

OHIO BOARD OF TAX APPEALS

CLINTON-GRANDVIEW HEIGHTS

JOINT ECONOMIC

DEVELOPMENT ZONE BOARD

OF DIRECTORS & REGIONAL

INCOME TAX AGENCY, (et. al.),

Appellant(s),

VS.

CITY OF GRANDVIEW HEIGHTS,

(et. al.),

Appellee(s).

CASE NO(S). 2020-2209

(MUNICIPAL INCOME TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

- CLINTON-GRANDVIEW HEIGHTS JOINT ECONOMIC
DEVELOPMENT ZONE BOARD OF DIRECTORS & REGIONAL
INCOME TAX AGENCY

Represented by:

BARTON A. HUBBARD

4388 SCENIC DR.

COLUMBUS, OH 43214

For the Appellee(s)

- CITY OF GRANDVIEW HEIGHTS

Represented by:

JOSEPH CURTAIN

TAX ADMINISTRATOR

1016 GRANDVIEW AVE.

GRANDVIEW, OH 43212

OHIO POWER COMPANY

Represented by:

L. BRADFORD HUGHES

PORTER WRIGHT MORRIS & ARTHUR, LLP

41 SOUTH HIGH STREET

SUITE 3000

COLUMBUS, OH 43215

Entered Thursday, January 16, 2025

Ms. Clements and Ms. Allison concur.

The Clinton-Grandview Heights Joint Economic Development Zone Board of Directors (“JEDZ”) and the Regional Income Tax Agency (“RITA”) challenge a decision issued by the Grandview Heights Board of Tax Review (“Board of Review”) regarding the taxation of net

profits earned by Ohio Power Company (“Ohio Power”). This matter is now considered upon the notice of appeal, the record certified by the Board of Review, the record of the hearing before this Board, and any written argument submitted by the parties.

BACKGROUND

Until January 1, 2015, a township and municipal corporation were authorized to enter into a contract designating a joint economic development zone “for the purpose of facilitating new or expanded growth for commercial or economic development in the state.” R.C. 715.691(B). Each joint economic development zone is governed by a board of directors that is considered a public body. R.C. 715.691(G). The contract establishing the joint economic development zone may authorize the board of directors to levy an income tax within the zone. R.C. 715.691(H). “The income tax may be levied in the zone based on income earned by persons working within the zone and on the net profits of businesses located in the zone,” and is subject to R.C. Ch. 718. R.C. 715.691(H).

The City of Grandview Heights and Clinton Township formed the JEDZ in 2013 and enacted a resolution levying a net income tax on all businesses earning business income in the JEDZ effective tax year 2014. Since that time, RITA has acted as the third-party administrator for the JEDZ. Effective January 1, 2016, the JEDZ is subject to the terms and conditions of R.C. Ch. 718. Ohio Power is a subsidiary of American Electric Power Company, Inc. (“AEP”). Ohio Power and its affiliates provide electricity to consumers and maintain grid equipment throughout Ohio, including the JEDZ. Ohio Power remits taxes under R.C. Ch. 5745, which governs the municipal taxation of electric light company income. For purposes of the issues in the present appeal, Ohio Power is referred to as both “an electric company” and “an electric light company,” which are each used in different statutory references.

PROCEDURAL HISTORY

On August 13, 2019, RITA sent correspondence to AEP, informing it that the JEDZ had no

record that AEP or any of its affiliates had filed the yearly net profit tax return and remitted the tax. RITA requested that AEP and any relevant affiliate having nexus with the JEDZ fully comply with the tax filing and payment requirements within sixty days. On December 12, 2019, RITA issued an assessment of municipal net profits tax for tax years 2014-2017 in the amount of \$207,770.12 (including interest and penalties). AEP protested the assessment, claiming that it is exempt from the imposition of municipal net profits tax under R.C. Ch. 718 because it is an electric company that is required to report under R.C. Ch. 5745. AEP claimed that it does not have nexus with the JEDZ and is not subject to the municipal net profits tax. AEP also challenged the amount of the tax, penalty, and interest as well as other aspects of the JEDZ's ability to assess taxes against AEP for the tax years at issue. Thereafter, Ohio Power was substituted as the real party in interest for the remainder of the proceedings.

Board of Review

The parties stipulated to uncontroverted facts. These include the assertion made by legal counsel for the Ohio Department of Taxation through an affidavit that the Tax Commissioner does not read the applicable law to apportion tax remitted under R.C. Ch. 5745 to joint economic development districts or joint economic development zones. She likewise averred that the Tax Commissioner read applicable law to exclude electric light companies, local exchange telephone companies, and combined companies from R.C. Ch. 718. The parties further stipulated that to the best of Ohio Power's knowledge and belief, it fully filed its R.C. Ch. 5745 report on the prescribed form, which does not include the JEDZ. Finally, the parties stipulated that Ohio Power has not paid any municipal income tax to the JEDZ.

The Board of Review convened a hearing and considered the parties' stipulations. Following the hearing, the Board of Review issued a decision addressing Ohio Power's claims and the JEDZ's arguments in favor of the assessment. The Board of Review agreed with Ohio Power's first argument that it is not subject to the JEDZ's tax and reporting obligations because it is an

electric company subject to and required to file reports under R.C. Ch. 5745. The Board of Review concluded that a JEDZ's authority to impose a net profits tax is limited to only those taxes that may be imposed under R.C. Ch. 718, citing R.C. 715.691. The Board of Review relied on R.C. 718.02, which sets forth the apportionment of net profits from a business conducted both within and outside the boundaries of a municipal corporation. R.C. 718.02 specifies that it applies to a taxpayer engaged in a business or profession in a municipal corporation that imposes an income tax under R.C. Ch. 718, "unless the taxpayer is . . . an electric company, combined company, or telephone company that is subject to and required to file reports under Chapter 5745. of the Revised Code." The Board of Review determined that this language exempts electric companies from JEDZ taxation under R.C. Ch. 718. Observing that Ohio Power's status as an "electric company" for purposes of the statute was undisputed, the Board of Review found in favor of Ohio Power.

Appeal to This Board

From this decision, the JEDZ and RITA filed the present appeal arguing that the Board of Review erred by failing to affirm the assessment. Appellants asserted that the assessments were issued in full compliance with the JEDZ's tax-levy authority and that R.C. 718.02 is an apportionment statute, not an exemption statute as the Board of Review applied it.

This Board convened a hearing, at which the parties had the opportunity to present additional evidence and argument in support of their positions. Appellants presented testimony from Joseph Curtain, co-tax administrator of the JEDZ and the City of Grandview Heights. Curtain described the creation of the JEDZ and the imposition of its net profits tax. He also explained the rationale behind the assessment. Christopher Heineike also testified during the Board's hearing. Heineike is the manager of state and local income taxes and is responsible for

AEP and its affiliated entities. He is primarily responsible for compliance but touches all aspects of state and local income taxation. Heineike testified about Ohio Power's uniform local returns and its municipal net profits apportionment.

Following the hearing, the parties each submitted briefs in support of their positions. Appellants' brief relies on four propositions of law. First, appellants claim that R.C. 718.02 does not set forth an exemption from municipal taxation, but rather excepts electric companies from the standard apportionment formula in favor of the apportionment method specifically for electric companies prescribed in R.C. Ch. 5745. Appellants assert that the language in R.C. 718.02 that limits its applicability with respect to electric companies, combined companies, or telephone companies, only applies to R.C. 718.02(A). Appellants contend that by enacting R.C. Ch. 5745 in the same legislation that amended R.C. 718.02, it allowed electric companies to use the specific apportionment formulas prescribed in R.C. 5745.02 for both city and joint economic development zone income tax return filings. Second, appellants argue that R.C. 718.02 is an apportionment statute and does not govern the imposition of taxes. As such, appellants claim, the limitation in R.C. 718.02 applies only to the apportionment of the tax and not whether it is imposed altogether. Third, appellants argue that the income taxes levied by a joint economic development zone are subject exclusively to R.C. Ch. 718, while R.C. Ch. 5745 governs how the Tax Commissioner computes and centrally administers income taxes levied by cities and villages. Fourth, appellants argue that Ohio Power has limited its claims and defenses based on its formal responses to appellants' interrogatories and requests for production of documents.

Ohio Power argues that the JEDZ has failed to demonstrate that it has the statutory authority to impose a municipal income tax on electric light companies like AEP. Ohio Power asserts that a joint economic development zone cannot levy municipal income taxes under R.C. Ch. 5745, and R.C. Ch. 718 does not give a joint economic development zone authority to levy municipal income taxes on electric light companies. Ohio Power contends that the Department of

Taxation agrees that electric light companies are excluded from taxation under R.C. Ch. 718 and that appellants' reading of R.C. Ch. 718 leads to absurd results. Ohio Power also challenges the amount of the assessment and seeks to preserve its Constitutional arguments.

STANDARD OF REVIEW

In an appeal from a decision of the Board of Review under R.C. 5717.011, this Board has the authority to conduct de novo review of the facts and law. *MacDonald v. Shaker Hts. Bd. of Income Tax Rev.*, 2015-Ohio-3290, ¶ 23. "The burden of proof is on the appellant to establish a right to the relief requested. Cf. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121." *Marion v. Marion Bd. of Rev.*, BTA No. 2005-T-1464, 2007 Ohio Tax LEXIS 1109, at 3 (Aug. 10, 2007). However, as we consider the law, our role is "to provide a fair reading of what the legislature has enacted: one that is based on the plain language of the enactment and not slanted toward one side or the other." *Stingray Pressure Pumping, L.L.C. v. Harris*, 2023-Ohio-2598, ¶ 22.

ANALYSIS

There are several uncontroverted facts in this case. The JEDZ was created pursuant to R.C. 715.691 and can take only those actions expressly permitted under the statute, including its ability to levy a tax under R.C. Ch. 718. Throughout the existence of joint economic development zones, this is the first instance any JEDZ has read its authority to apply to Ohio Power or any company affiliated with AEP. The Tax Commissioner does not read applicable law to allow the apportionment of tax remitted under R.C. Ch. 5745 to joint economic development zones. Nor does the Tax Commissioner read R.C. Ch. 718 to subject electric light companies like Ohio Power to be subject to that chapter. Ohio Power has fully filed its R.C. Ch. 5745 report on the prescribed form, which does not include the JEDZ. No joint economic development zone has attempted to assess a municipal net profit tax against Ohio Power. With that backdrop, we consider whether this long-standing administrative practice was in error and find it was not.

The Board of Review concluded that R.C. 718.02 exempted Ohio Power from the JEDZ's municipal net profits tax. Appellants claim that the language in R.C. 718.02 is merely an apportionment statute and does not govern the imposition of taxes. According to appellants, R.C. 718.02 excepts electric companies from using the standard apportionment formula in favor of the apportionment method specifically for electric companies prescribed in R.C. Ch. 5745. Ohio Power agrees with the Board of Review and asserts that R.C. Ch. 718 does not give a joint economic development zone authority to levy municipal income taxes on electric light companies. Indeed, the primary issue for the Board is whether the General Assembly granted the JEDZ authority to levy a net profit tax against Ohio Power through R.C. Ch. 718. *See Schaad v. Alder*, 2024-Ohio-525. To make this determination, the Board must read the plain language of the statutes "through a clear lens, not one favoring tax collection." *Stingray* at ¶ 22.

Because the JEDZ's power to tax is limited to R.C. Ch. 718, the Board must first consider the extent to which that chapter applies to Ohio Power, which is an electric company that is subject to and required to file reports under R.C. Ch. 5745. Taxes imposed under R.C. Ch. 718 are apportioned under R.C. 718.02, which begins with a limitation to its applicability:

This section applies to a taxpayer engaged in a business or profession in a municipal corporation that imposes an income tax in accordance with this chapter, unless the taxpayer is an individual who resides in the municipal corporation or the taxpayer is an electric company, combined company, or telephone company that is subject to and required to file reports under Chapter 5745. of the Revised Code.

(Emphasis added.) Notably, the limitation does not indicate that it applies only to division R.C. 718.02(A), as appellants would seek, which would permit an alternative apportionment under R.C. 718.02(B). Rather, the General Assembly chose to apply the limitation to the entire section. Thus, it would be contrary to the plain language of the statute to find that the limitation relates only to R.C. 718.02(A) and not the rest of the section. It follows, then, that an electric company that is

subject to and required to file reports under R.C. Ch. 5745 is not covered by R.C. 718.02. This interpretation is further supported by the scheme provided in R.C. Ch. 5745.

Appellants claim that the JEDZ is permitted to rely on R.C. 7545.02 to calculate the net profits tax it is owed by Ohio Power because the taxes are properly levied under R.C. Ch. 718, and R.C. 5745.02 is merely method of apportionment for the relevant group of taxpayers. Contrary to this assertion, R.C. Ch. 5745 is more than simply an apportionment formula. It provides a structure for certain types of taxpayers to apportion their municipal income taxes to those municipal corporations throughout the state that the General Assembly has permitted to collect such taxes.

The General Assembly has provided apportionment formulas for those municipal corporations that certify their rates to the Commissioner. R.C. 5745.03(F). Notably, such municipal corporations are prohibited from requiring a taxpayer to file a report of the taxpayer's income, the very requirement that the JEDZ seeks to impose here. R.C. 5745.03(E). The primary feature of this chapter is to create a centralized filing and payment system, which the General Assembly chose to extend to all municipal corporations levying a municipal income tax. When the General Assembly amended the relevant statutes related to electric companies and added the language to R.C. 718.02, it could have extended the alternative apportionment to joint economic development zones, but it did not do so. We will not extend R.C. Ch. 5745 beyond the municipal corporations expressly included in the statute. Accordingly, we reject appellants' argument that it can levy a tax under R.C. 718 and rely on the apportionment in R.C. 5745.02, a statute from which it was excluded.



Appellants also argue that the income taxes levied by a JEDZ are subject exclusively to R.C. Ch. 718, while R.C. Ch. 5745 governs how the Tax Commissioner computes and centrally administers income taxes levied by cities and villages. In other words, appellants claim that R.C. Ch. 5745 has nothing to do with the JEDZ's ability to levy and collect taxes, which are permitted

under R.C. Ch. 718. The practical effect of this argument being that the JEDZ is permitted to levy the tax and can apportion it in the methods set forth in R.C. 718.02. However, this interpretation would defeat the concept of a centralized filing and payment system if every joint economic development district or joint economic development zone were permitted to require these centralized taxpayers to file individual returns and remit taxes. This argument that it can require electric companies to file a municipal income tax return and remit income taxes ignores the point of R.C. Ch. 5745. We find no merit to this argument.

Finally, because Ohio Power has prevailed on the issue of whether the JEDZ was authorized to impose a net profits tax against it, we do not reach the issue of whether Ohio Power has limited its claims and defenses. Additionally, we do not address Ohio Power's constitutional arguments. This Board's role in cases involving a purely constitutional challenge is limited to receiving evidence. *See MCI Telecommunications Corp. v. Limbach*, 68 Ohio St.3d 195 (1994); *Cleveland Gear Co. v. Limbach*, 35 Ohio St.2d 229 (1988).

CONCLUSION

Accordingly, the decision of the Board of Review is hereby affirmed.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Ms. Clements		
Ms. Allison		

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



Kathleen M. Crowley, Board Secretary