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The Ohio Supreme Court Approves Sales and Use Tax Exemption for Fracking Equipment and Reverses the Strict Construction Rule of Statutory Tax Exemptions

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In *Stingray Pressure Pumping, L.L.C. v. Harris*, Slip Opinion No. 2023-Ohio-2598, the Ohio Supreme Court considered whether certain fracking equipment, including a blender, a hydration unit, a chemical-additive unit, a sand king, a t-belt and a data van, satisfied the requirements of the exploration and production (E&P) tax exemption under R.C. 5739.02(B)(42)(q). Stingray argued that the equipment qualifies for the E&P tax exemption because the equipment is used directly and is integral in the production of oil and gas. The tax commissioner denied tax exemption, finding that the equipment is not “directly used in injecting the high-pressure fracking fluid into the well.” Stingray appealed the finding to the Ohio Board of Tax Appeals where the board affirmed the tax commissioner. While the case was pending, the General Assembly amended the E&P tax exemption statute adding a non-exhaustive list of equipment that qualifies for exemption and a non-exhaustive list of equipment that does not qualify for exemption. As set forth in the uncodified section of Am. Sub. H.B. 430, the amendment was meant to be “a remedial measure intended to clarify existing law.” The board considered the clarifying amendment when it affirmed the tax commissioner’s finding that the E&P exemption did not apply. Stingray appealed to the Ohio Supreme Court.

In considering Stingray’s appeal, the court revisited its position regarding the statutory construction of tax exemption statutes, which the court has declared on numerous occasions “must be construed against the taxpayer.” The tax commissioner and the BTA have reiterated and applied this standard for decades. However, according to the court, “such statements are 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.”

Applying a plain and ordinary meaning to the E&P tax exemption and considering the amended E&P tax exemption statute, the court held that all of the fracking equipment, except for the data van, is “directly used in performing hydraulic fracking services” and, thus, qualifies for the E&P tax exemption under R.C. 5739.02(B)(42)(q)(i)(VIII). The court disagreed with the tax commissioner that the primary purpose of this equipment is to “hold” or “store” sand or chemicals, uses that would have been disqualifying of the tax exemption under R.C. 5739.02(B)(42)(q)(ii)(II). The court also held that the board’s reliance on earlier decisions supporting taxation of these pieces of equipment was legal error because those decisions applied a different version of the E&P tax exemption statute. The court was silent on the uncodified section of the statutory amendment that explained the amendment was clarifying overall how prior law should be applied and it outright rejected the tax commissioner’s argument that the amendment did not alter the court’s prior case law (see, e.g., *Lyons v. Limbach*, 40 Ohio St.3d 92, N.E.2d 106 (1988)).

The court’s decision arguably broadens the E&P sales and use tax exemption beyond what the legislature intended. This undoubtedly benefits taxpayers in the oil and gas industry. Taxpayers should take note and review all of their pending matters in light of this decision. Equipment (not just the equipment at issue in *Stingray*) once deemed taxable by the tax commissioner could arguably now be exempt.

A more enduring result of this decision is that it upends decades of decisions in all areas of tax. The tax commissioner, the board and the court have for years “strictly construed” tax exemption statutes in all areas of tax against taxpayers and against granting tax exemptions. The court is absolutely clear in *Stingray* that tax exemption statutes are no different than any other statute and all should be plainly read without inference or deference to one party. Accordingly, taxpayers should review all of their pending matters where claims for tax exemption exist.