

IN THE SUPREME COURT OF OHIO

Metamora Elevator Company, et al.,	:	
	:	Case No. 2014-0874
Appellees,	:	
	:	Appeal from the Ohio Board of Tax
vs.	:	Appeals, Case No. 2011-1854
	:	
Fulton County Auditor and	:	<u>Brief of Amicus Curiae</u>
Fulton County Board of Revision,	:	<u>Central Ohio Farmers Co-Op</u>
	:	<u>in support of</u>
Appellants.	:	<u>Appellees Metamora</u>

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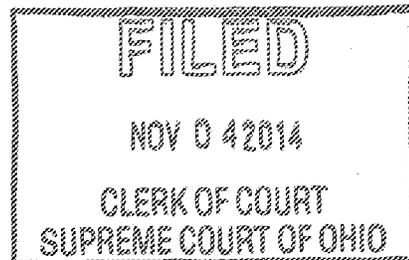
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Brief of Amicus Curiae Central Ohio Farmers Co-Op
in support of Appellees Metamora

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Brief of Amicus Curiae Central Ohio Farmers Co-Op
in support of Appellees Metamora

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Town and Country Co-Op, Inc. v. Richland County Board of Revision, BTA case
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R.C. 1.495

R.C. 5701.026

R.C. 5701.035

R.C. 5739.01(B)(5)(b)4, 5

Ohio Administrative Code 5703-9-144

Brief of Amicus Curiae Central Ohio Farmers Co-Op
in support of Appellees Metamora

I. Statement of Interest

Central Ohio Farmers Co-Op, Inc. is an agricultural non-profit statutorily constituted under R.C. Chapter 1729. The Co-Op operates in seven counties, four of which involve grain, with over 1,000 farmers serving as voting members. The essential nature of the Co-op's business is to receive, grade, store, process, market and ship the agricultural products of its members.

As a matter of law, the Board of Tax Appeals has rendered two other decisions for which the appeal time is expired, similarly determining that "grain bins" are not taxable as real property. See: *Central Ohio Farmers Co-Op v. Morrow County Board of Revision*, BTA Case No. 2013-3586 (Aug. 12, 2014), Exhibit A hereto; *Town and Country Co-Op, Inc. v. Richland County Board of Revision*, BTA case No. 2013-2321 (September 18, 2014), Exhibit B hereto.

Both decisions rely upon their own particular fact record, and both also cite to the BTA decision in this case as consistent legal precedent.

II. Law and Argument

Tax treatment of a Portable Grain Bin presents both a determination of fact and issue of law.

The BTA established the following facts below, without evidentiary rebuttal,

which factual findings ought to remain undisturbed in this appeal:

[T]he grain storage bins at issue are not permanent, but temporary structures. Unlike the silos, which are concrete structures that the appellant concedes are permanent, the storage bins are made of corrugated metal and are bolted to the ground, which allows for easier removal, further exhibiting their temporary nature. The construction of the grain bins themselves illustrates that they are not intended to exist for an indefinite period of time.

An easier example is the “elevator” component of a grain business, not at issue here. The “elevator” is the lift machinery, such as a grain auger, employed to take grain from a truck or surface and put it into a grain storage unit. Certainly no one argues that an elevator would be “real property;” unquestionably the elevator equipment is personalty and a business fixture. By analogy, the BTA factual findings hold that a Portable Grain Bin is more like the elevator above than the real estate below.

No adverse party presented evidence to the contrary, to establish as a matter of fact that these Portable Grain Bins are other than personalty or business fixtures.

From these factual findings, the following two legal conclusions follow for tax law purposes:

(1) a Portable Grain Bin specifically is statutorily-defined as personal property; and

(2) a Portable Grain Bin generally qualifies as a “business fixture.”

Applying tax law to these facts involves more than merely real estate taxes.

Taxation statutes must be construed *in pari materia* with other tax statutes that relate to

the same subject matter so as to give full effect to all the related taxation statutes. *State ex rel. Taxpayers for Westerville Schs v. Franklin County Bd. of Elections*, 133 Ohio St. 3d 153; 2012-Ohio-4267; 976 N.E.2d 890.

A. A Portable Grain Bin is Personalty for Other Taxation

Considering depreciation, personal property or equipment is depreciated over the useful life of the equipment; real estate is treated differently. The federal Internal Revenue Service includes as “personal property” all “grain storage bins.” See IRS Field Directive, November 28, 2005, Exhibit C hereto.

For state Sales Taxes, the construction of a Portable Grain Bin is a taxable event only if the Portable Grain Bin is personal property. That is the Ohio Department of Taxation’s current treatment. See Amended Bulletin No. 290, December 18, 2007, “Classification of Business Assets as Real Property or Personal Property,” Exhibit D hereto (referenced as fn 6, BTA Decision herein.)

In the alternative, construction which improves the land, incorporated into the real estate, increases the permanent value of the asset. Thus, a “construction contract” is not a Sales Tax event, as otherwise for equipment assembly. If a contractor installs a fixture as an improvement to real estate, the contractor is the consumer and must pay sales tax to the material supplier, not collecting from the owner or remitting sales tax.

From the Department of Taxation’s internet site on Sales Taxes:

A construction contractor who purchases materials or taxable

services for incorporation into real property is the consumer of those materials or services and needs to pay sales or use tax on their purchase price. The construction contractor is the consumer, even if a subcontractor provides the actual labor to incorporate those materials into the real property.

http://www.tax.ohio.gov/TaxEducation/construction_contract.aspx

In contrast, when an agricultural business purchases a Portable Grain Bin, the owner/purchaser must pay, and the seller/contractor must collect and remit Ohio sales tax, because R.C. 5739.01(B)(5)(b) expressly declares the Portable Grain Bin to be personal property, not incorporated into the real estate, and therefore constitutes a taxable sale. Thus, Ohio law expressly defines a Portable Grain Bin as personalty for purposes of sales tax in construction:

Ohio Administrative Code 5703-9-14:

(C) The sale and installation of the following items is never a construction contract and such transactions are to be treated as the sale and installation of tangible personal property for sales tax purposes:

* * *

(3) Portable grain bins as defined in division (B)(5)(b) of section 5739.01 of the Revised Code;

R.C. 5739.01(B)(5)(b) is conclusive of legislative intent:

"Portable grain bin" means a structure that is used or to be used by a person engaged in farming or agriculture to shelter the person's grain and that is designed to be disassembled without significant damage to its component parts.

Therefore, state law requires that an agricultural business pay sales tax on installation of Portable Grain Bins (or receive an unrelated sales tax exemption) at the

time of purchase. It is unfair first to charge Sales Tax to an agricultural business such as Metamora or the Co-Op, treating the assembly of a Portable Grain Bin and Elevator as personalty, then turn around and charge Property Tax as though a permanent improvement to the real estate asset. Accordingly, Portable Grain Bins cannot be taxed a second time as real property.

Failing to offer factual evidence to the contrary, Appellant relies on outdated case law to argue a different factual result. It is apparent that the subsequent legislative intent of R.C. 5739.01(B)(5)(b) is to reverse the legal holdings of those cases. R.C. 1.49 allows a tribunal to consider legislative intent.

B. A Portable Grain Bin is a Business Fixture

Consistently, R.C. 5701.03 defines personal property; even the concrete pad beneath the Portable Grain Bin and elevator equipment is considered a “business fixture.” The test is whether the equipment “primarily benefits” the business or the realty:

As used in Title LVII of the Revised Code:

(A) 'Personal property' includes every tangible thing that is the subject of ownership . . . including a business fixture, and that does not constitute real property as defined in section 5701.02 of the Revised Code.

(B) 'Business fixture' means an item of tangible personal property that has become permanently attached or affixed to the land or to a building, structure, or improvement, and that primarily benefits the business conducted by the occupant on the premises and not the realty. 'Business fixture' includes, but is not limited to, machinery, equipment,

signs, storage bins and tanks, whether above or below ground, and broadcasting, transportation, transmission, and distribution systems, whether above or below ground. 'Business fixture' also means those portions of buildings, structures, and improvements that are specially designed, constructed, and used for the business conducted in the building, structure, or improvement, including, but not limited to, foundations and supports for machinery and equipment. 'Business fixture' does not include fixtures that are common to buildings, including, but not limited to, heating, ventilation, and air conditioning systems primarily used to control the environment for people or animals, tanks, towers, and lines for potable water or water for fire control, electrical and communication lines, and other fixtures that primarily benefit the realty and not the business conducted by the occupant on the premises. (emphasis added.)

Consistently, R.C. 5701.02 defines real property:

As used in Title LVII of the Revised Code:

(A) 'Real property,' 'realty,' and 'land' include land itself . . . with all things contained therein, and, unless otherwise specified in this section or 5701.03 of the Revised Code, all buildings, structures, improvements, and fixtures of whatever kind on the land...

* * *

(E) 'Structure' means a permanent fabrication or construction, other than a building, that is attached or affixed to land, and that increases or enhances utilization or enjoyment of the land. 'Structure' includes, but is not limited to, bridges, trestles, dams, storage silos for agricultural products, fences, and walls.

The Supreme Court previously held that even an item permanently affixed to real property remains personal property, constituting a "business fixture," if it primarily benefits the business conducted on the land. *Funtime, Inc. v. Wilkins*, 105 Ohio St.3d 74, 2004-Ohio-6890, 822 N.E.2d 781.

The *Funtime* Court developed a two-prong analysis where an item is real

property only if the item: 1) is defined in the statutory real property categories; and 2) is not a "business fixture". *Id.*

A "business fixture" is any property that primarily benefits a business conducted by the occupant of the property. *Funtime*, at 38-40.

R.C. 5701.03(B) expressly includes "storage bins" as a business fixture. (see above.) The essential nature of the Co-op's business is to receive, grade, store, process, market and ship the agricultural products of its members. The Portable Grain Bins and elevator equipment are not necessary to the land itself, but only serve the purpose of the business.

In *Buckley Bros., Inc. v. Clinton County Bd. of Revision*, 11th Dist. No. 294, 1974 Ohio App. LEXIS 3046 (Oct. 15, 1974), the court determined that the property in question could not be classified as real property. "Grain tanks" were located on land that the taxpayer leased from a railroad, and the taxpayer had to remove the grain tanks at the termination of the lease. This lease provision did not manifest an "intention" to make the property a "permanent" accession to the land.

The court also relied on the Department of Taxation's own interpretation, citing Department of Taxation Bulletin, No. 23, issued January 11, 1973,

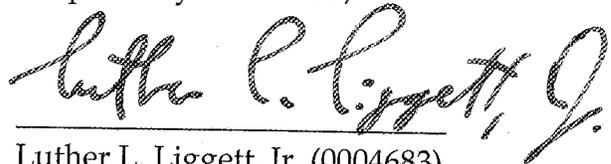
wherein the Board held that certain structures used in the business of grain handling, processing and storage constituted personal property because the structure or improvements were specialized units of construction which were a part of the integrated process of loading, drying, aerating, blending and disbursing grain. Because these structures

were primarily accessories to the business conducted on the land, and not accessory to the land itself they were held to be personal property rather than real property.

Buckley Bros. at paragraphs 15-16.

Therefore, the subject property is personal property and a business fixture, therefore not part of the real estate for purposes of local property taxes.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Amicus Curiae Brief was served this 4th day of November, 2014, by U.S. mail postage prepaid, upon all parties below:

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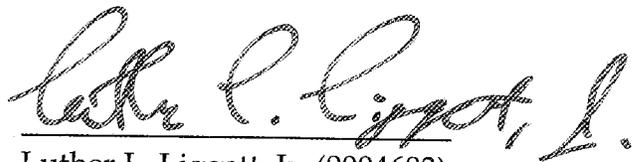
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IN THE SUPREME COURT OF OHIO

Metamora Elevator Company, et al.,	:	
	:	Case No. 2014-0874
Appellees,	:	
	:	Appeal from the Ohio Board of Tax
vs.	:	Appeals, Case No. 2011-1854
	:	
Fulton County Auditor and	:	<u>Brief of Amicus Curiae</u>
Fulton County Board of Revision,	:	<u>Central Ohio Farmers Co-Op</u>
	:	<u>in support of</u>
Appellants.	:	<u>Appellees Metamora</u>

EXHIBITS

- Exhibit A: *Central Ohio Farmers Co-Op v. Morrow County Board of Revision*,
BTA Case No. 2013-3586 (Aug. 12, 2014)
- Exhibit B: *Town and Country Co-Op, Inc. v. Richland County Board of
Revision*, BTA case No. 2013-2321 (September 18, 2014)
- Exhibit C: IRS Field Directive, November 28, 2005
- Exhibit D: Amended Bulletin No. 290, December 18, 2007,
"Classification of Business Assets as Real Property or
Personal Property"

OHIO BOARD OF TAX APPEALS

CENTRAL OHIO FARMERS CO-OP (MARION
 LANDMARK), (et. al.),)
)
 Appellant(s),)
)
 vs.)
)
 MORROW COUNTY BOARD OF REVISION,)
 (et. al.),)
)
 Appellee(s).)

CASE NO(S). 2013-3586

 (REAL PROPERTY TAX)

 DECISION AND ORDER

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Entered Tuesday, August 12, 2014

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

Appellant(s) appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number(s) G20-004-00-043-00, for tax year 2012. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record developed at this board's hearing and any written argument submitted by the parties. The subject property's true value was initially assessed at \$745,800. A decrease complaint was filed with the BOR seeking a reduction to the subject property's value because "[v]aluation includes bins that are exempt from taxation by Ohio law." The affected board of education ("BOE") filed a counter-complaint objecting to the request.

At the BOR hearing, the appellant and BOE were represented by counsel. The appellant submitted the testimony of Scott Crowder, the appellant's chief financial officer, and Phil Hulse, a plant manager, to support the appellant's argument that the metal corrugated storage bins located at the subject property were improperly taxed as real property when, in fact, they were business fixtures, as defined by R.C. 5701.03(B), and thus personal property. Furthermore, the appellant made a distinction between silos, which were described as permanent concrete structures, and grain bins, which were described as metal structures that were not permanent and could be removed from the subject property. Counsel for the appellant also moved to dismiss the BOE's counter-complaint because it failed to submit evidence in support of the auditor's initial valuation. There is no indication that the BOR ruled on the motion to dismiss. BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal(s).

The appellant's notice of appeal contained a number of attachments. To the extent that any of the attached documents were evidentiary in nature and were not submitted at the hearing before the BOR or this board, we cannot consider such evidence. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13; *Bd. of Edn. of the South Euclid-Lyndhurst City School Dist. v. Cuyahoga Cty. Bd. of Revision* (Oct. 28, 2008), BTA No. 2007-V-99, unreported. At the hearing before this board, counsel for the appellant also renewed a motion to dismiss the BOE's counter-complaint because it failed to submit evidence in support of the auditor's initial valuation. Because the BOE has a statutory right to participate in this matter, the motion to dismiss was denied. R.C. 5715.19(B). The parties then proceeded to submit evidence or argument in support of their respective positions.

In deciding this matter, we look to the Supreme Court's holding in *Funtime, Inc. v. Wilkins* (2004), 105 Ohio St.3d 74, which guides our analysis of the two statutes at issue, i.e., R.C. 5701.02 and R.C. 5701.03. In that case, the court articulated very specific instructions when reading the statutes:

"first, determine whether the item meets the requirements of one of the statutory definitions of real property set forth in R.C. 5701.02. If the item does not, then it is personal property. If the item fits a statutory definition of real property in R.C. 5701.02, it is real property unless it is 'otherwise specified' in R.C. 5701.03. If an item is 'otherwise specified' under R.C. 5701.03, it is personal property.

Thus, we must first determine whether the grain storage bins meet one of the statutory definitions for real property set forth in 5701.02. R.C. 5701.02 states in pertinent part as follows:

"'Real property,' 'realty,' and 'land' include land itself *** with all things contained therein, and, *unless otherwise specified in this section or section 5701.03 of the Revised Code*, all buildings, structures, improvements, and fixtures of whatever kind on the land, and all rights and privileges belonging or appertaining thereto.'

"(C) 'Fixture' means an item of tangible personal property that has become *permanently* attached or affixed to the land or to a building, structure, or improvement, and that primarily benefits the realty and not the business, if any, conducted by the occupant on the premises.

"(E) 'Structure' means a *permanent* fabrication or construction, other than a building, that is attached or affixed to land, and that increases or enhances utilization or enjoyment of the land. 'Structure' includes, but is not limited to, bridges, trestles, dams, storage silos for agricultural products, fences, and walls." (Emphasis added).

Following the court's two-step analysis, we find that the grain bins situated on the subject property do not meet one of the definitions of real property set forth in 5701.02. We find it significant that every definition

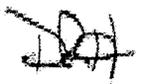
includes the term "permanent." In the instant appeal, we find that the record evidences that the grain storage bins at issue are not permanent, but temporary structures. Unlike the silos, which are concrete structures that the appellant concedes are permanent; the storage bins are made of corrugated metal and are bolted to the ground, which allows for easier removal, further exhibiting their temporary nature. The construction of the grain bins themselves illustrates that they are not intended to exist for an indefinite period of time. Therefore, we find that the grain storage bins do not meet the definitions of real property set forth in R.C. 5701.02 and, as a result, they have been improperly classified as real property and taxed as such. See, also *The Metamora Elevator Co. v. Fulton Cty. Bd. of Revision* (May 2, 2014), BTA No. 2011-1854, unreported, appeal pending Sup. Ct. No. 2014-0874; *Bd. of Edn. for Toledo Schs. v. Lucas Cty. Bd. of Revision* (Apr. 30, 2014), BTA No. 2011-138 et al., unreported, appeal pending Sup. Ct. No. 2014-0892.

Even if we had found that the grain bins were real property under R.C. 5701.02, we would have found that they meet the definition of "business fixture" under R.C. 5701.03(B) because it is a category specifically enumerated in the statute. R.C. 5701.03 states in pertinent part:

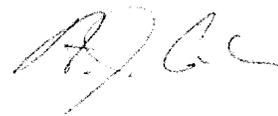
"(B) 'Business fixture' means an item of tangible personal property that has become permanently attached or affixed to the land or to a building, structure, or improvement, and that primarily benefits the business conducted by the occupant on the premises and not the realty. 'Business fixture' includes, but is not limited to, machinery, equipment, signs, storage bins and tanks, whether above or below ground, and broadcasting, transportation, transmission, and distribution systems, whether above or below ground***." (Emphasis added).

We also find it significant that R.C. 5701.02 defines "structure" to include storage silos, a term clearly differentiated from the term "storage bins" used in 5701.03. It is clear from this that the legislature had a different intent with regard to the treatment of silos as opposed to the treatment of bins.

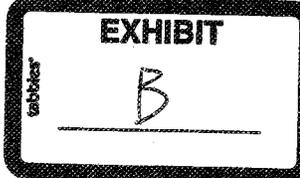
However, because the statutory transcript does not contain an official copy of the property record card, we are unable to discern, with a degree of certainty, the assessed values of the grain bins in order to determine the subject property's value. As such, this matter is remanded to the BOR to assess the subject property, less the values of the grain bins, in conformity with this decision and order.

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

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



A.J. Groeber, Board Secretary



OHIO BOARD OF TAX APPEALS

TOWN AND COUNTRY CO-OP, INC., (et. al.),)
Appellant(s),)
vs.)
RICHLAND COUNTY BOARD OF REVISION,)
(et. al.),)
Appellee(s).)

CASE NO(S). 2013-2321

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Thursday, September 18, 2014

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

Appellant(s) appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number(s) 027-04-140-14-000. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of this board's hearing, and the parties' written legal arguments. We will first note that the appellant has moved this board to strike the appellees' merit brief as well as dismiss the appellees as a party to the appeal. The motion is denied on all grounds and we will consider the evidence and arguments presented in their entirety. The subject's total true value was initially assessed at \$2,761,970. A decrease complaint was filed with the BOR seeking a reduction in value to \$93,730. The complaint indicated that the auditor's value includes portable grain bins that are exempt from taxation.

At the BOR hearing, Brian Amstutz, Chief Financial Officer of the appellant company, described the appellant as a grain marketing co-operative ("co-op") that is the only co-op of its kind in Richland County. He testified that the subject property contains three portable, steel corrugated bins that vary in size and can be disassembled. Amstutz further testified that the purposes of the bins are to dry and store grain and maintain its quality prior to shipment. Therefore, Amstutz explained, the bins primarily benefit the business and are depreciated as business fixtures for federal income tax purposes. In closing, counsel for the appellant argued that the three storage bins on the subject property should not

be taxed as real property because they are portable and primarily benefit the business. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal(s).

At the hearing before this board, Amstutz again discussed the utility of the grain bins and the differences between a grain bin, which is used to store grain, and a grain silo, which can be used for other purposes. Amstutz clarified that no silos were being challenged in the instant appeal. Amstutz went on to state the grain bins can be disassembled and moved without damaging the bins and that the bins were granted an exemption from sales tax. On cross-examination, counsel for the county addressed a condominium declaration that was filed on one of the bins which allows for the selling of units for that bin. There was also extensive argument over the proper characterization of the objects, i.e., whether they were properly termed "bins" or "silos."

Because of the discrepancy in terminology between the parties, we must first determine whether the containers at issue are properly classified as grain bins or silos. Based upon the information located in the record, we find that the containers at issue are grain bins, rather than silos which were described as concrete structures. It is also important to note that the containers are classified as grain bins on the county's property record card contained in the statutory transcript. With that determination, this board's recent decision in *The Metamore Elevator Company v. Fulton Cty. Bd. of Revision* (May 2, 2014), BTA No. 2011-1854, pending on appeal, Ohio Sup. Ct. No. 2014-0681, ("Metamore") guides our analysis. In *Metamore*, this board followed the court's two-step analysis in *Funtime, Inc. v. Wilkins* (2004), 105 Ohio St.3d 74 and determined that the grain bins in that appeal did not meet one of the definitions of real property set forth in 5701.02. The focal point of that determination was the permanency of the structures. In the instant appeal, we likewise find that the record evidences that the grain storage bins at issue are not permanent, but rather temporary structures. Mr. Amstutz testified that the grain bins can, and actually have, been taken apart and moved, further exhibiting their temporary nature. We also find that the filing of a condominium declaration on one of the bins does not alter our determination. The evidence in the record indicates that the presence of the declaration does not change the physical construction or intended use of the structure itself. Therefore, we find that the grain storage bins do not meet the definitions of real property set forth in R.C. 5701.02 and have thus been improperly classified and taxed as such.

Accordingly, based upon our review of the record, we find that the grain bins at issue constitute personal property and should not be assessed as real property by the county auditor. It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2012, were as follows:

TRUE VALUE
\$18,730
TAXABLE VALUE
\$6,560

BOARD OF TAX APPEALS

RESULT OF VOTE	YES	NO
Mr. Williamson		
Mr. Johrendt		
Mr. Harbarger		

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



A.J. Groeber, Board Secretary



Field Directive on the Planning and Examination of Cost Segregation Issues in the Biotech/Pharmaceutical Industry

November 28, 2005

**MEMORANDUM FOR INDUSTRY DIRECTORS, LMSB
DIRECTORS, FIELD OPERATIONS
DIRECTOR, FIELD SPECIALISTS
DIRECTOR, PREFILING AND TECHNICAL GUIDANCE
AREA DIRECTORS, SBSE**

FROM: /s/ Henry V. Singleton
Industry Director
Retailers, Food, Pharmaceuticals & Healthcare

/s/ Steve Burgess
Director, Examination, SBSE

SUBJECT: Field Directive on the Planning and Examination of Cost Segregation Issues in the Biotech/Pharmaceutical Industry

Introduction

This memorandum is intended to provide direction to effectively utilize resources in the classification and examination of a taxpayer who is recovering costs through depreciation of tangible property used in the Biotech/Pharmaceutical Industry. This Directive is not an official pronouncement of the law or the position of the Service and cannot be used, cited or relied upon as such.

Background

The crux of cost segregation is determining whether an asset is I.R.C. §1245 property (shorter cost recovery period property) or §1250 property (longer cost recovery period property). The most common example of §1245 property is depreciable personal property, such as equipment. The most common examples of §1250 property are buildings and building components, which generally are not §1245 property. ¹

The difference in recovery periods has placed the Internal Revenue Service and taxpayers in adversarial positions in determining whether an asset is §1245 or §1250 property. Frequently, this causes the excessive expenditure of examination resources. The Director for the Retailers, Food, Pharmaceuticals and Healthcare Industry chartered a working group to address the most efficient way to approach cost segregation issues specific to the Biotech/Pharmaceutical industry. The group produced the attached matrix and related definitions as a tool to reduce unnecessary disputes and foster consistent audit treatment.

Planning and Examination Guidance

The Biotech/Pharmaceutical industry matrix recommending the categorization and general depreciation system recovery period of various assets is attached as Exhibit A. (For recovery periods under IRC §168(g) alternative depreciation system, see Revenue Procedure 87-56, 1987-2 CB 674). If the taxpayer's tax return position for these assets is consistent with the recommendations in Biotech/Pharmaceutical matrix (Exhibit A), examiners should not make adjustments to categorization and recovery periods. If the taxpayer reports assets differently, then

adjustments should be considered. The Industry intends to update the Biotech/Pharmaceutical matrix (Exhibit A) regularly.

See also the Cost Segregation Audit Techniques Guide. Refêr especially to Appendix Chapter 6.3, which provides examples and general rules for asset classification.

If you have any questions, please contact either Louis Milano, Technical Advisor, Pharmaceuticals at 908-301-2106, Robert Lento, Engineering & Valuation Group Manager at 908-301-2129, Milton Pagan, SBSE Senior Program Analyst at 619-615-9583, or Ardell Mueller, Senior Program Analyst, Retailers, Food, Pharmaceuticals and Healthcare Industry at 630-493-5946.

¹ I.R.C. §1245 can apply to certain qualified recovery nonresidential real estate placed in service after 1980 and before 1987. See I.R.C. §1245(a)(5).

Attachment: Exhibit A

EXHIBIT A

This matrix, which is part of the Cost Segregation Audit Techniques Guide, is intended to provide direction to effectively utilize resources in the classification and examination of property used in the Biotech/Pharmaceutical industry. General fact patterns specific to this industry have been considered in the classification of these assets and may not be applicable to other industries. Similarly, asset classification guidance issued for other industries is based on the general fact pattern for that industry and may not be applicable to the Biotech/Pharmaceutical industry. For example, for asset classification of restaurants located within a pharmaceutical manufacturing plant, refer to the industry directive for restaurants. For examination techniques and historical background related to this issue, refer to the Cost Segregation Audit Techniques Guide.

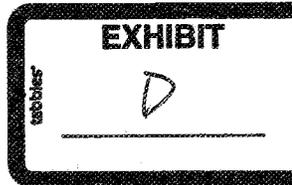
CAUTION: In the case of certain leasehold improvement property, the classifications in this directive are superseded to the extent that the American Jobs Creation Act of 2004 modifies IRC Section 168. Thus, a 15-year straight line recovery period should replace the recovery period shown in the following matrix if the asset is "qualified leasehold improvement property" (as defined in IRC Section 168(e)(6)) placed in service by the taxpayer after 10/22/04 and before 1/1/06.

Asset	Property Type	Description	Recovery Period
Awnings & Canopies	1245	Readily removable overhangs or coverings, often of canvas or plastic, used to provide shade or cover over exterior doors or windows. Does not include canopies that are an integral part of a building's structural shell, such as in the casino industry or over docks. See also Concrete Foundations & Footings and Loading Docks.	Personal Property With No Class Life - 7 Years
Breakrooms / Pantries / Lunchrooms	1250	A space within the building used for employee breaks, lunches, etc.	Building or Building Component – 39 Years
Breakrooms / Pantries / Lunchrooms	1245	Equipment such as tables, chairs, dishwashers, stoves, ovens, microwaves, toasters, coffee machines, refrigerators, and freezers.	Personal Property With No Class Life - 7 Years
Bridges & Tunnels	1250 / 1245	Depreciable improvements directly to or added to land, whether such improvements are section 1245 or 1250. Includes bridges and tunnels and all construction required for their completion (such as excavation, backfill, footings, foundations, piers, stone base, paving, etc.).	00.3 - Land Improvements but see <u>Note 2</u> for exceptions

Machinery & Equipment	1245	Tangible personal property, not covered elsewhere, which is in the nature of machinery or equipment. Includes a structure which is essentially an item of machinery or equipment if the use of the structure is so closely related to the use of such property that the structure clearly can be expected to be replaced when the property it initially houses is replaced. Factors which indicate that a structure is closely related to the use of the property it houses include the fact that the structure is specifically designed to provide for the stress and other demands of such property and the fact that the structure could not be economically used for other purposes. Includes such structures as oil and gas storage tanks, grain storage bins, silos, fractionating towers, blast furnaces, basic oxygen furnaces, coke ovens, brick kilns, and coal tipples. Does not include structural components of a building or other inherently permanent structure. See also Plumbing; Electrical; Heating, Ventilating, Air Conditioning (HVAC); and Elevators & Escalators.	Personal Property - Note 1
Millwork	1250	General millwork is all building materials made of finished wood (e.g., doors and frames, window frames, sashes, porch work, mantels, panel work, stairways, and special woodworking). Includes pre-built wooden items brought to the site for installation and items constructed on site (such as restroom cabinets, door jambs, moldings, trim, etc.).	Building or Building Component – 39 Years
Millwork	1245	Decorative millwork is the decorative finish carpentry in a building. Examples include detailed crown moldings, and lattice work placed over finished walls or ceilings. The decorative millwork serves to enhance the overall décor of the building and is not related to the operation of the building. Excludes cabinets and counters in a restroom. See also Restroom Accessories.	Personal Property With No Class Life - 7 Years
Office Furnishings	1245	Desks, chairs, credenzas, file cabinets, tables, bookcases, coat racks, projection screens, and other office furniture such as workstations. Also includes telephone equipment, fax machines, and other communications equipment. Does not include communications equipment included in other asset classes in Rev. Proc. 87-56.	00.11 Office Furniture, Fixtures, and Equipment – 7 Years
Parking Lots	1250 / 1245	Depreciable improvements directly to or added to land, whether such improvements are section 1245 or 1250. Grade level surface parking and base area usually constructed of asphalt, brick, concrete, stone or similar material. Also includes bumper blocks, curb cuts, curb work, striping, concrete landscape islands, truck parking ramps and staging areas, and traffic control systems (such as traffic lights and detectors, card readers, parking equipment, etc.). See also Roadways.	00.3 - Land Improvements but see Note 2 for exceptions
Parking Structures	1250	Any structure or edifice the purpose of which is to provide parking space. Includes garages, parking ramps, or other parking structures.	Building or Building Component – 39 Years



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TO: ALL COUNTY AUDITORS AMENDED BULLETIN NO. 290
FROM: RICHARD A. LEVIN, ^{real}TAX COMMISSIONER
DATE: DECEMBER 18, 2007
RE: CLASSIFICATION OF BUSINESS ASSETS AS REAL PROPERTY OR
PERSONAL PROPERTY

The Department of Taxation recently has reviewed the county auditor bulletins that classify assets as either real property or personal property. In light of recent case law and statutory amendments, many of these bulletins were found to be obsolete or unnecessary. In order to align the property classifications reflected in these bulletins with current law, the Tax Commissioner has rescinded them pursuant to Amended Bulletin No. 288 (Bulletins 33, 70, 74, 77, 80, 85, 110, 135, 154, 166, 247, and 284) issued September 7, 2007 and is replacing them with this bulletin.

The classifications set forth below are not intended to alter the sales/use tax consequences of the purchase or installation of real or personal property. In the case of purchases of personal property, Ohio sales/use tax will apply unless the taxpayer has some statutory claim of exemption. While transfers of real property are not normally subject to Ohio sales/use tax, construction contractors continue to have sales/use tax responsibilities for any personal property or taxable services used in performing a construction contract.

Further, Ohio's sales/use taxes apply to certain enumerated services. For example, R.C. 5739.01(B)(3)(g) includes landscaping and lawn care services within the definition of a "sale" for sales/use tax purposes. In transactions where such services are being provided, the service may be taxable regardless of the fact that the service results in an improvement to real property. Other services that are subject to sales/use tax (not inclusive) include the repair of personal property, installation of personal property, exterminating services, and private investigation and security services. This bulletin does not address the existence of any services that may be subject to sales/use tax at the issuance or after the issuance of this bulletin.

The following classifications of certain business property are intended to supplement, expound upon, and comport with the definitions set forth in R.C. 5701.02 and 5701.03, and the classifications set forth in Ohio Adm. Code 5703-3-01. This bulletin does not address the classification of assets on residential property. In addition, property classified in this bulletin as "real property" still may be deemed to be personal property if it meets the definition of a "business fixture" and/or the property does not meet the definition of a "fixture" (e.g., certain property subject to an operating lease).

The following business property is properly classified as personal property:

1. Air conditioning systems that utilize specialized cooling equipment to maintain specific environmental conditions in computer rooms, manufacturing areas, research areas, storage areas, or other areas that require specific environmental conditions for the business that is conducted on the premises. But, see 26 below.
2. Amusement park rides.
3. Bank vault doors unless an integral part of the building and the removal of which would damage the structural integrity of the building. Also, see 13 below.
4. Boilers and ancillary equipment such as, but not limited to, feed water heaters, pumps, steam traps, steam lines, and return water storage tanks, that are used for any purpose other than environmental control for buildings or structures housing people or animals. But, see 26 below.
5. Chemical lines used for fire protection of business equipment.
6. Concrete fire walls and earthen structures surrounding oil and gasoline storage tanks.
7. Drive-in windows, but only that portion that constitutes the window itself and not the framing.
8. Electrical lines and ancillary equipment that are specialized and used in manufacturing processes.
9. Fuel storage tanks, whether above ground or below ground.
10. Generators when used as a power source for manufacturing equipment or when used exclusively to maintain specific environmental conditions, e.g., in computer rooms. But, see 32 below.
11. Internal communication systems, including public address systems.
12. Kilns used in the drying, burning, firing, baking or similar processes of brick, grain, pottery, ceramics, lumber, and similar products.
13. Modular bank vault rooms. Also, see 3 above.
14. Pneumatic tube systems.
15. Portable grain storage bins regardless of size. But, see 30 below.
16. Process water transportation equipment used to transport water from a well to a processing operation of a business establishment, including equipment, lines, and pipes

whether above ground or below ground used to transport manufacturing process water. This classification does not include equipment used to transport water for the general use of the building, such as for drinking, bathing, cooking, or fire suppression.

17. Pumps, motors, or pipes used in connection with cooling towers, manufacturing equipment, spray ponds, storage tanks, or irrigation related to the business, e.g., golf courses.
18. Refrigerated cold areas, including equipment such as panels and insulation and the enclosure around or incident to the equipment, excluding supporting structures.
19. Service station canopies, all electrical wiring for the canopies, any appurtenances to the canopies, and any concrete pads or islands used as foundations for the canopies.
20. Signage, including neon signs and billboards.
21. Skip hoists and tipples. But, see 37 and 38 below.
22. Sliding boards, diving boards, diving platforms, lifeguard stands, lighting, rails, ladders, and filtration and chlorination systems associated with swimming pools. But, see 39 below.
23. Special purpose lighting and associated electrical wiring, whether inside or outside, including lighting for miniature golf courses and lighting for illuminating or displaying inventory, e.g., on automobile dealer lots. But, see 31 below.
24. Storage silos, bins, or tanks, whether above or below ground, and regardless of the type of facility where used. But, see 30 below.
25. Water softening equipment when used for industrial clothes cleaning or in a manufacturing process. But, see 40 below.

The following property is properly classified as real property:

26. Air conditioners, boilers and ancillary equipment such as, but not limited to, feed water heaters, pumps, steam traps, steam lines, and return water storage tanks primarily used for environmental control for buildings or structures housing people or animals. But, see 1 and 4 above.
27. Carpet installed and attached to a finished or unfinished interior surface so as to indicate permanent affixation for the useful life of the carpet. For sales tax purposes, note that the installation of carpet is taxable. See R.C. 5739.01(B)(5).
28. Cement parking pads, driveways, and walkways in use at trailer courts.

29. Chemical and water lines used for fire protection installed within and an integral part of a building or structure. But, see 5 above.
30. Elevators, storage bins, and storage silos used in agricultural operations. But, see 15 and 24 above.
31. General parking lot lighting. But, see 23 above.
32. Generators that have been installed as an integral part of a building or structure and that supply power for general usage to the building or structure. But, see 10 above.
33. Greenhouses attached to permanent foundations.
34. Powder magazines and any other buildings or structures constructed in compliance with R.C. Chapter 3743 for the storage of fireworks or other types of explosives.
35. Pump houses.
36. Pyrometer houses.
37. Skip hoist houses. But, see 21 above.
38. Supports for cranes, skip hoists, tipples, or similar property that are an integral part of the building or structures. But, see 21 above.
39. Swimming pools. But, see 22 above.
40. Water softening systems when used in relation to potable water. But, see 25 above.