

The Supreme Court of Ohio

MUSIAL OFFICES, LTD., <i>et al.</i> ,	:	CASE NO. 2022-1034
	:	
Plaintiffs-Appellees,	:	On Appeal from the Cuyahoga County
	:	Ohio Court of Appeals,
v.	:	Eighth Appellate District
	:	
COUNTY OF CUYAHOGA,	:	Court of Appeals
	:	Case No. No. 110974
Defendant-Appellant.	:	
	:	

**MEMORANDUM IN SUPPORT OF JURISDICTION OF AMICI CURIAE
THE COUNTY AUDITORS ASSOCIATION OF OHIO
AND THE COUNTY TREASURERS ASSOCIATION OF OHIO
IN SUPPORT OF APPELLANT CUYAHOGA COUNTY**

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Ohio Revised Code 2723.05 was intended by the General Assembly to impose a statutory limitation upon the payment and collection of a monetary judgment entered in a statutory action seeking the refund of an illegally assessed tax if the tax at issue has already been expended and is no longer in the possession of the County Treasurer at the time the judgment is entered.	4
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INTRODUCTION

This case presents a question of public and great general interest relating to the meaning and purpose of Ohio Rev. Code 2723.05, which is a statutory limitation imposed by the General Assembly upon the payment and collection of a judgment entered for an illegal taxation claim. This statutory limitation is an integral part of the tax collection and distribution system created by the Ohio General Assembly, which is founded on the premise that the real estate taxes are not collected solely for the benefit of each County, but are primarily collected on behalf of school districts, cities, townships, villages, libraries and other governmental entities within each county which are then entitled to receive timely distributions of property tax revenues collected by the County Treasurer. Accordingly, it is crucial that the Court accept jurisdiction over this appeal in order to enforce the plain language of R.C. 2723.05 as written and to ensure that counties are not wrongfully compelled to refund taxes that have already been expended and are no longer in their possession.

STATEMENT OF INTEREST OF AMICI CURIAE

The County Treasurers Association Ohio (CTAO) was established in 1924 and consists of all 86 county treasurers, plus the fiscal officers for the two charter counties, Cuyahoga County and Summit County. CTAO has a direct and immediate interest in this appeal because the General Assembly has delegated the important responsibility of collecting real estate taxes upon county treasurers who not only collect property taxes on behalf of the county, but primarily collect taxes on behalf of the many school districts, cities, villages, townships, libraries, fire districts, and other governmental entities within each county. The CTAO therefore has a compelling interest in ensuring that Ohio's tax collection laws are properly enforced in accordance with the General Assembly's intent.

The County Auditors Association of Ohio (CAAO) represents Ohio's 86 county auditors, as well as the fiscal officers of Cuyahoga and Summit County. The CAAO has a strong interest in this litigation because County auditors are responsible for assessing real property in Ohio for the purpose of determining the tax value of the property, and are further responsible for determining the amount of real estate taxes that should be distributed to other taxing districts within the county. County auditors also serve on county budget commissions, which approve the tax budgets for taxing districts within the county. As such, the CAAO also has an interest in ensuring that Ohio's tax collection and distribution statutes are properly enforced in accordance with the General Assembly's legislative intent as manifested in the plain language of the statute, and that the judiciary does not unduly interfere with the statutory obligations of Ohio's county treasurers and auditors, which are tasked with the important responsibility of serving as the gatekeepers and conduits for the collection and distribution of tax revenues to all of the political subdivisions in the State of Ohio that rely upon property tax revenues to carry out various and important public purposes.

THIS CASE IS A MATTER OF PUBLIC AND GREAT GENERAL INTEREST

This case presents a matter of public and great general interest relating to the meaning and purpose of Ohio Rev. Code 2723.05, which is designed to protect counties from having to refund taxes that have already been collected and distributed to the many taxing districts within each county. In this case, in fact, the Eighth District ignored the plain language of R.C. 2723.05 with respect to an extraordinarily large monetary judgment in favor of the Plaintiff class, which obligates the Cuyahoga County Treasurer to refund over \$3.9 million in taxes, even though it is undisputed that such taxes are not "unexpended" and "in the possession" of the Cuyahoga County Treasurer "at the time" of the judgment. As such, the Eighth District's ruling, if

permitted to stand, will significantly undermine the tax collection and distribution system established by the General Assembly and will not only negatively impact Cuyahoga County and the taxpayers of Cuyahoga County, but will negatively impact *all* of the 88 counties in the State of Ohio and *all* of the school districts, cities, villages, and other political subdivisions that rely upon property taxes in the State of Ohio. Thus, the Court should accept jurisdiction over this appeal in order to determine the proper interpretation, application and scope of R.C. 2327.05 upon judgments entered on illegal taxation claims in the State of Ohio.

STATEMENT OF THE CASE AND FACTS

Amici Curiae CAAO and CTAO defer to the Statement of the Case and Facts submitted by Appellant Cuyahoga County in its Memorandum in Support of Jurisdiction. In this regard, the CAAO and CTAO agree that the Eighth District's ruling goes directly to the heart of how R.C. 2723.05 should be interpreted and enforced because it is clear that the law-of-the-case doctrine would not apply if R.C. 2723.05 were interpreted as only applying if and when a final judgment has been entered on an illegal taxation claim Ohio Rev. Code Chapter 2723. CAAO and CTAO therefore agree with Cuyahoga County that R.C. 2723.05 does not prevent the entry of a final judgment that determines that a particular tax or assessment is illegal, but is intended to protect counties by ensuring that no refund shall be paid by the County Treasurer unless the tax or assessment at issue is "unexpended" and "in the possession" of the county treasurer "at the time of such judgment or order." *Id.* By so doing, the General Assembly sought to protect a county from having to refund taxes that have already been collected and distributed to other taxing districts in accordance with Ohio's tax collection and distribution statutes.

ARGUMENT

Proposition of Law No. 1:

Ohio Revised Code 2723.05 was intended by the General Assembly to impose a statutory limitation upon the payment and collection of a monetary judgment entered in a statutory action seeking the refund of an illegally assessed tax if the tax at issue has already been expended and is no longer in the possession of the County Treasurer at the time the judgment is entered.

As previously discussed, the issue presented in this case turns upon the proper interpretation and application of the following statutory limitation on judgments set forth in R.C. 2723.05, which provides:

*If, by judgment or final order of any court of competent jurisdiction in this state, in an action not pending on appeal, it is determined that any tax or assessment or part thereof was illegal and such judgment or order is not made in time to prevent the collection or payment of such tax or assessment, then such tax or assessment or such part thereof as is **at the time of such judgment or order unexpended and in the possession of the officer collecting the same** shall be refunded to the person paying such tax or assessment by the officer having the same in his possession.*

R.C. 2723.05 (emphasis added).

This statute is an integral part of Ohio's property tax collection and distribution system, which is based upon the premise that the County Treasurer does not merely collect real property taxes on behalf of the County, but serves primarily as a conduit for the collection and distribution property taxes on behalf of all of school districts, cities, villages, townships, parks, libraries, fire districts, and other tax-supported taxing districts within the County. *See* Ohio Rev. Code Sections 319.45, 321.12, 321.24, 321.30. R.C. 321.33, 321.34. If R.C. 2723.05 were not enforced as written, therefore, it would wreak havoc on the collection and distribution of property taxes throughout the State of Ohio by imposing an obligation upon county treasurers to refund taxes and assessments that have already been distributed and expended, and are no longer "in the possession of the officer collecting the same." *Id.*

Indeed, when viewed in the proper context, the meaning and purpose of R.C. 2723.05 becomes clear. Under R.C. 321.12, the County Treasurer is responsible by statute to collect all of the property taxes on a bi-annual basis in December/January and again in June/July of each year. *Id.* Thereafter, in February and August for each year, R.C. 321.24 provides that “the county treasurer shall settle with the county auditor for all taxes and assessments that the treasurer has collected on the general duplicate of real and public utility property at the time of making the settlement. If the county treasurer has made or will make advance payments to the several taxing districts of current year unpaid taxes under section 321.341 of the Revised Code before collecting them, the county treasurer shall take the advance payments into account for purposes of the settlement with the county auditor under this division.” *Id.*

Upon the collection of property taxes in the first and second half of each year, the County Treasurer does not retain most of tax revenues in the County’s general fund. Rather, under R.C. 323.30, R.C. 323.31, R.C. 323.33, and R.C. 323.34, the county treasurer then has a statutory obligation to make timely distributions to the State of Ohio and all of the various taxing districts within the county that are entitled to receive property tax revenues. In particular, R.C. 323.30 provides that “[t]he county treasurer, after he has made each settlement with the county auditor, shall pay to the state the full amount of all sums found by the auditor of state, on an audit of the duplicate settlement sheets sent to him by the county auditor, to belong to the state.” *Id.* Moreover, R.C. 323.31 provides that, “[i]mmmediately after each settlement with the county auditor, on demand, and on presentation of the warrant of the auditor therefor, the county treasurer shall pay to the township fiscal officer, or the treasurer of a municipal corporation, school district, or any board authorized by law to receive the funds or proceeds of any special tax levy, or other properly designated officers delegated by the boards and subdivisions to receive

such funds or proceeds, all moneys in the county treasury payable to such boards and subdivisions. Delinquent taxes, interest, and penalties are payable in the proportions prescribed in section 319.45 of the Revised Code.” *Id.*

This mandatory obligation to make timely distributions of the property tax revenues collected is also set forth in Revised Code Sections 323.33 and 323.34. In particular, R.C. 323.33 provides that “[o]n the first Monday of February and August, each year, the county treasurer shall pay over to the treasurer of the municipal corporation all moneys received by such county treasurer up to that date, arising from taxes levied and assessments made, belonging to the municipal corporation. Moneys received from other sources for municipal corporations shall be paid over on or before the tenth day of each month following the receipt or collections thereof.” *Id.* Moreover, R.C. 323.34(A)(1) provides that “[w]hen the local authorities by resolution so request, the county auditor shall pay township fiscal officers, treasurers of municipal corporations, the treasurer of any board of education, and the treasurer of any other political subdivision or taxing district whose funds derived from taxes or other sources are payable by law to the county treasurer, any money that may be in the county treasury to the accounts of the local authorities, respectively, and lawfully applicable to the purpose of the current fiscal year in which the request is made.” *Id.*

Additionally, R.C. 323.34(A)(2)(a) provides that “[f]or purposes of this section, in addition to the moneys payable under division (A)(1) of this section, money in the county treasury to the account of a board of education that is to be included in the settlement required under division (C) of section 321.24 of the Revised Code shall be paid to the treasurer when the board of education, by resolution, so requests,” and R.C. 323.34(C) provides that “[u]pon the request, in like form, of any board of public library trustees or board of township park

commissioners for which a share of the undivided classified property taxes collected in the county has been allowed and fixed by the budget commission, the auditor may, prior to the first day of April, in any year, pay to the treasurer of the board, from any undivided tax funds in the county treasury, an amount not exceeding twenty-five per cent of the board's share of the undivided classified property taxes; but the auditor and county treasurer shall retain an amount sufficient to meet all other requests for payments which have been made under this section or can be reasonably anticipated prior to such first day of April. On or after the first day of April, all amounts paid out of undivided tax funds shall be reimbursed to the funds from which they have been paid and charged against the share of the board of library trustees or board of township park commissioners in the undivided classified property tax fund.” *Id.*

Given the statutory obligation imposed upon county treasurers and county auditors to make timely distributions of property tax revenues to other taxing districts within the county, it makes sense why the General Assembly adopted R.C. 2723.05. Although this statute does not bar a taxpayer from obtaining a final judgment on an illegal taxation claim, it clearly and unambiguously provides that the County Treasurer’s obligation to refund the illegal taxes only arises if such tax or assessment “is at the time of such judgment or order unexpended and in the possession of the officer collecting the same.” *Id.* Under the plain language of R.C. 2723.05, therefore, it automatically follows that the county treasurer does not have the obligation to pay a final judgment on an illegal taxation claim unless the tax at issue was “unexpended and in the possession” of the county treasurer “at the time of such judgment or order.” *Id.*

For this reason, it does not matter whether Cuyahoga County raised the statutory limitation in R.C. 2723.05 as a defense to liability in any of the lower court proceedings below. Since this statutory limitation is not a defense to liability, but a statutory limitation on the

payment and collection of a final judgment once it has been entered, R.C. 2723.05 would only apply upon the entry of a final judgment, and thus could be raised upon the entry of the judgment or in any post-judgment collection proceedings. It therefore does not matter whether R.C. 2723.05 was raised by Cuyahoga County in any prior appeals or prior motions because it is a statutory limitation on a judgment that applies once a final judgment has been entered.

It is critically important, therefore, for this Court to accept jurisdiction over this appeal and uphold the validity and enforceability of this statutory limitation on judgments entered on an illegal taxation claim. R.C. 2723.05 does not exist in a vacuum; it was adopted for a reason. It was adopted by the General Assembly because it is a critical and indispensable part of the General Assembly's statutory system for the collection and distribution of property taxes in the State of Ohio. Given that taxes do not remain in the county treasurer's possession and are distributed to other taxing districts who have adopted their own independent budgets and made their own independent expenditures based upon such revenues, R.C. 2723.05 clearly was intended by the General Assembly to protect counties from having to refund taxes that have already been expended and are no longer in the possession of the county treasurer at the time that the judgment has been entered.¹ It would wreak havoc on Ohio's property tax collection and distribution system and expose counties to the obligation to refund taxes that have already been

¹ While Musial likely will argue in its Memorandum in Response that it would be "unjust" or "unfair" to prevent the Plaintiffs from collecting the judgment, this argument ignores the carefully-crafted statutory system established by the General Assembly. Musial and its attorneys, in fact, knew or should have known about the existence of this statutory limitation on judgments, and yet they never requested an injunction to enjoin the collection or distribution of taxes at issue or to require the County Treasurer to hold the disputed taxes in a separate fund, as other plaintiffs have done. For example, in *Pennsylvania R. Co. v. Scioto-Sandusky Conservancy Dist.*, 101 Ohio App. 61, 137 N.E.2d 891 (10th Dist. 1956), the trial court, upon motion by the plaintiffs, enjoined the county treasurer and county auditor "from paying any monies collected" as a result of the challenged tax levy, and then further ordered that all such taxes collected shall be deposited "in a fund separate and distinct from all other public funds." *Id.* at 63. Musial, however, never sought this type of injunctive relief in the trial court proceedings below.

distributed and have already expended by the numerous taxing districts (school districts, cities, villages, townships, parks, libraries, and other governmental entities) that received the property taxes in accordance with Ohio's tax collection and distribution statutes. Accordingly, it is critically important for county auditors and county treasurers throughout the State of Ohio – and all of the local government entities who receive and rely upon property tax revenues – for this Court to accept jurisdiction over this appeal and adopt an interpretation of R.C. 2723.05 that enforces this statutory limitation on judgments in accordance with its plain language of the statute and the General Assembly's legislative intent.

CONCLUSION

The General Assembly has carefully crafted a property tax collection and distribution system that has been undermined and interfered with by the Eighth District Court of Appeals. This is a matter of public and great general interest that should be resolved by this Court because it affects all 88 counties throughout the State of Ohio and the thousands of taxing districts that rely upon property tax revenues to carry out their important statutory purposes. This Court should therefore accept jurisdiction over this important appeal, reverse the Court of Appeals' decision, and enforce the plain language of R.C. 2723.05.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing *Memorandum in Support of Jurisdiction of Amici Curiae the County Auditors Association of Ohio and the County Treasurers Association of Ohio in Support of Appellant Cuyahoga County* was electronically filed this 19th day of August 2022 using the Court's electronic filing system which will send notification to all parties of record and is being served by electronic mail upon the following:

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