02

5717.02 Appeals from final determination of the tax commissioner; procedure; hearing

Effective: October 11, 2013

Currentness

(A) Except as otherwise provided by law, appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be taken to the board of tax appeals by the taxpayer, by the person to whom notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner is required by law to be given, by the director of budget and management if the revenues affected by that decision would accrue primarily to the state treasury, or by the county auditors of the counties to the undivided general tax funds of which the revenues affected by that decision would primarily accrue. Appeals from the redetermination by the director of development services under division (B) of section 5709.64 or division (A) of section 5709.66 of the Revised Code may be taken to the board of tax appeals by the enterprise to which notice of the redetermination is required by law to be given. Appeals from a decision of the tax commissioner or county auditor concerning an application for a property tax exemption may be taken to the board of tax appeals by the applicant or by a school district that filed a statement concerning that application under division (C) of section 5715.27 of the Revised Code. Appeals from a redetermination by the director of job and family services under section 5733.42 of the Revised Code may be taken by the person to which the notice of the redetermination is required by law to be given under that section.

(B) The appeals shall be taken by the filing of a notice of appeal with the board, and with the tax commissioner if the tax commissioner's action is the subject of the appeal, with the county auditor if the county auditor's action is the subject of the appeal, with the director of development services if that director's action is the subject of the appeal, or with the director of job and family services if that director's action is the subject of the appeal. The notice of appeal shall be filed within sixty days after service of the notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner, property tax exemption determination by the commissioner or the county auditor, or redetermination by the director has been given as provided in section 5703.37, 5709.64, 5709.66, or 5733.42 of the Revised Code. The notice of appeal may be filed in person or by certified mail, express mail, facsimile transmission, electronic transmission or by authorized delivery service. If the notice of appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. If notice of appeal is filed by facsimile transmission or electronic transmission, the date and time the notice is received by the board shall be the date and time reflected on a timestamp provided by the board's electronic system, and the appeal shall be considered filed with the board on the date reflected on that timestamp. Any timestamp provided by another computer system or electronic submission device shall not affect the time and date the notice is received by the board. The notice of appeal shall have attached to it and incorporated in it by reference a true copy of the notice sent by the commissioner, county auditor, or director to the taxpayer, enterprise, or other person of the final determination or redetermination complained of, but failure to attach a copy of that notice and to incorporate it by reference in the notice of appeal does not invalidate the appeal.

taken and the board. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten days of the date on which the first notice of appeal was filed or within the time otherwise prescribed in this section, whichever is later. A notice of appeal shall set forth the decision of the board appealed from and the errors therein complained of. Proof of the filing of such notice with the board shall be filed with the court to which the appeal is being taken. The court in which notice of appeal is first filed shall have exclusive jurisdiction of the appeal.

In all such appeals the commissioner or all persons to whom the decision of the board appealed from is required by such section to be sent, other than the appellant, shall be made appellees. Unless waived, notice of the appeal shall be served upon all appellees by certified mail. The prosecuting attorney shall represent the county auditor in any such appeal in which the auditor is a party.

The board, upon written demand filed by an appellant, shall within thirty days after the filing of such demand file with the court to which the appeal is being taken a certified transcript of the record of the proceedings of the board pertaining to the decision complained of and the evidence considered by the board in making such decision.

If upon hearing and consideration of such record and evidence the court decides that the decision of the board appealed from is reasonable and lawful it shall affirm the same, but if the court decides that such decision of the board is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter final judgment in accordance with such modification.

The clerk of the court shall certify the judgment of the court to the board, which shall certify such judgment to such public officials or take such other action in connection therewith as is required to give effect to the decision. The "taxpayer" includes any person required to return any property for taxation.

Any party to the appeal shall have the right to appeal from the judgment of the court of appeals on questions of law, as in other cases.

CREDIT(S)

(2013 H 138, eff. 10-11-13; 2009 H 1, eff. 10-16-09; 1987 H 231, eff. 10-5-87; 1983 H 260; 1977 H 634; 1973 S 174; 125 v 250; 1953 H 1; GC 5611-2)

Notes of Decisions (223)

R.C. § 5717.04, OH ST § 5717.04
Current through Files 1 to 146, 148 to 157, 159 to 161, 164 to 178, 181 to 185, 187 to 190, 192 to 195 and Statewide Issue 1 of the 130th GA (2013-2014).

End of Document

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Baldwin's Ohio Revised Code Annotated
Title LVII. Taxation (Refs & Annos)
Chapter 5717. Appeals (Refs & Annos)

R.C. § 5717.04

5717.04 Appeal from decision of board of tax appeals to supreme court

Effective: October 11, 2013

Currentness

This section does not apply to any decision and order of the board made pursuant to section 5703.021 of the Revised Code. Any such decision and order shall be conclusive upon all parties and may not be appealed.

The proceeding to obtain a reversal, vacation, or modification of a decision of the board of tax appeals shall be by appeal to the supreme court or the court of appeals for the county in which the property taxed is situate or in which the taxpayer resides. If the taxpayer is a corporation, then the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the supreme court or to the court of appeals for the county in which the property taxed is situate, or the county of residence of the agent for service of process, tax notices, or demands, or the county in which the corporation has its principal place of business. In all other instances, the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the court of appeals for Franklin county.

Appeals from decisions of the board determining appeals from decisions of county boards of revision may be instituted by any of the persons who were parties to the appeal before the board of tax appeals, by the person in whose name the property involved in the appeal is listed or sought to be listed, if such person was not a party to the appeal before the board of tax appeals, or by the county auditor of the county in which the property involved in the appeal is located.

Appeals from decisions of the board of tax appeals determining appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be instituted by any of the persons who were parties to the appeal or application before the board, by the person in whose name the property is listed or sought to be listed, if the decision appealed from determines the valuation or liability of property for taxation and if any such person was not a party to the appeal or application before the board, by the taxpayer or any other person to whom the decision of the board appealed from was by law required to be sent, by the director of budget and management if the revenue affected by the decision of the board appealed from would accrue primarily to the state treasury, by the county auditor of the county to the undivided general tax funds of which the revenues affected by the decision of the board appealed from would primarily accrue, or by the tax commissioner.

Appeals from decisions of the board upon all other appeals or applications filed with and determined by the board may be instituted by any of the persons who were parties to such appeal or application before the board, by any persons to whom the decision of the board appealed from was by law required to be sent, or by any other person to whom the board sent the decision appealed from, as authorized by section 5717.03 of the Revised Code.

Such appeals shall be taken within thirty days after the date of the entry of the decision of the board on the journal of its proceedings, as provided by such section, by the filing by appellant of a notice of appeal with the court to which the appeal is