

ORIGINAL

IN THE SUPREME COURT OF OHIO

THE METAMORA ELEVATOR)
 COMPANY,)
 Appellee,)
 v.)
 FULTON COUNTY AUDITOR AND)
 FULTON COUNTY BOARD OF)
 REVISION,)
 Appellants,)

Case No. 2014-0874

Appeal from the Ohio Board of Tax Appeals
BTA Case No. 2011-1854

**BRIEF OF AMICI CURIAE
 OHIO FARM BUREAU FEDERATION AND FULTON COUNTY FARM BUREAU
 IN SUPPORT OF APPELLEE THE METAMORA ELEVATOR COMPANY**

Chad A Endsley (0080648)
 (Counsel of Record)
Leah F. Curtis (0086257)
Amy M. Milam (0082375)
 Ohio Farm Bureau Federation
 P.O. Box 182383
 Columbus, OH 43218-2383
 Telephone: (614) 246-8256
 Facsimile: (614) 246-8656
 cendsley@ofbf.org
 lcurtis@ofbf.org
 amilam@ofbf.org

**Attorneys for Amici Curiae,
 Ohio Farm Bureau Federation, Inc. and
 Fulton County Farm Bureau**

FILED
 NOV 07 2014
 CLERK OF COURT
 SUPREME COURT OF OHIO

Kelley A. Gorry (0079210)

(Counsel of Record)

James R. Gorry (0032461)

Rich & Gillis Law Group, LLC

6400 Riverside Drive, Suite D

Dublin, OH 43017

Telephone: 614.228.5822

Fax: 614.540.7476

kgorry@richgillislawgroup.com

Attorney for Appellants Fulton County

Auditor and Fulton County Board of

Revision

Jonathan T. Brollier (0081172)

(Counsel of Record)

Bricker & Eckler LLP

100 South Third Street

Columbus, Ohio 43215

Telephone: 614.227.2300

Facsimile: 614.227.2390

Attorney for Appellee The Metamora

Elevator Company

The Honorable Michael DeWine

(0009181)

Ohio Attorney General

30 East Broad Street, 17th Floor

Columbus, OH 43215

Telephone: 614.466.4986

Attorney for Appellee Ohio Tax

Commissioner

Table of Contents

TABLE OF AUTHORITIES	ii
I. STATEMENT OF THE CASE AND FACTS	1
II. THE INTEREST OF THE AMICI CURIAE	1
III. ARGUMENT	3
A. The BTA’s decision to not classify grain bins as real property was a proper interpretation of the statutes governing real property taxation and should be affirmed.	3
1. Grain bins are not real property within the meaning of the statute.....	3
2. In arguendo, grain bins may be real property but are “otherwise specified” in R.C. 5701.03 as business fixtures and therefore, not subject to property taxation.	6
3. The BTA correctly applied the statutory language and had no need to engage in a statutory interpretation analysis given the plain and unambiguous language of the statutes at hand.....	8
B. The BTA decision is proper under Ohio Constitution, Article XII, Section 2 and the Ohio Revised Code statutes executing the meaning of that provision.	9
1. Ohio Constitution, Article XII, Section 2 is not self-executing and required further legislation by the General Assembly to be effective.....	9
2. The 1931 Amendment to Ohio Constitution, Article XII, Section 2 clarifies the General Assembly’s plenary power to tax and exempt certain types of property from taxation.	10
3. The General Assembly properly exercised its plenary power to tax and grant tax exemptions by defining which property will be subject to real property taxation.....	12
IV. CONCLUSION	14
CERTIFICATE OF SERVICE	16

TABLE OF AUTHORITIES

Ohio Constitution

Article II, Section 1.....	12
Article XII, Section 2	9, 10, 11, 12

Cases

<i>Adair v. Koppers Co., Inc.</i> , 741 F.2d 111 (6 th Cir.1984)	13-14
<i>Brennaman, et al. v. R.M.I. Company</i> , 70 Ohio St.3d 460, 639 N.E.2d 425 (1994).....	13
<i>Campbell v. City of Carlisle</i> , 127 Ohio St.3d 275, 2010-Ohio-5707, 939 N.E.2d 153	8
<i>Citizens Financial Corp. v. Porterfield</i> , 25 Ohio St. 3d 53, 495 N.E.2d 16 (1971)	9
<i>City of Dayton v. Cloud</i> , 30 Ohio St. 2d 295, 285 N.E.2d 42 (1972).....	11, 12
<i>City of Zanesville v. Richards</i> , 5 Ohio St. 589 (1855).....	10
<i>Denison University v. Board of Tax Appeals</i> , 2 Ohio St.2d 17, 205 N.E.2d 896 (1965).....	10, 11, 12
<i>Funtime, Inc.v. Wilkins</i> , 105 Ohio St.3d 74, 2004-Ohio-6890, 822 N.E.2d 781	7
<i>Kraus v. City of Cleveland</i> , 42 O.O 490, 94 N.E.2d 814, 818 (M.C. 1950).....	10
<i>Litton Systems, Inc. v. Tracy</i> , 88 Ohio St. 3d 568, 728 N.E.2d 389 (2000).....	13
<i>State v. Muncie</i> , 91 Ohio St. 3d 440, 746 N.E.2d 1092 (2001).....	8
<i>State v. Williams</i> , 88 Ohio St. 3d. 513, 728 N.E. 2d 342 (2000)	9

<i>State ex. rel. Russell v. Bliss</i> , 156 Ohio St. 147, 101 N.E. 3d 289 (1951).....	9
<i>State ex rel. Swetland v. Kinney</i> , 62 Ohio St. 2d 23, 402 N.E. 2d 542 (1980).....	12
<i>Symmes Twp. Bd. of Trustees v. Smyth</i> , 87 Ohio St.3d 549, 721 N.E.2d 1057 (2000).....	8
<i>Terteling Bros. v. Glander</i> , 151 Ohio St. 236, 85 N.E.2d 379 (1949).....	13
<i>Zangerle v. Standard Oil</i> , 144 Ohio St. 506, 60 N.E.2d 52 (1945).....	13

Statutes

26 U.S.C. 168(e)(1).....	5
26 U.S.C. 168(e)(3)(C).....	5
26 U.S.C. 179(d)(1)(B).....	5
26 U.S.C. 1245(a)(3)(B)(iii).....	5
R.C. 5701.02.....	3, 7, 13
R.C. 5701.02(B)(1).....	3, 4
R.C. 5701.02(C).....	3
R.C. 5701.02(D).....	3, 13
R.C. 5701.02(E).....	3, 4
R.C. 5701.03.....	6, 7
R.C. 5701.03(B).....	7
R.C. 5739.01(B)(5)(b).....	4
R.C. 5739.02(B)(17).....	4-5
R.C. 5739.02(B)(31).....	4-5
R.C. 5739.02(B)(42)(n).....	4-5

Regulations

26 C.F.R. 1.167(a)-6.....	5
---------------------------	---

Administrative Materials

The Metamora Elevator Co. v. Fulton County Board of Revision, et al.,
BTA No. 2011-1854, 2014 WL 2708166 (May 2, 2014).....6, 12

The Mennel Milling Company v. Tracy, BTA No. 94-X-116,
1996 WL 765091, at 10 (July 12, 1996)..... 5

Other Authorities

Internal Revenue Service, *Publication 225 Farmers Tax Guide*,
(October 20, 2014) available at
<http://www.irs.gov/pub/irs-pdf/p225.pdf> (accessed November 3, 2014). 5, 6

Ohio Farm Bureau Federation, 2014 State Policies, Policy 481:
State and Local Taxes, at 65, lns 4-9 (2013) available at
<http://ofbf.org/policy-and-politics/policy-development>..... 2

I. STATEMENT OF THE CASE AND FACTS

OFBF fully adopts and incorporates the statement of the case as presented by Appellee The Metamora Elevator Company in its merit brief.

II. THE INTEREST OF THE AMICI CURIAE

The Ohio Farm Bureau Federation (“OFBF”) is Ohio’s largest general farm organization, representing nearly 200,000 member families. The Ohio Farm Bureau is a federation of 87 member-county Farm Bureaus, representing Ohio’s 88 counties. The Fulton County Farm Bureau is one of those member-counties, representing the 1,199 member families within Fulton County, Ohio. Farm Bureau members in every county of the state serve on boards and committees working on legislation, regulations, and issues that affect agriculture, rural areas, and Ohio’s citizens in general. Many members are involved in farm and agribusiness activities, including crop and livestock production, food processing, commodity processing, conditioning and handling, biofuel production, and greenhouse operations. Members of the Farm Bureau run the gamut from large to small businesses.

One issue that is always of top concern to Farm Bureau members is that of taxation, and in particular, property taxation. Farming is a land and asset intensive business. Farmers invest significant funds to buy or lease land. Even after acquiring land, farmers must purchase equipment and inputs before they even have hope of making a profit. Because farming by its very nature requires significant amounts of land, it comes as no surprise that property taxes are of utmost concern to farmers across Ohio.

Since 1919, Ohio Farm Bureau members have led the way in public policy information and issue education. Today is no different, as Farm Bureau members frequently engage in conversations regarding the way property taxes work in Ohio, and tax policies' effects on Ohio's farmers. The Ohio Farm Bureau conducts numerous property tax education meetings for its members every year, and provides free "web meetings" for county auditors to invite the general public to learn about property taxation and the current agricultural use valuation ("CAUV") program. By undertaking these educational programs, Ohio Farm Bureau became a leader in property tax information for not only its members, but for many others across the State of Ohio.

The policies of the Ohio Farm Bureau are created by the members through a grassroots process. Ohio Farm Bureau members created policy that generally categorizes income taxes, sales tax, and the commercial activity tax as more palatable ways to raise revenue compared to real property taxation. Ohio Farm Bureau Federation, 2014 State Policies, Policy 481: State and Local Taxes, at 65, Ins 4-9 (2013) available at <http://ofbf.org/policy-and-politics/policy-development>.

But Farm Bureau members remain acutely aware that real property taxes are the lifeblood of their communities, funding local government agencies, services, and schools. Because of this, farmers have always been willing to pay their fair share of the real property tax burden to ensure their communities can continue to function and operate.

Grain bins and other non-permanent structures, in particular, are a point of concern for many farmers when it comes to their property taxation. Some members report that grain bins are always listed as taxable structures on their property tax card, while others

have not had them listed and therefore are not paying property taxes upon them. Differing interpretation of the property tax law as it applies to grain bins results in a non-uniform system of real property taxation. While members often cite their duty to pay their fair share of the real property tax burden, it is unfair to charge real property taxes on items to which the law of real property tax does not apply. Ohio Farm Bureau urges the court to affirm the reasonable and lawful decision of the Board of Tax Appeals (“BTA”) in holding that grain bins are not taxable real property.

III. ARGUMENT

A. The BTA’s decision to not classify grain bins as real property was a proper interpretation of the statutes governing real property taxation and should be affirmed.

The BTA properly classified the grain bins at issue in this case as personal property, after carefully examining the statutes that define real property subject to taxation. The BTA’s decision and judgment of factual issues should be reviewed only for unreasonable or unlawful results, neither of which occurred in this case.

1. Grain bins are not real property within the meaning of the statute

As the Appellees argue, and the BTA decided, grain bins do not constitute real property under the governing statute, R.C. 5701.02. As the BTA correctly noted, the definition of real property does include “buildings, structures, improvements and fixtures of whatever kind on the land.” The statute goes on to further define the words, “building,” “structure,” “improvement,” and “fixture,” but all require permanence, an attribute that grain bins clearly lack. R.C. 5701.02(B)(1), (C), (D), (E).

The County Appellants claim that the BTA erroneously applied a permanence requirement from the fixture definition to structures, arguing instead that the standard requires only that the grain bins be “attached or affixed to the land” to constitute real property. However, Appellants ignore that the word “permanent” appears within the first three words of the definitions of both “structure” and “building.” R.C. 5701.02(B)(1),(E). While it is correct that buildings and structures must be “attached or affixed to the land,” they must also first be a “permanent fabrication or construction.” *Id.*

Grain bins are modular; they can be easily disassembled and removed at any time. Those in grain processing or grain farming rely upon the bins’ quality of impermanence to temporarily store a product, but the bins are not intended to be upon the land for time immemorial. Grain bins are also not “permanently attached or affixed to the land” as would be required of the definition of “fixture,” as they are clearly bolted to a concrete pad so that they can be removed from the land at any time, rather than being incorporated into the realty itself.

The temporary nature and portability of grain bins have been recognized by the General Assembly in the sale and use tax section of the Ohio Revised Code. Grain bins are specifically referenced as “portable grain bins” and are defined as “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.” R.C. 5739.01(B)(5)(b).

Furthermore, the sale and erection or installation of portable grain bins are specifically exempted from sales and use tax application when used by a person engaged in

farming or agriculture, similarly to other tangible personal property used in the production, conditioning, or holding of agricultural products. R.C. 5739.02(B)(17), (31), and (42)(n).

The BTA has also previously recognized that portable grain bins can be removed by truck or crane, are bolted to concrete to allow removal without damage to such foundation, and enjoy a secondary market for resale. *The Mennel Milling Company v. Tracy*, BTA No. 94-X-116, 1996 WL 765091, at 10 (July 12, 1996) (discussing the portability of grain bins.).

The federal government also recognizes grain bins as non-permanent structures. For federal income tax purposes, grain bins are depreciated within seven or ten years, depending on whether general or alternative depreciation is chosen. 26 USC 168(e)(3)(C). *See also* Internal Revenue Service, *Publication 225 Farmers Tax Guide*, (October 20, 2014) at 42, available at <http://www.irs.gov/pub/irs-pdf/p225.pdf> (accessed November 3, 2014).

By contrast, this is much shorter than the 20 year depreciation schedule assigned to farm buildings by the Internal Revenue Code. 26 U.S.C 168(e)(1), 26 C.F.R 1.167(a)-6, Internal Revenue Service, *Publication 225 Farmers Tax Guide*, at 42.

Further, and of great significance, the funds for a metal grain bin qualify for a Section 179 deduction under the U.S. Tax Code, a status not generally afforded to real estate or buildings except in very limited circumstances.¹ 26 U.S.C 179(d)(1)(B); 26 U.S.C

¹ Section 179 deduction treatment does, however, apply to certain “single purpose agricultural or horticultural structures” including things like greenhouses, structures for growing mushrooms, and structures used to raise, house, and feed a particular type of livestock and its produce. Internal Revenue Service, *Publication 225 Farmers Tax Guide*, at 38.

1245(a)(3)(B)(iii) (“qualifying property” includes “bulk storage of fungible commodities.”);
see also Internal Revenue Service, *Publication 225 Farmers Tax Guide*, at 37-38.

2. In arguendo, grain bins may be real property but are “otherwise specified” in R.C. 5701.03 as business fixtures and therefore, not subject to property taxation.

Appellant repeatedly refers to the BTA’s opinion as flawed because it considered each structure to be a “business fixture.” Appellant’s Brief at 3. However, the BTA did not rule that the grain bins in question are business fixtures. Instead, the BTA wisely provided in a footnote that, had it considered grain bins to be permanent (and therefore real property), only then would the BTA have ruled that these bins constitute business fixtures because they are otherwise specified in R.C. 5701.03. *The Metamora Elevator Co. v. Fulton County Board of Revision, et al.*, BTA No. 2011-1854, 2014 WL 2708166, at *2, n7 (May 2, 2014).

The footnote merely reiterates the holding of the opinion: that grain bins are non-permanent fabrications and therefore cannot be considered real property. The BTA is wise to use such a footnote to help provide guidance for any future situation that may involve items similar to the grain bins at hand, but with the important distinguishing factor of permanence. If such a case arose, the BTA’s opinion and included footnote could serve to guide auditors and taxpayers that such *permanent* property should be considered a business fixture, and therefore, not taxable as real estate.

The footnote does, however, provide sufficient reasoning for why such grain bins would be considered business fixtures in the event they were found to be permanent

structures. Appellants argue the opposite, ignoring the pertinent part of R.C. 5701.02, which states that real property includes all buildings, structures, improvements and fixtures, “unless otherwise specified in this section or section 5701.03 of the Revised Code.” This requires the analysis of the definition of “real property” to include a concerted look and understanding of R.C. 5701.03 as well. This analysis is guided by the Court’s holding in *Funtime, Inc.v. Wilkins*, 105 Ohio St.3d 74, 2004-Ohio-6890, 822 N.E.2d 781, which provided that a court must:

“[F]irst, determine whether the item meets the requirements of one of the definitions of real property set forth 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.” *Id.* at ¶33.

The latter statute clearly defines two classes of property that are not to be considered real property: “personal property” and “business fixtures.” R.C. 5701.03. Within the definition of “business fixtures” is an express list of types of property that should be considered within the definition, and in that list is the term “storage bins and tanks, whether above or below ground.” R.C. 5701.03(B). Grain bins are squarely within the category of “storage bins and tanks.” Their main and sole purpose is to store grain for those in the grain farming or processing business. The bins are measured, not by square feet or area, but rather by capacity—like any other storage container, large or small.

Even without the express mention of “storage bins or tanks,” which surely encompasses grain bins, the general definition of “business fixture” also applies to grain bins. The types of bins at issue are only for the benefit of the business conducted on the premises, which is a unique attribute of a “business fixture” per R.C. 5701.03(B). The bins

would not be useful to another owner of the property that was not engaged in grain marketing or farming. Luckily for any future property owner, the nonpermanent nature of the bins makes it quite simple to remove them so as to not burden the future property owner with business fixtures of no use. And, it is not uncommon for grain bins to be sold, along with other farm machinery and equipment, separate and apart from the sale of the land, which serves as further evidence of the bins' status as impermanent fabrications that can be removed easily from the land without damaging it.

3. The BTA correctly applied the statutory language and had no need to engage in a statutory interpretation analysis given the plain and unambiguous language of the statutes at hand.

“When the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need for this court to apply the rules of statutory interpretation.” *Symmes Twp. Bd. of Trustees v. Smyth*, 87 Ohio St.3d 549, 553, 721 N.E.2d 1057 (2000). Similarly, there was no need for the BTA to engage in complicated matters of statutory interpretation, as the language of all the definitions at issue were unambiguous and clear, considering common usage and understanding.

As the BTA hears numerous property tax challenges every year, surely it is well aware of the plain meaning of the word “permanent” and other definitional phrases in the statutes at hand. Attributing any other meaning, when language is clear and unambiguous, would “constitute ‘not interpretation but legislation, which is not the function’ of an administrative body nor their appellate bodies.” *Campbell v. City of Carlisle*, 127 Ohio St.3d 275, 2010-Ohio-5707, 939 N.E.2d 153, ¶58 citing *State v. Muncie*, 91 Ohio St. 3d 440, 447,

746 N.E.2d 1092 (2001). The BTA correctly interpreted the statutes at hand to categorize grain storage bins as non-real property, per the statutes governing real property taxation.

Furthermore, the BTA has the administrative expertise in manners of classifying property for taxation, whether that be real property taxation, sales and use tax, or otherwise. The categorization of grain bins as personal property is a factual issue determined by the BTA which should not be disturbed unless the Court finds the board's decision to be unreasonable or unlawful. *Citizens Financial Corp. v. Porterfield*, 25 Ohio St. 3d 53, 57, 495 N.E.2d 16 (1971).

B. The BTA decision is proper under Ohio Constitution, Article XII, Section 2 and the Ohio Revised Code statutes executing the meaning of that provision.

1. Ohio Constitution, Article XII, Section 2 is not self-executing and required further legislation by the General Assembly to be effective.

Ohio Constitution , Article XII, Section 2 is not a self-executing provision of the Ohio Constitution, in that further action was necessary by the General Assembly to pass laws to carry out its purpose. A constitutional provision is self-executing only if it is complete in itself and becomes operative without the aid of supplemental or enabling legislation. *State v. Williams*, 88 Ohio St. 3d. 513, 521, 728 N.E. 2d 342 (2000).

“Another way of stating this general, governing principle is that a constitutional provision is self-executing if there is nothing to be done by the legislature to put it in operation.” *State ex. rel. Russell v. Bliss*, 156 Ohio St. 147, 152, 101 N.E. 3d 289 (1951) (quoting former 11 American Jurisprudence, 691, Section 74).

In contrast, a constitutional provision is not self-executing when its language cannot provide for adequate or meaningful enforcement of its terms without further legislative

enactment. *Id.* Further, a provision cannot be self-executing if it only enacts a line of policies or principles, without supplying the means by which such policies or principles are to be effectuated. *Kraus v. City of Cleveland*, 42 O.O 490, 94 N.E.2d 814, 818 (M.C. 1950).

Ohio Constitution, Article XII, Section 2 cannot be deemed self-executing, as it merely puts forth a principle that requires further legislative enactment to become enforceable. The amendment states that “[l]and and improvements thereon shall be taxed by uniform rule according to value. . .” However, the constitutional provision does not provide what types of land or improvements, what that uniform rule should be, or how it shall be executed by the state or local taxing authority. These were matters left to the legislature to determine. Furthermore, other language in both this section and other sections of the Ohio Constitution must be read *in pari materia* to provide the full scope of the General Assembly’s power to tax property within Ohio.

2. The 1931 Amendment to Ohio Constitution, Article XII, Section 2 clarifies the General Assembly’s plenary power to tax and exempt certain types of property from taxation.

Notwithstanding the constitutional provision requiring taxation by uniform value of land and improvements, Appellants ignore constitutional amendments and historical case law which clearly interprets the General Assembly’s plenary power to tax and grant tax exemptions. Prior to the adoption of the 1851 Constitution, all matters of taxation or exemption lay within the discretion of the General Assembly. *Denison University v. Board of Tax Appeals*, 2 Ohio St.2d 17, 23, 205 N.E.2d 896 (1965), citing *City of Zanesville v. Richards*, 5 Ohio St. 589, 592 (1855).

In the Constitution of 1851, that power was limited in Ohio Constitution, Article XII, Section 2 when the word “all” was inserted so the provision read, “Laws shall be passed, taxing by uniform rule, *all* money, credits, investments. . . and also *all* real and personal property according to its true value in money. . .” *Denison* (Emphasis sic.) The section therefore required all real and personal property be taxed except for the list of specific exemptions such as public houses, and lands for a purely public use. The addition of the word “all” and the specific exclusive list of exemptions in former Ohio Constitution, Article XII, Section 2, provided a basis for the interpretation at the time that any and all exemptions from taxation must be specifically allowed by the Ohio Constitution. *Id.* at 27.

But in 1931, the language of Ohio Constitution, Article XII, Section 2 was once again changed. The word “all” was removed, and the provision simply provided, as it does today, that land and improvements be taxed at uniform value. The provision was further amended at that time to provide, “[w]ithout limiting the general power, subject to the provision of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt” various types of properties including burying grounds, public schools, and other public property used for exclusively public purposes. Ohio Constitution, Article XII, Section 2 (Emphasis added.)

This language, along with the general powers language in Ohio Constitution, Article II, Section 1, has been consistently determined by the Court to clarify the General Assembly’s power to both impose property tax and to exempt from it. “The General Assembly has plenary power to determine exemptions from taxation, limited only by the provisions of Article I of the Ohio Constitution. . .” *City of Dayton v. Cloud*, 30 Ohio St. 2d

295, 299, 285 N.E.2d 42 (1972). *See also Denison*, 2 Ohio St.2d 17, 23, 205 N.E.2d 896, at syllabus paragraph 3 (“By reason of the amendment of Section 2 of Article XII of the Ohio Constitution effective in 1931 the General Assembly now has a power to determine exemptions from taxation that is limited only by the provisions of Article I (Bill of Rights) of the Ohio Constitution.”)

Such reasoning has been used to uphold exemption of private learning institutions, *Denison, supra*, urban renewal bonds, *City of Dayton, supra*, and homestead exemptions, *State ex rel. Swetland v. Kinney*, 62 Ohio St. 2d 23, 402 N.E. 2d 542 (1980). Due to the 1931 amendment of Ohio Constitution, Article XII, Section 2, the General Assembly can rightfully assert a general power to exempt certain properties from taxation.

3. The General Assembly properly exercised its plenary power to tax and grant tax exemptions by defining which property will be subject to real property taxation.

As the BTA correctly surmised, the General Assembly provided a framework for exempting certain property from real property taxation through the definitions used to inform the laws governing real property taxation. The General Assembly specifically included within the definitions of “fixture” and “structure,” a requirement that either be “permanent” in order to be classified as “real property.” *The Metamora Elevator Co. v. Fulton County Board of Revision, et al.*, BTA No. 2011-1854, 2014 WL 2708166, at *2, *see also* R.C. 5701.02.

It was within the General Assembly’s plenary power to articulate the definition of real property and improvements for the purposes of complying with the Constitution’s requirement that land and improvements be taxed by uniform rule. As is noted above, the

grain bins at issue in this case were not permanent structures, and therefore, not of a type of property which the General Assembly intended to define as real property under their plenary power. Such exemption, and the BTA's correct following of that rule of law, does not violate any constitutional provisions but instead is a valid exercise of the General Assembly's rightful power to make choices regarding taxation of property within Ohio.

Appellants attempt to argue a common law definition of "improvement," along with the statutory definitions in R.C. 5701.02, require grain bins to be considered taxable real property. But, "[i]t is a well settled principle of law that where a statute defines terms used therein, which are applicable to the subject matter affected by the legislation, such definition controls in the application of the statute. *Terteling Bros. v. Glander*, 151 Ohio St. 236, 241, 85 N.E.2d 379 (1949).

Appellants assert that an improvement need only be "attached or affixed to the land" to constitute an improvement, ignoring the most important caveat of the definitional statute which requires the attachment or affixing to be permanent. R.C. 5701.02(D).

Though the court has discussed a "common law" definition of improvement in other cases, even those cases respect the statutory definitions and the requirement that interpretations of a word or phrase not be interpolated between cases of different subject matter. *Litton Systems, Inc. v. Tracy*, 88 Ohio St. 3d 568, 570, 728 N.E.2d 389 (2000) (applying common law definitions because statutory definitions in R.C. 5701.02 were provided after the claim period in question.), *Brennaman, et al. v. R.M.I. Company*, 70 Ohio St.3d 460, 464, 639 N.E.2d 425 (1994) (rejecting application of *Zangerle v. Standard Oil*, 144 Ohio St. 506, 60 N.E.2d 52 (1945), interpretation of "improvement" to statute of

repose.), *Adair v. Koppers Co., Inc.*, 741 F.2d 111, 113 (6th Cir.1984) (“Given the unrelated purposes of these provisions, there is no reason to assume that the legislature meant to refer to judicial construction of ‘improvements’ in the constitution by using the term ‘improvement’ in section 2305.131 [a statute of repose].”

In contrast to these cases, the legislature expressly requires that a fabrication be permanent to qualify as real property. And the BTA specifically found that these grain storage bins were not permanent. From this factual determination, it follows that the bins constitute personal property.

IV. CONCLUSION

As significant landowners in many jurisdictions, farmers are especially interested in seeing property tax laws enforced appropriately and consistently across the state. The laws of real property, as properly enacted by the General Assembly, clearly remove from real property taxation non-permanent fabrications, such as the grain bins in question. Ohio Farm Bureau urges the Court to affirm the BTA’s finding that grain bins are non-permanent items of personal property.

Respectfully submitted,

A handwritten signature in cursive script that reads "Chad A. Endsley". The signature is written in black ink and is positioned above a solid horizontal line that extends to the right.

Chad A. Endsley (0080648)
(Counsel of Record)
Leah F. Curtis (0086257)
Amy M. Milam (0082375)
Ohio Farm Bureau Federation, Inc.
P.O. Box 182383
Columbus, Ohio 43218-2383
Phone: (614) 246-8256
Fax: (614) 246-8656
cendsley@ofbf.org
lcurtis@ofbf.org
amilam@ofbf.org

Attorneys for Amici Curiae,
Ohio Farm Bureau Federation, Inc. and
Fulton County Farm Bureau

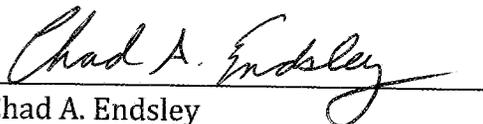
CERTIFICATE OF SERVICE

I hereby certify that, on November 7, 2014, a copy of this Brief was served by U.S. postal mail upon the following:

Kelley A. Gorry (0079210)
(Counsel of Record)
James R. Gorry (0032461)
Rich & Gillis Law Group, LLC
6400 Riverside Drive, Suite D
Dublin, OH 43017
Telephone: 614.228.5822
Fax: 614.540.7476
kgorry@richgillislawgroup.com
**Attorney for Appellants Fulton County
Auditor and Fulton County Board of
Revision**

Jonathan T. Brollier (0081172)
(Counsel of Record)
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
Telephone: 614.227.2300
Facsimile: 614.227.2390
jbrollier@bricker.com
**Attorney for Appellee The Metamora
Elevator Company**

The Honorable Michael DeWine
(0009181)
Ohio Attorney General
30 East Broad Street, 17th Floor
Columbus, OH 43215
Telephone: 614.466.4986
**Attorney for Appellee Ohio Tax
Commissioner**


Chad A. Endsley