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I. SUMMARY OF REPLY

Defiance County is not a Solid Waste Management District and no law allows the Tax Commissioner to treat Defiance County as a Solid Waste Management District. Wading into territory outside his bailiwick, the Tax Commissioner insists that the proposed transfer of Defiance County funds must be restricted pursuant to R.C. 343.08. The Tax Commissioner's decision is grounded in a fundamental misunderstanding of the difference between Defiance County and a Solid Waste Management District and is not supported by sound reasoning.

The Tax Commissioner's faulty reasoning actually creates a disincentive for the County's exceptional management of public funds. If upheld, the decision would limit the use of excess funds to only those uses that inure to the benefit of the Defiance County landfill, which does not need the money. Further, the decision would wrongfully prohibit these excess funds from benefiting the public in any other way.

The Tax Commissioner improperly applied additional legal requirements to the proposed transfer and this decision was unlawfully upheld by the Ohio Board of Tax Appeals. For the reasons outlined below, the Tax Commissioner's denial of the proposed transfer must be overturned.

II. REPLY ARGUMENT

Defiance County's Proposition of Law #1:

Transfer restrictions imposed by R.C. 343.08 do not apply to the Defiance County Landfill Fund, because it is a County Fund not a Solid Waste Management District Fund.

A. R.C. 343.08 applies only to Solid Waste Management District Funds.

Markedly absent from the Tax Commissioner's Brief is any mention of legal authority for applying the transfer restrictions imposed on Solid Waste Management Districts by R.C. 343.08 to the Defiance County funds. Instead, the Tax Commissioner persists in his argument that his

determination was a logical and reasoned attempt to advance and synthesize solid waste disposal at the local level with the state's policies for regional waste disposal. Casting aside the question of whether synthesizing the solid waste disposal law falls within the Tax Commissioner's authority; the Tax Commissioner's argument ignores the reality that he, by applying R.C. 343.08 to Defiance County funds, is rewriting the law to create new, binding legal obligations where none previously existed. The Tax Commissioner concluded that "differing use of funds based upon ownership of a landfill by a solid waste management district as opposed to the county itself is both illogical and inconsistent." *See* Hearing Tr. 26:23-27:2, Exhibit C. As a result the Tax Commissioner found the "funds garnered by a county that owns a landfill must, similarly, be limited to the purposes identified in R.C. 323.08(A)(2)(sic)." *Id.* It is not for the Tax Commissioner to decide whether R.C. 343.08, which only applies to Solid Waste Management Districts, should also apply to other entities that own landfills—only the General Assembly can make this decision, via legislation. *Wheeling Steel Corp. v. Porterfield*, 24 Ohio St.2d 24, 27-28, 263 N.E.2d 249, 251 (1970).

The Tax Commissioner's attempt to rely on a 1978 version of R.C. 343.08 to support its argument that the transfer of county funds should be restricted is unpersuasive. As the Tax Commissioner recognizes, R.C. 343.08 was subsequently amended by the General Assembly to apply only to Solid Waste Management Districts, not counties. This amendment shows that the General Assembly knew how to place transfer restrictions on counties, but chose not to extend these restrictions to county funds when the statute was amended to include Solid Waste Management Districts. *Hulsmeyer v. Hospice of Southwest Ohio, Inc.*, 142 Ohio St.3d 236, 244, 2014-Ohio-5511, 29 N.E.3d 903, 911, 26 (2014) citing *Maggiore v. Kovach*, 101 Ohio St.3d 184,

2004-Ohio-722, 803 N.E.2d 790, 27, and *In re Election of Member of Rock Hill Local School Dist. Bd. of Edn.*, 76 Ohio St.3d 601, 608, 669 N.E.2d 1116 (1996).

The law routinely treats entities differently based upon their legal status. For example, a non-profit corporation may qualify for tax exemptions, but is restricted in its use of funds, whereas a for-profit corporation must pay taxes, but may also use funds more freely for the financial benefit of its owners and shareholders, simply by virtue of chosen legal status. Similarly, political subdivisions are required by law to engage in certain formalities when contracting, requiring written contracts for disbursements over \$25,000 and restricting permissible disbursements, whereas private corporations are not subject to these restrictions when they enter into contracts. *See* R.C. 9.231 and 9.237. In each of these circumstances, the legislature has chosen to treat entities differently based on their legal status.

The treatment of Solid Waste Management Districts under R.C. 323.08 is no different. The General Assembly has chosen to restrict the use and transfer of funds by Solid Waste Management Districts—not other legal entities owning landfills and this decision by the General Assembly should be respected.

B. The transfer of funds from the Defiance County Landfill Fund is not restricted under Chapter 5705 of the Revised Code.

Recognizing the flaw in his reliance on R.C. 343.08, the Tax Commissioner now advances the argument that his decision was lawful, because it denied the transfer of money from a special fund to a general fund. This was not the basis for the Tax Commissioner’s determination. The Tax Commissioner very plainly rested his denial on the finding that “funds garnered by a county that owns a landfill, must, similarly, be limited to the purposes identified in R.C. 323.08(A)(2)(sic).”

In support of this new argument, the Tax Commissioner once again demonstrates his fundamental misunderstanding of the role of Solid Waste Management Districts and the legislation supporting their creation by arguing that R.C. 343.08(A) contemplates that a landfill in a Solid Waste Management District could be owned by a local board of county commissioners and as a result, the same restrictions on collection and use of disposal fees would apply. The Tax Commissioner is misreading the statute. A county can be subject to R.C. 343.08(A) when it forms a County Solid Waste Management District—not because it owns a landfill within the district. A close review of Chapter 343 makes this clear.

Next, the Tax Commissioner asserts that the transfer of funds was restricted by R.C. 5705.10, purportedly because the transfer would be from a special fund to a general fund. General funds are composed of “all revenue derived from the general levy for current expense within the ten- mill limitation, from any general levy for current expense authorized by vote in excess of the ten-mill limitation, and from sources other than the general property tax, unless its use for a particular purpose is prescribed by law.” 2015 Ohio Atty. Gen. Ops. No. 2015-007, citing R.C. 5705.10(A). In contrast, special funds “consist of revenues generated by special levies or from sources ‘other than the general property tax and which the law prescribes shall be used for a particular purpose.’ ” *Id.* citing R.C. 5705.15(C); (D).

The Defiance County Landfill Fund was established to create a better bookkeeping system. *See* Hearing Tr. 19:10-20:3 and 29:16-30:6, Exhibit F. Funds in this account are not generated by special levies or from sources which the law prescribes shall be used for a particular purpose. *See* R.C. 5705.15(C); (D). Therefore, the money in the Defiance County Landfill Fund is not a “special fund”. Further, the Tax Commissioner advances no evidence in

support of his claim that the Public Improvement Fund should be considered a general fund, while the Landfill Fund should be considered a special fund.

Moreover, R.C. 5705.10 does not restrict the transfer of funds from special funds to general funds as the Tax Commissioner asserts. First, R.C. 5705.10 governs the use of funds, not the transfer of funds. Transfers of funds are governed by the standards set forth R.C. 5705.14-5705.16 which allow for the permissive transfer of funds outside those transfers specifically outlined in R.C. 5705.14. Second, even if the requirements of R.C. 5705.10, restricting the use of funds, were deemed applicable to fund transfers, neither of the subsections cited by the Tax Commissioner support a finding that R.C. 5705.10 limits the transfer of Defiance County funds in the specific circumstance under review.

R.C. 5705.10(D) provides:

Except as otherwise provided by resolution adopted pursuant to section 3315.01 of the Revised Code, **all revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose, shall be paid into a special fund for such purpose.** Except as otherwise provided by resolution adopted pursuant to section 3315.01 of the Revised Code or as otherwise provided by section 3315.40 of the Revised Code, all revenue derived from a source other than the general property tax, for which the law does not prescribe use for a particular purpose, including interest earned on the principal of any special fund, regardless of the source or purpose of the principal, shall be paid into the general fund. [**Emphasis added**].

R.C. 5705.10(I) states:

Money paid into any **fund shall be used only for the purposes for which such fund is established.** [**Emphasis added**].

Subsection (D) limits the use of funds when the law requires that the funds be used for a specific purpose. No law requires Defiance County Landfill Funds to be used for a specific purpose. For this reason, the restrictions outlined in subsection (D) do not apply to Defiance County. This issue was recently considered by the Ohio Attorney General in an opinion

provided to the Tuscarawas County Prosecuting Attorney. *See* 2013 Ohio Atty. Gen. Ops. No. 2013-044.

The Tuscarawas County Prosecuting Attorney asked the Attorney General whether revenue derived from a public recycling program was required to be kept in a special fund for “solid waste disposal fees”. *Id.* The Attorney General concluded that the recycling funds were not required be restricted in same manner that “solid waste disposal fees” are restricted under the statutes governing Solid Waste Management Districts. *Id.* Indeed, the Attorney General found that no statute requires revenue derived from a recycling program to be deposited into a special Solid Waste Management District fund. *Id.*; *see also Stark-Tuscarawas-Wayne Joint Solid Waste Mgmt. Dist. v. Republic Servs. Of Ohio II, LLC*, Case No-CA-00099, 2004-Ohio-5710, 2004 WL 2406553 (Stark County Oct. 25, 2004) (finding that while a Joint Solid Waste Management District could not use monies derived from solid waste disposal fees to fund an administrative appeal, it could use general funds including interest earned on solid waste disposal fees to pay for the appeal). The same principle applies here, use of revenue from “tipping fees” like revenue from the public recycling program is not restricted by law and therefore R.C. 5705.10(D) does not apply.

Similarly, subsection (I) limits the use of funds to the purpose for which the fund is established. The Defiance County Landfill Fund was established “for the express purpose of creating a better bookkeeping system.” *See* Hearing Tr. 29:16-30:6 and Hearing Tr. 19:10-20:3, Exhibit F. Allowing the transfer of funds from the Landfill Fund, where they were properly recorded and accounted for, to the Public Improvement Fund, where they will again be properly maintained, comports with this purpose. R.C. 5705.10(D) and (I) do not restrict the use of the money in the Defiance County Landfill Fund.

C. The Tax Commissioner's Determination does not synthesize regional and local solid waste disposal law.

The Tax Commissioner places great emphasis on the importance of “synthesizing solid waste disposal at the local level with the state’s policies for regional solid waste disposal.” *Appellee Brief*, p.15-17. Here again, the Tax Commissioner misunderstands the role of Solid Waste Management Districts. Solid Waste Management Districts can be local, serving only one county, or they can be regional a.k.a. Joint Solid Waste Management Districts, comprising more than one county. *See* R.C. 343.01(A). County boards of commissioners decide whether to create their own County Solid Waste Management District or whether to participate in a Joint Solid Waste Management District. R.C. 343.01(B). There is no need for the Tax Commissioner to synthesize solid waste disposal law at the local level with regional disposal; the General Assembly has already completed this task by enacting legislation covering both local and regional Solid Waste Management Districts.

Chapter 343 applies only to Solid Waste Management Districts and the restrictions included in Chapter 343 apply only to a landfill owned by a Solid Waste Management District. The Tax Commissioner advocates for the extension of these restrictions to landfills owned by counties, but his arguments are misplaced. Looking to R.C. 343.08, the Commissioner questions whether counties can retain “tipping fees”. But, then the Tax Commissioner mistakenly cites language from R.C. 343.08 to support his question. The plain language of the statute provides that the restriction on funds applies to landfills owned by “districts” meaning Solid Waste Management Districts; these districts may be single county districts or joint districts. Nothing in the language of R.C. 343.08 indicates that it is meant to extend to a landfill owned by a county.

Defiance County has chosen to participate in the Four County Solid Waste Management District and remits funds to the District as required by R.C. Chapter 343. There are two landfills

located in the Four County Solid Waste Management District, one owned and operated by Defiance County and one owned and operated by Republic Services, Inc. Both landfills are part of the Four County Solid Waste Management District and collect “solid waste disposal fees” for the district as required by law. Hearing Tr. 33:5-10, Exhibit S. But, no provision of the Revised Code restricts these landfills from also collecting “tipping fees” and using the fees collected as they see fit.

D. The evidence adduced at the Board hearing supports approval of the transfer of funds from the Defiance County Landfill Fund.

The evidence presented at the hearing demonstrated that Defiance County took all steps necessary under R.C. 5705.15 and 5705.16 to obtain approval of the proposed transfer of county owned funds and the transfer of county owned funds should have been approved. *See* Hearing Tr. 21:21:8-19 and 25:19-22, Exhibits A and B. The Tax Commissioner painstakingly outlines the history and use of these funds in an attempt to show that the facts adduced at the hearing support restricting transfer from the Landfill Fund. *Appellee Brief*, pp. 18-19. However, the Commissioner fails to make a logical connection demonstrating why the use of funds for landfill operations or the remission of “solid waste disposal fees” from the fund to the Four County Solid Waste District supports restricting the transfer of “tipping fee” funds. Indeed, there is no logical connection. Nothing in the Revised Code states that a political subdivision that voluntarily uses “tipping fee” funds in a certain manner cannot transfer excess monies to a separate fund. As discussed, the restrictions on transfer are outlined in R.C. 5705.14 and 5705.15 and none of these restrictions apply to the Defiance County Landfill Fund.

Without any citation to the record to support of his assertion, the Tax Commissioner argues that Defiance County has “always considered the money in the Landfill Fund to have the same limitations as the Solid Waste District disposal fees.” Nothing in the record supports this

bold, unsubstantiated statement. Indeed, the testimony that was actually elicited supports the opposite conclusion.

Mr. Thomas Kime, Defiance County Commissioner, testified that in the past, the Commissioners felt there was not sufficient money in the Landfill Fund, and that is why they did not previously transfer any money to another fund. It was not because the County thought the money could not be transferred. Hearing Tr. 72:16-73:6, 73:19-74:3. Mr. Timothy Houck, manager of the Defiance County Sanitary Landfill, similarly testified that when he drafted language to be included on the Defiance County website, he did not intend for this language to limit or inhibit the County Commissioners in their use of the funds that were generated by the facility. Hearing Tr. 57:24-58:5. The record supports a finding that the proposed transfer should have been approved. The Tax Commissioner's use of R.C. 343.08 to justify denying the transfer under R.C. 5705.15 and 5705.16 is not supported by law or fact.

Defiance County's Proposition of Law #2:

Defiance County complied with all statutory requirements in order to transfer funds under R.C. Chapter 5705.

A. R.C. Chapter 5705 creates a framework for the transfer of funds with which Defiance County complied.

The Tax Commissioner does not deny that Defiance County complied with all statutory requirements under Chapter 5705. Instead, he simply argues that complying with these requirements is not enough—more is required. A political subdivision has the authority to transfer *any* public funds under its supervision. R.C. 5705.15; *City of Niles v. Union Ice Corp.*, 133 Ohio St. 169, 178, 12 N.E.2d 483 (1938) (upholding the transfer of surplus funds from the electric light and power department to the Mahoning Valley Sanitary District Fund). The only

funds not included in this general authorization are those funds specifically excepted in R.C. 5705.14. *City of Niles v. Union Ice Corp.*, 133 Ohio St. 169 at 178.

The Tax Commissioner seeks to downplay the significance of *City of Niles* by side-stepping the Supreme Court's analysis of sections 5625-13 and 5625-13a, now codified at R.C. 5705.14 and R.C. 5705.15. In *City of Niles* the Supreme Court directly addressed a political subdivision's authority to transfer funds and the relationship between then section 5625-13 (now R.C. 5705.14) and section 5625-13a (now R.C. 5705.15). The Supreme Court held that the "power to transfer 'any public funds under its supervision', meaning thereby, whether derived from taxation or otherwise, to any other fund, was expressly granted." *City of Niles v. Union Ice Corp.*, 133 Ohio St. at 178. The Court went on to find "Consequently, on compliance with the conditions precedent required by statute, the City of Niles has full power, under section 5625-13a, General Code, to transfer surplus funds from its electric light and power department to the Mahoning Valley Sanitary District Fund." *Id.*

Just as the City of Niles had full power to transfer funds from its electric light and power department, so too does Defiance County have full power to transfer funds from its Landfill Fund. This is because nothing in R.C. 5705.14 or 5705.15 restricts the transfer of these funds.

R.C. 5705.15 and 5705.16 generally authorize public fund transfers and must be read *in pari materia* with R.C. 5705.14. *State v. Moaning*, 76 Ohio St.3d 126, 129, 666 N.E.2d 1115 (1996) ("it is a well-settled rule of statutory interpretation that statutory provisions be construed together"); *State ex rel. Herman v. Klopfleisch*, 72 Ohio St. 3d 581, 585, 651 N.E.2d 995 (1995) ("all statutes relating to the same general subject matter must be read *in pari materia*, and in constructing these statutes *in pari materia*, this court must give them a reasonable construction..."). R.C. 5705.14 explicitly outlines how certain transfers may occur and specifies

the location to which monies from eight specific funds can be transferred. R.C. 5705.14. After delineating the funds from which transfers are restricted and explaining the circumstances when transfers can be effectuated, R.C. 5705.15 and R.C. 5705.16 explain the transfer process for all other generally authorized transfers.

The authority to transfer funds under R.C. 5705.15 and R.C. 5705.16 is free from doubt. R.C. 5705.15 provides “the taxing authority of any political subdivision may, in the manner provided in this section and section 5705.16, transfer from one fund to another any public funds under its supervision . . .”. Because this language is clear, the safeguards enunciated in *State ex rel. Bentley & Sons Co. v. Pierce*, and *State ex rel. Locher v. Menning* do not apply. See *State ex rel. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 47, 117 N.E. 6 (1917); *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916). These safeguards, creating a presumption against the expenditure of public funds, apply only when the power to expend funds is in doubt. There is no doubt here, Defiance County had the authority to transfer funds and nothing in the Revised Code restricts this transfer.

Instead of vesting the Tax Commissioner with discretion to deny approvals, the Ohio General Assembly, by passing R.C. 5705.15 and 5705.16, intended to provide a general transfer authorization by excluding specific requirements for transfers. The Board of Tax Appeals erred when it interpreted these sections as having a different meaning.

B. Legal concerns raised in other transfer of funds cases do not apply to Defiance County’s proposed transfer.

The Tax Commissioner cites to four Board of Tax Appeals cases in support of his argument that the transfer denial was consistent with precedent from other fund transfer cases. While these decisions were wrongly decided because they employ the wrong standard of review (using an abuse of discretion standard when a lawful and reasonable standard was correct) they

are also distinguishable. Each case asked the Tax Commissioner, and subsequently the Board of Tax Appeals, to determine whether funds collected or levied to benefit certain citizens or a subset of citizens could be transferred to benefit a different group of citizens. In each case, the Board concluded that the transfer should be denied because it would allow a political subdivision to do something via transfer that it could not regularly do under the law.

In *Deer Creek, Lincoln Twp.*, and *Buck Twp.*, the Board found that road funds collected from a small subset of citizens could not be transferred to the general fund for the benefit of all citizens, reasoning that no law allows taxing a limited group of citizens within a township for the benefit of all citizens. *Deercreek Township Board of Trustees v. Testa*, Board of Tax Appeals, Case No. 2012-1357, 2014 WL 5406660 (September 19, 2014); *Buck Township: Hardin County Fiscal Officer v. Levin*, Board of Tax Appeals, Case No. 2010-2106, 2013 WL 6833211 (October 2, 2013); *Lincoln Township Board of Trustees v. Levin*, Board of Tax Appeals, Case No. 2009-M-693, 2011 WL 5039829 (October 18, 2011). The Board similarly found in *Lake Twp.* that transferring funds from the general fund to the Uniontown Police District Fund would have the effect of using funds collected for the exclusive use and benefit of all taxpayers in the Township for the exclusive use and benefit of only a limited number of citizens and as a result denied the transfer. *Lake Township of Stark County v. Kinney*, Board of Tax Appeals, Case No. 82-F-525 (March 27, 1984).

The concern expressed in these cases does not apply to the current case. Transferring funds from the Defiance County Landfill Fund, which is operated for the benefit of all citizens, to the Public Improvement Fund, which is also operated for the benefit of all citizens, does not result in a change in scope of intended beneficiaries of public funds. Therefore, allowing the transfer does not result in a situation where the County is authorized to do something via transfer

that it would not otherwise be allowed to accomplish, the primary concern expressed by the Tax Commissioner in each of these decisions.

Defiance County's Proposition of Law #3:

The Board of Tax Appeal's Decision was unlawful and unreasonable because it was contrary to R.C. 343.08 and 5705.16.

A. The Board of Tax Appeals Decision was unlawful and unreasonable because it was not in accordance with R.C. 343.08 and 5705.16.

The standard of review for a decision of the Board of Tax Appeals is whether the decision was "reasonable and lawful". *Global Knowledge Training, L.L.C. v. Levin*, 127 Ohio St.3d 34, 2010-Ohio-4411, 936 N.E.2d 463. The Board erred as a matter of law when it extended the transfer restrictions of R.C. 343.08 to Defiance County. Neither the Tax Commissioner nor the Board of Tax Appeals may legislate to add a requirement to a statute enacted by the General Assembly. *Wheeling Steel Corp. v. Porterfield*, 24 Ohio St.2d 24, 27-28, 263 N.E.2d 249, 251 (1970). Defiance County complied with the procedure set forth in R.C. 5705.16 and nothing in this section allows the Tax Commissioner to disapprove a transfer of funds otherwise authorized by law. The Board of Tax Appeals, by upholding the Tax Commissioner's decision unlawfully applied the restrictions of R.C. 343.08 to a County fund, thereby extending a statute that is only applicable to landfills owned by a Solid Waste Management Districts to all landfills owned by a County.

B. The Tax Commissioner's decision to deny the proposed transfer should not be afforded discretion.

The Tax Commissioner's powers and duties are outlined in R.C. Chapter 5703 and grant him authority related to "tax assessments, valuations, findings, determinations, computations, and orders the department of taxation is by law authorized and required to make." R.C. 5703.05(H). While the Tax Commissioner, pursuant to these powers, is often tasked with

making decisions that fall within his area of expertise, his decisions sometimes intersect with areas in which he is not an expert. Compare the Tax Commissioner decision on penalties in *J.M. Smucker, L.L.C. v. Levin*, 113 Ohio St.3d 337, 340 2007-Ohio-2073, 865 N.E.2d 866 (considering the Tax Commissioner’s authority to grant or deny an abatement of a late-filing penalty and finding the Tax Commissioner has discretion to grant or deny such an abatement) with the current case.

When the Tax Commissioner is not acting within his expertise, giving discretion to his interpretation or providing him with deference is inapt. *Central Arizona Conservation Dist. v. US EPA*, 990 F.2d 1531, 1540 (providing the “court should not defer to the agency where it ‘simply has not exercised its expertise’ citing to *Citizen Health Research Group v. Tyson*, 796 F.2d 1479, 1505 (D.C. Cir. 1986); see also *Heckler v. Chaney*, 470 U.S. 821, 832, 105 S.Ct. 1649 (1985) (discussing agency discretion and stating “similar concerns animate the principles of administrative law that courts generally will defer to an agency’s construction of the statute it is charged with implementing”). Where, as here, the Tax Commissioner is acting outside of his expertise—discretion should not be afforded.

C. In the alternative, the Board of Tax Appeals erred by failing to find an abuse of discretion.

Even under the more deferential abuse of discretion standard, the Tax Commissioner’s decision should be reversed. The Supreme Court has considered the meaning of “abuse of discretion” on a number of occasions. The Court has defined abuse of discretion as “discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence.” *State ex rel. Smith v. Industrial Com’n of Ohio*, 26 Ohio St.3d 128, 131, 498 N.E.2d 447(1986) citing *State ex. rel. Democratic Executive Committee v. Brown*, 39 Ohio St.2d 157, 161, 314 N.E.2d

376 (1974); *State ex rel. Shafer v. Ohio Turnpike Comm.*, 159 Ohio St. 581, 591, 113 N.E.2d 14 (1953); *State ex rel. Wilms v. Blake*, 144 Ohio St. 619, 624, 60 N.E.2d 308 (1945).

As the Tax Commissioner asserts, an exercise of honest judgment is not an abuse of discretion. *Id.* However, agency decisions that cannot be reconciled with fact or reason cannot be said to be an exercise of honest judgment. *Id.* Said differently, a decision is unreasonable and qualifies as an abuse of discretion when “there is no sound reasoning process that would support that decision.” *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990).

There is no sound reasoning to support the Tax Commissioner’s decision denying Defiance County’s proposed transfer of funds. As discussed above, R.C. Chapter 343 applies only to Solid Waste Management Districts and its restrictions cannot be extended to counties absent legislation. Similarly, there is no sound logic that supports a finding that the Tax Commissioner’s determination was a reasonable attempt to synthesize solid waste disposal at the local level with the State’s policies for regional waste disposal, because R.C. Chapter 343 contemplates both local and regional Solid Waste Management Districts and, quite simply, the Tax Commissioner cannot create new law extending these restrictions to a landfill owned by a county. The Tax Commissioner’s determination should not be blindly followed under the rationale of discretion.

Defiance County's Proposition of Law #4:

The correct standard of review is whether the Tax Commissioner's Decision was lawful or reasonable.

A. The Board of Tax Appeals erred when it determined that the appropriate standard of review was abuse of discretion.

The Tax Commissioner advances the argument that decisions under R.C. 5705.15 and 5705.16 are subject to his discretionary authority, relying on Board of Tax Appeals decisions that—in error—apply an abuse of discretion standard to determinations under R.C. 5705.16. These decisions are purportedly rooted in the precedent of *State ex rel. Caley v. Tax Commission of Ohio*. *State ex rel. Caley v. Tax Commission of Ohio*, 129 Ohio St. 83 (1934). Mr. Caley petitioned the Supreme Court for a writ of prohibition to stop the Tax Commissioner from approving a petition of Moreland Hills to transfer funds. *Id.* The Supreme Court denied Caley's writ reasoning that the Tax Commission's performance under 5625-13c (now R.C. 5705.16) was "much more ministerial than judicial" and holding that the "full and complete jurisdiction of the subject-matter of the action" lies with the Court of Common Pleas. *Id.* at 87. The reason the Supreme Court was comfortable denying the writ was because the Tax Commission's determination was not the final authority on the matter and was subject to further review. *Id.*

The Tax Commissioner now seeks to insulate his determinations from review under the shield of agency discretion. Under the Tax Commissioner's interpretation of discretion, his determinations under Chapter 5705 would be absolute. This was certainly not the intention of the Supreme Court in *Caley* when it found that the Commission's ruling was in the nature of an expert opinion. And as the Tax Commissioner acknowledges, his decisions are typically reviewed under a lawful and reasonable standard. *Ohio Truckload Carriers, Inc. v Limbach*, Board of Tax Appeals, No. 87-B-272, 1990 WL 208368 (June 29, 1990) (reviewing appellant's

challenge to the Commissioner's motor vehicle fuel tax assessment); *Manfredi Motor Transit Co. v. Limbach*, Board of Tax Appeals, No. 87-F-279, 1990 WL 175596 (August 17, 1990) (reviewing the Commissioner's highway use tax assessment); *Powelson v. Limbach*, Board of Tax Appeals, No. 87-B-823, 1989 WL 162962 (December 22, 1989) (reviewing the Commissioner's use tax assessment and penalty). There is no reason to deviate from the typical standard under which Tax Commissioner determinations are reviewed. For this reason, the Court should find that the correct standard of review was lawful or reasonable and, applying this standard, reverse the Tax Commissioner's determination.

IV. CONCLUSION

For the reasons outlined above, the decision by the Ohio Board of Tax Appeals upholding the Tax Commissioner's denial of Defiance County's proposed transfer of funds should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Merit Brief of Appellant Defiance County, Ohio was served via operation of the Court's electronic filing system and also via ordinary U.S. mail, postage prepaid, on the 8th day of September, 2015 on the counsel listed below:

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