March 9, 2011

The Honorable Kenneth W. Oswalt
Licking County Prosecuting Attorney
20 South Second Street
Newark, Ohio 43055

SYLLABUS: 2011-007

1. Seasonal crop production activities constitute a "business located in the district" for purposes of R.C. 715.74(C)(1) if such activities take place within the geographical limits of a Joint Economic Development District and are the pursuit of a for-profit enterprise. Seasonal crop production activities in a Joint Economic Development District that constitute a business located in the district are subject to a Joint Economic Development District income tax levied pursuant to the provisions of both R.C. 715.74(C)(1) and the contract creating the Joint Economic Development District, provided such activities are not subject to an exemption granted by the contract. Only those seasonal crop production activities actually occurring within the Joint Economic Development District are subject to the Joint Economic Development District income tax.

2. The Board of Directors of a Joint Economic Development District may not exempt seasonal crop production activities, or any other area or business in a district, from a Joint Economic Development District income tax.

3. The municipalities, townships, or counties that are parties to the contract creating the Joint Economic Development District may provide for an exemption to the Joint Economic Development District income tax, and may do so by amending the contract creating the Joint Economic Development District.

4. A person who receives income from seasonal crop production activities is subject to a municipal income tax levied pursuant to R.C. Chapter 718 unless such income meets one of the exceptions of R.C. 718.01(H). Pursuant to R.C. 718.01(D)(1), a municipal corporation may not "exempt from a tax on income compensation for personal services of individuals over eighteen years of age or the net profit from a business or profession."

5. A municipal income tax levied pursuant to R.C. Chapter 718 applies to individuals, corporations, and unincorporated business entities.

MIKE DEWINE
★ OHIO ATTORNEY GENERAL ★

Opinions Section
Office 614-752-6417
Fax 614-466-0013

30 East Broad Street, 15th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

March 9, 2011

OPINION NO. 2011-007

The Honorable Kenneth W. Oswalt
Licking County Prosecuting Attorney
20 South Second Street
Newark, Ohio 43055

Dear Prosecutor Oswalt:

You have requested an opinion concerning several questions about a Joint Economic Development District (JEDD) in your county and how particular provisions of the Ohio Revised Code apply to the JEDD. Specifically, you ask:

1. Once a JEDD has been created pursuant to R.C. 715.72-.83, and an income tax has been levied by the JEDD Board in accordance with the provisions of the JEDD Contract and R.C. 715.74, are pre-existing seasonal crop production activities considered to be a "business located in the district" as that phrase is used in R.C. 715.74(C)(1)? Consequently, would pre-existing seasonal crop production activities be subject to the JEDD income tax levied pursuant to the provisions of the JEDD Contract and R.C. 715.74?

2. If the answer to the first question is yes, can the JEDD Board of Directors appointed in accordance with the provisions of the JEDD Contract and R.C. [715.78] exempt pre-existing seasonal crop production activities from the JEDD income tax levied pursuant to the provisions of the JEDD Contract and R.C. 715.74?

3. Is crop production activity subject to a municipal income tax levied pursuant to R.C. Chapter 718? If so, can a city or village council exempt crop production from a municipal income tax levied pursuant to R.C. Chapter 718?

4. With respect to a municipal income tax levied pursuant to R.C. Chapter 718, is there any distinction between a private entity engaged in crop production activities and an incorporated entity engaged in crop production activities?

We begin by examining the statutory framework and authority of a JEDD. JEDDs are created pursuant to the provisions of R.C. 715.70, R.C. 715.71, or R.C. 715.72-.81. *See generally* R.C. 715.72(B) ("[R.C. 715.72-.81] provide alternative procedures and requirements to those set forth in [R.C. 715.70] and [R.C. 715.71] for creating and operating a joint economic development district. [R.C. 715.72-.81] apply to municipal corporations and townships that are located in the same county or in adjacent counties"). We understand that the Pataskala Corporate Park JEDD was created by the "Pataskala Corporate Park Joint Economic Development District Contract" ("JEDD Contract") pursuant to the framework of R.C. 715.72-.81.

The basic structure and function of a JEDD are described in R.C. 715.72(C):

> One or more municipal corporations, one or more townships, and, under [R.C. 715.72(D)], one or more counties may enter into a contract pursuant to which they create as a joint economic development district one or more areas for the purpose of facilitating economic development to create or preserve jobs and employment opportunities and to improve the economic welfare of the people in this state and in the area of the contracting parties.[1] (Footnote added.)

We now turn to your specific questions. First, you ask whether "pre-existing seasonal crop production activities" are considered to be a "business located in the district" pursuant to R.C. 715.74(C)(1). R.C. 715.74(C)(1) provides that a contract creating a JEDD "may grant to the board the power to adopt a resolution to levy an income tax within the district and the contract may designate certain portions of the district where such an income tax may be levied." Further, "[t]he income tax may be levied in the district based on income earned by persons working within the district and based on the net profits of *businesses located in the district*." R.C. 715.74(C)(1) (emphasis added).

The phrase "businesses located in the district" is not statutorily defined for purposes of R.C. 715.74(C)(1), and "[w]here the General Assembly has not provided or attached a specific meaning to

---

[1] The term "contracting parties" is defined both by statute and by the JEDD Contract. Pursuant to R.C. 715.72(A)(1), "'[c]ontracting parties' means one or more municipal corporations, one or more townships, and, under [R.C. 715.72(D)], one or more counties that have entered into a contract under [R.C. 715.72] to create a joint economic development district." The JEDD Contract defines "contracting parties" more specifically:

> The "Contracting Parties" to this Contract are the City of Pataskala, a municipality existing and operating under the laws of the State, including the Charter of [Pataskala], the City of Newark, a municipality existing and operating under the laws of the State, including the Charter of [Newark], and the Township of Harrison, a township located in the County of Licking, Ohio existing and operating under the laws of the State, and their respective successors, in all or in part. (Parentheticals omitted.)

JEDD Contract at 2, Section 2.

a term, the common or plain meaning of the term is used." 1989 Op. Att'y Gen. No. 89-091, at 2-434. *Accord* R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 62, 446 N.E.2d 449 (1983). A "business" is "[a] commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain." *Black's Law Dictionary* 226 (9th ed. 2009). The meaning of "location" is more abstract. "[L]ocate," as a verb, means "to establish oneself or one's business : SETTLE" and "to determine or indicate the place, site, or limits of." *Merriam-Webster's Collegiate Dictionary* 730 (11th ed. 2007).

With these definitions in mind, we turn to the meaning of "seasonal crop production activities." "[S]easonal" means "of, relating to, or varying in occurrence according to the season," "affected or caused by seasonal need or availability." *Merriam-Webster's Collegiate Dictionary* 1120 (11th ed. 2007). A "crop" is "a plant or animal or plant or animal product that can be grown and harvested extensively for profit or subsistence." *Id.* at 297. "[P]roduction" means "something produced," "the act or process of producing," and the "total output esp. of a commodity or an industry." *Id.* at 991. The verb "produce" means "to give being, form, or shape to : MAKE; *esp* : MANUFACTURE" and "to cause to accrue … to bear, make, or yield something." *Id.* And finally, "activit[ies]" are "pursuit[s] in which a person is active." *Id.* at 13.

From these definitions, it is clear that seasonal crop production activities can constitute a business pursuit. Because a crop is a product that can be harvested for profit, it is reasonable to conclude that crop production is a business activity. For a business enterprise that centers on crop production, the key to determining where that business is located, for purposes of R.C. 715.74(C)(1), is where the crop production activities occur. Such a business might engage in crop production activities in more than one location, but if a business produces crops within the JEDD, it can be said to be located in the JEDD for purposes of R.C. 715.74(C)(1). Thus, seasonal crop production activities constitute a "business located in the district" for purposes of R.C. 715.74(C)(1) if such activities take place within the geographical limits of a JEDD and are the pursuit of a for-profit enterprise.

In the second part of your first question, you have asked whether seasonal crop production activities are subject to the JEDD income tax. Pursuant to R.C. 715.74(C)(1), the contract creating a JEDD "may grant to the board the power to adopt a resolution to levy an income tax within the district and the contract may designate certain portions of the district where such an income tax may be levied." Further, such an "income tax may be levied in the district based on income earned by persons working within the district and based on the net profits of businesses located in the district." R.C. 715.74(C)(1). The JEDD Contract mimics the language of the statute, stating that the JEDD income tax "shall be levied in the District based on income earned by persons working in the District and on the net profits of businesses located in the District." JEDD Contract at 10, Section 10. The JEDD Contract further requires that the JEDD income tax "shall apply in the entire District throughout the term of this Contract." *Id.*

Thus, seasonal crop production activities in a JEDD that constitute a business located in the district are subject to a JEDD income tax levied pursuant to the provisions of both R.C. 715.74(C)(1) and the JEDD Contract, provided the JEDD Contract does not expressly exempt such activities from

the imposition of the JEDD income tax. Only those crop production activities actually occurring within the JEDD are subject to the JEDD income tax.

Your second question asks whether, if the seasonal crop production activities are a business located in the district, the JEDD Board of Directors (the "Board") may exempt such seasonal crop production activities from the JEDD income tax. R.C. 715.78 governs boards of directors of JEDDs. "A board described under [R.C. 715.78(A)(1) or (2)] has no powers except as described in [R.C. 715.72-.81] and in the contract creating the [JEDD]." R.C. 715.78(B). Thus, the provisions of R.C. 715.72-.81 and the JEDD Contract are the sources of the Board's authority. The Board may not exercise a power not granted, either explicitly or implicitly, by the statutory or contractual provisions.

Pursuant to R.C. 715.74(C)(1), a JEDD "contract may grant to the board the power to adopt a resolution to levy an income tax within the district and *the contract may designate certain portions of the district where such an income tax may be levied*." (Emphasis added.) *See also* R.C. 715.74(C)(4) ("[a]n income tax levied under this section shall apply in the district or any portion of the district in which the contract authorizes an income tax throughout the term of the contract creating the district"). *See generally Desenco, Inc. v. City of Akron*, 84 Ohio St. 3d 535, 538, 706 N.E.2d 323 (1999) ("[t]his court has repeatedly held that pursuant to [the General Assembly's] plenary power [to levy taxes], the state may establish special districts and boards of directors to administer the districts, and the state may grant these boards various duties and powers, including the power to levy taxes within the district"). The statute governing the contracts creating JEDDs permits such a contract to grant a JEDD board of directors the power to levy an income tax in the district. Further, the statute permits such a contract to designate particular areas of the district where the income tax may be levied. Thus, JEDD contracting parties, but not JEDD boards of directors, may determine, by way of the contract creating a JEDD or a subsequent amendment to such contract, in which portions of the district an income tax may be levied.

The JEDD Contract grants the Board the authority to levy an income tax in the district. JEDD Contract at 10, Section 9. The JEDD Contract further provides that the income tax "*shall apply in the entire District* throughout the term of [the JEDD Contract]." *Id.* at 10, Section 10 (emphasis added). Pursuant to this language, adopted by the contracting parties when the JEDD was created by the JEDD Contract, no business located in the district is exempted from the JEDD income tax. Nonetheless, the JEDD contracting parties may amend the JEDD Contract to exempt a particular area from the JEDD income tax. The JEDD Contract provides that it "may be amended by the City [of Pataskala], [the City of Newark], and the Township [of Harrison] only in a writing approved by the respective legislative authorities of each of the Contracting Parties by appropriate legislation authorizing that amendment." *Id*. at 14, Section 15.

Accordingly, in response to your second question, the Board may not exempt seasonal crop production activities, or any other area or business in the district, from the JEDD income tax. The entities that are parties to the JEDD Contract may provide for such an exemption, and may do so by amending the JEDD Contract.

Next, you have asked whether crop production activity is subject to a municipal income tax levied pursuant to R.C. Chapter 718. You also wish to know whether the legislative authority of a municipality may exempt crop production activity from a municipal income tax. For purposes of R.C. Chapter 718, a "[t]axpayer" is "a *person* subject to a tax on income levied by a municipal corporation." R.C. 718.01(A)(8) (emphasis added). A "[p]erson," for purposes of R.C. 718.01(A)(8) and all of R.C. Chapter 718, "includes individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, governmental entities, and any other entity." R.C. 718.01(A)(11).

R.C. 718.01(D)(1) declares that, "[e]xcept as otherwise provided in [R.C. 718.01], no municipal corporation shall exempt from a tax on income compensation for personal services of individuals over eighteen years of age or the net profit from a business or profession." *See also Cincinnati Imaging Venture v. City of Cincinnati*, 116 Ohio App. 3d 1, 4, 686 N.E.2d 528 (Hamilton County 1996) ("[R.C. 718.01(D)] provides … that municipalities may not grant exemption from tax except as specified by state law"); *Columbus Division of Income Tax v. Boles*, 78 Ohio App. 3d 617, 623, 605 N.E.2d 981 (Franklin County 1992) ("[s]ince its enactment, [R.C. 718.01] has included a mandatory provision stating that no municipal corporation passing an income tax levy … 'shall exempt from such tax … the net profit from a business or profession'"). Thus, if crop production activities result in compensation for adult individuals or a net profit for a business or profession, that compensation or net profit may not be exempt from a municipal income tax unless it meets an exception provided for in R.C. 718.01. R.C. 718.01(H) states that "[a] municipal corporation shall not tax any of the following," and proceeds to list eleven categories of income that are exempt from a municipal income tax, including "military pay or allowances of members of the armed forces," "[t]he income of religious, fraternal, charitable, scientific, literary, or educational institutions" to a certain extent, intangible income as defined in R.C. 718.01(A)(5), public utility income, "compensation paid to a nonresident individual to the extent prohibited under [R.C. 718.011]," "an S corporation shareholder's distributive share of net profits of the S corporation" with certain exceptions, and "[e]mployee compensation that is not 'qualifying wages' as defined in [R.C. 718.03]." R.C. 718.01(H)(1)-(3), (6), (8)-(10). Therefore, a person who receives income from crop production activities is subject to a municipal income tax levied pursuant to R.C. Chapter 718 unless such income meets one of the exceptions of R.C. 718.01(H).

You also wish to know whether the legislative authority of a municipality may exempt crop production activity from a municipal income tax. R.C. 718.01(D)(1) prohibits a municipal corporation from exempting from a municipal income tax any compensation or net profit other than those explicitly provided for in R.C. 718.01.[2] In addition to the list of exemptions found in R.C.

---

[2] The Ohio Constitution's home rule amendment grants municipalities the "authority to exercise all powers of local self-government," including taxation. Ohio Const. art. XVIII, § 3. *See also* 1988 Op. Att'y Gen. No. 88-019, at 2-74 (quoting *State ex rel. Zielonka v. Carrel*, 99 Ohio St. 220, 227, 124 N.E. 134 (1919): "[t]here can be no doubt that the grant of authority to exercise all powers of local government includes the power of taxation"). But the General Assembly has the authority to limit a

718.01(H), R.C. 718.01(E) permits the legislative authority of a municipal corporation to, by ordinance or resolution: (1) exempt from withholding and from a tax on income compensation arising from a change in disposition of a stock option or compensation "attributable to a nonqualified deferred compensation plan or program described in section 3121(v)(2)(C) of the Internal Revenue Code"; (2) allow an individual taxpayer to deduct an amount equal to an amount paid into the taxpayer's health savings account during the taxable year; and (3) "allow[] a taxpayer who has a net profit from a business or profession that is operated as a sole proprietorship to deduct from that net profit the amount that the taxpayer paid during the taxable year for medical care insurance premiums." R.C. 718.01(E)(1)-(3).[3] None of the provisions of R.C. 718.01(E) permit a municipal corporation to exempt crop production activity from a municipal income tax. In sum, pursuant to R.C. 718.01(D)(1), a municipal corporation may not "exempt from a tax on income compensation for personal services of individuals over eighteen years of age or the net profit from a business or profession."

In your final question, you ask whether there is a distinction between a private entity engaged in crop production activities and an incorporated entity engaged in crop production activities for purposes of imposing a municipal income tax levied pursuant to R.C. Chapter 718.[4] Insofar as R.C.

---

municipality's power to tax. Ohio Const. art. XVIII, § 13 ("[l]aws may be passed to limit the power of municipalities to levy taxes"); *Angell v. City of Toledo*, 153 Ohio St. 179, 182, 91 N.E.2d 250 (1950). *See also* 1976 Op. Att'y Gen. No. 76-016, at 2-45 and 2-46 ("the power of taxation [is] a fundamental power of local government conferred upon municipalities pursuant to Section 3, Article XVIII, Ohio Constitution. However, the municipal power of taxation is limited by Section 6, Article XIII and Section 13, Article XVIII, Ohio Constitution…. These provisions give the General Assembly the authority to limit a municipality's taxation power…. R.C. 718.01 is an exercise of the General Assembly's power to limit municipal taxation"); *State ex rel. Zielonka v. Carrel*, 99 Ohio St. at 227 ("[t]he constitution recognizing the necessity of this grant of power [of taxation] conferred it on municipalities, subjecting them only to the staying hand of the general assembly in respect to its limitation").

[3] Depending on the type of business entity involved, various other provisions of R.C. 718.01 may apply to alter the way in which a municipal income tax is applied or calculated. *E.g.*, R.C. 718.01(G)(1) ("[i]n the case of a taxpayer who has a net profit from a business or profession that is operated as a sole proprietorship, no municipal corporation may tax … an amount other than the net profit required to be reported by the taxpayer on schedule C or F from such sole proprietorship for the taxable year"); R.C. 718.01(L)(1) ("[a] single member limited liability company that is a disregarded entity for federal tax purposes may elect to be a separate taxpayer from its single member in all Ohio municipal corporations in which it either filed as a separate taxpayer or did not file for its taxable year ending in 2003" if several conditions are met).

[4] By "incorporated entity," we assume you mean a corporation or nonprofit corporation incorporated pursuant to R.C. Chapters 1701 or 1702, respectively. By "private entity," we assume you mean any business entity not incorporated pursuant to the laws of Ohio. *See, e.g.* R.C. Chapter

718.01(B) prohibits a municipal corporation from taxing income at anything other than a uniform rate, a municipal corporation may not distinguish between individuals and corporations in determining the rate at which a municipal income tax is applied.[5] *See generally* 1976 Op. Att'y Gen. No. 76-016, at 2-47 (discussing *Youngstown Sheet & Tube Co. v. City of Youngstown*, 91 Ohio App. 431, 108 N.E.2d 571 (Mahoning County 1951): the Youngstown income tax was "a denial of equal protection because the tax was imposed on individuals at one rate and on corporations at a substantially higher rate"). Whether the taxpayer is an individual or a corporation, or what type of business entity the taxpayer is, may determine the way in which the uniform rate is applied, how income is calculated, and what deductions are allowed. *See, e.g.*, R.C. 718.01(A)(1); R.C. 718.01(A)(1)(g); R.C. 718.01(A)(7)-(8); R.C. 718.01(D)(2)(b); R.C. 718.01(E)(2)-(3); R.C. 718.01(F); R.C. 718.01(G)(1); R.C. 718.01(H)(9); R.C. 718.01(L)(1)-(2). Nonetheless, a municipal income tax levied pursuant to R.C. Chapter 718 is applicable to individuals, corporations, and unincorporated business entities.

In sum, it is my opinion, and you are hereby advised that:

1. Seasonal crop production activities constitute a "business located in the district" for purposes of R.C. 715.74(C)(1) if such activities take place within the geographical limits of a Joint Economic Development District and are the pursuit of a for-profit enterprise. Seasonal crop production activities in a Joint Economic Development District that constitute a business located in the district are subject to a Joint Economic Development District income tax levied pursuant to the provisions of both R.C. 715.74(C)(1) and the contract creating the Joint Economic Development District, provided such activities are not subject to an exemption granted by the contract. Only those seasonal crop production activities actually occurring within the Joint Economic Development District are subject to the Joint Economic Development District income tax.

2. The Board of Directors of a Joint Economic Development District may not exempt seasonal crop production activities, or any other area or business in a district, from a Joint Economic Development District income tax.

3. The municipalities, townships, or counties that are parties to the contract creating the Joint Economic Development District may provide for an exemption to the Joint Economic Development District income tax, and may

---

1705 (limited liability companies); R.C. Chapter 1776 (partnerships); R.C. Chapter 1782 (limited partnerships).

[5] We assume the crop production activities and the business entity in question do not qualify for the exemption in R.C. 718.01(H)(2) for the "income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities."

do so by amending the contract creating the Joint Economic Development District.

4. A person who receives income from seasonal crop production activities is subject to a municipal income tax levied pursuant to R.C. Chapter 718 unless such income meets one of the exceptions of R.C. 718.01(H). Pursuant to R.C. 718.01(D)(1), a municipal corporation may not "exempt from a tax on income compensation for personal services of individuals over eighteen years of age or the net profit from a business or profession."

5. A municipal income tax levied pursuant to R.C. Chapter 718 applies to individuals, corporations, and unincorporated business entities.

Respectfully,

MICHAEL DEWINE
Ohio Attorney General