STINGRAY PRESSURE PUMPING, L.L.C., APPELLANT, *v.* HARRIS,[1] TAX COMMR., APPELLEE.

[Cite as *Stingray Pressure Pumping, L.L.C. v. Harris*, 172 Ohio St.3d 130, 2023-Ohio-2598.]

Taxation—Use tax—Some of the taxpayer's fracking equipment at issue qualifies for tax exemption—R.C. 5739.02(B)(42)—Decision affirmed in part and reversed in part.

(No. 2022-0304—Submitted February 28, 2023—Decided August 2, 2023.)

APPEAL from the Board of Tax Appeals, Nos. 2015-1465 and 2015-1823.

DEWINE, J.

{¶ 1} This case requires that we decide whether certain equipment used in fracking is subject to Ohio's sales and use tax. Generally, Ohio exempts from taxation equipment used directly in the production of oil and gas. But not everything that is involved in oil and gas production qualifies for the exemption.

{¶ 2} In this appeal, a taxpayer challenges a decision of the Ohio Board of Tax Appeals ("BTA") concluding that some of its equipment does not qualify for the exemption. We render a mixed verdict. We hold that most of the equipment at issue is exempt from taxation and overrule the BTA as to these items. But we agree that one item is subject to taxation. So, we affirm in part and reverse in part.

I. Background

{¶ 3} The equipment at issue was purchased back in 2012. The procedural posture of the case is a bit complicated because, while the tax issues were being litigated, the legislature changed the law that provides the exemption. We apply

1. Under S.Ct.Prac.R. 4.06(B), the current tax commissioner, Patricia Harris, is automatically substituted as a party to this action for the former tax commissioner, Jeff McClain.

the new version of the statute. But before we can get there, we need to explain the taxpayer's business, the prior proceedings, and the change in the law.

A. The taxpayer's fracking services

{¶ 4} Stingray Pressure Pumping, L.L.C., is in the fracking business. Fracking is a process that entails pumping a pressurized mixture of water, chemicals, and sand deep into the earth to fracture and prop open rock formations and extract oil and gas. At issue in this appeal is the eligibility for tax exemption of six types of equipment that Stingray uses in fracking: a data van, blenders, sand kings, t-belts, hydration units, and chemical-additive units. (In the paragraphs that follow, we will explain how each of these pieces of equipment is used by Stingray.)

{¶ 5} Before Stingray begins its work, other companies drill the well, secure it with cement and casing, and perforate the casing. The perforations provide a doorway from the casing to the adjacent rock formation in which the oil and gas lie. After the site is prepared, a truck convoy hauls Stingray's equipment to the site.

{¶ 6} Stingray performs its work in stages that occur in different zones within the well. A stage may last anywhere from two to four hours, and a well may require as many as 50 stages. At the beginning of every stage, Stingray pumps diluted hydrochloric acid into the well to dissolve the rock around the perforations, ensuring that the perforations remain open.

{¶ 7} Immediately thereafter, Stingray pumps a water-and-chemical mixture into the well under very high pressure. This mixture opens and enlarges fractures in the rock. Next, Stingray pumps a pressurized mixture of water, sand, and chemicals into the well. The sand particles prop open the fractures, allowing the oil and gas to seep through the well.

{¶ 8} Stingray's equipment works in tandem during this process. A *hydration unit* draws fresh water from "frack" tanks, mixes the water with a gelling agent or a friction reducer, and pumps the mixture into the *blender*. At the same

time, a *sand king*[2] feeds sand onto a conveyor belt, called a *t-belt*, which transports the sand to the *blender*. Simultaneously, a *chemical-additive unit* adds friction reducer (which reduces the surface tension of the fluid) and other chemicals into the fluid. The blender mixes together the water, chemicals, and sand and transports the mixture to the manifold. The manifold transports the mixture to the pumps, which pressurize the mixture and return it to the manifold, which then sends the mixture down the well.

{¶ 9} According to Stingray's vice president of operations, Michael Rexroad, all of this happens in a rapid, synergetic process. He analogized the operation to a recipe in which all the ingredients must be added together:

> Everybody's got to work in synergy and [be] synchronized in their particular job performance to complete this at the same time. * * * [I]f you look at the recipe of what the customer is trying to achieve, you've got to have the proper sand amount going at the same time. You've got to have the proper chemical amount going at the same time. You have to have the proper friction reducer. You have to have the proper amount of acid.
>
> It's like a recipe. You've got to have the recipe so close together to make that frack fluid sufficient * * * [for] that customer's well.

{¶ 10} Because not all well conditions are the same, Stingray must tailor its stage work to accommodate a well's unique features. Stingray's data van is the command center. The van sits near the well and contains several monitors that display data regarding well pressure and sand and water volumes. Stingray

2. A vertical version of the "sand king" is referred to in the record as a "sand silo." We will use the term "sand king" to refer to both pieces of equipment.

personnel monitor the data and make decisions from inside the van. A pump operator remotely controls the pumps. Others in the van convey orders via headsets to the operators of the blender, the sand king, the t-belt, the chemical-additive unit, and the hydration unit. The operators adjust their equipment based on the instructions they receive.

B. Stingray purchases fracking equipment and is assessed taxes

{¶ 11} In 2012, Stingray purchased multiple pieces of equipment for use in its fracking operations. Ohio imposes a sales tax on most items that are sold in the state. R.C. 5739.02. It imposes a corresponding use tax on items that are purchased out of state for use in Ohio. R.C. 5741.02. Not everything is subject to the sales/use tax, however. There are exemptions. And when an item is exempt from the sales tax, it is generally also exempt from the use tax. R.C. 5741.02(C)(2). One exemption covers equipment that is used directly in the production of crude oil and natural gas. *See* R.C. 5739.02(B)(42)(a).

{¶ 12} Stingray did not pay the use tax on the equipment; instead, it represented that the equipment was exempt from taxation because Stingray intended to directly use the equipment to produce oil and gas. The tax commissioner challenged Stingray's claims for exemption. The commissioner initially concluded that all the items purchased by Stingray were taxable, and issued 60 use-tax assessments, one for each piece of equipment. Stingray filed petitions for reassessment, and in 2015, the tax commissioner issued final determinations, canceling about half the assessments.

{¶ 13} At the time, Ohio law provided that the tax did not apply "where the purpose of the purchaser" was to "use or consume the thing transferred directly in producing tangible personal property for sale by mining, including, without limitation * * * production of crude oil and natural gas." Former R.C. 5739.02(B)(42)(a), 2014 Am.Sub.H.B. No. 533 ("2014 H.B. 533"). The tax commissioner read this provision to mean that equipment was exempt only if it was

"directly used in injecting the high-pressure fracking fluid into the well." Applying this standard, the tax commissioner concluded that pumps used to inject the hydraulic mixture into the well and the manifolds used in conjunction with the pumps were tax exempt. But he found that the sand kings, blenders, hydration units, chemical-additive units, t-belts and data van were taxable because their use was preliminary to the actual insertion of the hydraulic mixture into the well.[3]

{¶ 14} Stingray appealed to the BTA, which affirmed the assessments. BTA Nos. 2015-1465 and 2015-1823, 2018 WL 1372693, *4 (Jan. 17, 2018).

C. The legislature amends the statute, and the court of appeals remands for application of the new statute

{¶ 15} Stingray appealed the BTA's decisions to the Tenth District Court of Appeals. 10th Dist. Franklin Nos. 18AP-110 and 18AP-111, 2019-Ohio-5198, ¶ 1. While the appeal was pending, the General Assembly substantially amended the statute, *see* 2018 Sub.H.B. No. 430. As explained previously, the old statute provided a general standard for tax exemption where the purpose of the purchaser was "to use or consume the thing transferred directly" in the production of crude oil and natural gas. Former R.C. 5739.02(B)(42)(a), 2014 H.B. 533. The new statute retains this "to use or consume the thing transferred directly" language but adds two lists. Specifically, it adds a nonexhaustive list of equipment that constitutes a "thing transferred" and a nonexhaustive list of equipment that does not constitute a "thing transferred." *See* R.C. 5739.02(B)(42)(q). The court of appeals concluded that the amendment applies retrospectively and remanded the case for application of the new statute to the equipment at issue here. 2019-Ohio-5198 at ¶ 17.

{¶ 16} On remand, the BTA determined that even under the new statute, all the equipment at issue remained taxable. BTA Nos. 2015-1465 and 2015-1823,

3. The tax commissioner also determined that some equipment falling outside these six categories was taxable, but Stingray has not placed the taxation of this equipment at issue.

2022 WL 659239, *5 (Feb. 25, 2022) ("*Remand Decision*"). In doing so, it applied the principle that when a taxpayer "claims an exemption from the general operation of sales tax, it must show that the amended statute 'clearly expresses the exemption in relation to the facts of its claim.' " *Id.* at *2, quoting *N.A.T. Transp., Inc. v. McClain*, 165 Ohio St.3d 250, 2021-Ohio-1374, 178 N.E.3d 454, ¶ 15.

{¶ 17} The BTA explained that in enacting the new statute, "the General Assembly demonstrated an intent to detail the specific classes of property that qualify for exemption in place of the more general language prior to the amendment." *Id.* at *3. Thus, the BTA went through each of the disputed items and applied the new statutory categories as to what does and what does not constitute a "thing transferred." Based on its application of these categories, it determined that each piece of equipment was not a "thing transferred," and thus not exempt from the tax. *Id.* at *3-4. Stingray then filed this appeal.

II. ANALYSIS

{¶ 18} We must determine whether various pieces of equipment qualify for a tax exemption. The factual issues are largely undisputed. Both sides accept the testimony about the use of the equipment at issue. Thus, the question we must answer with respect to each piece of equipment is a legal one: does the equipment meet the legal requirements for a tax exemption? We apply de novo review to such legal questions. *See SFZ Transp., Inc. v. Limbach*, 66 Ohio St.3d 602, 605, 613 N.E.2d 1037 (1993). That means we answer them without any deference to the legal determinations of the BTA or the tax commissioner. *See TWISM Ents., L.L.C. v. State Bd. of Registration for Professional Engineers & Surveyors*, 172 Ohio St.3d 225, 2022-Ohio-4677, 223 N.E.3d 371.

{¶ 19} In reaching its decision, the BTA applied a principle of construction that tax exemptions must be strictly construed against the taxpayer. *Remand Decision*, 2022 WL 659239, at *2, quoting *N.A.T. Transp., Inc.*, 165 Ohio St.3d 250, 2021-Ohio-1374, 178 N.E.3d 454, at ¶ 15 ("because Stingray claims an

exemption from the general operation of sales tax, it must show that the amended statute 'clearly expresses the exemption in relation to the facts of its claim' "). Stingray contends that this was improper and that we ought simply to apply our "normal rules of construction without a construction tilted toward taxation."

{¶ 20} It is true that in the past we have sometimes said that tax exemptions must be construed against the taxpayer. *See, e.g., N.A.T. Transp., Inc.* at ¶ 15; *Cincinnati Fed. S. & L. Co. v. McClain*, 168 Ohio St.3d 123, 2022-Ohio-725, 196 N.E.3d 799, ¶ 49 (DeWine, J., concurring in judgment only) (collecting cases). But such statements are in tension with our often-expressed commitment to apply the plain and ordinary meaning of statutory text. *See, e.g., Jones v. Action Coupling & Equip., Inc.*, 98 Ohio St.3d 330, 2003-Ohio-1099, 784 N.E.2d 1172, ¶ 12 ("When the statutory language is plain and unambiguous, and conveys a clear and definite meaning, we must rely on what the General Assembly has said"); *State v. Taylor*, 161 Ohio St.3d 319, 2020-Ohio-3514, 163 N.E.3d 486, ¶ 9 ("the proper role of a court is to construe a statute as written without adding criteria not supported by the text").

{¶ 21} The idea that special rules apply to tax exemptions appears to be a carryover from 19th-century federal caselaw dealing with the Contracts Clause of the United States Constitution and limitations on intrusions into state sovereignty. *See* Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 359-363 (2012). While this court has continued to cite the principle, we have not grounded the strict-construction rule in the statutory language of the tax exemption under consideration. Rather, we have justified the rule based upon notions about what constitutes good tax policy. *See, e.g., Parma Hts. v. Wilkins*, 105 Ohio St.3d 463, 2005-Ohio-2818, 828 N.E.2d 998, ¶ 10 (observing that because tax exemptions place a heavier burden on the nonexempt, the proponent of a tax exemption must overcome a strict construction of the statute against exemption); *Lutheran Book Shop v. Bowers*, 164 Ohio St. 359, 362, 131 N.E.2d 219 (1955) (strict construction

"must necessarily be the rule in order to preserve equality in the burden of taxation"). But what is and what is not wise tax policy is a matter to be determined by the legislature.

{¶ 22} Our task is not to make tax policy but to provide a fair reading of what the legislature has enacted: one that is based on the plain language of the enactment and not slanted toward one side or the other. "Like any other governmental intrusion on property or personal freedom, a tax statute should be given its fair meaning, and this includes a fair interpretation of any exception it contains." Scalia & Garner at 362. Tax statutes must be read through a clear lens, not one favoring tax collection. Thus, we make clear today that henceforth we will apply the same rules of construction to tax statutes that we apply to all other statutes.

A. The statutory scheme

{¶ 23} The parties do not challenge the court of appeals' determination that the new statute, the amended version of R.C. 5739.02(B)(42)(q), applies to this dispute. But they take divergent approaches to the new statute's meaning.

{¶ 24} Under the older versions of the statute, whether equipment used in fracking qualified for the tax exemption turned largely on whether something was deemed to have been used "directly" in oil and gas production. *See* 2014 H.B. 533; 1988 Am.Sub.H.B. No. 689. Thus, a body of caselaw developed that focused on whether equipment was used in the production process itself or whether its use was "preliminary and preparatory to production," *Lyons v. Limbach*, 40 Ohio St.3d 92, 95, 532 N.E.2d 106 (1988); *see also Kilbarger Constr., Inc. v. Limbach*, 37 Ohio St.3d 234, 525 N.E.2d 483 (1988).

{¶ 25} The new statute retains the requirement that to qualify for the tax exemption, a piece of equipment must be used "directly" in the production of oil or gas. R.C. 5739.02(B)(42)(q). But it adds a nonexhaustive list of items that qualify as "thing[s] transferred" and a nonexhaustive list of items that do not qualify as "thing[s] transferred."

{¶ 26} The statute begins by explaining that the sales tax does not apply where the purpose of the purchaser is to "use or consume the thing transferred directly in production of crude oil and natural gas for sale." R.C. 5739.02(B)(42)(a). It then defines "production" as "operations and tangible personal property directly used to expose and evaluate an underground reservoir that may contain hydrocarbon resources, prepare the wellbore for production, and lift and control all substances yielded by the reservoir to the surface of the earth." R.C. 5739.02(B)(42)(q).

{¶ 27} It next sets forth categories of equipment and services that constitute a "thing transferred" and those that do not constitute a "thing transferred." The distinction between what is and what is not a "thing transferred" appears to be based largely on the closeness of the item's connection with the extraction process. For the most part, items used for drilling a well or extracting oil and gas from the well are categorized as "thing[s] transferred." And items more remotely connected to those activities are categorized as not "thing[s] transferred."

{¶ 28} "Thing transferred" includes, but is not limited to, the following:

> (I) Services provided in the construction of permanent access roads, services provided in the construction of the well site, and services provided in the construction of temporary impoundments;
>
> (II) Equipment and rigging used for the specific purpose of creating with integrity a wellbore pathway to underground reservoirs;
>
> (III) Drilling and workover services used to work within a subsurface wellbore, and tangible personal property directly used in providing such services;
>
> (IV) Casing, tubulars, and float and centralizing equipment;
>
> (V) Trailers to which production equipment is attached;

> (VI) Well completion services, including cementing of casing, and tangible personal property directly used in providing such services;
>
> (VII) Wireline evaluation, mud logging, and perforation services, and tangible personal property directly used in providing such services;
>
> (VIII) Reservoir stimulation, hydraulic fracturing, and acidizing services, and tangible personal property directly used in providing such services, including all material pumped downhole;
>
> (IX) Pressure pumping equipment;
>
> (X) Artificial lift systems equipment;
>
> (XI) Wellhead equipment and well site equipment used to separate, stabilize, and control hydrocarbon phases and produced water;
>
> (XII) Tangible personal property directly used to control production equipment.

R.C. 5739.02(B)(42)(q)(i).

{¶ 29} The statute then specifies that "thing transferred" does not include:

> (I) Tangible personal property used primarily in the exploration and production of any mineral resource regulated under Chapter 1509. of the Revised Code other than oil or gas;
>
> (II) Tangible personal property used primarily in storing, holding, or delivering solutions or chemicals used in well stimulation as defined in section 1509.01 of the Revised Code;

(III) Tangible personal property used primarily in preparing, installing, or reclaiming foundations for drilling or pumping equipment or well stimulation material tanks;

(IV) Tangible personal property used primarily in transporting, delivering, or removing equipment to or from the well site or storing such equipment before its use at the well site;

(V) Tangible personal property used primarily in gathering operations occurring off the well site, including gathering pipelines transporting hydrocarbon gas or liquids away from a crude oil or natural gas production facility;

(VI) Tangible personal property that is to be incorporated into a structure or improvement to real property;

(VII) Well site fencing, lighting, or security systems;

(VIII) Communication devices or services;

(IX) Office supplies;

(X) Trailers used as offices or lodging;

(XI) Motor vehicles of any kind;

(XII) Tangible personal property used primarily for the storage of drilling byproducts and fuel not used for production;

(XIII) Tangible personal property used primarily as a safety device;

(XIV) Data collection or monitoring devices;

(XV) Access ladders, stairs, or platforms attached to storage tanks.

R.C. 5739.02(B)(42)(q)(ii).

{¶ 30} Stingray argues that all the equipment at issue qualifies for the tax exemption because it is used directly in the production of oil and gas and falls

within the category "thing transferred." The tax commissioner makes two arguments in response. First, the commissioner contends that the new statute does not change the substantive law that controls this case. In this view, regardless of whether any of the equipment falls into the category "thing transferred," the equipment does not qualify for the exemption, because it is not used directly in the actual extraction of oil or gas from the well. Second, the tax commissioner argues that none of the equipment falls into the category of "thing transferred." In the tax commissioner's view, either ground is a sufficient basis to deny the exemption.

{¶ 31} The BTA denied the exemption primarily on the basis that none of the equipment at issue constitutes a "thing transferred." Thus, we will first consider whether each item qualifies as a "thing transferred." Then, we will consider the tax commissioner's argument that the exemption should be denied because the equipment is not used directly in the production of oil or gas.

B. Thing transferred

{¶ 32} Stingray contends that all the equipment at issue is a "thing transferred" under subsection VIII because each piece of equipment is used for "[r]eservoir stimulation, *hydraulic fracturing*, and acidizing services, and tangible personal property directly used in providing such services, including all material pumped downhole," (emphasis added) R.C. 5739.02(B)(42)(q)(i)(VIII). Stingray relies on the tax commissioner's administrative definition of hydraulic fracturing: "the use of fluid and material to create or restore small fractures in a formation in order to stimulate production from new and existing crude oil and natural gas wells," Ohio Adm.Code 5703-9-63(B)(13). And it also points to the administrative definition of "reservoir stimulation," which "includes hydraulic fracturing, acidizing, and any means by which the reservoir is acted upon, by chemicals, gases, pressure related services, or otherwise as a way to stimulate production of the hydrocarbons," Ohio Adm.Code 5703-9-63(B)(24).

{¶ 33} With the exception of the data van (more on that later), we agree that each piece of equipment qualifies as a "thing transferred."

1. Most of the equipment falls into the category "thing transferred"

{¶ 34} The BTA determined that all the equipment at issue best corresponds with R.C. 5739.02(B)(42)(q)(ii)'s list of equipment that does *not* constitute a "thing transferred." For all the equipment except the data van, the BTA looked principally to R.C. 5739.02(B)(42)(q)(ii)(II), which states that the following does not qualify as a "thing transferred": "[t]angible personal property *used primarily* in storing, holding, or delivering solutions or chemicals used in well stimulation as defined in section 1509.01 of the Revised Code," (emphasis added). Thus, it concluded that the blenders, hydration units, chemical-additive units, and sand kings are not "thing[s] transferred," because they are used for storage. *Remand Decision*, 2022 WL 659239, at *3-4. Similarly, it concluded that the t-belts are not a "thing transferred," because they are used for delivering solutions or chemicals. *Id.* at *3.

{¶ 35} Before we turn to these specific items, it is worth noting a couple of general points about the construction of the statute. As indicated by the tax commissioner's and Stingray's dueling interpretations, each piece of equipment at issue serves multiple purposes and potentially implicates both the thing-transferred and the not-a-thing-transferred categories. All the aforementioned equipment is undoubtedly used in hydraulic fracturing but also has a storage or delivery function. Indeed, numerous everyday items have storage, holding, or delivery functions in addition to other functions. We think of a mechanical pencil as being used for writing, but it also stores—and may even deliver—the graphite that creates one's signature. A flashlight produces light, but it also holds and stores batteries. And a squirt gun wouldn't be much use in soaking a victim if it didn't also hold and deliver water.

{¶ 36} R.C. 5739.02(B)(42)(q)(ii)(II) recognizes this reality by limiting its application to items that are "used primarily" for the storing, holding, or delivering

of chemicals. This formulation invokes the primary-use test that has been developed in our caselaw. As we explained in *Manfredi Motor Transit Co. v. Limbach*, "[i]f the item is used in a manner which would provide exception from the tax and in another manner which would not provide an exception from the tax, the primary use test is applied." 35 Ohio St.3d 73, 76, 518 N.E.2d 936 (1988). " '[P]rimary use' is not merely the quotient of the time that a device is utilized in a taxable, vis-à-vis a nontaxable, activity. 'Primary use' connotes primacy in utility or essentiality, in quality as well as quantity." *Ace Steel Baling, Inc. v. Porterfield*, 19 Ohio St.2d 137, 140-141, 249 N.E.2d 892 (1969).

{¶ 37} In our interpretative task, we are also mindful that words must be read in the context in which they appear. *Great Lakes Bar Control, Inc. v. Testa*, 156 Ohio St.3d 199, 2018-Ohio-5207, 124 N.E.3d 803, ¶ 9. Thus, "[r]ather than limit our analysis to the 'hyperliteral meaning of each word,' we [must] consider the ordinary meaning of the word as it is used within the surrounding text." *Id.*, quoting Scalia & Garner at 356. Here, this means that we do not consider the words "storing," "holding," and "delivering" in isolation but rather consider them in the context of the rest of the statutory scheme that distinguishes categories of "thing transferred" and not "thing transferred."

{¶ 38} With these principles in mind, we review the BTA's determinations.

{¶ 39} *Blender*. Rexroad explained, "[The] blender mixes all the other chemicals, the water, the gel, and the sand together. That's why it's called a blender, blends it all up." Nonetheless, the BTA determined that under R.C. 5739.02(B)(42)(ii)(II), the blender is not a thing transferred, because it is used to hold the hydraulic mixture before the mixture is pumped downhole. *Remand Decision*, 2022 WL 659239, at *4. We disagree. Rexroad's testimony conveys that the use of the blender for blending outranks, in terms of essentiality or utility, the use of the blender for holding. A washing machine holds clothes during a wash

cycle, but no one would say that its primary use is to hold clothes. Similar logic applies here.

{¶ 40} In concluding that a blender is not a "thing transferred," the BTA relied on one of its earlier decisions, *Indep. Frac Serv., Inc. v. Limbach*, BTA No. 89-J-863, 1991 WL 155552 (June 28, 1991), in which it found under a prior version of the statute that a blender used in fracking was not taxable. *Remand Decision* at *4. It was error for the BTA to rely on *Indep. Frac*. The language of the statute controls, not a prior administrative decision applying a different version of the statute.

{¶ 41} Although the blender undoubtedly performs a holding function, that is not its primary use. The primary use of the blender is exactly what its name suggests. As Rexroad explained, the blender mixes the critical ingredients in the fracking recipe seconds before the mixture is inserted into the well. Thus, we have little difficulty concluding that the blender qualifies as a "thing transferred" under subsection VIII because it is directly used in performing hydraulic fracking services.

{¶ 42} *Hydration unit*. The BTA determined that the hydration unit does not qualify for the exemption, because it is used to store water and chemicals before pumping the mixture to the blender. *Remand Decision*, 2022 WL 659239, at *4. But Rexroad testified that the "[h]ydration unit pulls the water from the frack tanks, mixes it with gel or friction reducer, mixes it up, then pumps it over to the blender where the blender can do its job." His testimony conveys that the hydration unit's primary use is in mixing water and the various chemicals, not storage. Thus, the hydration unit also qualifies as a "thing transferred" under subsection VIII because it is "tangible personal property directly used" in hydraulic fracking services.

{¶ 43} *Chemical-additive unit*. The BTA similarly determined that the chemical-additive unit does not constitute a "thing transferred," because it is primarily used for holding chemicals. *Remand Decision* at *4. But, again,

Rexroad's testimony conveys that the chemical-additive unit is not primarily used for holding. Rather, the primary function of the unit is to provide chemicals to the hydration unit and the blender by way of hoses. Because the chemical-additive unit is "tangible personal property directly used" in hydraulic fracking services, R.C. 5739.02(B)(42)(q)(i)(VIII), it qualifies as a "thing transferred."

{¶ 44} *Sand king*. The BTA concluded that Stingray primarily uses the sand king to store or hold the sand before adding it to the fracturing liquid. *Remand Decision* at *3. The record, however, demonstrates that the sand is primarily stored at an off-site plant. The sand is driven to the well and blown from pneumatic air cans into the sand king. *Id.* The sand king then holds the immediate supply of sand to be used for a single stage of operations.

{¶ 45} Undoubtedly, the sand king holds sand for a brief period before it is injected into the mixture that is sent down the well. But the record indicates that the primary use of the sand king is to feed sand into the blender. Rexroad testified that an operator using hydraulic levers operates gates on the sand king controlling the unloading of sand onto the t-belt, which delivers the sand to the blender. Indeed, elsewhere in its decision, the BTA found that the sand kings "are used to supply sand to the blender." *Remand Decision*, 2022 WL 659239, at *2. As we have explained, when the BTA's findings contradict its legal conclusion, "the latter must fall and the findings must prevail." *Ace Steel Baling*, 19 Ohio St.2d at 142, 249 N.E.2d 892.

{¶ 46} Furthermore, the provision relied on by the BTA applies to "[t]angible personal property used primarily in storing, holding, or delivering *solutions or chemicals* used in well stimulation." (Emphasis added.) R.C. 5739.02(B)(42)(q)(ii)(II). Sand is neither a solution nor a chemical. No ordinary speaker of the English language would describe a walk along a sandy beach as being a walk along solution or chemicals.

{¶ 47} The record establishes that the sand king is used to supply sand to the pressurized mixture that is immediately injected into the well. Under these circumstances, the sand king constitutes "tangible personal property directly used" in hydraulic fracking services, R.C. 5739.02(B)(42)(q)(i)(VIII), and thus qualifies as a "thing transferred."

{¶ 48} *T-belt.* A similar analysis applies to the t-belt. The BTA characterized the t-belt as being used to "deliver[] sand to the blender" and concluded that it is not a "thing transferred," because it is " '[t]angible personal property used primarily in storing, holding, or delivering solutions or chemicals used in well stimulation.' " *Remand Decision*, 2022 WL 659239, at *3, quoting R.C. 5739.02(B)(42)(q)(ii)(II). But, again, sand is not a solution or chemical, so the provision relied on by the BTA is inapplicable.

{¶ 49} The record demonstrates that the t-belts are used directly in the fracking process, moving sand into the blender split seconds before it is injected into the manifold and sent down the well shaft. Because the t-belt is "tangible personal property directly used" in hydraulic fracking services, R.C. 5739.02(B)(42)(q)(i)(VIII), it is a "thing transferred."

2. The data van is not a thing transferred

{¶ 50} We come last to the data van. The BTA determined that because the data van is a motor vehicle, it is not a "thing transferred," *see* R.C. 5739.02(B)(42)(q)(ii)(XI), and is therefore taxable. *Remand Decision* at *3. The picture of the data van in the record clearly establishes that it is a motor vehicle. The record also shows that the data van contains various screens and monitoring devices. "Data collection or monitoring devices" are also items that the statute specifies as not falling into the category of "thing transferred." R.C. 5739.02(B)(42)(q)(ii)(XIV).

{¶ 51} Stingray, however, argues that the data van more closely aligns with equipment described as a "thing transferred." It first argues that the data van is a

"thing transferred" under subsection VIII because it is tangible personal property directly used in providing hydraulic fracking services. But recall the administrative code's definition of fracking: "the use of fluid and material to create or restore small fractures in a formation in order to stimulate production from new and existing crude oil and natural gas wells." Ohio Adm.Code 5703-9-63(B)(13). The data van is not used in the fracking process in the same way as the other items—it does not act directly on the "fluid and material." Thus, it does not fit squarely within subsection VIII's delineation of a "thing transferred."

{¶ 52} Stingray also argues that the data van is a "thing transferred" under subsection XII, which encompasses "[t]angible personal property directly used to control production equipment." In support, Stingray points to the BTA's finding that the data van serves as a "command post, where computers and operators measure, control, and direct the fracturing process." *Remand Decision*, 2022 WL 659239, at *2. The problem, though, is that the BTA did not find that the data van controls production equipment—it concluded that the computers and operators do.

{¶ 53} Third, Stingray makes a passing claim that the data van falls within R.C. 5739.02(B)(42)(q)(i)(V) as a "trailer[] to which production equipment is attached." Stingray reads this language to mean that "equipment on a trailer can be exempt if the equipment is used in the production of oil and gas." But that's not what the provision says. Subsection V speaks to a trailer's eligibility for exemption, not the eligibility of the equipment attached to it.

{¶ 54} The data van fits squarely within R.C. 5739.02(B)(42)(q)(ii)(XI)'s enumeration of items that are not "thing[s] transferred"—the data van is unquestionably a motor vehicle. None of the categories under R.C. 5739.02(B)(42)(q)(i) proposed by Stingray provide nearly such a good fit. We agree with the BTA that the data van is not a "thing transferred" under the statute.

C. Directly used in production

{¶ 55} The tax commissioner contends that even if the pieces of equipment at issue fall into the category "thing transferred," they still do not qualify for tax exemption. The commissioner notes that the statute requires that to qualify for the exemption, a "thing transferred" must be used "directly in production of crude oil and natural gas for sale." R.C. 5739.02(B)(42)(q). And he contends that the statute does nothing to alter this court's prior caselaw that only items used to send material directly into the well—as opposed to items used "preliminary and preparatory" to production, *Lyons*, 40 Ohio St.3d at 95, 532 N.E.2d 106—can qualify for the exemption.

{¶ 56} We decline to read the statutory amendments as narrowly as the commissioner suggests. To do so would render the new statute's list of "thing[s] transferred" to be largely meaningless. For example, the first thing that qualifies as a "thing transferred" is "[s]ervices provided in the construction of permanent access roads, services provided in the construction of the well site, and services provided in the construction of temporary impoundments." R.C. 5739.02(B)(42)(q)(i)(I). But under the commissioner's reading of the statute, such services could *never* qualify for the exemption, because they are "preliminary and preparatory" to the actual extraction process. The same goes for the second thing: "Equipment and rigging used for the specific purpose of creating with integrity a wellbore pathway to underground reservoirs." R.C. 5739.02(B)(42)(q)(i)(II). Indeed, under the commissioner's reading of the statute, most of the things that fall into the category "thing transferred" could never qualify for the exemption. But why would the legislature go to the trouble of describing things that fall into the category "thing transferred" when those things could never qualify for the exemption? That would hardly make sense.

{¶ 57} Further, under the commissioner's reading of the new statute, the only impact of the statutory amendment is to *restrict* the items that qualified as tax

exempt. In this view, the description of items that do not fall into the category "thing transferred" removes items that would otherwise be tax exempt. But the enumeration of items that constitute a "thing transferred" does nothing to expand the applicability of the exemption because the pre-amendment "preliminary and preparatory" exclusion continues to apply.

{¶ 58} We are not inclined to believe that the legislature chose to engage in such a pointless exercise. There is no reason to think that the legislature would have created categories of items that constituted a "thing transferred" unless it intended that, in at least some circumstances, items in that category could qualify for the tax exemption. Thus, rather than adopt the tax commissioner's construction, we apply the ordinary meaning of "use[d] * * * directly in production of crude oil and natural gas for sale," R.C. 5739.02(B)(42)(q).

{¶ 59} Recall that the tax commissioner has already determined that Stingray uses some of its equipment directly in the production of oil and natural gas for sale. In his final determination, he determined that the manifold and the pumps qualify for exemption because they "function in unison to create the high-pressure injection that actually fractures the rock formation and frees the oil and gas." But he determined that the remaining equipment is not used directly in oil and gas production. We disagree.

{¶ 60} The statute defines "production" as "operations and tangible personal property directly used to expose and evaluate an underground reservoir that may contain hydrocarbon resources, prepare the wellbore for production, and lift and control all substances yielded by the reservoir to the surface of the earth." R.C. 5739.02(B)(42)(q). Rexroad's testimony demonstrates that, other than the data van, the equipment at issue—like the manifold and the pumps—works directly to expose the underground reservoir that contains oil and gas. He testified that the mixture arrives at the manifold as a package by way of a synergetic process. He explained that the process happens so quickly that if you dropped a marble into the

hydration unit, it would take only three seconds for the marble to work its way to the manifold and be pumped into the well.

{¶ 61} The record demonstrates that the equipment is used in unison to create the injection of the mixture that is sent downhole to free the oil and gas. The blenders, hydration units, chemical-additive units, sand kings, and t-belts all work in unison with the manifold and pumps. Thus, we have little difficulty in concluding that they are used directly in the production of oil and gas.

III. CONCLUSION

{¶ 62} We conclude that the blenders, hydration units, chemical-additive units, sand kings, and t-belts are tax exempt, and we reverse the BTA's contrary decision. We uphold the BTA's determination that the data van is not tax exempt.

Decision affirmed in part
and reversed in part.

KENNEDY, C.J., and FISCHER and DETERS, JJ., concur.

BRUNNER, J., concurs in judgment only.

DONNELLY, J., concurs in part and dissents in part, with an opinion joined by STEWART, J.

DONNELLY, J., concurring in part and dissenting in part.

{¶ 63} Respectfully, I dissent in part.

{¶ 64} I agree with the majority that the hydration units and blenders whose tax-exempt classification is at issue in this appeal constitute "thing[s] transferred" under R.C. 5739.02(B)(42)(q)(i) and are therefore tax exempt, and I agree that the data van is not a "thing transferred," *see* R.C. 5739.02(B)(42)(q)(ii), and is therefore not tax exempt. However, I would hold that the sand kings, the t-belts, and the chemical-additive units also do not constitute "thing[s] transferred." In my view, these latter items fit within the category of equipment that is "used primarily in

storing, holding, or delivering solutions or chemicals used in" hydraulic-fracturing services, R.C. 5739.02(B)(42)(q)(ii)(II). Equipment that holds such materials at or delivers such materials to the site of the hydraulic fracturing will inevitably ultimately be connected to other equipment at the site or otherwise manipulated to remove the materials. There would be no point in holding materials at a hydraulic-fracturing site or delivering materials to the site to have them just sit there. The fact that the storage or delivery equipment eventually has some connection with the hydraulic-fracturing process does not change the equipment's categorization to "property directly used in providing [hydraulic-fracturing] services" under R.C. 5739.02(B)(42)(q)(i)(VIII). Otherwise, the inclusion of such storage and delivery equipment in the list of items excluded from the category of "thing transferred" in R.C. 5739.02(B)(42)(q)(ii)(II) would be superfluous.

{¶ 65} Given the foregoing, I join the majority opinion to the extent that it affirms the Board of Tax Appeals' ("BTA's") decision regarding the data van and reverses the decision regarding the hydration units and blenders. But I would uphold the BTA's determination that the sand kings, the t-belts, and the chemical-additive units are not tax exempt. Accordingly, I concur in part and dissent in part.

STEWART, J., concurs in the foregoing opinion.

Baker & Hostetler, L.L.P., Edward J. Bernert, and David D. Ebersole, for appellant.

Dave Yost, Attorney General, and Daniel G. Kim, Assistant Attorney General, for appellee.
