

In the Supreme Court of Ohio

J. Craig Snodgrass,	:	
Auditor of Lorain County, Ohio,	:	
	:	Case No. 2023-0354
Appellant,	:	
	:	Appeal from the Ohio
v.	:	Board of Tax Appeals
	:	Case Nos. 2022-1296
Patricia Harris, Tax Commissioner of Ohio,	:	and 2022-1247
and NEXUS Gas Transmission LLC,	:	
	:	(Public Utility Personal Property Tax)
Appellees.	:	

**BRIEF OF *AMICI CURIAE* THE OHIO CHAMBER OF COMMERCE
AND THE OHIO COUNCIL OF RETAIL MERCHANTS IN SUPPORT OF THE
DECISION OF THE OHIO BOARD OF TAX APPEALS TO DISMISS APPELLANT'S
NOTICE OF APPEAL**

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**BRIEF OF AMICI CURIAE THE OHIO CHAMBER OF COMMERCE
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I. STATEMENT OF INTEREST OF AMICI CURIAE

The amici curiae organizations filing this brief (collectively the “Ohio Business Amici”) represent thousands of members that contribute to the bedrock of Ohio’s economy by employing millions of Ohioans and providing manufacturing, distributing, and retailing goods and services across the state. The Ohio Business Amici and their members have a vital interest in this case because Appellant’s position would permit collateral attacks on previously existing, valid tax settlement agreements negotiated and entered by the Ohio Tax Commissioner and the taxpayer in accordance with R.C. 5703.05(C). Such a result poses great harm to Ohio businesses in their tax planning and compliance, which impacts operations and investment generally. The Ohio Business Amici urge this Court to affirm the Board of Tax Appeals’ (“BTA”) ruling. That decision preserves the reliability and predictability that are important components of all settlement contracts entered between a taxpayer and the State of Ohio that resolve a state tax dispute. R.C. 5703.05(C).

The Ohio Business Amici do not deny that Ohio law provides a county auditor the ability to appeal errors in final determinations under R.C. 5717.02. However, this right is not open-ended. It may not negate the express statutory rights of the Tax Commissioner to resolve tax controversies. Application of R.C. 5717.02, in the context of a valid settlement agreement reached under the authority of R.C. 5703.05(C), should not undermine the certainty and finality that Ohio businesses need in their tax compliance disputes with the State. Ohio Business Amici have the reasonable expectation that a contractual settlement of a state tax action with the Tax Commissioner of Ohio will end the litigation and establish an understanding of the taxpayer’s tax obligations and the State’s expectations for future compliance and collection. To permit attacks on tax settlements

under the guise of re-litigating settled issues would force parties through complex and costly litigation despite the fact that these parties already settled. The Court should consider the county auditor's appeal rights in the context of the existing and statutorily valid Settlement Agreement, and within the bounds of Ohio law.

The Ohio Chamber of Commerce (the "Ohio Chamber") is Ohio's largest and most diverse statewide business advocacy organization representing businesses ranging in size from small, sole proprietorships to some of the largest U.S. companies. It works to promote and protect the interests of its more than 8,000 business members while building a more favorable business climate in Ohio by advocating for the interests of Ohio's business community on matters of statewide importance. By promoting its pro-growth agenda with policymakers and in courts across Ohio, the Ohio Chamber seeks a reliable and predictable legal system, which fosters a stable business climate where enterprise and Ohioans prosper. The Ohio Chamber regularly files amicus briefs in cases important to its members' interests in courts across the state of Ohio.

Founded in 1922, **the Ohio Council of Retail Merchants ("OCRM")** is Ohio's oldest and largest advocate for the retail and wholesale industries, representing more than 7,000 retailers, wholesalers and distributors, ranging from local enterprises to influential regional and national businesses and large companies operating across the state. Ohio's retail industry supports 1.5 million jobs in Ohio. OCRM is dedicated to maintaining a legal environment that supports businesses and creates jobs, and to presenting and protecting its members' interests on important statewide issues.

II. STATEMENT OF FACTS

The facts and circumstances in this matter are extensive and complex. The Ohio Business Amici defer to the statement of facts as set forth in Appellee's (NEXUS') brief.

III. ARGUMENT

A. Ohio Business Amici seek finality and certainty when settling tax matters through the State's statutory representative, the Ohio Tax Commissioner.

The issue before this Court concerns the finality of settlement. Specifically, the case involves how to implement and preserve the statutory right of the Tax Commissioner to settle state tax controversies on behalf of the State under R.C. 5703.05(C) within the context of a county auditor's standing under R.C. 5717.02 to appeal errors in findings made within in a final determination issued by the Tax Commissioner.

1. Ohio Law embodies a strong public policy in favor of settlements and the related principle of finality.

"If there is any one thing which the law favors above another, it is the prevention of litigation, by the compromise and settlement of controversies." *White v. Brocaw*, 14 Ohio St. 339 (1863), 346. *See, also, Infinite Sec. Solutions, L.L.C. v. Karam Properties II*, 143 Ohio St.3d 346, 2015-Ohio-1101, 37 N.E.3d 1211, at ¶30; and *Spercel v. Sterling Industries, Inc.*, 31 Ohio St.2d 36, 38, 285 N.E.2d 324 (1972). Fundamentally, the policy provides that "[t]he law favors the resolution of controversies and uncertainties through compromise and settlement rather than through litigation. * * * The resolution of controversies * * * by means of compromise and settlement * * * results in a saving of time for the parties, the lawyers, and the courts, and it is thus advantageous to judicial administration, and, in turn, to government as a whole." *Spercel*, 38, quoting 15 American Jurisprudence 2d 938, *Compromise and Settlement*, Section 4. A concise and well written summary of this same policy appears in Margaret Meriwether Corday, *Settlement Agreements and the Supreme Court*, 48 Hasting L.J. 9 (1996), 47, which provides: "[A] primary function for the judicial system is to resolve disputes. When the courts facilitate settlement, they

help parties resolve their disputes * * * in a way that is potentially less expensive, faster, and more satisfying. In essence, this aspect of the policy reflects a core purpose of the courts.”

In *Ortiz v. United States Fid. & Guar. Co.*, 8th Dist. Cuyahoga No. 85966, 2005-Ohio-5982, discretionary appeal denied by *Ortiz v. United States Fid. & Guar. Co.*, 2006-Ohio-1703, 2006 Ohio LEXIS 890 (Ohio, Apr. 12, 2006), an Ohio court described this policy as:

Without [a policy favoring settlement], it would be difficult for parties to attempt the amicable adjustment or compromise of disputes. Moreover, when parties agree to settle cases, litigation is avoided, costs of litigation are contained, and the legal system is relieved of the burden of resolving the dispute with the resulting effect of alleviating an already overcrowded docket. ***Perhaps the most salubrious aspect of settlement is its finality***; the conflict is resolved and the appellate process is avoided. Were this court to affirm appellant's contentions, no controversy could ever truly be concluded.

Id., ¶21 (Emphasis added).

2. “[T]***he most salubrious aspect of settlement is its finality.***”

“The principle of finality’ ‘requires that there be some end to every lawsuit, thus producing certainty in the law and public confidence’ in the legal system.” *Knapp v. Knapp*, 24 Ohio St.3d 141, 144–145, 493 N.E.2d 1353 (1986). This principle is rooted in the understanding that the parties to litigation have “freely bargained to exchange the costs, risks and potential rewards of litigation for the certainty of a settlement that seems fair in light of facts known at the time.” *Matsuura v. Alston & Bird*, 9th Cir. Nos. 97-16400, 97-17033, 1999 U.S. App. LEXIS 14017 (Feb. 2, 1999), ¶17. Thus, jurisprudence reasons “society gains most from the certainty and finality of such settlements.” *Norton v. Benjamin*, 220 A.2d 248 (Me. 1966), 251.

Settlements often result in more satisfying resolutions than would occur in litigation because, through negotiation, the parties are free to consider “the entire spectrum of relevant facts and principles, whether or not they are formally cognizable in law.” Margaret Meriwether Corday,

Settlement Agreements and the Supreme Court, 48 Hasting L.J. 9 (1996), 37. The parties also have the flexibility to craft more creative and responsive resolutions because they are not limited to traditional legal remedies. *Id.*

B. The Tax Commissioner’s exclusive authority to settle state tax disputes embodies the policy considerations making settlements final. The Tax Commissioner binds the State of Ohio through R.C. 5703.05(C).

The Tax Commissioner has the exclusive authority to settle state tax controversies on behalf of the State under R.C. 5703.05(C).¹ This authority is essential to the State’s ability to provide Ohio’s business community finality and measured reliability in tax matters. Because a settlement affects the rights and responsibilities of the taxpayer under Ohio tax law, businesses that settle tax disputes must know that the matter is resolved and behind them. *See, e.g., Raczak v. Ameritech Corp.*, 103 F.3d 1257, 1997 FED App. 0006P (6th Cir. 1997), fn.8. (stating that parties to voluntary settlements are “purchasing certainty and finality, a valuable business and legal commodity.”). Assigning the Tax Commissioner the exclusive authority to settle state tax matters ensures Ohio businesses a fair and uniform treatment under state tax laws while also advancing reliability in Ohio’s tax administration. As this Court acknowledged over forty years ago, Ohio law and tax policy provide strong motivation for “the attainment of the goals of certainty and finality in tax planning and tax collection – for both the taxpayer and the Tax Commissioner.” *McLean Trucking Co. v. Lindley*, 70 Ohio St.2d 106, 112, 435 N.E.2d 414 (1982).

R.C. 5703.05(C) also provides similarly situated taxpayers consistency in tax resolutions because each taxpayer deals with the same state tax official. Ohio business Amici assert this was

¹ R.C. 5703.05 provides: “All powers, duties, and functions of the department of taxation are vested in and shall be performed by the tax commissioner, which powers, duties, and functions shall include, but shall not be limited to, the following: * * * (C) Exercising the authority provided by law relative to consenting to the compromise and settlement of tax claims[.]”

a wise outcome intended by the General Assembly in enacting R.C. 5703.05(C). In a competitive business environment, this opportunity for consistency in result without the expense and time of full litigation encourages a level playing field among businesses, efficiency, and a clear understating of future obligations. Tax settlements allow businesses to plan proficiently and predictably.

It is undeniable that the Tax Commissioner has solitary authority to settle a state tax matter on behalf of the State of Ohio. The terms of R.C. 5703.05(C) make clear that no other governmental entity or agent has the ability to participate in, approve, or veto the Tax Commissioner's decision to settle state tax disputes. This makes sense in the tax case now before the Court because the case involves the public utility personal property tax, that is, a state tax that benefits the state and is imposed, administered, and allocated according to the directives of the Ohio General Assembly. *See Wastenev v. Schott*, 58 Ohio St. 410, 51 N.E. 34 (1898).

1. The Tax Commissioner acts on behalf of the State of Ohio, the real party in interest.

It is with the State of Ohio, therefore, that the taxpayer seeks clarity in state tax administration and policy, as well resolution of any conflicts over Ohio state tax law. In other words, the State of Ohio possesses the substantive rights in question when parties litigate or settle a state tax dispute. *Wastenev, supra*, 415-416. Of course, the General Assembly cannot personally attend to every tax dispute, so it must act through one of its agents. *State ex rel. Wilson v. Preston*, 173 Ohio St. 203, at 210–211, 181 N.E.2d 31 (1962). The Tax Commissioner's role is to represent the interests of the State and to defend the State's value of the subject property through review and appeal. The Tax Commissioner serves as the party representative of the State and has no rights to assert on behalf of the State of Ohio except those of the State. *Hess v. Amidon*, 56 Ohio App. 99,

10 N.E.2d 26 (1937), *certiorari denied* 302 U.S. 706. This authority is not just convenient for the State of Ohio. It gives a taxpayer an authoritative point of contact to resolve tax matters.

2. The principle of finality, and the law that has developed around the principle, prohibits the county auditor's collateral attack on the settlement terms.

The BTA appropriately concluded that the tax settlement between the Tax Commissioner and NEXUS is final as a matter of law. These were the only parties to the original litigation, and they clearly negotiated, approved, and signed the settlement agreement all in compliance with R.C. 5703.05(C). *Spercel, supra*, 39–40; *Klever v. Stow*, 13 Ohio App.3d 1, 4, 468 N.E.2d 58 (9th Dist.1983). *See also Bostick Foundry Co. v. Lindberg, Div. of Sola Basic Indus., Inc.*, 797 F.2d 280, 283 (6th Cir. 1986) ("Once concluded, a settlement agreement is as binding, conclusive, and final as if it had been incorporated into a judgment and the actual merits of the antecedent claims will not thereafter be examined.").

The effect of NEXUS and the Tax Commissioner contracting a settlement under R.C. 5703.05(C) is immediate and final. Later attacks are not permitted on a settlement agreement on a claim that one of the parties did not take full advantage of the circumstances or that other evidence or argument would produce a different outcome. Restatement (Second) of Judgments §§ 24, 27; *See also Walther v. Walther*, 102 Ohio App. 3d 378, 383, 657 N.E.2d 332 (1995) (Neither a change of heart nor poor legal advice is a ground to set aside a settlement agreement); *O'Neill v. Showa Denko K.K.*, 101 Ohio App.3d 345, 351, 655 N.E.2d 767 (8th Dist. 1995) (third party defendant could not reopen other defendant's settlement with plaintiff to prove plaintiff's liability. Such an act would "defeat the public policy of limiting judicial resources and preserving the finality of settlement agreements."); *Ortiz, supra* (in the absence of applying finality to a settlement, a party having a "change of heart" would have nothing to lose by refusing to comply

with the settlement agreement and continuing to litigate the matter.); Principles of Transnational Civil Procedure Introduction (2006) (Finality discourages the reopening of litigation that has been completed. Such a matter “should be left at rest even when there may be some reason to think that a different result could be achieved,”); Principles Law Agg. Lit. § 3.14 (2010), cmt. a (stating that the very integrity of the settlement process is undermined by permitting the reopening of a settlement based on issues that could have been raised during the settlement process).

The NEXUS settlement agreement also is equally binding on Auditor Snodgrass. The law establishes that when the State of Ohio is the real party in interest, as it is here, any government official that is authorized to appear in a proceeding on the same subject represents the state’s interest and not their own. *State ex rel. Hofstetter*, 20 Ohio St. 2d 117, 119–120, 254 N.E.2d 15 (1969) (a court looks beyond the nominal parties to discover the real party in interest). *See also State ex rel. Ohio v. Crock Construction Co.*, 2014-Ohio-2944, ¶31, 2014 Ohio App. LEXIS 2885. This principle applies to settlement agreements and binds a government official to a settlement agreement as one in privity, even if that official did not participate in the negotiation and execution of the agreement. *Triplex Co. v. R.L. Pomante Contr., Inc.*, 10th Dist. Franklin No. 07AP-801, 2008-Ohio-6301, ¶25. The county auditor in this case argues that he is not bound by the NEXUS settled agreement. However, the law is clear that he is.

The settlement agreement affects the scope of Auditor Snodgrass’ ability to file an appeal under R.C. 5717.02. Bound by the settlement agreement, the county auditor may not now attack the terms of settlement by arguing that additional evidence or statutory interpretation would produce a different value. This is all the county auditor did in his notice of appeal. He does not

allege that the settlement agreement is invalid.² The settlement agreement is final, *Spercel* and *Bostick Foundry Co.*, and R.C. 5717.02 applies only to decisions that are open as a matter of law.³

C. The BTA correctly applied the legal doctrine of mootness to find R.C. 5717.02 does not permit the county auditor’s attack on the terms of a valid and final settlement agreement executed by the taxpayer and the Tax Commissioner.

In dismissing the county auditor’s appeal, the BTA expressly relied on the doctrine of mootness. “When all parties to the live controversy agreed to the outcome and this Board remanded the matter, there were no longer any live issues.” *Snodgrass v. O’Leary*, BTA Nos. 2022-1296 and 2022-1247, 2023 Ohio Tax LEXIS 299 (Feb. 9, 2023), 9. In other words, the BTA confirmed that, because of the settlement, the terms of the settlement were final and not subject to a direct appeal under R.C. 5717.02.

² Because Auditor Snodgrass failed to raise or otherwise preserve such potential claims, the BTA’s jurisdiction under R.C. 5717.02 to address such errors is not before this Court. Whereas, the BTA’s decision to dismiss the errors actually raised must be affirmed because a county auditor may not utilize R.C. 5717.02 to pursue an after-the-fact attack on the terms and obligations of a valid settlement contract. *See DeWeese v. Zaino*, 100 Ohio St.3d 324, 2003-Ohio-6502, 800 N.E.2d 1 (county auditors do not have an unlimited right to challenge issues in an appeal to the BTA that were not addressed by the Tax Commissioner’s final determination).

³ Even as to a potential allegation concerning the validity of a settlement agreement made pursuant to R.C. 5703.05(C), a county auditor may not be the proper official to bring such a challenge. The only party statutorily authorized to enter into that agreement and speak on behalf of the State is the Tax Commissioner, whose duty is to administer and enforce that agreement. Because settlement under R.C. 5703.05(C) occurs separately and outside the Tax Commissioner’s merit review or the BTA litigation, an auditor’s right to complain of errors in a final determination may not be a sufficient foundation to attack the State’s entrance into an agreement that was final as a matter of law before the Tax Commissioner issued the final determination. Instead, the Attorney General may be the designated official who possesses the authority to question the validity of the State’s settlement agreement. The Attorney General may “file and prosecute to judgment or decree appropriate actions to prevent the unlawful expenditures of public funds, cancel contracts not made in compliance with law, * * * [and] secure compliance with the laws, ordinances, rules, and orders pertaining to any public office * * *.” R.C. 117.42. In this context, the Court may find helpful that, in negotiating and entering the settlement agreement, the Commissioner was represented by the Ohio Attorney General.

In fact, no valuation issues remained at the time the county auditor attempted his appeal. *Maitland v. Ford Motor Co.*, 103 Ohio St.3d 463, ¶20, 2004-Ohio-5717, 816 N.E.2d 1061, in which this Court stated, “A valid compromise and settlement bars all right of recovery on the previously existing claim. * * * The previously existing claim is extinguished by the compromise and settlement and, as a result, any subsequent litigation based upon it is barred.”). Once the Settlement Agreement disposed of the valuation issues, the BTA had no authority to consider such issues because they were moot. *Gough Family Trust v. Vos*, 7th Dist. Columbiana No. 17 CO 0035, 2018-Ohio-5390, ¶27–¶28 (“Here, the parties resolved the underlying controversy with a settlement of all issues pending before the trial court. As a result, those issues are moot, rendering Appellant's appeal moot. This Court is not able to give an opinion on issues that have already been resolved by the parties.”).

The BTA recognized that the county auditor was attempting to use R.C. 5717.02 impermissibly to challenge the underlying terms and obligations of the Settlement Agreement, *i.e.*, the agreed values, as a means of forcing the parties to re-litigate the issues already settled. The law that supports a policy in favor of settlement and the principle of finality prohibits this type of legal gamesmanship. The terms and obligations under the settlement are final, and value was no longer a “living” issue. *Id.*

D. The BTA’s decision prevents an erosion of the policy favoring the settlement of tax litigation.

Auditor Snodgrass’ position that he may challenge the value of NEXUS’ property despite the existence of a settlement agreement with the State of Ohio places taxpayers in a situation where tax litigation never may be considered final. It would lead to a situation where tax settlements with the state can no longer be trusted, because such settlements may be subject to some “tacit” right of political subdivisions to reopen litigation whenever they do not fully like the terms or

believe that the mere threat and prospect of renewed litigation provides them additional bargaining power. In the context of this case, the BTA warned that allowing Auditor Snodgrass to contest the terms of the Settlement Agreement would be the proverbial “camel nose under the tent flap” that would allow the other twelve counties in which the property is located to file their own appeal from any subsequent settlement agreement, decision, or entry issued in the matter. *Snodgrass, supra*, 9-10 (“This cycle could be endless and result in a lack of finality for Nexus and all counties involved if just one disagrees with a newly assessed valuation. This would remove any incentive for parties to work together for a mutually agreeable outcome.”).

If a county auditor who does not like the settlement terms can collaterally attack the terms of a binding settlement contract with the Tax Commissioner, then parties would be far less inclined to work out problems between themselves and be more inclined to seek final decisions from the BTA and the courts in solving any problems that arise—even minor ones. This would add to the work of the tribunals, “thereby disserving the goals of conserving judicial resources and reducing backlog.” Corday, 48 Hasting L.J. 9, 59. Being unable to rely on the finality of a settlement means that dispute resolution may not be possible; but, assuredly, it will be more expensive, slower, less predictable, less satisfying to the parties, and less efficient for the courts. Because a fair, regulated, and predictable tax policy is an integral part of operating an efficient and prosperous business, Auditor Snodgrass’ arguments impede the efficiency of courts and obstruct how Ohio’s business community functions, competes, and succeeds. Trust in Ohio’s statutory tax resolution process and the state’s chief tax officer, like trust in Ohio’s judicial system, is a vital part of business success.

IV. CONCLUSION

The Ohio Business Amici respectfully request that the Court affirm the Board of Tax Appeals' decision to dismiss and hold that an auditor's right to appeal under R.C. 5717.02 does not permit an attack on the pre-existing issues resolved under the terms of a valid and binding settlement agreement executed pursuant to R.C. 5703.05(C).

Established and effective policy supports the settlement of litigation. This policy is important to Ohio businesses, which seek dispute finality and certainty for their business operations. The Court must preserve the finality of tax settlement agreements in particular to promote certainty in tax planning and tax collection. *McLean, supra*. Fortunately, the law that supports the policy of finality clearly holds that a tax settlement agreement is final, binding on the State and its representatives, and eliminates the underlying tax controversy. This makes such issues moot and subject to dismissal.

It is obvious that the county auditor seeks to circumvent the terms of a state tax settlement agreement. Without saying so, he promotes an interpretation of R.C. 5717.02 that grants the county auditors the power to strike from the law the General Assembly's delegation of its authority to the Tax Commissioner to settle a state tax matter. R.C. 5703.05(C). The Court should not permit this outcome. The Tax Commissioner's power to settle under R.C. 5703.05(C) is complementary to, but distinct from, her authority to consider facts and law to find value in a final determination of a taxpayer's objections on administrative appeal. The latter is subject to appeal to the BTA under R.C. 5717.02, but a final, settled value under R.C. 5703.05(C) is not. The Tax Commissioner's discretion to settle disputes is a power exercised for the benefit of the state, and the settled issues are rendered moot. Otherwise, the finality and judicial efficiency of state tax settlements that both Ohio businesses and the State of Ohio want and need is jeopardized. For

these reasons, Ohio Business Amici respectfully request the Court affirm the Board of Tax Appeals' dismissal decision.

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Ohio Council of Retail Merchants*

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on July 5, 2023, by email upon the following:

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