IN THE SUPREME COURT OF OHIO

BOARD OF EDUCATION OF THE COLUMBUS CITY SCHOOL DISTRICT,	:	
Appellant,	:	
	:	Case No. 2015-2105
v.	:	
	:	Appeal from Ohio Board of Tax Appeals
FRANKLIN COUNTY BOARD OF REVISION, FRANKLIN COUNTY AUDITOR, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY AND JDM II SF NATIONAL, LLC,	:	Case No. 2014-3918
Appellees,	:	

MERIT BRIEF OF BOARD OF EDUCTION OF THE COLUMBUS CITY SCHOOL DISTRICT

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STATEMENT OF THE CASE AND FACTS

This appeal concerns the value of an office building located at 5400 New Albany Road, Franklin County, Ohio. The Franklin County Auditor valued the property at $18,540,000 for tax years 2011 and 2012. The former property owner, State Farm Mutual Automobile Insurance Company ("State Farm") filed a complaint with the Franklin County Board of Revision ("BOR") requesting that the value of the subject property be decreased to $14,000,000. The Board of Education of the Columbus City School district ("BOE") file a counter-complaint. Subsequent to the filing of the 2011 complaints, the subject property sold twice. First, on November 19, 2013, State Farm sold the property to LSREF2 Tractor REO (Direct), LLC for $25,092,326. (Supp. 1, 2.) Subsequently, on April 7, 2014, LSREF2 Tractor REO (Direct), LLC sold the subject property to JDM II SF National, LLC for $26,100,000. (Supp. 8, 9.)

The BOR determined that the November 2013 sale was not arm's length and found the value of the subject property to be $14,000,000 as of January 1, 2011 and January 1, 2012, despite the fact that State Farm failed to produce any witness with personal knowledge of either sale and therefore, failed to rebut the presumption that the price paid in the November 2013 arm's length sale of the subject property constituted the best evidence of the value of the property as of January 1, 2011 and January 1, 2012. In rendering its decision, the BOR simply made a blanket statement that it found that the November 2013 sale was not arm's length, without any explanation. The BOR did not address the April 2014 sale. The BOE appealed the BOR's erroneous decision to the Board of Tax Appeals. The BTA affirmed the BOR's value determination for tax year 2011, but increased the value of the subject property to the

$25,092,326 purchase price for tax year 2012. State Farm appealed the BTA's 2012 decision to this Court.

In its Supplement filed with this Court, State Farm includes two documents which are not part of the record in this case since they were not submitted at the hearing before the BOR or BTA in this matter. First, State Farm included a Notice of Resolution, Licking County Board of Revision, Case No. 13-370, decided Sept. 3, 2014. See Supplement of Appellants, Suppl. 278. In addition, State Farm included a copy of a printout from the Franklin County Auditor's website for parcel no. 010-292742. See Supplement of Appellants, Suppl. 279. This document is dated March 31, 2016.

S.Ct.Prac.R. 16.09 sets forth the documents to be included in a supplement to a brief filed with this Court, and provides:

> (A) Appellant's supplement
>
> In every civil case on appeal to the Supreme Court from a court of appeals or an administrative agency, the appellant may prepare and file a supplement to the briefs that contains those portions of the record necessary to enable the Supreme Court to determine the questions presented. Parties to an appeal are encouraged to consult and agree on the contents of the supplement to minimize the appellee's need for filing a supplement. Documents not necessary to determine the questions presented shall not be included in the supplement. The fact that parts of the record are not included in the supplement shall not prevent the parties or the Supreme Court from relying on those parts of the record. (Emphasis added.)

Neither the Licking County Board of Revision Notice of Resolution nor the Franklin County Auditor's printout is part of the record herein. It is inappropriate to submit new evidence to this Court by including it in a supplement. Evidentiary documents must be submitted at an evidentiary hearing in order to afford all parties the opportunity to question a witness as to the document's authenticity, as well as the reliability of the information contained in the

documentation. *Columbus Board of Education v. Franklin County Board of Revision* (1996), 76 Ohio St. 3d 13, 1996-Ohio-432, 665 N.E.2d 1098. State Farm is attempting to introduce these documents for the first time by merely including them in a supplement, despite the fact that they clearly are not part of the record herein. State Farm's inclusion of the documents in the supplement violates S.Ct.Prac.R. 16.09 and accordingly, the BOE respectfully requests that this document be stricken from the record herein.

LAW AND ARGUMENT

Introduction:

The BTA reasonably and lawfully determined that the November 19, 2013 arm's length sale of the property was the best evidence of the value of the property as of January 1, 2012. In this case, the sale price paid in the November 2013 sale must be taken to be its true value under R.C. 5713.03, since State Farm failed to rebut the arm's length nature or recency of the sale.

This Court has consistently held that the price paid for real property in an arm's-length sale must be taken as its true value in money as a matter of law. In *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005 Ohio 4979, 834 N.E. 2d 782, at ¶13 and *Lakota Local Sch. Dist. Bd. of Educ. v. Butler County Bd. of Revision*, 108 Ohio St. 3d 310, 2006 Ohio 1059, 843 N.E. 2d 757, at ¶22 and 23, the Court held that the sale price is required to be taken as the true value of the property. In recent years, this Court has consistently applied *Berea*, even when unusual circumstances exist with regard to the property involved in the sale. *Rhodes v. Hamilton County Bd.*, 117 Ohio St. 3d 532, 2008 Ohio 1595, 885 N.E. 2d 236 and *Cummins Prop. Servs. v. Franklin County Bd. of Revision*, 117 Ohio St. 3d 516, 2008 Ohio 1473,

885 N.E.2d 222.

In addition, this Court has confirmed that the presentation of a deed and conveyance fee statement to a board of revision shifts the burden of proof to the property owner for the purposes of R.C. 5713.03. In *Columbus Board of Education v. Franklin County Board of Revision* (1996), 76 Ohio St. 3d 13, 1996-Ohio-432, 665 N.E.2d 1098, the Court stated that the conveyance fee form which was filed with the county auditor constitutes proof of the sale and puts the burden on the party opposing reliance upon the sale to "prove a lesser value" for the property. According to the Court:

> Therefore, once the Columbus Board of Education introduced into evidence a copy of the deed and conveyance fee statement, which listed the five parcels being transferred for $1,575,000, the burden to prove a lesser value shifted to Nestle. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St. 3d 493, 628 N.E.2d 1365. *Id.* at ¶7.

In *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin County Bd. of Revision*, 125 Ohio St. 3d 485, 2010 Ohio 1921, 929 N.E.2d 426, the Court reconfirmed, stating:

> (w)e have held that the "initial burden on a party presenting evidence of a sale is not a heavy one, where the sale on its face appears to be recent and at arm's length." Indeed, our cases acknowledge that the school board, as the proponent of using a sale price to value real property, typically makes a prima facie case when it presents a recent conveyance-fee statement along with a deed to evidence the sale and the price. Moreover, the basic documentation of a sale invokes a "rebuttable presumption" that "the sale has met all the requirements that characterize true value." (Citations omitted) [¶ 23 & 24]

In this case, the BOE presented a deed and conveyance fee statements establishing that the subject property sold in November 2013 for $25,092,326 and again in April 2014 for $26,100,000. State Farm has failed to rebut the presumption raised by the sale documentation.

Standard of Review

As this Court is well aware, the fair market value of property is a question of fact, and a reviewing court will not disturb a decision of the BTA with respect to valuation unless the BTA's decision is unreasonable or unlawful. *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 129 Ohio St.3d 3, 2011-Ohio-2316, 949 N.E.2d 986, ¶18. Further, in reviewing a decision of the BTA, this Court does not sit as "a super BTA or a trier of fact de novo." *RNG Properties, Ltd. v. Summit Cty. Bd. of Revision*, 140 Ohio St.3d 455, 2014-Ohio-4036, 19 N.E.3d 906, ¶18, quoting *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St. 3d 1, 2005-Ohio- 3096, 829 N.E.2d 686, ¶17. While this Court has consistently held that it "will not hesitate to reverse a BTA decision that is based on an incorrect legal conclusion" *Gahanna-Jefferson Local School Dist. Bd. of Edn. v. Zaino*, 93 Ohio St.3d 231, 232, 2001 Ohio 1335, 754 N.E.2d 789 ¶5, the BTA's finding of facts are entitled to deference so long as the findings are supported by "reliable and probative" evidence in the record. *Am. Natl. Can Co. v. Tracy*, 72 Ohio St. 3d 150, 152, 1995 Ohio 42, 648 N.E.2d 483 (1995). The BTA has "wide discretion in determining the weight to be given to the evidence and the credibility of the witnesses that come before it." *EOP-BP Tower* at ¶ 9. In *EOP-BP Tower*, the Court specifically held:

> Absent a showing of an abuse of discretion, the BTA's determination as to the credibility of witnesses and the weight to be given to their testimony will not be reversed by this court. *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155, 157, 573 N.E.2d 661. An assertion of an abuse of discretion by the BTA connotes more than an error of law or judgment. It implies that the BTA's attitude was unreasonable, arbitrary, or unconscionable. *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 16 O.O.3d 169, 404 N.E.2d 144. *Id.* at ¶ 14

In its brief, State Farm erroneously argues that this Court's standard of review herein is de novo

with no deference to the BTA. However, after considering the evidence and testimony presented, the BTA made certain findings of fact that cannot be reversed by this Court unless State Farm can show that the BTA's attitude was "unreasonable, arbitrary, or unconscionable." Specifically, the BTA determined that neither party to the November 2013 sale was compelled or under duress to sell/purchase the subject property, that the parties to both sales were unrelated and acted in their own self-interest and that the November 2013 sale was sufficiently recent to the January 1, 2012 tax lien date. Contrary to State Farm's assertions, deference to these findings is required and this Court cannot overrule these findings unless it determines that the BTA abused its discretion. The question in the appeal is whether the BTA's value determination was reasonable and lawful.

Reply to Appellant's Proposition of Law #1:

The BTA's determination that the November 2013 was the best evidence of the value of the subject property as of January 1, 2012 was reasonable and lawful.

1. The property owner failed to meet its burden of submitting evidence to rebut the arm's length nature of the November 2013 sale.

In *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd.of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, 950 N.E.2d 955, the Court held that the opponent of utilizing a sale price to establish value has the burden of rebutting either the arm's length character or the recency of the sale before the BTA, even if the BOR rejected the sale price below:

> It is true that the appellant at the BTA typically bears the burden to establish a different valuation from the one determined below, *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St. 3d 268, 2009 Ohio 4975, 915 N.E.2d 1196, ¶ 23. But when the issue is whether a proffered sale price should be used to value the property, the burden at the BTA is usually on the same party

> who bore that burden at the BOR: the opponent of using the sale price. *Cummins Property Servs.*, 117 Ohio St.3d 516, 2008 Ohio 1473, 885 N.E.2d 222.
>
> That burden does not shift at the BTA even if the BOR decided not to use the sale price as the criterion of value. In *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009 Ohio 5932, 918 N.E.2d 972, the board of revision had rejected the sale price as the value of the property at issue. *Id*. at ¶ 11. The property owner contended that the board of education had the burden at the BTA to show that the proposed sale price was indicative of value. *Id*. at ¶27. But we rejected that contention, holding that "the BTA was justified in viewing the conveyance-fee statement and the deed that the school board had presented to the BOR as constituting a prima facie showing of value." *Id*. at ¶ 28. By the same token, the conveyance-fee statement on which the school board relies in the present case formed an adequate basis for the BTA to find a recent, arm's-length sale, subject to rebuttal by Riser. *Id*. at ¶¶15, 16.

State Farm erroneously claims that the BOE was required to submit corroborating evidence to support the arm's length nature of the November 2013 sale. However, as set forth above, the burden of proof herein clearly did not shift to the BOE before the BTA, but remained with State Farm, as the opponent of using the sale price.

2. <u>The property owner failed to prove that the November 2013 sale was between related parties</u>.

State Farm argues that the parties to the November 2013 sale were "related" in that they were involved in a larger contractual relationship as seller/lessee and buyer/lessor. According to State Farm, because the November 2013 sale was a sale-leaseback transaction, it was not arm's length. However, the mere fact that the property sold and was leased to the seller in a sale-leaseback transaction is insufficient to establish that the parties were "related." Rather, State Farm was required to prove collusion by the parties or that the parties failed to act as typical market participants. State Farm has clearly failed to meet this burden. The record establishes,

and the BTA properly concluded that the parties to the November 2013 sale acted in their own self-interest, seeking to maximize the value received from the sale-leaseback transaction.

In *AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision*, 119 Ohio St.3d 563, 2008-Ohio-5203, 895 N.E.2d 830, the Court found a sale to be an arm's length transaction despite the sale-leaseback arrangement. The facts in *AEI* are very similar to those before the Court in this case. *AEI* involved the value of an Applebee's restaurant previously owned by Apple American Group ("Apple American"). Apple American bundled 26 Applebee's restaurants located in several states and sold them to PRESCO II CRIC, LLC (Presco"). As part of the sale transaction, Presco agreed to lease the property at issue to Apple American. The sale price was calculated by applying a capitalization rate to the income generated by the properties and the lease rate was determined based on the creditworthiness of the tenant. Approximately one year after its purchase, Presco sold the property at issue to AEI, subject to the existing lease.

The Court held that Presco's sale of the property to AEI was a recent arm's length transaction and therefore determinative of value. Specifically, the Court held that "the sale-leaseback in this case constitutes, in its totality, an arm's length transaction." ¶21

Herein, State Farm faults the BTA's reliance upon *AEI* because *AEI* involved the second sale of the property, after the sale-leaseback transaction. However, in rendering its decision, the Court considered whether the initial sale-leaseback transaction constituted an arm's-length transaction. *Id*. at ¶ 21. The Court concluded that the concern with sale-leaseback transactions arises when there is collusion between the parties to lower a property's value for tax purposes:

> In *Cummins*, we held as a general matter that the effect of encumbrances on the sale price of the fee interest did not make that sale price unreflective of the true value of the property. We predicated our holding in part on the observation that encumbering the property constituted an owner's method of realizing the value of

> the property. Cummins, at ¶27. In that context, we hypothesized a situation in which a sale price might not be determinative of value if the contract creating the encumbrance was not entered into at arm's length, and we pointed to a sale-leaseback as having potential to present such a situation. Cummins, at ¶30.
>
> But additional language in *Cummins* clarifies that the sale-leaseback situation in this case does not raise such concerns. In *Cummins*, we relied on the Wisconsin Supreme Court's decision in *Darcel, Inc. v. Manitowoc Bd of Review* (1987), 137 Wis.2d 623, 405 N.W.2d 344, which stated that " '[s]ale-leaseback situations, for instance, may be undertaken with terms to avoid property tax and might not be entered at arms-length.'" *Cummins*, at ¶30, quoting *Darcel*, at 631. Thus, the concern associated with sale-leaseback transactions lies in collusion between the parties to depress property value for tax purposes. No evidence in the present case suggests that such collusion existed -- indeed, the transaction in this case actually increased the property value by providing for a stream of elevated rent payments. *Id*. at ¶¶19, 20.

The Court determined that collusion did not exist because each party "manifestly pursued its objective to obtain maximum value from the transaction." Id. at ¶ 21. As the Supreme Court explained:

> For its part, Apple American sought to realize the value of the fee interest by selling the real property to obtain operating capital; on the other side of the deal, Preco sought to realize value from purchasing the fee interest by encumbering the property with a lease that provided a stream of rent income—income that would allow Preco to sell the property at a premium in the net-lease market. The fact that the rent rose in accordance with the amount of cash "financing" that Apple American desired does not mean that the sale-leaseback, taken as a whole, is anything but an arm's-length transaction. *Id*. See also *CCleveland* at ¶ 7 ("Nothing in the record of this case raises [the concern of collusion between the parties to depress property value for tax purposes]; indeed, CCleveland's central objection arises because the parties to the sale-leaseback succeeded in maximizing the value of the realty: the seller received an elevated sale price and, as consideration, committed to paying the purchaser a stream of elevated lease payments, which in turn allowed the purchaser to fetch a greater sale price later on."). *Id.* at ¶21

The facts of this case are very similar. State Farm sold the subject property to LSREF2 Tractor REO (Direct), LLC for $25,092,326 in a sale-leaseback transaction. Subsequently, on April 7, 2014, LSREF2 Tractor REO (Direct), LLC sold the property to JDM II SF National, LLC for

$26,100,000. The BTA determined that neither party to the November 2013 sale was compelled or under duress to sell/purchase the subject property, and that all parties acted in their own self-interest. Clearly, there was no collusion herein. Section 1.2.3(c) of the State Farm lease mandates that the lease payments shall be fair market rent, as calculated by independent appraisers:

> (c) **Appraisal**. Within fifteen (15) days after the expiration of the 30-day period for the mutual agreement of Landlord and Tenant as to the Fair Market Rent, each party hereto, at its cost, shall engage a real estate appraiser to act on its behalf in determining the Fair Market Rent. The appraisers each shall have at least ten (10) years' experience with leases in first class mid-rise office buildings in greater metropolitan Columbus, Ohio, shall not have worked as an employee or consultant for Landlord or Tenant during the preceding 10-year period, and shall submit to Landlord and Tenant in advance for Landlord's and Tenant's reasonable approval the appraisal methods to be used to determine Fair Market Rent. (Supp. 5)

This section of the lease further provides that if the appraisers are unable agree on a Fair Market Rent, a third independent appraiser shall be appointed by the appraisers. Accordingly, it is clear that the lease rate paid in the sale lease-back transaction was fair market rent and there was no collusion by the parties to the November 2013 sale to artificially deflate rent in order to lower the sales price.

The Tenth District Court of Appeals found a sale leaseback transaction to be an arm's length sale and determinative of value in *Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. No. 12AP-682, 2013-Ohio-4504. Therein, the Court specifically rejected the related party argument advanced by State Farm herein:

> The court explained the potential concerns arising from a sale-leaseback transaction in *Cummins Property Servs*. The court noted that a sale-leaseback transaction may be designed to avoid property tax and that a willing buyer would pay less for a property if the leaseback limited the amount of rent that could be

> collected from the property. Id. at ¶ 30. Appellants argue that this case presents the converse of *Cummins*—i.e., Kaufmann was willing to pay a higher price for the property because of the increased rental rate under the triple-net lease. However, in two more recent decisions, the court concluded that a sale-leaseback transaction could constitute an arm's-length transaction for valuation purposes. See *CCleveland OH Realty I, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 121 Ohio St.3d 253, 2009-Ohio-757, 903 N.E.2d 622; *AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision*, 119 Ohio St.3d 563, 2008-Ohio-5203, 895 N.E.2d 830. *Id* at ¶15.

Recently, the Fifth District Court of Appeals similarly found a sale-leaseback transaction to be an arm's length transaction and affirmed the BTA's reliance upon the sale-leaseback transaction to determine value in *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, Delaware App. No. 14 CAH 100070, 2015-Ohio-2070.

As support for its related party argument, State Farm relies upon the Court's decision in *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St. 3d 1, 2014-Ohio-853, 9 N.E.3d 920, wherein the Court summarized:

> Both the appraisal literature and the case law define "market value" in part in terms of whether the buyer and the seller act as "typically motivated market participants" who are acting "in their own self-interest." *See, e.g.*, Internatl. Assn. of Assessing Officers, Property Assessment Valuation 17-19 (2d Ed.1996) (quoting the Uniform Standards of Professional Appraisal Practice definition that calls for a buyer and a seller to be "typically motivated" and to be "acting in what they consider their best interests," *id*. at 18); American Institute of Real Estate Appraisers (now the Appraisal Institute), The *Dictionary of Real Estate Appraisal* 194-195 (1984) (definition of "market value" calling for the buyer and seller to be "motivated by self-interest"); Appraisal Institute, *The Appraisal of Real Estate* 22-25 (13th Ed.2008) (quoting various definitions of market value to the same effect); *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, 950 N.E.2d 955, ¶ 33 ("one primary characteristic of an arm's-length sale is that the parties act in their own self-interest"); *AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision*, 119 Ohio St.3d 563, 2008-Ohio-5203, 895 N.E.2d 830, ¶ 25 (a "typically motivated" transaction is one in which the buyer and seller are pursuing their own financial interests), citing *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, 885 N.E.2d [8] 222, ¶ 31, and *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532, 2008-Ohio-

> 1595, 885 N.E.2d 236, ¶ 10. It follows that the inquiry into whether "the parties to a sale are related bears on whether they are self-interested for purposes of R.C. 5713.03." *N. Royalton*, ¶ 33.
>
> The Court further noted:
>
> We have acknowledged that another type of relationship between the parties may defeat the arm's-length character of the sale. If the sale of property constitutes one element of a larger contractual relationship, the existence of those other contractual provisions may create motivations for the seller and the buyer that are atypical of the market as a whole. See *Cummins*, 117 Ohio St.3d 516, 2008-Ohio-1473, 885 N.E.2d 222, ¶ 30, fn. 4; *S. Euclid/Lyndhurst Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 74 Ohio St.3d 314, 317, 1996 Ohio 165, 658 N.E.2d 750 (1996) (in a sale-leaseback situation, "a willing buyer would pay less for property if the leaseback arrangement limited the amount of rent the buyer could collect").

State Farm relies upon the Court's reference to *Cummins* above to argue that the mere existence of its contractual relationship with LSREF2 Tractor REO (Direct), LLC as buyer/lessor and seller/lessee requires a finding that the November 2013 sale was between related parties, and therefore was not an arm's length transaction. As set forth above, this argument was specifically rejected by the Court in *AEI* and the Tenth District Court of Appeals in *Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. No. 12AP-682, 2013-Ohio-4504. In order to establish that a sale-leaseback transition was not arm's length, a party must prove the existence of a larger contractual relationship AND that there was collusion between the parties to deflate the property's value – an action that is atypical of the market. It is the latter element that is missing herein. State Farm failed to submit any evidence to establish that the parties to the November 2013 sale acted as anything other than typical market participants. Conversely, the record establishes, and the BTA properly concluded that the parties to the November 2013 sale acted in their own self-interest, seeking to maximize the value received from the transaction. Accordingly, State Farm has clearly failed to establish an alignment of interest between the parties to the November 2013 sale,

or other motivations atypical of the market.

State Farm next argues that the November 2013 sale was not arm's length because the sale price was wholly dependent on the lease rate paid by State Farm. State Farm urges this Court to instead rely upon its appraisal evidence to determine value. However, this Court has consistently rejected the argument that a sale is not arm's length due to the existence of a long-term lease. In *HIN, L.L.C. v. Cuyahoga County Bd. of Revision,* 138 Ohio St. 3d 223, 2014-Ohio-523, ("*HIN II*"), the Court specifically rejected this argument:

> Nevertheless, HIN attempts to make the lease relevant by arguing that because the property was sold with the lease attached, and because leases are not taxable, the sale price does not reflect the true value of the property for tax purposes. HIN claims that the 2004 sale represents the value of the leased fee, not the unencumbered fee simple. It argues that we must value property in its unencumbered state.
>
> We have rejected this argument numerous times. In *Berea*, 106 Ohio St.3d 269, 2005-Ohio-4979, 834 N.E.2d 782, we faced the question of how to value a property subject to two long-term leases. The property had recently been sold in an arm's-length transaction. The board of education argued that the BTA should have disregarded the sale price and valued the property as if unencumbered with the leases. The board also presented appraisal evidence of what that unencumbered value would be. We rejected the board's arguments and held that **when there has been a recent arm's-length sale, the taxing authority must disregard appraisal evidence and accept the sale price as the true tax value of the property, regardless of any lease encumbrances**. Thus, despite HIN's contentions, a recent arm's-length sale price establishes the value of real property for tax purposes even if that property is encumbered by a long-term lease. See also *AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision*, 119 Ohio St.3d 563, 2008-Ohio-5203, 895 N.E.2d 830, ¶ 17 ("we reject the contention that the existence of a long-term lease resulting from a sale-leaseback makes the subsequent sale price not indicative of true value"); *Cummins*, 117 Ohio St.3d 516, 2008-Ohio-1473, 885 N.E.2d 222, at ¶ 18 ("the arm's-length sale price of a legal fee interest should not be adjusted on account of the mere existence of an encumbrance" [emphasis sic]); *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 45, 2008-Ohio-1588, 885 N.E.2d 934, ¶ 12 (same); *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532, 2008-Ohio-1595, 885 N.E.2d 236, ¶ 3 (holding that a sale price established the tax value of property, even though the property was encumbered by a long-term lease). (Emphasis added.) *Id.* at ¶¶19, 20.

Here, the existence of the long-term lease and State Farm's submission of appraisal evidence are likewise irrelevant to the Court's determination of value herein. *HIN II*, at ¶¶ 26, 27. The existence of the long-term lease does not prevent the Court from adopting the sale price as the best evidence of value, and the appraisal evidence cannot be used to rebut the arm's-length sale. Id. at ¶ 26. Thus, just as in *HIN II*, since State Farm neither rebutted the arm's-length character nor recency of the sale ("the only measures that mattered"), the Court must accept the sale price "as the conclusive value of the property for tax purposes." Id. at ¶ 27.

State Farm attempts to differentiate the above-cited case law by arguing that the subject lease was an absolute net lease, whereby State Farm retained significant ownership obligations in the property. However, this is a distinction without a difference. Generally, an absolute lease is understood to be slightly more restrictive than a triple net lease because the tenant is responsible for structural maintenance, in addition to taxes, insurance and common area maintenance. However, this distinction has absolutely no relevance to the probative nature of a sale-leaseback transaction in determining the value of the property transferred. LSREF2 Tractor REO (Direct), LLC. as the purchaser of the property, obtained a fee simple estate and encumbering the property with an absolute net lease is one method of realizing the value of legal ownership of the property. See *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008 Ohio 1473, 885 N.E.2d 222, ¶27 ("encumbering property typically represents an owner's attempt to realize the full value of the property") There is nothing in the record to establish that the parties to the November 2013 sale colluded to artificially set the lease rate and resulting sale price in an attempt to avoid property tax. There is similarly nothing in the record to establish that the parties were acting in any manner other than typical market participants. Mr. Templett

admitted at the BTA hearing that an appraisal was likely prepared at the time of the November 2013 sale, since the properties were financed. Although Mr. Templett had never seen a copy of the appraisal, the appraisal presumably supported the purchase price since the purchaser was able to obtain financing for the transaction.

Contrary to State Farm's assertions, absolute net leases are not uncommon. In fact, many build-to-suit properties are leased on an absolute net lease basis. In addition, it appears that the sale-leaseback transaction before the Court in *AEI* involved an absolute net lease. Therein, the Court noted: "The lease qualifies as a 'triple net lease,' pursuant to which the restaurant as lessee pays the utilities and also pays for all maintenance, taxes and insurance." (Emphasis added.) *Id*. at ¶6. While the Court in *AEI* referred to the lease as a triple net lease, the terms "triple net lease" and "absolute net lease" are often used interchangeably, as illustrated by State Farm's reference to *The Appraisal of Real Estate*, 14th Edition: "An extreme form of net lease is commonly referred to as a *bondable lease* (or sometimes referred to as an absolute or a triple net lease.) (Emphasis added.)(Appellant's Appx., 22) Based upon the foregoing, it is clear that a recent arm's-length sale price establishes the value of real property for tax purposes even if that property is encumbered by a long-term lease, regardless of whether the lease is an absolute net lease or a triple net lease.

State Farm also relies upon several decisions of this Court rejecting sale-leaseback transactions as indicative of value that, with one exception, were all decided prior to *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005 Ohio 4979, 834 N.E.2d 782. Since the cases were decided pre-*Berea*, they are inapplicable herein.

State Farm also relies on *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 112 Ohio St.3d 309, 2007-Ohio-6, 859 N.E.2d 54, where the Court affirmed the BTA's determination that a sale-leaseback transaction was not arm's length because the seller was under duress. However, as State Farm admits in its brief, duress is not the issue in this case. Therefore, this case in equally inapplicable herein.

Finally, the reliability of utilizing the November 2013 purchase price of $25,092,326 to value the property as of January 1, 2012 is further supported by the fact that the subject property sold again, five months later, on April 7, 2014 for $26,100,000. There has been absolutely no evidence submitted to rebut the arm's length nature or recency of this sale. Not only does this sale support utilizing the November 2013 sale price, it is sufficient to establish the value of the subject property for tax year 2012 if this Court determines that the November 2013 sale was not an arm's length transaction.

In *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, 9 N.E.3d 1004, the Court held that "[w]hen a sale occurs more than 24 months before the tax lien date, and the assessor decides not to base the reappraisal on it, the sale should not be presumed recent." *Id.*, headnote 3 ¶23. However, this holding has no application to this case. The April 2014 sale of the subject property obviously could not have been relied upon by the Franklin County Auditor when performing his six-year reappraisal of the property in 2011. As a result, the April, 2014 sale is presumed to be recent to the 2012 tax lien date and the burden to prove otherwise is on State Farm, which they clearly did not meet in this case. Accordingly, in the unlikely event that the Court determines that the November 2013 sale was not an arm's

length transaction, the Court must rely upon the April 2014 purchase price of $26,100,000 to determine the value of the subject property for tax year 2012.

State Farm makes various other unsubstantiated arguments against using the November 2013 sale to value the subject property for tax year 2012. For example, State Farm argues that since the BTA accepted State Farm's appraisal evidence for tax year 2011, the BTA was required to reconcile the 95% increase that resulted when the BTA accepted the November 2013 sale price for tax year 2012. While State Farm erroneously argues that this is a case of first impression, the exact argument advanced by State Farm was previously been rejected by this Court in *Olmstead Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009-Ohio-2461, 909 N.E.2d 597. In *Olmstead Falls,* the Court addressed a situation where the BTA's value determination for the subject property increased 270% - from $325,000 for tax year 2002 to $1,200,000 for tax year 2003. Therein, the Court rejected the argument that the BTA's determination of value for one year may not deviate from the determination of value for an earlier year unless the evidence supports a change of value from one year to the next. The Court began its analysis by noting:

> First, we regard it as elemental that for purposes of any challenge to the valuation of real property, each tax year constitutes a new "claim" or "cause of action," such that the determination of value for one tax year does not operate as res judicata that would bar litigation of value as to the next tax year. R.C. 5715.19(A) and (D) (complaint against valuation pertains to "current" tax year and any other years subject to "continuing complaint" rule); see S*td. Oil Co. v. Zangerle* (1943), 141 Ohio St. 505, 511, 514, 516, 26 O.O. 82, 49 N.E.2d 406 (language of Ohio statutes concerning determination of property value consistent with the proposition that "each year's taxes are the basis of a distinct and separate cause of action"); accord *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26, 28-29, 1997 Ohio 362, 684 N.E.2d 304. *Id*. at ¶16.

The Court then went on the hold:

> As a matter of both case law and elementary principles, each tax year should be determined based on the evidence presented to the assessor that pertains to that year. We have so held in the past. See *Freshwater*, 80 Ohio St.3d at 29, 684 N.E.2d 304 ("When the BTA makes a determination of true value for a given year, such determination is to be based on the evidence presented to it in that case, uncontrolled by the value assessed for prior years"); *Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision* (1999), 85 Ohio St.3d 609, 612, 1999 Ohio 323, 710 N.E.2d 681 (party that challenges the county's valuation at the BTA need not prove that determination of value as to earlier tax year was wrong because the "determination of taxable value as of a given tax lien date does not involve the valuation at a prior tax lien date").
>
> Moreover, our decision in *Freshwater* states the basic reason for this holding. To insist that the party who challenges the valuation of a parcel show a change from the value determined for a prior year would require that "the prior year's valuation should be deemed to be correct," and in actuality, it "may not be correct." 80 Ohio St.3d at 28. *Id*. at ¶¶20, 21.

Subsequently, in *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009 Ohio 4975, P14, 915 N.E.2d 1196, the Court affirmed this holding:

> Indeed, we have recently had occasion to consider and reject the argument that the BTA's determination of value as to one tax year is subject to legal constraints of consistency to its determination of value as to other tax years. O*lmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St. 3d 134, 2009 Ohio 2461, P19, 23-25, 909 N.E.2d 597. Of particular importance is our holding that '[a]s a matter of both case law and elementary principles, each tax year should be determined based on the evidence presented to the assessor that pertains to that year.' Id., ¶20." Id. at ¶15.

Based upon the foregoing, the BTA's value determination of value for tax year 2012 was not limited by its value determination for tax year 2011 and the BTA had no duty to reconcile its increase in value. In this case, the property sold twice in two unrelated, arm's length transactions in 2013 and 2014. The BOE disagreed with the BTA's conclusion that the property was worth over $11,000,000 less than either sale price in for tax year 2011, but opted not to pursue an appeal since the deficiency was created for tax year 2012. State Farm argues that the BOE had

no basis to appeal the BTA's 2011 decision. However, this argument is completely erroneous, unsupported and irrelevant herein. While State Farm argues that there is nothing in the record to support the significant increase determined by the BTA for tax year 2012, a review of the record establishes that it is more likely that the BTA's value determination for tax year 2011 was erroneous in that the BTA's application of this Court's decision in *Akron* resulted in a substantial undervaluation of the subject for tax year 2011.

State Farm further argues that the November 2013 sale price is not indicative of value because it was part of a large portfolio sale. The record reveals that the parties agreed to an individual sale price for the subject and filed an individual conveyance fee statement evidencing the consideration paid for the subject. Mr. Templet testified at the BTA hearing that the $25,092,326 purchase price was the value agreed upon by the parties at the time of the sale (Supp. 31). The same type of portfolio sale was before the Court in *AEI* and the Court found the transaction to be arm's length. In *St Bernard Self-Storage, L.L.C. v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249 at P15, 875 N.E.2d 85, the Court acknowledged "that a bulk sale may consist of a sale of numerous real estate parcels at an aggregate price as part of a single deal. In all such cases, a question arises beyond the basic pronouncement of *Berea*: whether the proffered allocation of bulk sale price to the particular parcel of real property is 'proper,' which is the same as asking whether the amount allocated reflects the true value of the parcel for tax purposes." The Court also held that the burden rests with the opponent of a recorded sale to demonstrate why the transfer amount does not properly reflect the true value of the property in issue. See, e.g., *FirstCal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921, 929 N.E.2d 426; *Bedford Bd. of Edn. v.*

Cuyahoga Cty. Bd. of Revision, 132 Ohio St.3d 371, 2012-Ohio-2844, 972 N.E.2d 559. State Farm has failed to submit competent probative evidence to rebut the presumption that the November 2013 sale price is the best indication of the value of the subject property. In addition, the April 7, 2014 sale of the subject for $26,100,000 lends further support for the $25,092,326 purchase price paid in the November 19, 2013 sale.

State Farm next argues that the BTA applied an irrebutable presumption to the November 2013 sale price, since the BTA failed to analyze the evidence submitted. Again, this argument is completely unsupported by the record. In its decision, the BTA concluded that, based upon the evidence presented, the November 2013 sale was sufficiently recent he 2012 tax lien date and that neither party to the November 2013 sale was compelled or under duress to sell/purchase the subject property. The BTA further determined that the parties to the both sales were unrelated and acted in their own self-interest. This Court recently held that the BTA has no duty to make specific findings of facts and conclusions of law in *Sears, Roebuck & Co. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2015-Ohio-4522, 144 Ohio St. 3d 421, 44 N.E.3d 274:

> [T]he BTA has no obligation to make particularized findings of fact and conclusions of law. See *Wolf v. Cuyahoga Cty. Bd. of Revision*, 11 Ohio St. 3d 205, 206, 11 Ohio B. 523, 465 N.E.2d 50 (1984) (rejecting the argument that "the failure of the BTA to render specific findings of fact and conclusions of law renders the decision per se unreasonable and unlawful" and observing that "this court has found no authority which places a mandatory duty upon the BTA to make separate findings of fact and conclusions of law"); *Wheeling Steel Corp. v. Evatt*, 143 Ohio St. 71, 96, 54 N.E.2d 132 (1944) ("There is no authority for [a] request for findings of fact and conclusions of law separately stated").

In this case, State Farm's argument appears to be that the BTA failed to consider Pickering's appraisal evidence in rendering its value determination for 2012. However, as set forth above, reliance upon appraisal testimony in this case is inappropriate. Once evidence of a qualifying

sale has been presented, a property owner must rebut either the arm's length nature or recency of that sale before appraisal evidence can be considered. *Pingue v. Franklin Cty. Ed. of Revision* (1999), 87 Ohio St.3d 62, 64, 1999 Ohio 252, 717 N.E.2d 293; *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13, 885 N.E.2d 222. The Court has recently held that specific information contained in an appraisal report/testimony bearing on the question of the recency, the arm's-length character, or the voluntariness of the sale may be sufficient to rebut the presumption that the sale is the best evidence of value. *Columbus City Schools Bd. of Edn v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2016-Ohio-757 ("*Buckeye Hospitality*") However, as set forth below, State Farm has submitted no such evidence in this case and therefore, State Farm has failed to rebut either the arm's length nature or the recency of the November 2013 sale. As the Court reaffirmed in *Buckeye Hospitality*:

> The mere fact that an expert has opined a different value should not be deemed sufficient to undermine the validity of the sale price as the property value. That would violate the Berea precept.

Accordingly, reliance upon appraisal evidence in this case is clearly improper. *HIN, L.L.C. v. Cuyahoga County Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, 923 N.E.2d 1144, ¶ 26.

Herein, State Farm attempts to rely upon the legal conclusions drawn by its appraiser to argue that the November 2013 sale was not arm's length. However, Mr. Pickering admitted that he was not a party to the November 2013 sale and therefore had no personal knowledge of the transaction. Nonetheless, Mr. Pickering concluded that the November 2013 sale was not arm's length due to the motivations of the parties and the existence of the long term lease. First, it must be noted that Mr. Pickering is not an attorney and therefore, he is not qualified to make legal conclusions relating to the arm's

length nature of the sale at issue herein. Mr. Pickering's lack of qualifications is exemplified by the fact that he applied the wrong standard in drawing his legal conclusion. When asked at the BTA hearing why he concluded that the November 2013 sale was not arm's length, he stated:

> Because there were special motivations involved in the sale. There was a lease to a high credit tenant that was really key in that the lease – the creditworthiness of the tenant overshadowed the value of the real estate that was sold." (Supp. 33.)

However, as set forth above, the existence of the long-term lease does not prevent this Court from determining that a sale is an arm's length transaction and adopting the sale price as the best evidence of value. It is also interesting to note that Mr. Pickering admitted that he had not calculated market rent for the subject property. (Supp. 35.) Therefore, Mr. Pickering's conclusion that the November 2013 sale was not arm's length was based upon the mere existence of the lease at the time of the sale, not that the lease had an impact on the price paid for the property. Clearly, Mr. Pickering's conclusions in this regard are not supported and not probative.

Next, State Farm argues for the first time that the property sold in the November 2013 sale does not correspond to the parcel at issue as of January 1, 2012. First, the fact is completely unsupported by the record, which establishes that the parcel, as it existed January 1, 2011 consisted of 29.062 acres improved with an office building. There is no evidence in the record to establish the state of the property as of January 1, 2012. While State Farm alleges that sometime prior to the November 2013 sale, 10.165 acres was split from the subject, there is absolutely no evidence in the record to establish whether this

split occurred prior to or subsequent to January 1, 2012. Further, State Farm failed to argue that a change in the property had any impact on value as of January 1, 2012 either before the BOR or the BTA; therefore, State Farm has waived this argument. *Oak View Props., L.L.C. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2016-Ohio-786; *Columbus City School District Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 144 Ohio St. 3d 549, 2015-Ohio-4837, 45 N.E.3d 968. In addition, because State Farm did not assert this argument as an assignment of error in its notice of appeal to this Court, the Court lacks jurisdiction to consider the argument. *CCleveland OH Realty I, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 121 Ohio St.3d 253, 2009-Ohio-757, 903 N.E.2d 622, ¶9; *Newman v. Levin*, 120 Ohio St.3d 127, 2008 Ohio 5202, 896 N.E.2d 995, ¶28, quoting *Norandex, Inc. v. Limbach* (1994), 69 Ohio St.3d 26, 31, 1994 Ohio 536, 630 N.E.2d 329, fn. 1. Finally, if this Court were to accept State Farm's argument, it would be required to increase the value of the property above that determined by the BTA to $27,379,430 – sale price of $25,092,325 for the property transferred plus $2,287,100 which equals the Auditor's 2013 assessed value of the excess land retained by State Farm.

Reply to Appellant's Proposition of Law No 2.

The recent amendments to R.C. 5713.03 were not effective for tax year 2012 and therefore are inapplicable in this case

For the tax year in question, R.C. 5713.03 read, in part "in determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's-length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor **shall** consider the sale price of

such tract, lot, or parcel to be the true value for taxation purposes." Both State Farm and the Institute for Professionals in Taxation ("IPT") allege that the recent revisions to R.C. 5713.03 apply to the Court's resolution of this matter because they were effective on September 10, 2012, and the sale occurred after this date. However, a review of the legislative history of R.C. 5717.03 reveals that the revisions were not effective until March 27, 2013 due to the effective date clause in the original legislation.

Recently, the Fifth District Court of Appeals recognized that the revisions to R.C. 5713.03 were not effective for tax year 2012 in *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, Delaware App. No. 14 CAH 100070, 2015-Ohio-2070. Therein, the Court held:

> In summary, the valuation of the Powell Property is for tax year 2012. The H.B. 260 version of R.C. 5713.03 was effective to September 9, 2012. H.B. 487, effective September 10, 2012, amended R.C. 5713.03; however, uncodified section 757.51 set a different effective date for R.C. 5713.03 based on R.C. 5715.24. The unrebutted argument of Olentangy BOE is that the effective date of R.C. 5713.03, as amended by H.B. 487, was tax year 2014. H.B. 510, effective March 27, 2013, amended R.C. 5713.03 again and repealed uncodified section 757.51.
>
> Based on our review of the effective dates of the different versions of R.C. 5713.03, we find the H.B. 260 version of R.C. 5713.03 is applicable to the present case. The BTA was correct in its reliance on case law analyzing the H.B. 260 version of R.C. 5713.03. *Id.* at ¶¶38, 39

The 129th General Assembly enacted the first amendment to R.C. 5713.03 in H.B. 487, which was signed into law by the Governor on June 11, 2012 and became effective on September 10, 2012. See 2011 Am.Sub.H.B. 487 (Appx. 5.). The first set of revisions contained two primary features: requiring the Auditor to value the fee simple "as if unencumbered"; and the substitution of the word "may" for "shall" regarding an auditor's use of a recent arm's-length

sale price as true value. *Id*. The statute, with such revisions, reads in its relevant part:

> The county auditor, from the best sources of information available, shall determine, as nearly a practicable, the true value of *the fee simple estate, as if unencumbered, of* each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon and the current agricultural use value of land valued for tax purposes in accordance with sections 5713.31 of the Revised Code, in every district, according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with uniform rules and methods of valuing and assessing real property as adopted, prescribed and promulgated by the tax commissioner. *The Auditor* shall determine the taxable value of all real property by reducing its true or current agricultural use value by the percentage ordered by the commissioner. In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot or parcel has been the subject of an arm's length sale between a willing seller and willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor *may* consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. (Revisions emphasized.)

2011 Am.Sub.H.B. 487, Section 101.01. (Appx. 6.) However, in enacting these revisions, the legislature specifically added an effective date clause which reads as follows:

> The amendment by this act of section 5713.03 of the Revised Code applies to the first tax year, after tax year 2012, to which division (A) or (B) of section 5715.24 of the Revised Code applies in the county.

2011 Am.Sub.H.B. 487, Section 757.01. (Appx. 8.) R.C. 5715.24 governs both the sexennial reappraisal and triennial update valuations. See R.C. 5715.24. Thus, pursuant to H.B. 487, the revisions to R.C. 5713.03 were not effective until the Franklin County Auditor conducted either a sexennial reappraisal or triennial update after tax year 2014.

However, the 129th General Assembly enacted a second set of revisions to R.C. 5713.03 in H.B. 510 which was signed into law by the Governor on December 26, 2012 and became effective on March 27, 2013. See 2011 Am.Sub.H.B. 510 (Appx. 9.). This set of revisions

retained the H.B. 487 revisions and added additional clarification regarding the meaning of the "fee simple, as if unencumbered" revision. *Id*. The statute reads, in its relevant part:

> The county auditor, from the best sources of information available, shall determine, as nearly a practicable, the true value of the fee simple estate, as if unencumbered, *but subject to any effects from the exercise of police powers or from other governmental actions*, of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon and the current agricultural use value of land valued for tax purposes in accordance with sections 5713.31 of the Revised Code, in every district, according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with uniform rules and methods of valuing and assessing real property as adopted, prescribed and promulgated by the tax commissioner. The Auditor shall determine the taxable value of all real property by reducing its true or current agricultural use value by the percentage ordered by the commissioner. In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot or parcel has been the subject of an arm's length sale between a willing seller and willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor may consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. (Revisions emphasized.)

2011 Am.Sub.H.B. 510, Section 1. (Appx.). H.B. 510 also specifically repealed H.B. 487's effective date clause as follows:

> That section 757.51 of Am. Sub. H.B. 487 of the 129th General Assembly is hereby repealed.

2011 Am.Sub.H.B. 510, Section 3. (Appx. 10.) Accordingly, and with the repeal of the effective date clause from H.B. 487, the revisions to R.C. 5713.03 were not actually effective until March 27, 2013, pursuant to H.B. 510.

In its amicus brief, ITP argues, but fails to cite any precedent in support thereof, that the date of the sale is relevant in determining whether the recent revisions to R.C. 5713.03 govern the resolution of this matter. ITP's assertion it is incorrect. In discussing the application of the

revisions to R.C. 5713.03, the Court held that "the case law establishes that we must apply the substantive tax law in effect during the tax year at issue." S*apina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St. 3d 188, 2013-Ohio-3028, 992 N.E.2d 1117, ¶ 20, n. 1; see also *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 138 Ohio St. 3d 223, 2014-Ohio-523, 5 N.E.3d 637, ¶ 12, n. 3. Accordingly, it is clear that the revisions to R.C. 5713.03 do not apply to the resolution of this case. First, neither of the revisions had even been passed on the applicable lien date of January 1, 2012. Although State Farm and ITP mistakenly argue that the revisions were effective in part of 2012 (i.e. through H.B. 487), this is incorrect because of the effective date clause. See 2011 Am.Sub.H.B. 487, Section 757.01. At the very earliest, the revisions were effective on March 27, 2013. See 2011 Am.Sub.H.B. 510, Section 1. The issue in this case is the value of the property as of tax year 2012. Accordingly, this Court must apply the substantive law in effect as of that date. The sale dates are wholly irrelevant to the effective date of the revisions as applying the revisions for different tax years based upon a sale date would undoubtedly violate the Uniform Rule of the Ohio Constitution (Article XII, Section 2) in that different laws would be applied for the same tax year based upon the date of the sale. Based upon the foregoing, the recent revisions to R.C. 5713.03 clearly do not apply to the resolution of this case.

Even if the recent amendments to R.C. 5713.03 were effective for tax year 2012, the purchase price paid in the November 2013 arm's length sale of the subject property is still the best evidence of the value for the property for tax year 2012.

Article XII, Section 2 of the Ohio Constitution requires that land and improvements shall be taxed by "uniform rule" according to the property's true value. (Appx. 2.) County auditors

are required to "view and appraise or cause to be viewed and appraised at its true value in money, each lot or parcel of real estate" at least once every six years. R.C. 5713.01(B).

Ohio Adm. Code 5703-25-05 defines true value in money as:

> A) "True value in money" or "true value" means one of the following:
>
> (1) The fair market value or current market value of property and is the price at which property should change hands on the open market between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having a knowledge of all the relevant facts.
>
> (2) The price at which property did change hands under the conditions described in section 5713.03 of the Revised Code, within a reasonable length of time either before or after the tax lien date, unless subsequent to the sale the property loses value due to some casualty or an improvement is added to the property. (Appx. 3)

As set forth above, R.C. 5713.03 was recently amended to require the Auditor to value the fee simple "as if unencumbered"; and the substitution of the word "may" for "shall" regarding an auditor's use of a recent arm's-length sale price as true value. However, nothing in the amendments to R.C. 5713.03 overrules the well-established principle that the recent sale price of a property is presumed to be the best evidence of a property's "true value in money." Rather, the amendments apply to the methods by which an appraisal is to be performed if no arm's length sale has occurred.

The well-established rule that an arm's length sale is generally the best evidence of a property's true value in money was summarized in *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, 412, 25 O.O.2d 432, 195 N.E.2d 908, wherein the Court held:

> The best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. This, without question, will usually determine the monetary value of the property.

At the time this case was decided, R.C. 5713.03 did not contain language requiring the Auditor to consider a recent arm's length sale when determining value.

In 1976, the legislature codified the well-established rule established by this Court when it amended R.C. 5713.03 to include language requiring the Auditor to consider the sale price when determining value. As this Court recognized *Cummins Prop. Servs. v. Franklin County Bd. of Revision*, 117 Ohio St. 3d 516, 2008 Ohio 1473, 885 N.E.2d 222, this language was merely a codification of existing case law:

> As we explained more than 40 years ago, the best method of determining value is an actual sale of the property, but because such information is not usually available, an appraisal becomes necessary. State ex rel. Park Invest. Co. v. Bd. of Tax Appeals (1964), 175 Ohio St. 410, 412, 25 O.O.2d 432, 195 N.E.2d 908. When value is determined by appraisal, "the various methods of evaluation, such as income yield or reproduction cost, come into action," but the goal of the appraisal is "to determine the amount which such property should bring if sold on the open market." Id. The legislature reinforced these points through the 1976 enactment of the now familiar language at R.C. 5713.03 that "[i]n determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes." Am.Sub.H.B. No. 920, 136 Ohio Laws 3182, 3247. *Id.* at 23.

Accordingly, this Court recognized that a sale price is the best evidence of value long before R.C. 5713.03 required the Auditor to consider a sale when valuing property. R.C. 5713.03's recent amendments should therefore have no impact upon this Court's well established precedent.

Since R.C. 5713.03 was recently amended to substitute the word "may" for "shall" regarding an auditor's use of a recent arm's-length sale price, this Court has not specifically

addressed the effect of the amendments. In *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, 992 N.E.2d 1117, ¶20, fn. 1, the Court noted:

> In any event, we find that the amendment is inconsequential in this case. If H.B. 487 and H.B. 510 constitute a clarification of prior law, we are justified in applying the case law under former R.C. 5713.03 without according the new statute any great significance. Alternatively, amended R.C. 5713.03 may have substantively changed the law—but if that is so, the case law establishes that we must apply the substantive tax law that was in effect during the tax year at issue—i.e., tax year 2007. See *Giant Tiger Drugs, Inc. v. Kosydar*, 43 Ohio St.2d 103, 107-108, 330 N.E.2d 917 (1975) (applying sales-tax exemption law in effect during the audit period—i.e., the period when the transactions occurred that were subject to taxation—and declining to apply a later amendment to the exemption); *Akron Home Medical Servs., Inc. v. Lindley*, 25 Ohio St.3d 107, 110, 25 Ohio B. 155, 495 N.E.2d 417 (1986) (same).

Based upon the foregoing, the BTA properly determined that the amendments to R.C. 5713.03 do not overrule this Court's directive that a recent arm's length sale of property is the best evidence of value.

Herein, State Farm argues that amended R.C. 5713.03 requires the party advocating for use of a sale price of a leased property to establish that the leased fee is equivalent to the fee simple unencumbered estate of the property transferred. However, this argument must be rejected. The Court has previously held that the distinction between "fee simple" and "leased fee" for appraisal purposes is not a distinction recognized in the law. In *Meijer Stores, Ltd. Partnership v. Franklin Cty. Bd. of Revision*, 122 Ohio St.3d 447, 2009-Ohio-3479, 92 N.E.2d 560, ¶23, fn 4, the Court explained:

> The distinction between "fee simple" and "leased fee" is one drawn in the context of appraisal practice. See Appraisal Institute, The Appraisal of Real Estate (13th Ed. 2008) 114. The appraisal industry uses the term "fee simple" to refer to unencumbered property – or to property appraised as it were unencumbered. Id. This distinction is not one recognized by the law, however. A "fee simple" may

> be absolute, conditional, or subject to defeasance, but the mere existence of encumbrances does not affect its status as fee simple. Black's Law Dictionary (8th Ed. 2004) 648-649.

See, also *Copely-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, Slip Opinion No. 2016-Ohio-1485.

> Further, in *HIN II*, *supra*, the Court stated:
>
> The appraisal profession defines "fee simple" as "[a]bsolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat." Appraisal Institute, *Appraisal of Real Estate* 114 (13th Ed.2008). By contrast, when a property is encumbered by a lease, appraisers define the property as a "leased fee." *Id*. At the BTA hearing, HIN's witnesses testified to these terms and distinctions.
>
> But we have already pointed out that these definitions, though no doubt useful for how appraisers understand their assignments, simply do not define the subjects of taxation under Ohio law:
>
> > The distinction between "fee simple" and "leased fee" is one drawn in the context of appraisal practice. The appraisal industry uses the term "fee simple" to refer to unencumbered property—or to property appraised as if it were unencumbered. This distinction is not one recognized by the law, however. A "fee simple" may be absolute, conditional, or subject to defeasance, but the mere existence of encumbrances does not affect its status as fee simple.
>
> (Citations omitted.) *Meijer Stores Ltd. Partnership v. Franklin Cty. Bd. of Revision*, 122 Ohio St.3d 447, 2009 Ohio 3479, 912 N.E.2d 560, ¶23, fn. 4. Accordingly, the appraisal-profession standards espoused by HIN's experts do not alter our legal analysis.
>
> Additionally, HIN relies on *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision*, 37 Ohio St.3d 16, 523 N.E.2d 826 (1988), in support of its position that we must value the property as if unencumbered by the U.S. Bank lease. In *Alliance Towers*, we stated that "[f]or real property tax purposes, the fee simple estate is to be valued as if it were unencumbered." *Id*. at paragraph one of the syllabus. In *Cummins*, however, we distinguished *Alliance Towers* because it involved a valuation by appraisal, not the validity of a sale price. *Cummins*, 117 Ohio St.3d 516, 2008-Ohio-1473, 885 N.E.2d 222, at ¶15. We found *Alliance Towers* to be

> inapposite and affirmed that it would never be proper to adjust a recent arm's-length sale price because of an encumbrance. Id. at ¶ 25-26. (Emphasis added.)

Accordingly, it is clear that the revisions to R.C. 5713.03 apply to the appraisal methodology to be used when no recent arm's length sale of the property has occurred. The revisions have no impact upon the reliability of using the sale price when a leased property has transferred in a recent arm's length transaction.

IPT's argument is even more expansive than that advanced by State Farm. IPT argues that the General Assembly has legislatively overruled this Court's decision in *Berea* and reinstated *Ratner v. Stark Cty. Bd. of Revision*, 23 Ohio St.3d 59. However, there is absolutely nothing in the recent revisions to R.C. 5713.03 to indicate that the General Assembly intended such sweeping results. No revisions were made to R.C. 5713.01 which requires that property is to be valued at its "true value in money" or to Ohio Adm. Code 5703-25-05 which defines true value in money as the price paid in an arm's length transaction. Surely if the General Assembly had intended the results suggested by IPT, some revision would have been made to these sections as well. Accordingly, IPT's arguments must be rejected.

In addition, IPT cites case law decided prior to *Berea* as support for its contention that appraisal evidence is appropriate to determine if the rent paid in a sale-leaseback transaction is below market. Again, cases decided pre-*Berea* are inapplicable herein as the underlying case law relied upon in this case (*Ratner*) was expressly overruled by this Court. It is interesting to note, however, that State Farm has failed to present any evidence that at the lease in place at the time of the November 2013 sale had any impact on the $25,092,326 purchase price paid for the property. According to the terms of the lease, fair market rent was to be determined by

independent appraisers familiar with the Columbus market. Mr. Pickering specifically testified that he did not calculate a market rent for the subject, so there is no evidence in the record to establish that the actual rent paid by State Farm was above market. Therefore, even under IPT's argument, State Farm has failed to rebut the presumption that the purchase price paid in the November 2013 sale is the best evidence of the property's value. The mere fact that the property was leased when sold is insufficient to establish that the sale price was not indicative of value.

CONCLUSION

For the reasons set forth herein, the Board of Education respectfully requests this Court to affirm the decision of the Board of Tax Appeals that the value of the subject property was $25,092,326 for tax year 2012.

Respectfully Submitted,

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IN THE SUPREME COURT OF OHIO

BOARD OF EDUCATION OF THE COLUMBUS CITY SCHOOL DISTRICT,	:	
Appellant,	:	
	:	Case No. 2015-2105
v.	:	
	:	Appeal from Ohio Board of Tax Appeals
FRANKLIN COUNTY BOARD OF REVISION, FRANKLIN COUNTY AUDITOR, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY AND JDM II SF NATIONAL, LLC,	:	Case No. 2014-3918
Appellees,	:	

APPENDIX

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(B) Reversal of judgment

If the appellee fails to file a merit brief within the time provided by S.Ct.Prac.R. 16.03 or as extended in accordance with S.Ct.Prac.R. 3.03, the Supreme Court may accept the appellant's statement of facts and issues as correct and reverse the judgment if the appellant's brief reasonably appears to sustain reversal.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; June 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 16.08. Prohibition Against Supplemental Briefing.

Except as provided in S.Ct.Prac.R. 3.13 and S.Ct.Prac.R. 17.08 and 17.09, merit briefs shall not be supplemented. If a relevant authority is issued after the deadline has passed for filing a party's merit brief, that party may file a citation to the relevant authority but shall not file additional argument.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; June 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 16.09. Supplements to the Briefs.

(A) Appellant's supplement

In every civil case on appeal to the Supreme Court from a court of appeals or an administrative agency, the appellant may prepare and file a supplement to the briefs that contains those portions of the record necessary to enable the Supreme Court to determine the questions presented. Parties to an appeal are encouraged to consult and agree on the contents of the supplement to minimize the appellee's need for filing a supplement. Documents not necessary to determine the questions presented shall not be included in the supplement. The fact that parts of the record are not included in the supplement shall not prevent the parties or the Supreme Court from relying on those parts of the record.

(B) Appellant's time to file

The appellant shall file the supplement with the appellant's merit brief.

Ohio Constitution [The 1851 Constitution with Amendments to 2015]

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XII.02 Limitation on tax rate; exemption

No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value, except that laws may be passed to reduce taxes by providing for a reduction in value of the homestead of permanently and totally disabled residents, residents sixty-five years of age and older, and residents sixty years of age or older who are surviving spouses of deceased residents who were sixty-five years of age or older or permanently and totally disabled and receiving a reduction in the value of their homestead at the time of death, provided the surviving spouse continues to reside in a qualifying homestead, and providing for income and other qualifications to obtain such reduction. Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

(Adopted November 6, 1990).

(Amended, effective July 1, 1975; HJR No.59.)

[View Article Table of Contents] - [View Constitution Table of Contents]

5703-25-05 Definitions.

As used in rules 5703-25-05 to 5703-25-17 of the Administrative Code:

(A) "True value in money" or "true value" means one of the following:

(1) The fair market value or current market value of property and is the price at which property should change hands on the open market between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having a knowledge of all the relevant facts.

(2) The price at which property did change hands under the conditions described in section 5713.03 of the Revised Code, within a reasonable length of time either before or after the tax lien date, unless subsequent to the sale the property loses value due to some casualty or an improvement is added to the property.

(B) In compliance with the provisions of sections 5713.01, 5713.03, 5715.01 and 5715.24 of the Revised Code, the "taxable value" of each parcel of real property and the improvements thereon shall be thirty-five per cent of the "true value in money" of said parcel as of tax lien date in the year in which the county's sexennial reappraisal is or was to be effective beginning with the tax year 1978 and thereafter or in the third calendar year following the year in which a sexennial reappraisal is completed beginning with the tax year 1978.

(C) "Computer assisted appraisal systems" - A method in which the value of a property is derived by any or all of the following computerized procedures:

(1) Multiple regression analysis using sales to form the data base for valuation models to be applied to similar properties within the county.

(2) Computerized cost approach using building cost and other factors to value properties by the cost approach as defined in this rule.

(3) Computerized market data approach where a subject property is valued by adjusting comparable sales to subject by adjustments based on regression or other analyses.

(4) Computerized income approach using economic and income factors to estimate value of properties.

(5) Computerized market analysis to provide trend factors used by appraisers as basis of market valuation.

(D) "Cost approach" - A method in which the value of a property is derived by estimating the replacement or reproduction cost of the improvements; deducting therefrom the estimated physical depreciation and all forms of obsolescence if any; and then adding the market value of the land. This approach is based upon the assumption that the reproduction cost new normally sets the upper limit of building value provided that the improvement represents the highest and best use of the land.

(E) "Effective tax rate" - Real property taxes actually paid expressed as a percentage rate in terms of actual true or market value rather than the statutory rate expressed as mills levied on taxable or assessed value. In Ohio four factors must be considered in arriving at the effective tax rate:

(1) The statutory rate in mills;

(2) The composite tax reduction factor as calculated and applied under section 319.301 of the Revised Code;

(3) The percentage rollback prescribed by section 319.302 of the Revised Code;

(4) The prescribed assessment level of thirty-five per cent of true or market value.

(F) "Income approach" - An appraisal technique in which the anticipated net income is processed to indicate the capital amount of the investment which produces the net income. The reliability of this technique is dependent upon four conditions:

(1) The reasonableness of the estimate of the anticipated net annual incomes;

(2) The duration of the net annual income, usually the economic life of the building;

(3) The capitalization (discount) rate;

(4) The method of conversion (income to capital).

(G) "Market data approach" - An appraisal technique in which the market value estimate is predicated upon prices paid in actual market transactions and current listings, the former fixing the lower limit of value in a static or advancing market (price wise), and fixing the higher limit of value in a declining market; and the latter fixing the higher limit in any market. It is a process of correlation and analysis of similar recently sold properties. The reliability of this technique is dependent upon:

(1) The degree of comparability of each property with the property under appraisal;

(2) The time of sale;

(3) The verification of the sale data;

(4) The absence of unusual conditions affecting the sale.

(H) "Qualified project manager" has the same meaning as division (A)(2) of section 5713.012 of the Revised Code.

(I) "Replacement cost"

(1) The cost that would be incurred in acquiring an equally desirable substitute property;

(2) The cost of reproduction new, on the basis of current prices, of a property having a utility equivalent to the one being appraised. It may or may not be the cost of a replica property;

(3) The cost of replacing unit parts of a structure to maintain it in its highest economic operating condition.

Effective: 10/09/2014
Five Year Review (FYR) Dates: 07/25/2014 and 10/09/2019
Promulgated Under: 5703.14
Statutory Authority: 5703.05
Rule Amplifies: 5713.01, 5715.01
Prior Effective Dates: 10/20/81, 9/18/03

(129th General Assembly)
(Amended Substitute House Bill Number 487)

AN ACT

To amend sections 7.10, 7.16, 9.34, 102.02, 103.05, 105.41, 109.57, 109.572, 109.801, 119.032, 121.04, 121.08, 121.083, 121.084, 122.07, 123.01, 123.011, 123.07, 123.09, 123.10, 123.101, 123.13, 123.14, 123.15, 123.152, 123.17, 123.21, 123.48, 123.77, 124.04, 124.06, 124.11, 124.12, 124.14, 124.231, 124.241, 124.25, 124.26, 124.27, 124.30, 124.31, 125.082, 125.14, 126.14, 135.35, 140.01, 140.03, 140.05, 140.08, 145.01, 145.012, 149.43, 151.01, 152.18, 152.24, 153.01, 153.011, 153.013, 153.02, 153.04, 153.06, 153.07, 153.08, 153.09, 153.11, 153.12, 153.14, 153.16, 153.17, 153.502, 153.503, 153.53, 154.01, 167.04, 173.14, 173.21, 173.23, 173.26, 173.27, 173.391, 173.394, 173.40, 173.42, 173.45, 173.46, 185.01, 185.02, 185.03, 185.05, 185.06, 185.07, 185.09, 185.12, 306.04, 306.36, 306.55, 313.121, 313.122, 313.16, 329.01, 329.40, 329.41, 329.42, 329.43, 329.44, 329.45, 329.46, 330.04, 339.091, 340.03, 340.05, 340.091, 705.18, 749.04, 749.05, 749.18, 901.54, 924.51, 955.16, 955.26, 991.02, 1121.23, 1155.03, 1163.05, 1315.141, 1317.05, 1321.37, 1321.53, 1321.531, 1322.03, 1322.031, 1345.05, 1501.04, 1502.01, 1502.02, 1502.03, 1502.04, 1502.05, 1502.06, 1502.12, 1502.99, 1503.012, 1503.43, 1506.42, 1509.071, 1509.36, 1533.10, 1541.26, 1551.33, 1555.02, 1555.03, 1555.04, 1555.05, 1555.06, 1571.14, 1707.08, 1707.391, 1724.03, 1733.47, 1751.01, 1751.02, 1751.13, 1761.26, 1901.06, 1901.18, 1907.13, 1909.11, 1923.01, 1923.02, 1923.061, 1923.15, 2151.33, 2151.412, 2151.86, 2152.121, 2152.22, 2301.01, 2301.03,

appropriate credentials, to act as a qualified project manager.

(3) The tax commissioner, beginning two years after the effective date of the enactment of this section by H.B. 487 of the 129th general assembly, shall not include any person that has not designated an officer or employee, with the appropriate credentials, to act as a qualified project manager on a list generated by the commissioner for either of the following purposes:

(a) To assist county auditors in selecting a person to do all or any part of the work necessary to the performance of the auditor's duties as assessor of all real property under section 5713.01 of the Revised Code;

(b) To assist the commissioner in the consideration of whether to approve or disapprove the auditor's application requesting authority to employ an appraisal firm or individual appraiser.

Sec. 5713.03. The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the fee simple estate, as if unencumbered, of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon and the current agricultural use value of land valued for tax purposes in accordance with section 5713.31 of the Revised Code, in every district, according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with the uniform rules and methods of valuing and assessing real property as adopted, prescribed, and promulgated by the tax commissioner. ~~He~~ The auditor shall determine the taxable value of all real property by reducing its true or current agricultural use value by the percentage ordered by the commissioner. In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor ~~shall~~ may consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. However, the sale price in an arm's length transaction between a willing seller and a willing buyer shall not be considered the true value of the property sold if subsequent to the sale:

(A) The tract, lot, or parcel of real estate loses value due to some casualty;

(B) An improvement is added to the property. Nothing in this section or section 5713.01 of the Revised Code and no rule adopted under section 5715.01 of the Revised Code shall require the county auditor to change the true value in money of any property in any year except a year in which the tax commissioner is required to determine under section 5715.24 of the Revised Code whether the property has been assessed as required by law.

The county auditor shall adopt and use a real property record approved by the commissioner for each tract, lot, or parcel of real property, setting forth the true and taxable value of land and, in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value, the number of acres of arable land, permanent pasture land, woodland, and wasteland in each tract, lot, or parcel. ~~He~~ The auditor shall record pertinent information and the true and taxable value of each building, structure, or improvement to land, which value shall be included as a separate part of the total value of each tract, lot, or parcel of real property.

Sec. 5719.13. Taxes assessed on the shares of stock of a dealer in intangibles shall be a lien on such shares from the first day of January in each year until they are paid. Each dealer in intangibles shall collect the taxes due from the owners of such shares and ~~pay~~ remit the same to the tax commissioner, who shall accept the remittance on behalf of the treasurer of state. The remittance shall be made payable to the treasurer of state and shall be made in the form prescribed by the commissioner. Any dealer in intangibles who fails to pay said taxes as provided in this section shall be liable by way of penalty for the gross amount of the taxes due from all the owners of shares, and for an additional amount of one hundred dollars for each day of delay in the payment of said taxes.

A dealer in intangibles who pays ~~to the treasurer of state~~ the taxes assessed upon its shares in the hands of its shareholders, as provided in this section, may deduct the amount thereof from dividends or distributions that are due or thereafter become due on such shares, and shall have a lien on the shares of stock and all funds belonging to such shareholders in its possession, or which come into its possession, for reimbursement of such tax paid on account of the shareholders, with legal interest. Such lien may be enforced in any appropriate manner.

Sec. 5725.14. (A) As used in this section and section 5725.15 of the Revised Code:

(1) "Billing address" of a customer means one of the following:

(a) The customer's address as set forth in any notice, statement, bill, or similar acknowledgment shall be presumed to be the address where the customer is located with respect to the transaction for which the dealer issued the notice, statement, bill, or acknowledgment.

(b) If the dealer issues any notice, statement, bill, or similar acknowledgment electronically to an address other than a street address or post office box address or if the dealer does not issue such a notice, statement, bill, or acknowledgment, the customer's street address as set forth in the records of the dealer at the time of the transaction shall be presumed

Upon receipt of the application and after consideration of it, the Tax Commissioner shall determine if the applicant meets the qualifications set forth in this section, and if so shall issue an order directing that the property be placed on the tax-exempt list of the county and that all unpaid taxes, penalties, and interest for every year the property met the qualifications for exemption described in section 5709.07 or 5709.08 of the Revised Code be abated. If the Tax Commissioner finds that the property is not now being so used or is being used for a purpose that would foreclose its right to tax exemption, the Tax Commissioner shall issue an order denying the application.

If the Tax Commissioner finds that the property is not entitled to tax exemption and to the abatement of unpaid taxes, penalties, and interest for any of the years for which the current or prior owner claims an exemption or abatement, the Tax Commissioner shall order the county treasurer of the county in which the property is located to collect all taxes, penalties, and interest due on the property for those years in accordance with law.

The Tax Commissioner may apply this section to any qualified property that is the subject of an application for exemption pending before the Tax Commissioner on the effective date of this section, without requiring the property owner to file an additional application. The Tax Commissioner also may apply this section to any qualified property that is the subject of an application for exemption filed on or after the effective date of this section and on or before twelve months after that effective date, even though the application does not expressly request abatement of unpaid taxes, penalties, and interest.

SECTION 757.51. The amendment by this act of section 5713.03 of the Revised Code applies to the first tax year, after tax year 2012, to which division (A) or (B) of section 5715.24 of the Revised Code applies in the county.

SECTION 757.61. The General Assembly hereby declares that the intent of the amendment by this act of section 5739.02 of the Revised Code is to clarify the law as it existed prior to the amendment by this act of that section.

SECTION 806.10. The items of law contained in this act, and their applications, are severable. If any item of law contained in this act, or if any

(129th General Assembly)
(Amended Substitute House Bill Number 510)

AN ACT

To amend sections 122.17, 122.171, 122.85, 145.114, 145.116, 149.311, 150.01, 150.07, 150.10, 715.013, 742.114, 742.116, 1311.85, 1311.86, 1311.87, 1311.88, 3307.152, 3307.154, 3309.157, 3309.159, 5505.068, 5505.0610, 5703.052, 5703.053, 5703.70, 5707.03, 5709.76, 5711.22, 5713.03, 5725.02, 5725.14, 5725.16, 5725.26, 5725.33, 5733.01, 5733.02, 5733.021, 5733.06, 5747.01, 5747.98, 5751.01, 5751.011, 5751.012, and 5751.98, to enact sections 5701.12, 5726.01 to 5726.04, 5726.041, 5726.05 to 5726.08, 5726.10, 5726.20, 5726.21, 5726.30 to 5726.33, 5726.36, 5726.40 to 5726.43, 5726.50 to 5726.57, 5726.98, 5726.99, 5747.65, and 5751.54 of the Revised Code, and to repeal Section 757.51 of Am. Sub. H.B. 487 of the 129th General Assembly to impose a new tax on financial institutions, effective January 1, 2014, to provide that such institutions and dealers in intangibles are no longer subject to the corporation franchise tax or dealers in intangibles tax after 2013, to require dealers in intangibles that are not owned by a financial institution to pay the commercial activity tax after 2013 except for "small dollar lenders," which will become subject to the new financial institutions tax, to make changes to the law regarding commercial real estate broker liens, to require county auditors to account for the impact of police powers and other governmental actions in the valuation of real property, and to accelerate the application of provisions of Am. Sub. H.B. 487 of the 129th General Assembly

taxation shall be listed and assessed at the following percentages of true value in money:

(1) For tax year 2005, twenty-five per cent of true value;

(2) For tax year 2006, eighteen and three-fourths per cent of true value;

(3) For tax year 2007, twelve and one-half per cent of true value;

(4) For tax year 2008, six and one-fourth per cent of true value;

(5) For tax year 2009 and each tax year thereafter, zero per cent of true value.

(H)(1) For tax year 2007 and thereafter, all personal property used by a telephone company, telegraph company, or interexchange telecommunications company shall be listed as provided in this chapter and assessed at the following percentages of true value in money:

(a) For tax year 2007, twenty per cent of true value;

(b) For tax year 2008, fifteen per cent of true value;

(c) For tax year 2009, ten per cent of true value;

(d) For tax year 2010, five per cent of true value;

(e) For tax year 2011 and each tax year thereafter, zero per cent of true value.

(2) The property owned by a telephone, telegraph, or telecommunications company shall be apportioned to each appropriate taxing district as provided in section 5727.15 of the Revised Code.

(I) During and after the tax year in which the assessment rate equals zero per cent, the property described in division (E), (F), (G), or (H) of this section shall not be listed for taxation.

(J) Divisions (E), (F), (G), and (H) of this section apply to the property of a person described in divisions (E)(3) ~~to (10)~~, (4), and (5) of section 5751.01 of the Revised Code. Division (J) of this section does not prevent the application of the exemption of property from taxation under section 5725.25 or 5725.26 of the Revised Code.

Sec. 5713.03. The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the fee simple estate, as if unencumbered but subject to any effects from the exercise of police powers or from other governmental actions, of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon and the current agricultural use value of land valued for tax purposes in accordance with section 5713.31 of the Revised Code, in every district, according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with the uniform rules and methods of valuing and assessing real property as adopted, prescribed, and promulgated by the tax commissioner. The auditor shall

determine the taxable value of all real property by reducing its true or current agricultural use value by the percentage ordered by the commissioner. In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor may consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. However, the sale price in an arm's length transaction between a willing seller and a willing buyer shall not be considered the true value of the property sold if subsequent to the sale:

(A) The tract, lot, or parcel of real estate loses value due to some casualty;

(B) An improvement is added to the property. Nothing in this section or section 5713.01 of the Revised Code and no rule adopted under section 5715.01 of the Revised Code shall require the county auditor to change the true value in money of any property in any year except a year in which the tax commissioner is required to determine under section 5715.24 of the Revised Code whether the property has been assessed as required by law.

The county auditor shall adopt and use a real property record approved by the commissioner for each tract, lot, or parcel of real property, setting forth the true and taxable value of land and, in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value, the number of acres of arable land, permanent pasture land, woodland, and wasteland in each tract, lot, or parcel. The auditor shall record pertinent information and the true and taxable value of each building, structure, or improvement to land, which value shall be included as a separate part of the total value of each tract, lot, or parcel of real property.

Sec. 5725.02. ~~The~~ For report years prior to 2014, the cashier or other principal accounting officer of each bank, the secretary or other principal accounting officer of each other incorporated financial institution, and the manager or owner of each unincorporated financial institution shall return to the department of taxation between the first and second Mondays of March, annually, a report exhibiting in detail, and under appropriate heads, the resources and liabilities of such institution at the close of business on the thirty-first day of December next preceding.

The report of each financial institution shall also show the aggregate balances of the taxable deposits of its depositors in each county in which the institution maintained an office for the receipt of deposits, at the end of business on the day fixed by the tax commissioner pursuant to section 5725.05 of the Revised Code. The report shall show also the names and

5733.01, 5733.02, 5733.021, 5733.06, 5747.01, 5747.98, 5751.01, 5751.011, 5751.012, and 5751.98 of the Revised Code are hereby repealed.

SECTION 3. That section 757.51 of Am. Sub. H.B. 487 of the 129th General Assembly is hereby repealed.

SECTION 4. The amendment by this act of division (E) of section 5751.01 and sections 5751.011 and 5751.012 of the Revised Code applies to tax periods beginning on or after January 1, 2014 except for a taxpayer that is a corporation or any other person directly or indirectly owned by one or more insurance companies subject to the tax imposed by section 5725.18 or Chapter 5729. of the Revised Code. For such taxpayers, the amendment by this act of division (E) of section 5751.01 and sections 5751.011 and 5751.012 of the Revised Code applies to tax periods beginning on or after January 1, 2013.

SECTION 5. (A) The Tax Commissioner shall not assess or hold liable for the failure to report or pay the tax imposed by section 5751.02 of the Revised Code for any tax periods ending before January 1, 2013, a corporation or any other person directly or indirectly owned by one or more insurance companies that are subject to the tax imposed by section 5725.18 or Chapter 5729. of the Revised Code, provided the corporation, but not the other person or persons, so owned by the insurance company or companies reported and paid the tax imposed by section 5733.06 of the Revised Code and not the tax imposed by section 5751.02 of the Revised Code for taxable periods before January 1, 2013.

(B) For the purposes of this section, division (E)(8)(a),(b), or (c) of section 5751.01 of the Revised Code as that section applied to tax periods ending before January 1, 2013, for a corporation or any other person directly or indirectly owned by one or more insurance companies that are subject to the tax imposed by section 5725.18 or Chapter 5729. of the Revised Code, shall apply in determining whether a person is directly or indirectly owned.

SECTION 6. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Mark C. Flanders

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 26 day of December, A. D. 20 12.

Secretary of State.

File No. 186 Effective Date March 27, 2013