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The Ohio Board of Tax Appeals Moves Away from the Strict Construction Rule of Statutory Tax Exemptions after the Ohio Supreme Court's decision in *Stingray Pressure Pumping*

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In early 2023, the Supreme Court of Ohio decided *Stingray Pressure Pumping, L.L.C. v. Harris*, 172 Ohio St.3d 130, 2023-Ohio-2598, a case involving a taxpayer's exploration and production sales tax exemption claim for fracking equipment. In considering the taxpayer's appeal, the Court revisited its longstanding position regarding the statutory construction of tax exemption statutes that tax exemption statutes "must be strictly construed against the taxpayer." The Court in *Stingray* took issue with the standard as being "in tension with our often-expressed commitment to apply the plain and ordinary meaning of statutory text." The Court went on to state that its "task is not to make tax policy but 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." According to the Court: "Tax statutes must be read through a clear lens, not one favoring tax collection. Thus, we make clear today that henceforth we will apply the same rules of construction to tax statutes that we apply to all other statutes."

In the 18 months after the Court's decision on *Stingray*, we have seen arguably more balanced decisions, particularly in the area of real property tax exemption. Taxpayers seeking real property tax exemptions had historically been subject to a strict statutory application. Now, the Ohio Board of Tax Appeals is citing to the Court's *Stingray* decision and is interpreting real property tax exemption statutes "neutrally" by applying a "fair reading" of tax exemption statutes "based on the plain language" of the statutes in a way that is not "favoring tax collection." In *City of Middletown v. Harris* (July 23, 2024), BTA No. 2021-529, citing *Stingray*, the BTA reversed the tax commissioner and allowed real property tax exemption for leased hangars located on a portion of the Middletown Regional Airport. In *Cleveland Metroparks Dist. v. Harris* (Aug. 2, 2024), BTA No. 2022-732,

citing to *Stingray*, the BTA reversed the tax commissioner and granted real property tax exemption for a public park in its entirety, including a portion subject to an oil and gas lease. The BTA has also cited to *Stingray* in affirming the tax commissioner in *Bd. of Edn. Worthington City Schools v. Harris* (Jan. 8, 2024), BTA No. 2021-2795, wherein the local school board appealed the tax commissioner's determination allowing real property tax exemption for property used by a charitable foundation. Additionally, the BTA has cited to *Stingray* in affirming the tax commissioner's denial of real property tax exemption in *Christ the World Reformed Church v. Harris* (Aug. 5, 2024), BTA No. 2023-1447, wherein the property owner failed to put forth sufficient evidence that the property was being used for public worship. The BTA is also citing *Stingray* and interpreting tax statutes "neutrally" in areas of law outside of real property tax exemption, including personal income and commercial activity tax. See, e.g., *Frank and Carole Gori v. Harris* (June 18, 2024), BTA No. 2022-932, and *Drummond Financial Services, Inc. v. Harris* (May 13, 2024), BTA No. 2020-700.

Taxpayers who have tax matters pending before the tax commissioner or expect to have matters before the commissioner in the future should review the Court's decision in *Stingray* and the decisions, primarily from the BTA, which have been issued since the Court's decision to ensure opportunities are not being missed.