

IN THE SUPREME COURT OF OHIO

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

**REPLY BRIEF OF APPELLANT
TALAWANDA CITY SCHOOL DISTRICT BOARD OF EDUCATION**

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ARGUMENT

As argued in its Merit Brief, the Talawanda City School District Board of Education (the “Board of Education”) is entitled to a real property tax exemption regardless of the use of its property. That statute provides that “[r]eal ... property owned by ... any board of education ... shall be exempt from taxation.” The Tax Commissioner and the Board of Tax Appeals (the “BTA”) ignored precedent from this Court that is directly on point and instead relied on outdated, overruled, and irrelevant case law in an attempt to manufacture a desired outcome, which is to convince this Court to judicially legislate and read language into R.C. 3313.44 that simply does not exist.

Section 3313.44 of the Revised Code is both concise and precise in providing a tax exemption for property that is merely owned by a board of education. R.C. 3313.44 could not be written any clearer. If this Court were to accept the Tax Commissioner’s argument, no statute is safe from judicial usurpation. Such judicial activism in the face of unambiguous statutory language would undermine the General Assembly’s authority and the principle of the separation of powers. This Court should honor the General Assembly’s clear intent and order that the Board of Education’s property be entitled to exemption pursuant to R.C. 3313.44.

A. **This Court’s 1948 Decision In *Cincinnati* Does Not Support The Tax Commissioner’s Position.**

The Tax Commissioner argues that, despite the clear, plain, unequivocal, and unambiguous language in R.C. 3313.44, property owned by a board of education must be used exclusively for a public school purpose in order to qualify for exemption. The Tax Commissioner primarily supports its argument with this Court’s 1948 decision in *Bd. of Ed. of City Sch. Dist. of Cincinnati v. Bd. of Tax Appeals*, 149 Ohio St. 564, 80 N.E.2d 156 (1948). The

Tax Commissioner's heavy reliance on *Cincinnati* is indicative of the overall lack of strength in its argument.

The *Cincinnati* decision involved the question of whether property that was purchased for future development was entitled to exemption prior to the construction of a school building. *Id.* at 566. The *Cincinnati* Court was specifically confronted with the issue of whether the General Assembly exceeded its constitutional grant of power when it enacted Section 4834-16 of the General Code (the predecessor to R.C. 3313.44) and authorized a tax exemption for property that was simply "vested in any board of education." *Id.* at 567.

The *Cincinnati* Court ultimately found that the property was entitled to exemption because the board of education purchased it for the construction of a new school building. The Tax Commissioner conveniently downplays the following language from *Cincinnati* that directly supports the Board of Education's position in this case:

In the opinion of this court, a distinction must be made in the exemption of private property which is ultimately used for a charitable purpose and property purchased by public authorities for a public purpose and being prepared to serve the public use. 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. *Id.* at 568. (Emphasis added.)

The case at hand does not concern property that is owned by a private entity. The Board of Education purchased over 150 acres of property for the benefit of the public when it built its new high school campus. (Supp. 4, (Tr. 12-13)) The property in question (approximately 34 acres) was included in the Board of Education's purchase. The Board of Education was without the authority or power to purchase the subject property for anything other than a public purpose.

Like this Court found in *Cincinnati*, the 34 acres in this case “became subject to exemption from taxation when title vested in the board of education.” *Id.* at 568.

The *Cincinnati* Court aptly noted that property purchased by a board of education is necessarily purchased for a public purpose because a board of education lacks the authority to purchase property for any other purpose. It is notable that the Tax Commissioner has not argued that the Board of Education lacked the authority to purchase the subject property or that the Board of Education exceeded its authority when it purchased the subject property. The Tax Commissioner cannot make that argument because the Board of Education purchased 154 acres of property from an individual named Leo Erik specifically for the purpose of constructing a new high school. (Supp. 4, (Tr. 12-13))

The Board of Education ultimately did not need all 154 acres for its high school campus. However, there is no evidence whatsoever in the record that would indicate that the Board of Education knew at the time of its purchase that it would not need the 34 acres at issue. In fact, the Board of Education quickly realized that it needed approximately 17 of the 34 acres for its new high school. (Supp. 8, 10 (Tr. 27-29, 34-37))

There is also no evidence that the Board of Education was not required to purchase the 34 acres from Mr. Erik but chose to do so anyway because its real goal for the property was to put it to use for a commercial purpose. To the contrary, the Board of Education’s Treasurer, Michael Davis, testified that the Board of Education purchased the entire 154 acres for its new high school but 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)) Mr. Davis further indicated that the

property in question would have been utilized for “green space” for the new high school campus if it was not leased to a farmer. (Supp. 7, (Tr. 22))

The Tax Commissioner’s brief argues that the subject property “is taxable rather than exempt because property must be used exclusively for public school purposes in order to qualify for exemption under the school board exemption” and cites *Cincinnati* for support. See, Tax Commissioner Merit Brief at 6. The Tax Commissioner further argues that the BTA “has followed this Court’s *Cincinnati* decision to deny exemption under R.C. 3313.44 whenever school board-owned property is leased for commercial purposes to private entities.” See, Tax Commissioner Merit Brief at 8.

It is the Board of Education’s position that *Cincinnati* does not hold that property must be used exclusively for public school purposes in order to qualify for exemption under R.C. 3313.44. In fact, *Cincinnati* held that board of education property “became subject to exemption from taxation when title vested in the board of education.” *Cincinnati*, 149 Ohio St. at 568. The discussion in *Cincinnati* about the public use of the property was secondary to the Court’s ultimate holding.

Moreover, and perhaps most importantly, if *Cincinnati* did stand for the proposition advanced by the Tax Commissioner, continued reliance upon it is dubious because the *Cincinnati* Court was likely still under the assumption in 1948 that the Ohio constitution required the property to be devoted exclusively to a public use even if the statute in question did not require a specific use. Thus, even if *Cincinnati* stood for the proposition advanced by the Tax Commissioner, it no longer stood for that proposition after this Court’s 1965 *Denison* decision.

As was thoroughly articulated in the Board of Education’s Merit Brief, until *Denison University v. Board of Tax Appeals*, 2 Ohio St.2d 17, 205 N.E.2d 896 (1965), this Court held that

the General Assembly had no power to provide for any tax exemptions that were not specified in Section 2 of Article XII of the Ohio constitution. This Court recognized for the first time 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. The effect of the *Denison* holding is that the actual use of property no longer has any significance as to whether an exemption applies unless the General Assembly includes a specific use requirement in an exemption statute.

The Tax Commissioner's argument takes an illogical and unsupported turn on page 9 of its brief. The Tax Commissioner quotes R.C. 3313.44 and states that “[b]y its plain terms, the school board exemption provides exemption for property owned by school boards and used exclusively for public school purposes ...” See, Tax Commissioner Merit Brief at 9. (Emphasis added.) This claim is wrong. The statute's plain terms do not state that exemption exists only when property is “used exclusively for public school purposes.” That is a requirement that has been incorrectly read into this statute by the Tax Commissioner and the BTA. It is beyond question that the words “used exclusively for public school purposes” cannot be found in R.C. 3313.44.

Contradicting itself in the very next paragraph, the Tax Commissioner's brief acknowledges that R.C. 3313.44 “does not expressly employ the phrase ‘exclusive public school use.’” See, Tax Commissioner Merit Brief at 9. The Tax Commissioner then claims that the statute nevertheless requires an exclusive public school use because explicitly stating so “is unnecessary” since political subdivisions, like boards of education, are “inherently nonprofit.” See, Tax Commissioner Merit Brief at 9.

This logic is extremely weak. Despite including a specific public use in nearly all other tax exemption statutes,¹ the Tax Commissioner now claims that we can ignore the plain language of R.C. 3313.44 because there was no need for the General Assembly to specify an exclusive public use requirement. However, that logic necessarily requires this Court to read language into the statute that simply does not exist. It also ignores the fact that the General Assembly has included a specific use requirement in most other exemption statutes involving property owned by other political subdivisions. Footnote 1 of this Reply Brief provides just a small sample of those statutes, which all involve other political subdivisions that are, like the Tax Commissioner claims with boards of education, inherently non-profit.

B. The “Park District” Cases Cited In The Board Of Education’s Merit Brief Are Absolutely Relevant To This Case.

The Tax Commissioner argues that the Board of Education is somehow misguided in relying upon several of this Court’s decisions involving a tax exemption statute that was previously available to park districts. That statute contained nearly identical language to the language in R.C. 3313.44. It is ridiculous to claim that these cases cannot be relied upon as they involve decisions made after this Court’s 1965 decision in *Denison*; they all permit exemption regardless of use despite persistent opposition from the Tax Commissioner; and their holdings are supported by this Court’s interpretation of the 1931 amendment to Section 2 of Article XII of the Ohio constitution. In short, the “park district” cases fully support the Board of Education’s argument, which absolutely justifies their consideration in this case.

¹ For example: See R.C. 5709.07(A) (“The following property shall be exempt from taxation. (1) Real property used by a school for primary or secondary educational purposes ...”); R.C. 5709.08(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.”); R.C. 5709.10 (“Market houses and other houses or halls, public squares, or other public grounds of a municipal corporation or township used exclusively for public purposes ... shall be exempt from taxation.”); R.C. 5709.12 (“(B) Lands, houses, and other buildings belonging to the county, township, or municipal corporation and used exclusively for the accommodation or support of the poor ... shall be exempt from taxation.”).

The Tax Commissioner attempts to distinguish these cases by claiming that the meaning of the former park district statute (R.C. 5709.10) had not been established by a “long line of precedent” holding that park district property must be used exclusively for a public purpose. The Tax Commissioner goes on to claim that R.C. 3313.44 has been uniformly interpreted to require property to be used exclusively for public school purposes.

It is worth examining the supposed “long line of precedent” that the Tax Commissioner repeatedly references. The only Ohio Supreme Court decision involving the exemption under R.C. 3313.44 is *Cincinnati*, which was decided prior to *Denison* in 1948 and analyzed a predecessor General Code provision. *Cincinnati* was also decided prior to the “park district” cases cited by the Board of Education. The rest of the cases in this “long line of precedent” are all decisions from the BTA, which is an administrative agency whose decisions certainly do not carry the same precedential value as decisions from this Court.

Additionally, none of the decisions of the BTA relied upon by the Tax Commissioner: (a) considered the effect of the 1931 amendment to the constitution; (b) considered this Court’s 1965 decision in *Denison*; (c) considered the “park district” cases cited by the Board of Education; and (d) were appealed by the non-prevailing boards of education to this Court. Therefore, the only decision in this area of law that carries any weight whatsoever is *Cincinnati*. The ultimate holding in *Cincinnati* directly supports the Board of Education’s position. But, even if *Cincinnati* stood for the proposition now advanced by the Tax Commissioner, that proposition was no longer valid once *Denison* was decided.

The fact is that this Court has only addressed the language in R.C. 3313.44 (albeit the predecessor General Code provision) on one occasion in 1948 and the BTA decisions failed to

consider the arguments now advanced by the Board of Education. As such, the long-standing interpretation that the Tax Commissioner believes carries so much precedential weight is a myth.

The Tax Commissioner's claim that longstanding inaction on the part of the General Assembly in not acting to amend R.C. 3313.44 indicates its approval to retain the supposed interpretation of the statute also misses the point. The only Ohio Supreme Court decision that addressed the exemption in question occurred in 1948 at a point when this Court had not yet recognized the meaning of the 1931 constitutional amendment. All of the more recent decisions are from the BTA. Assuming that the General Assembly is even aware of these BTA decisions takes quite a leap of faith. Moreover, such an assumption conflicts with the assumption that this Court acknowledged in *Kinney*, which was that the General Assembly was assumed to be aware of the 1931 amendment when it reenacted the park district exemption. If the General Assembly is assumed to be aware of the constitutional amendment, it most certainly should have amended R.C. 3313.44 to endorse the BTA's interpretation and require a specific public use. It has not done so.

The case of *Maitland v. Ford Motor Co.*, 103 Ohio St.3d 463, 816 N.E.2d 1061 (2004) cited by the Tax Commissioner does not support this proposition. That case dealt with a policy of the Attorney General that was not legislatively overruled when the Lemon Law was amended. The Attorney General was specifically authorized by the legislature to develop rules concerning the policy at issue. In this case, the BTA was not specifically authorized to develop rules or a policy that interprets R.C. 3313.44.

The Tax Commissioner acknowledges that this Court's decision in *Montgomery Cty. Park Dist. v. Kinney*, 61 Ohio St.2d 88, 399 N.E.2d 556 (1980) stated that R.C. 5709.10 "extends a tax exemption to property owned by park districts, regardless of use." But the Tax

Commissioner takes issue with this Court's supposed lack of analysis or reasoning for its conclusion. Ignoring the fact that *Cincinnati* was decided prior to *Denison*, the Tax Commissioner argues that *Kinney*² is inapposite and unpersuasive when compared to the reasoning and analysis in *Cincinnati*. This argument carries no weight.

Contrary to the Tax Commissioner's claim, this Court did analyze and provide reasoning for its decision. In *Kinney*, the Tax Commissioner was trying, yet again, to convince this Court that a public use requirements must be read into R.C. 5709.10. This Court noted "the similarity between the relevant facts [in *Kinney*] and those addressed by this court in *Atwell v. Board of Park Commrs.* (1965), 2 Ohio St.2d 257, 208 N.E.2d 541." *Kinney*, 61 Ohio St.2d at 90. "In *Atwell*, this court approved the granting of a tax exemption under R.C. 5709.10 on a mere showing of park district ownership, without considering the use made of the subject property." *Id.* The Court also cited for support another of the "park district" cases, *Muskinghum v. Walton* (1970), 21 Ohio St.2d 240, 244, 208 N.E.2d 541. *Id.* Therefore, the perceived lack of analysis or reasoning exists only because this Court was able to so quickly dispense with the Tax Commissioner's argument since it made the exact same argument in two prior cases.

The Tax Commissioner next attempts to distinguish the "park district cases" by claiming that the Court did not specifically find that the park property was not used exclusively for a public purpose. It is also argued that the General Assembly's response after *Kinney* defeated the notion that park district property is exempt regardless of use.

This Court could not have been clearer in the park district cases! The use of the property was of no consequence. The statute was clear an unequivocal just like R.C. 3313.44 is clear and

² The Tax Commissioner's Merit Brief refers to this case as *Montgomery Cty. Park Dist.* whereas the Board of Education's Merit Brief referred to it as *Kinney*. The Board of Education will continue to refer to this case as *Kinney* herein.

unequivocal. The Court was not required to decide whether the property in the “park district” cases was used exclusively for a public purpose because the statute did not require it to do so.

Moreover, despite the Tax Commissioner’s claim that General Assembly acted swiftly in response to this Court’s decisions involving the “park district” cases, it actually acted quite slowly. The Tax Commissioner conveniently uses *Kinney* to support its claim because that case was decided in 1980. The problem with this claim is that it took the General Assembly two years to act after the *Kinney* decision, which is not very swift at all. More importantly, the first of the “park district” cases (*Atwell*) was decided in 1965, which was 17 years prior to the General Assembly’s action. Therefore, the claim that the General Assembly’s action in response to this Court’s park district decisions was “swift and emphatic” is completely false and misleading.

C. Section 5709.86 Of The Revised Code Can Easily Be Harmonized With R.C. 3313.44.

The Tax Commissioner argues that the “abandoned school property exemption” found in R.C. 5709.86 is more specific and that, with its enactment in 1994, the General Assembly somehow recognized that it would be impermissible for a board of education to lease property for non-school purposes. The Tax Commissioner goes on to claim that R.C. 3313.44 should be read in harmony with R.C. 5709.86 and that, as a result, the Board of Education is not entitled to exemption under R.C. 3313.44.

Section 5709.86 of the Revised Code is inapplicable as the Board of Education is not attempting to receive exempt status for its property under that statute. That statute applies to abandoned school property. Moreover, R.C. 5709.86 does not preclude the Board from receiving exempt status under R.C. 3313.44 because the two statutes can easily be harmonized.

Section 5709.86 of the Revised Code was enacted in 1994. It is safe to classify the exemption available through this statute as a tax incentive that is more akin to tax increment

financing or enterprise zone exemptions for commercial or residential development. In fact, this statute is found in Chapter 5709 of the Revised Code among the other tax incentive statutes.

Section 5709.86 of the Revised Code applies not only to boards of education, but also to counties, townships, and cities that own or owned property that was used for school purposes for not less than ten years. R.C. 5709.86(A)(3). It permits one of those governmental entities to declare “abandoned school property” as being used for the public purpose of restoring unused public property to a productive use. R.C. 5709.86(B). The statute even allows this declaration to be made to “qualified tangible personal property.” *Id.* Once the governmental entity has made this declaration under R.C. 5709.86, it is then permitted to sell or lease the property to any person and grant real property tax exempt status on the property for up to ten years.

Section 3313.44 of the Revised Code cannot be classified as a tax incentive. It only applies when a board of education owns real property or leases real property from someone else for a term of 50 years or more. Unlike R.C. 5709.86, section 3313.44 does not apply to abandoned property that was once utilized as a school but is owned by a county, township or municipal corporation. This is where the Tax Commissioner’s argument surely fails.

The award of a tax incentive for up to ten years under R.C. 5709.86 can be made by a “legislative authority” as that term is defined in the statute. “Legislative authorities” are defined in R.C. 5709.86 as boards of education, county commissioners, township trustees, and municipal corporations. Any of those entities that own abandoned school property are permitted to award the tax incentive in R.C. 5709.86.

The statute further provides that qualifying property may be exempted for up to “ten years from the day the property is purchased from the legislative authority, or, if the property is leased by the legislative authority, from the day the lease agreement takes effect.” R.C.

5709.86(B). Clearly, this statutory language applies to all of the legislative authorities that were defined earlier in the statute. It does not apply only to boards of education.

The fact that this statute applies to governmental entities other than school districts is extremely important. There do not appear to be any statutes like R.C. 3313.44 that are available to counties, townships, or municipal corporations. In other words, the General Assembly has not given property owned by counties, townships, and municipal corporations the broad exemption it has given to boards of education in R.C. 3313.44 where ownership is the only requirement to obtaining tax exempt status. This fact is crucial because it harmonizes both statutes.

Section 3313.44 awards tax exempt status to property that is merely owned by a board of education. Section 5709.86 on the other hand allows a board of education to induce a potential purchaser of abandoned school property by awarding up to a ten-year exemption after the board of education has sold its property. Section 3313.44 does not permit that.

The language in R.C. 5709.86 with respect to tax exempt status being available to leased property would seem to be rarely used by boards of education since they are already entitled to tax exempt status under R.C. 3313.44 for property they own but lease to another. In other words, it would not make sense for a board of education to invoke R.C. 5709.86 in the situation where it is leasing real property that it owns because its property should already be entitled to exempt status under R.C. 3313.44. However, a board of education would invoke R.C. 5709.86 in the situation where it wanted to induce a purchaser into purchasing abandoned property by granting a tax incentive that applies when the board of education no longer owns the property.

In contrast, the absence of statutes similar to R.C. 3313.44 for counties, townships, and municipal corporations gives meaning to the provisions in R.C. 5709.86 that pertain to leased property. Unlike a board of education, property that a county, township, or municipal

corporation leases for a private use is not entitled to an automatic exemption. However, under R.C. 5709.86 a county, township, or municipal corporation is able to award a tax incentive to property that it owns but leases for a private use. As such, the provisions in R.C. 5709.86 that pertain to tax incentives for leased property are available and applicable to counties, townships and municipal corporations.

It is implausible to conclude that R.C. 5709.86 somehow negates R.C. 3313.44 simply because boards of education are included within the definition of a “legislative authority” that is permitted to award an exemption under R.C. 5709.86. Sections 3313.44 and 5709.86 can both be harmonized by the reasonable and logical interpretation mentioned above. The ability to award an exemption for property sold or leased by a legislative authority applies to all of the legislative authorities named in R.C. 5709.86. A board of education would be unlikely to utilize R.C. 5709.86 for property it wanted to lease because that property should already be entitled to exemption under R.C. 3313.44. However, counties, townships and cities would certainly utilize R.C. 5709.86 for property they wanted to lease because they do not have the benefit of a broad tax exemption statute like boards of education do.

Basic tenants of statutory construction support the Board of Education’s position. There is a long-standing rule which provides that courts will not hold prior legislation to be impliedly repealed by the enactment of subsequent legislation unless the subsequent legislation clearly requires such a holding. *Ludlow v. Johnston*, an 1828 Ohio Supreme Court decision, states:

When the provisions of two statutes are so far inconsistent with each other that both can not be enforced, the latter must prevail. But if, by any fair course of reasoning, the two can be reconciled, both shall stand. When the legislature intend to repeal a statute, we may, as a general rule, expect them to do it in express terms, or by the use of words which are equivalent to an express repeal. No court will, if it can be consistently avoided, determine that a statute is repealed by implication. *Ludlow v. Johnson*, 3 Ohio 553, 564 (1828).

In *Pancoast v. Ruffin*, 1 Ohio 381, 385-86 (1824), the Ohio Supreme Court said:

Statutes should be so construed as to give effect to the intention of the Legislature, and, if possible, render every section and clause effectually operative. ... It is settled that, where there are contradictory provisions in statutes, and both are susceptible of a reasonable construction which will not nullify either, it is the duty of the court to give such construction, and further, that where two affirmative statutes exist one is not to be construed to repeal the other by implication unless they can be reconciled by no mode of interpretation.

The General Assembly even codified this judicial policy in section 1.51 of the Revised Code. In this case, R.C. 3313.44 and R.C. 5709.86 can be construed so that effect is given to both. The Tax Commissioner's claimed conflict between the two statutes is not irreconcilable so as to permit a holding that R.C. 5709.86 must apply over R.C. 3313.44. Additionally, there is no indication whatsoever that the General Assembly intended to repeal R.C. 3313.44 when it enacted R.C. 5709.86. The two statutes can clearly coexist and the Tax Commissioner's argument is entirely misplaced.

D. The Tax Commissioner's Other Arguments Against Exemption Are Equally Unpersuasive.

The Tax Commissioner also argues that the current statutory language should be given the same meaning that it had when first enacted in 1873. The Tax Commissioner advanced this very same argument in *Kinney*. This Court quickly dispensed with that argument by stating:

[w]e assume that the General Assembly in 1949 was aware of the 1931 constitutional amendment, and reenacted the relevant provision of R.C. 5709.10 with it in mind. Since the language of R.C. 5709.10 as amended in 1949 is unequivocal in its requirement that a park district merely own the subject property, there is no basis for reading into it stricter requirements. See *Provident Bank v. Wood* (1973), 36 Ohio St.2d 101, 105, 106, 304 N.E.2d 378. Thus, at least as of 1949, property owned by a park district is entitled to a tax exemption under R.C. 5709.10, regardless of its use. *Kinney*, 61 Ohio St.2d at 90.

The Tax Commissioner's renewal of the same argument it made in *Kinney* should continue to be rejected. The argument ignores: the 1931 amendment to Section 2 of Article XII of the Ohio constitution; the reenactment of R.C. 3313.44; this Court's 1965 decision in *Denison*; and the General Assembly's subsequent amendment to R.C. 3313.44 in 2010 that applies to the tax year in question.

The General Assembly is assumed to be fully aware of the 1931 constitutional amendment when it incorporated a prior exemption for Board owned property into the Revised Code in 1953 as Revised Code § 3313.44, and when it amended Revised Code § 3313.44 in 2010. If the General Assembly wanted to impose a public use requirement it could have easily done so – it did not. As mentioned above, it has included a specific public use requirement in a multitude of other statutes applicable to political subdivisions but never chosen to do so with respect to RC. 3313.44 and boards of education. It is not the place for the Tax Commissioner or a court to usurp this power that the constitution reserves for the General Assembly.

The Tax Commissioner next argues that the Board of Education is not entitled to exemption because the General Assembly did not “provide express statutory language in order to exempt property *leased from* a public institution for a non-public use.” See, Tax Commissioner Merit Brief at 16. But this argument completely ignores the plain and unequivocal language of the statute. Property that is simply owned by a board of education, regardless of its use or the fact that it is leased to someone, is entitled to exemption.

The General Assembly did not say, as it has said in other statutes, that the exemption is only available for property that is owned by a board of education and not used “with the view to profit” or that “is not leased or otherwise used with a view to profit.” See R.C. 5709.121(A)(2);

R.C. 5709.14; R.C. 5709.07(A)(2)(3) and (4). Quite the contrary, the General Assembly requires mere ownership in order for the exemption provided by R.C. 3313.44 to apply.

It is also worth noting that the amendment to R.C. 3313.44 in 2010 replaced the word “vested” with the words “owned by or leased to.” The statute now acknowledges the possibility of an exemption for property “leased to” a board of education. It does not require the suspension of judgment to infer that the General Assembly could have easily prohibited the exemption of property “leased from” a board of education by simply including that language in the statute.

What the Tax Commissioner really seeks is for this Court to read language into the statute that simply does not exist. In order for property to be “leased from” a board of education, the board of education must first own the real property. If the board of education owns the real property the plain terms of R.C. 3313.44 unquestionably allow for exemption regardless of whether the property is leased from the board of education.

The Tax Commissioner next cites five cases that supposedly support its argument that this Court has issued some broad-based holding that publicly-held property leased to private parties for private use must always be denied exemption. However, the problem with each and every one of these cases is that exemption was denied because the statutes involved required a specific public use in order for the exemption to apply.

In *City of Parma Heights v. Wilkins*, 105 Ohio St.3d 463, 2005-Ohio-2818, 828 N.E.2d 998, the city sought exemption on an ice skating rink that it owned but leased to a private entity. The exemption was sought under three different statutes: “(1) R.C. 5709.08, which exempts from taxation any ‘public property used exclusively for a public purpose’; (2) R.C. 5709.081, which exempts certain publicly owned athletic facilities; and (3) R.C. 5709.12, which exempts some public property used for charitable purposes.” *Id.* at 464. This Court rejected the city’s

argument because, unlike R.C. 3313.44, the specific language of the exemption statutes required that the property be utilized for specific purposes. *Id.* at 467-468.

The Tax Commissioner also cited *Columbus City Sch. Dist. Bd. of Ed. v. Testa*, 130 Ohio St.3d 344, 2011-Ohio-5534, 958 N.E.2d 557, but that case involved an exemption under R.C. 3345.17, which provides a real property tax exemption to certain university owned property that is exempt “so long as such property is used for the support of such university.” R.C. 3345.17. The central issue in *Columbus City* was whether the use of income from commercial and residential tenants qualified the property as being used for the support of the university. Again, unlike R.C. 3313.44, this is another statute that requires a specific use in addition to ownership.

City of Cleveland v. Perk, 29 Ohio St.2d 161, 280 N.E.2d 653 (1972) involved leased commercial space in Hopkins International Airport. The city sought exemption under R.C. 5709.08, which requires an exclusive public use in addition to ownership. *Id.* at 163. Again, R.C. 3313.44 does not list a specific use that must be met in order for the exemption to apply. *Carney v. Cleveland*, 173 Ohio St. 56, 180 N.E.2d 14 (1962) and *Div. of Conserv. and Nat. Resources v. Bd. of Tax Appeals*, 149 Ohio St. 33, 77 N.E.2d 242 (1948) are similarly inapplicable, like the others cited by the Tax Commissioner, because those cases involved statutes that required exclusive public use in addition to ownership.

The Tax Commissioner uses these cases to claim that express statutory authorization is necessary to exempt property leased from a public entity. However, this Court has never held that to be the case! In fact, this Court recognized in *Parma Heights* that the private use of public property does not always preclude exemption. “[W]henver public property is used by a private citizen for a private purpose, that use generally prevents exemption.” *Parma Heights*, 105 Ohio St. 3d at 465. The refusal of this Court to adopt a “hard and fast rule” with the use of the word

“generally” in *Parma Heights* acknowledges that most, but not all, tax exemption statutes require that property be utilized for a public purpose for tax exemption to apply. Section 3313.44 does not, which is entirely permissible according to *Denison*.

In examining tax exemption statutes that require an exclusive public use, this Court has even found that incidental private use will not defeat exemption. In a case with nearly identical facts to this case, the Court in *Whitehouse v. Tracy*, 72 Ohio St.3d 178, 648 N.E.2d 503 (1995) held that a private farmer’s use of village-owned land was incidental and so *de minimus* that it did not defeat an R.C. 5709.08 exemption. In that case the Court found that the farmer was not reaping a substantial business profit and that the village allowed the farmer to farm the property solely to save money on maintenance expenses. The *Whitehouse* Court also cited the case of *South-Western City Schools Bd. of Edn. v. Kinney*, 24 Ohio St.3d 184, 494 N.E.2d 1109 (1986), which held that a snack shop lease to a private concessioner at a publicly owned golf course did not defeat exemption because there was nothing in the record to suggest that the number of sales by the concessioner was anything other than inconsequential and trivial. Therefore, assuming *arguendo* that ownership alone is not enough for a R.C. 3313.44 exemption, the incidental use of the Board of Education’s property by a farmer is not enough to defeat exemption.

E. The Board Of Tax Appeals Should Have Considered Changes To The Property And Made A Determination For Tax Years Subsequent To 2010.

The issue of whether the Board of Education is entitled to exemption for years subsequent to 2010 is properly before this Court because the Board of Education’s exemption application did not just seek exemption for the 2010 tax year. Rather, it sought exemption for the 2010 tax year and all subsequent years. To prove this point, had the exemption application been properly granted, it would have been granted prospectively and nothing further would have needed to be done to ensure that exempt status continued during subsequent tax years.

The BTA specifically found that changes to the property that “took place after the 2010 tax lien date” were not relevant to the instant appeal because the exemption application was filed beginning with the 2010 tax year. The Tax Commissioner argues that the Board of Education did not request a hearing or consideration of more current tax years “at any point during the proceedings before the Commissioner.” However, the reality is that the Board of Education filed its exemption application with the Butler County Auditor on January 26, 2010. (Supp. 16) The Auditor transmitted the application to the Ohio Department of Taxation where it sat for more than two years until a Final Determination was issued on March 14, 2012. (Appx. 8.) No communications came from the Ohio Department of Taxation to the Board of Education during this period of time. For instance, the Tax Commissioner never offered the opportunity for a hearing or even informed the Board of Education that a hearing would not be held.

The Tax Commissioner is clearly able to consider additional facts during the pendency of a tax exemption application under the authority of R.C. 5715.27(H) and to make a determination for subsequent tax years. The changes to the property discussed in the Board of Education’s Merit Brief occurred after the tax exemption application was filed but before the Tax Commissioner issued its decision. The first opportunity to explain what happened to the subject property occurred at the BTA hearing.

The Board of Education presented additional evidence to the BTA pursuant to R.C. 5717.02(E) that could have been presented to the Tax Commissioner had the Tax Commissioner conducted a hearing on the exemption application. The Board of Education should not be prejudiced by the Tax Commissioner’s unilateral decision to dispense with a hearing.

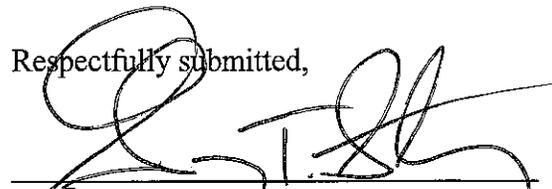
The BTA hearing is *de novo* and the BTA is “statutorily authorized to conduct full administrative appeals in which the parties are entitled to produce evidence in addition to that

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. 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 and available for consideration. Accordingly, 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).

CONCLUSION

This Court has addressed these exact issues in the “park district” cases and rejected the Tax Commissioner’s arguments on at least three prior occasions. The Tax Commissioner continues to exhaust the same arguments that have previously been rejected in another attempt to convince this Court to usurp the General Assembly’s authority and judicially legislate a public school use into R.C. 3313.44. The language of R.C. 3313.44 could not be any clearer. All 34 acres at issue should be entitled to tax exemption.

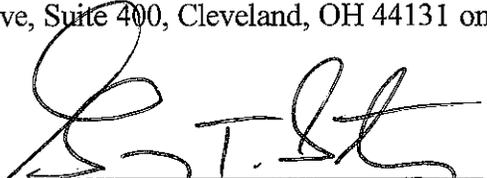
Respectfully submitted,


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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served by certified mail to: **David D. Ebersole**, Counsel for Appellee, Joseph W. Testa, Tax Commissioner of Ohio, 30 East Broad Street, 25th Floor, Columbus, OH 43215 and **Karrie M. Kalail and Paul J. Deegan**, Counsel for Amici Curiae, Ohio School Boards Association and Ohio Association of School Business Officials, Smith, Peters & Kalail, Co., L.P.A., 3 Summit Park Drive, Suite 400, Cleveland, OH 44131 on this the 28th day of April, 2015.



Gary T. Stedronsky (0079866)

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

R.C. § 5709.081

5709.081 Exemption of public recreational facility for athletic events

Effective: September 15, 2011

Currentness

(A) Real and tangible personal property owned by a political subdivision that is a public recreational facility for athletic events shall be exempt from taxation if all of the following apply:

(1) The property is controlled and managed by a political subdivision or a county-related corporation or by a similar corporation under the direct control of a political subdivision and whose members and trustees are chosen or appointed by the subdivision;

(2) All revenues and receipts derived by the subdivision or corporation that controls and manages the property, after deducting amounts needed to pay necessary expenses for the operation and management of the property, accrue to the political subdivision owning the property;

(3) The property is not occupied and used for more than seven days in any calendar month by any private entity for profit or for more than a total of fifteen days in any calendar month by all such private entities for profit;

(4) The property is under the direction and control of the political subdivision or managing corporation whenever it is being used by a private entity for profit;

(5) The primary user or users of the property, if such a primary user exists, are controlled and managed by the political subdivision or corporation that controls and manages the property.

(B) Tangible personal property, and all buildings, structures, fixtures, and improvements of any kind to the land, that are constructed or, in the case of personal property, acquired after March 2, 1992, and are part of or used in a public recreational facility used by a major league professional athletic team or a class A to class AAA minor league affiliate of a major league baseball team for a significant portion of its home schedule, and land acquired by a political subdivision in 1999 for such purposes or originally leased from a political subdivision, such political subdivision qualifying as such pursuant to division (H) of this section, in 1998 for such purposes, are declared to be public property used for a public purpose and are exempt from taxation, if all of the following apply:

(1) Such property, or the land upon which such property is located if such land was originally leased in 1998 from a political subdivision that qualifies as such pursuant to division (H) of this section, is owned by one or more political subdivisions or by a corporation controlled by such subdivisions;

(2) Such property was or is any of the following:

(a) Constructed or, in the case of personal property, acquired pursuant to an agreement with a municipal corporation to implement a development, redevelopment, or renewal plan for an area declared by the municipal corporation to be a slum or blighted area, as those terms are defined in section 725.01 of the Revised Code;

(b) Financed in whole or in part with public obligations as defined in section 5709.76 of the Revised Code or otherwise paid for in whole or in part by one or more political subdivisions;

(c) An improvement or addition to property defined in division (B)(2)(a) or (b) of this section.

(3) Such property is controlled and managed by either of the following:

(a) One or more of the political subdivisions or the corporation that owns it;

(b) A designee, tenant, or agent of such political subdivision or subdivisions or corporation pursuant to a management, lease, or similar written agreement.

(4) The primary user or users of such property, if a primary user or primary users exist, either:

(a) Are controlled and managed by one or more of the political subdivisions or the corporation that owns the property; or

(b) Operate under leases, licenses, management agreements, or similar arrangements with, and providing for the payment of rents, revenues, or other remuneration to, one or more of the political subdivisions or the corporation that owns the property.

(5) Any residual cash accrues to the political subdivision or subdivisions that own the property or that control the corporation that owns the property, and is used for the public purposes of the subdivision or subdivisions. As used in division (B)(5) of this section, "residual cash" means any revenue and receipts derived from the property by the political subdivision or subdivisions or corporation that owns the property and that are available for unencumbered use by the political subdivision or subdivisions or corporation, after deducting amounts needed to make necessary expenditures, pay debt service, and provide for working capital related to the ownership, management, operation, and use of the property, including payments of taxes on the taxable part of the public recreational facility, contractually obligated payments or deposits into reserves or otherwise, and service payments under section 307.699 of the Revised Code.

(C) The exemption provided in division (B) of this section also applies to both of the following:

(1) The property during its construction or, in the case of tangible personal property, acquisition during the construction period, if the owner meets the condition of division (B)(1) of this section and has agreements that provide for the satisfaction of all other conditions of division (B) of this section upon the completion of the construction;

(2) Any improvement or addition made after March 2, 1992, to a public recreational facility that was constructed before March 2, 1992, as long as all other conditions in division (B) of this section are met.

(D) A corporation that owns property exempt from taxation under division (B) of this section is a public body for the purposes of section 121.22 of the Revised Code. The corporation's records are public records for the purposes of section 149.43 of the Revised Code, except records related to matters set forth in division (G) of section 121.22 of the Revised Code and records related to negotiations that are not yet completed for financing, leases, or other agreements.

(E) The exemption under division (B) of this section applies to property that is owned by the political subdivision or subdivisions or the corporation that owns the public recreational facility. Tangible personal property owned by users, managers, or lessees of the facility is taxable when used in the public recreational facility.

(F) All real property constituting a public recreational facility, including the land on which the facility is situated, that is owned by a municipal corporation and used primarily by an independent professional minor league baseball team for a significant portion of its home schedule is declared to be public property used for a public purpose, and is exempt from taxation, if the facility is constructed in 2008 or thereafter, the team operates at the facility under a lease, license, management agreement, or similar arrangement with the municipal corporation that requires the team to pay rent, revenue, or other remuneration to the municipal corporation, and any residual cash, as defined in division (B)(5) of this section, that accrues to the municipal corporation is used for the public purposes of the municipal corporation.

For the purposes of this division, an independent professional minor league baseball team is a baseball team that employs professional players and that is a member of an established league composed of teams that are not affiliated with a constituent member club of the association known as major league baseball.

(G) Nothing in this section or in any other section of the Revised Code prohibits or otherwise precludes an agreement between a political subdivision, or a corporation controlled by a political subdivision, that owns or operates a public recreational facility that is exempted from taxation under division (A), (B), or (F) of this section and the board of education of a school district or the legislative authority of a municipal corporation, or both, in which all or a part of that facility is located, providing for payments to the school district or municipal corporation, or both, in lieu of taxes that otherwise would be charged against real and tangible personal property exempted from taxation under this section, for a period of time and under such terms and conditions as the legislative authority of the political subdivision and the board of education or municipal legislative authority, or both, may agree, which agreements are hereby specifically authorized.

(H) As used in this section, "political subdivision" includes the state or an agency of the state if the city, local, or exempted village school district in which the property is situated expressly consents to exempting the property from taxation.

CREDIT(S)

(2011 S 71, eff. 9-15-11; 2006 H 530, eff. 3-30-06; 2002 H 524, eff. 6-28-02; 1995 S 188, eff. 7-19-95; 1991 H 228, eff. 3-2-92; 1978 S 392)

Notes of Decisions (1)

R.C. § 5709.081, OH ST:§ 5709.081

Current through 2015 Files 1, 3 and 4 of the 131st GA (2015-2016).

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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. § 5709.12

5709.12 Exemption of property used for charitable purposes

Effective: September 15, 2014
Currentness

(A) As used in this section, "independent living facilities" means any residential housing facilities and related property that are not a nursing home, residential care facility, or residential facility as defined in division (A) of section 5701.13 of the Revised Code.

(B) Lands, houses, and other buildings belonging to a county, township, or municipal corporation and used exclusively for the accommodation or support of the poor, or leased to the state or any political subdivision for public purposes shall be exempt from taxation. Real and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation, including real property belonging to an institution that is a nonprofit corporation that receives a grant under the Thomas Alva Edison grant program authorized by division (C) of section 122.33 of the Revised Code at any time during the tax year and being held for leasing or resale to others. If, at any time during a tax year for which such property is exempted from taxation, the corporation ceases to qualify for such a grant, the director of development shall notify the tax commissioner, and the tax commissioner shall cause the property to be restored to the tax list beginning with the following tax year. All property owned and used by a nonprofit organization exclusively for a home for the aged, as defined in section 5701.13 of the Revised Code, also shall be exempt from taxation.

(C)(1) If a home for the aged described in division (B)(1) of section 5701.13 of the Revised Code is operated in conjunction with or at the same site as independent living facilities, the exemption granted in division (B) of this section shall include kitchen, dining room, clinic, entry ways, maintenance and storage areas, and land necessary for access commonly used by both residents of the home for the aged and residents of the independent living facilities. Other facilities commonly used by both residents of the home for the aged and residents of independent living units shall be exempt from taxation only if the other facilities are used primarily by the residents of the home for the aged. Vacant land currently unused by the home, and independent living facilities and the lands connected with them are not exempt from taxation. Except as provided in division (A)(1) of section 5709.121 of the Revised Code, property of a home leased for nonresidential purposes is not exempt from taxation.

(2) Independent living facilities are exempt from taxation if they are operated in conjunction with or at the same site as a home for the aged described in division (B)(2) of section 5701.13 of the Revised Code; operated by a corporation, association, or trust described in division (B)(1)(b) of that section; operated exclusively for the benefit of members of the corporation, association, or trust who are retired, aged, or infirm; and provided to those members without charge in consideration of their service, without compensation, to a charitable, religious, fraternal, or educational institution. For the purposes of division (C)(2) of this section, "compensation" does not include furnishing room and board, clothing, health care, or other necessities, or stipends or other de minimis payments to defray the cost thereof.

(D)(1) A private corporation established under federal law, as defined in 36 U.S.C. 1101, Pub. L. No. 102-199, 105 Stat. 1629, as amended, the objects of which include encouraging the advancement of science generally, or of a particular branch of science, the promotion of scientific research, the improvement of the qualifications and usefulness of scientists, or the increase and diffusion of scientific knowledge is conclusively presumed to be a charitable or educational institution. A private corporation established as a nonprofit corporation under the laws of a state 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.A. 1, as amended, and that has as its principal purpose one or more of the foregoing objects also is conclusively presumed to be a charitable or educational institution.

The fact that an organization described in this division operates in a manner that results in an excess of revenues over expenses shall not be used to deny the exemption granted by this section, provided such excess is used, or is held for use, for exempt purposes or to establish a reserve against future contingencies; and, provided further, that such excess may not be distributed to individual persons or to entities that would not be entitled to the tax exemptions provided by this chapter. Nor shall the fact that any scientific information diffused by the organization is of particular interest or benefit to any of its individual members be used to deny the exemption granted by this section, provided that such scientific information is available to the public for purchase or otherwise.

(2) Division (D)(2) of this section does not apply to real property exempted from taxation under this section and division (A)(3) of section 5709.121 of the Revised Code and belonging to a nonprofit corporation described in division (D)(1) of this section that has received a grant under the Thomas Alva Edison grant program authorized by division (C) of section 122.33 of the Revised Code during any of the tax years the property was exempted from taxation.

When a private corporation described in division (D)(1) of this section sells all or any portion of a tract, lot, or parcel of real estate that has been exempt from taxation under this section and section 5709.121 of the Revised Code, the portion sold shall be restored to the tax list for the year following the year of the sale and, except in connection with a sale and transfer of such a tract, lot, or parcel to a county land reutilization corporation organized under Chapter 1724. of the Revised Code, a charge shall be levied against the sold property in an amount equal to the tax savings on such property during the four tax years preceding the year the property is placed on the tax list. The tax savings equals the amount of the additional taxes that would have been levied if such property had not been exempt from taxation.

The charge constitutes a lien of the state upon such property as of the first day of January of the tax year in which the charge is levied and continues until discharged as provided by law. The charge may also be remitted for all or any portion of such property that the tax commissioner determines is entitled to exemption from real property taxation for the year such property is restored to the tax list under any provision of the Revised Code, other than sections 725.02, 1728.10, 3735.67, 5709.40, 5709.41, 5709.62, 5709.63, 5709.71, 5709.73, 5709.78, and 5709.84, upon an application for exemption covering the year such property is restored to the tax list filed under section 5715.27 of the Revised Code.

(E) Real property held by an organization organized and operated exclusively for charitable purposes as described under section 501(c)(3) of the Internal Revenue Code and exempt from federal taxation under section 501(a) of the Internal Revenue Code, 26 U.S.C.A. 501(a) and (c)(3), as amended, for the purpose of constructing or rehabilitating residences for eventual transfer to qualified low-income families through sale, lease, or land installment contract, shall be exempt from taxation.

The exemption shall commence on the day title to the property is transferred to the organization and shall continue to the end of the tax year in which the organization transfers title to the property to a qualified low-income family. In no case shall the exemption extend beyond the second succeeding tax year following the year in which the title was transferred to the organization. If the title is transferred to the organization and from the organization to a qualified low-income family in the same tax year, the exemption shall continue to the end of that tax year. The proportionate amount of taxes that are a lien but not yet determined,

assessed, and levied for the tax year in which title is transferred to the organization shall be remitted by the county auditor for each day of the year that title is held by the organization.

Upon transferring the title to another person, the organization shall file with the county auditor an affidavit affirming that the title was transferred to a qualified low-income family or that the title was not transferred to a qualified low-income family, as the case may be; if the title was transferred to a qualified low-income family, the affidavit shall identify the transferee by name. If the organization transfers title to the property to anyone other than a qualified low-income family, the exemption, if it has not previously expired, shall terminate, and the property shall be restored to the tax list for the year following the year of the transfer and a charge shall be levied against the property in an amount equal to the amount of additional taxes that would have been levied if such property had not been exempt from taxation. The charge constitutes a lien of the state upon such property as of the first day of January of the tax year in which the charge is levied and continues until discharged as provided by law.

The application for exemption shall be filed as otherwise required under section 5715.27 of the Revised Code, except that the organization holding the property shall file with its application documentation substantiating its status as an organization organized and operated exclusively for charitable purposes under section 501(c)(3) of the Internal Revenue Code and its qualification for exemption from federal taxation under section 501(a) of the Internal Revenue Code, and affirming its intention to construct or rehabilitate the property for the eventual transfer to qualified low-income families.

As used in this division, "qualified low-income family" means a family whose income does not exceed two hundred per cent of the official federal poverty guidelines as revised annually in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C.A. 9902, as amended, for a family size equal to the size of the family whose income is being determined.

(F)(1)(a) Real property held by a county land reutilization corporation organized under Chapter 1724. of the Revised Code shall be exempt from taxation. Notwithstanding section 5715.27 of the Revised Code, a county land reutilization corporation is not required to apply to any county or state agency in order to qualify for the exemption.

(b) Real property acquired or held by an electing subdivision other than a county land reutilization corporation on or after April 9, 2009, for the purpose of implementing an effective land reutilization program or for a related public purpose shall be exempt from taxation until sold or transferred by the electing subdivision. Notwithstanding section 5715.27 of the Revised Code, an electing subdivision is not required to apply to any county or state agency in order to qualify for an exemption with respect to property acquired or held for such purposes on or after such date, regardless of how the electing subdivision acquires the property.

As used in this section, "electing subdivision" and "land reutilization program" have the same meanings as in section 5722.01 of the Revised Code, and "county land reutilization corporation" means a county land reutilization corporation organized under Chapter 1724. of the Revised Code and any subsidiary wholly owned by such a county land reutilization corporation that is identified as "a wholly owned subsidiary of a county land reutilization corporation" in the deed of conveyance transferring title to the subsidiary.

(2) An exemption authorized under division (F)(1) of this section shall commence on the day title to the property is transferred to the corporation or electing subdivision and shall continue to the end of the tax year in which the instrument transferring title from the corporation or subdivision to another owner is recorded, if the use to which the other owner puts the property does not qualify for an exemption under this section or any other section of the Revised Code. If the title to the property is transferred to the corporation and from the corporation, or to the subdivision and from the subdivision, in the same tax year, the exemption shall continue to the end of that tax year. The proportionate amount of taxes that are a lien but not yet determined, assessed,

and levied for the tax year in which title is transferred to the corporation or subdivision shall be remitted by the county auditor for each day of the year that title is held by the corporation or subdivision.

Upon transferring the title to another person, the corporation or electing subdivision shall file with the county auditor an affidavit or conveyance form affirming that the title was transferred to such other person and shall identify the transferee by name. If the corporation or subdivision transfers title to the property to anyone that does not qualify or the use to which the property is put does not qualify the property for an exemption under this section or any other section of the Revised Code, the exemption, if it has not previously expired, shall terminate, and the property shall be restored to the tax list for the year following the year of the transfer. A charge shall be levied against the property in an amount equal to the amount of additional taxes that would have been levied if such property had not been exempt from taxation. The charge constitutes a lien of the state upon such property as of the first day of January of the tax year in which the charge is levied and continues until discharged as provided by law.

In lieu of the application for exemption otherwise required to be filed as required under section 5715.27 of the Revised Code, a county land reutilization corporation holding the property shall, upon the request of any county or state agency, submit its articles of incorporation substantiating its status as a county land reutilization corporation.

(G) Real property that is owned by an organization described under section 501(c)(3) of the Internal Revenue Code and exempt from federal income taxation under section 501(a) of the Internal Revenue Code and that is used by that organization exclusively for receiving, processing, or distributing human blood, tissues, eyes, or organs or for research and development thereof shall be exempt from taxation.

CREDIT(S)

(2014 H 483, eff. 9-15-14; 2014 S 172, eff. 9-4-14; 2012 H 487, eff. 9-10-12; 2008 S 353, eff. 4-7-09; 2005 H 66, eff. 6-30-05; 2002 H 416, eff. 9-6-02; 2001 H 405, eff. 12-13-01; 1999 H 194, eff. 11-24-99; 1995 H 117, eff. 9-29-95; 1993 H 281, eff. 7-2-93; 1992 H 782; 1989 H 253; 1987 S 21; 132 v S 207; 1953 H 1; GC 5353)

Notes of Decisions (342)

R.C. § 5709.12, OH ST § 5709.12

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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. § 5709.121

5709.121 Certain property declared to be used exclusively for charitable or public purposes

Effective: March 23, 2015

Currentness

<Note: See also version(s) of this section with earlier effective date(s).>

(A) Real property and tangible personal property belonging to a charitable or educational institution or to the state or a political subdivision, shall be considered as used exclusively for charitable or public purposes by such institution, the state, or political subdivision, if it meets one of the following requirements:

(1) It is used by such institution, the state, or political subdivision, or by one or more other such institutions, the state, or political subdivisions under a lease, sublease, or other contractual arrangement:

(a) As a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein;

(b) For other charitable, educational, or public purposes.

(2) It is made available under the direction or control of such institution, the state, or political subdivision for use in furtherance of or incidental to its charitable, educational, or public purposes and not with the view to profit.

(3) It is used by an organization described in division (D) of section 5709.12 of the Revised Code. If the organization is a corporation that receives a grant under the Thomas Alva Edison grant program authorized by division (C) of section 122.33 of the Revised Code at any time during the tax year, "used," for the purposes of this division, includes holding property for lease or resale to others.

(B)(1) Property described in division (A)(1)(a) of this section shall continue to be considered as used exclusively for charitable or public purposes even if the property is conveyed through one conveyance or a series of conveyances to an entity that is not a charitable or educational institution and is not the state or a political subdivision, provided that all of the following conditions apply with respect to that property:

(a) The property was listed as exempt on the county auditor's tax list and duplicate for the county in which it is located for the tax year immediately preceding the year in which the property is conveyed through one conveyance or a series of conveyances;

- (b) The property is conveyed through one conveyance or a series of conveyances to an owner that does any of the following:
- (i) Leases the property through one lease or a series of leases to the entity that owned or occupied the property for the tax year immediately preceding the year in which the property is conveyed or to an affiliate of that entity;
 - (ii) Contracts to have renovations performed as described in division (B)(1)(d) of this section and is at least partially owned by a nonprofit organization described in section 501(c)(3) of the Internal Revenue Code¹ that is exempt from taxation under section 501(a) of that code.²
- (c) The property includes improvements that are at least fifty years old;
- (d) The property is being renovated in connection with a claim for historic preservation tax credits available under federal law;
- (e) The property continues to be used for the purposes described in division (A)(1)(a) of this section after its conveyance; and
- (f) The property is certified by the United States secretary of the interior as a "certified historic structure" or certified as part of a certified historic structure.

(2) Notwithstanding section 5715.27 of the Revised Code, an application for exemption from taxation of property described in division (B)(1) of this section may be filed by either the owner of the property or its occupant.

(C) For purposes of this section, an institution that meets all of the following requirements is conclusively presumed to be a charitable institution:

- (1) The institution is a nonprofit corporation or association, no part of the net earnings of which inures to the benefit of any private shareholder or individual;
- (2) The institution is exempt from federal income taxation under section 501(a) of the Internal Revenue Code;
- (3) The majority of the institution's board of directors are appointed by the mayor or legislative authority of a municipal corporation or a board of county commissioners, or a combination thereof;
- (4) The primary purpose of the institution is to assist in the development and revitalization of downtown urban areas.

CREDIT(S)

(2014 S 243, eff. 3-23-15; 2012 H 487, eff. 9-10-12; 2008 H 458, eff. 12-30-08; 2008 H 562, eff. 9-23-08; 2005 H 66, eff. 6-30-05; 2001 H 405, eff. 12-13-01; 1992 H 782, eff. 4-8-93; 1969 H 817)

Notes of Decisions (213)

Footnotes

1 26 U.S.C.A. § 501(c)(3).

2 26 U.S.C.A. § 501(a).

R.C. § 5709.121, OH ST § 5709.121

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R.C. § 5709.14

5709.14 Exemption of graveyards

Currentness

Lands used exclusively as graveyards, or grounds for burying the dead, except such as are held by a person, company, or corporation with a view to profit, or for the purpose of speculating in the sale thereof, shall be exempt from taxation.

CREDIT(S)

(1953 H 1, eff. 10-1-53; GC 5350)

Notes of Decisions (10)

R.C. § 5709.14, OH ST § 5709.14

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