

OPINION NO. 96-012**Syllabus:**

1. The fifty percent figure prescribed by R.C. 5709.82(D) for calculating compensation to a school district for tax revenue lost due to property tax exemption programs should be applied to the total amount of income taxes levied and collected by the municipal corporation for its use and benefit, but should not be applied to the portion of a shared income tax that is required by agreement, ordinance, and ballot language to be paid to the school district.
2. The portion of a shared income tax dedicated to a school district pursuant to R.C. 718.09 should be paid to the school district, even if the school district also receives compensation pursuant to R.C. 5709.82(D).

To: Stephanie Tubbs Jones, Cuyahoga County Prosecuting Attorney, Cleveland, Ohio
By: Betty D. Montgomery, Attorney General, February 1, 1996

I am in receipt of your request for an opinion concerning the distribution of municipal income tax to a school district pursuant to R.C. 5709.82(C) and (D) when the municipal corporation shares an income tax with the school district under the provisions of R.C. 718.09.

You have asked how the total income tax proceeds should be allocated between the city and the school district in light of R.C. 5709.82 (school district compensation provision), which provides for compensating a school district for revenues lost when a property tax exemption is granted. Your question relates to the City of Euclid, which increased its two percent income tax rate to 2.85% by enacting a shared income tax levy of .85% pursuant to R.C. 718.09.¹ By agreement, ordinance, and ballot language, the .85% is allocated between the municipal corporation and the school district, with an amount of .47% designated for the Euclid City School District and .38% remaining with the city.

Under the school district compensation provision, any political subdivision that grants an exemption for real or tangible personal property tax (commonly known as a tax abatement) under specified statutory programs -- including the enterprise zone, urban renewal, community urban redevelopment, community reinvestment area, and tax increment financing programs -- may negotiate with an affected school district to compensate that district for tax revenue that the school district would have received if the property had not been exempted from taxation. R.C. 5709.82(B). A municipal corporation that imposes an income tax is required to enter into negotiations for a compensation agreement if the municipal corporation acts on or after July 1, 1994, to grant or consent to a tax exemption that is subject to R.C. 5709.82(C) and the annual payroll of new employees equals or exceeds one million dollars. If, in such circumstances, the legislative authority of the municipal corporation and the board of education of the school district fail to negotiate an agreement that is mutually acceptable within six months of the granting of the exemption, the municipal corporation is required to compensate the school district "in the amount and manner" prescribed by R.C. 5709.82(D). R.C. 5709.82(C). The relevant portion of R.C. 5709.82(D) states:

Annually, the legislative authority of a municipal corporation subject to this division shall pay to the city, local, or exempted village school district within the territory of which the exempted property is located an amount equal to fifty per cent of the difference between the amount of taxes levied and collected by the municipal corporation on the incomes of new employees in the calendar year ending on the day the payment is required to be made, and the amount of any infrastructure costs incurred in that calendar year. (Emphasis added.)

Your letter and its attachments indicate that, on December 28, 1994, the City of Euclid granted a tax exemption to a local industry. The city and the school district were allowed six months to negotiate a mutually acceptable agreement providing for compensation to the school

¹ Pursuant to Ohio Const. art. XVIII, §§3 and 7, a municipal corporation has authority to levy an income tax, subject to statutory limits imposed by the General Assembly in accordance with Ohio Const. art. XIII, §6 and art. XVIII, §13. See, e.g., *Thompson v. City of Cincinnati*, 2 Ohio St. 2d 292, 208 N.E.2d 747 (1965). R.C. Chapter 718 sets forth statutory limits on the municipal power to impose an income tax. See, e.g., *Williams v. City of Columbus*, 40 Ohio App. 3d 71, 531 N.E.2d 1336 (Franklin County 1987). In particular, R.C. 718.01(C) requires that a municipal income tax levy in excess of one percent be approved by the electorate. Thus, voter approval was necessary for the two percent income tax of the City of Euclid. A municipal corporation, however, may adopt an income tax levy in the amount of one percent or less pursuant to its constitutional powers and without voter approval, subject to the limitations imposed by R.C. Chapter 718.

district for all or a portion of the tax revenue the school district would have received if the exemption had not been granted. R.C. 5709.82(C). Since the city and the school district did not reach such an agreement by the required date, the provisions of R.C. 5709.82(D) came into effect,² requiring that the municipal corporation pay to the school district "an amount equal to fifty per cent of the difference between the amount of taxes levied and collected by the municipal corporation on the incomes of new employees in the calendar year...and the amount of any infrastructure costs incurred in that calendar year." You have not raised any questions concerning infrastructure costs and, for ease of discussion, I assume for purposes of this opinion that they are zero. Therefore, the amount that the city must pay to the school district is an amount equal to fifty percent of "the amount of taxes levied and collected by the municipal corporation on the incomes of new employees." R.C. 5709.82(D).

In order to answer your question, it is necessary to determine which taxes are "taxes levied and collected by the municipal corporation on the incomes of new employees" for purposes of applying the fifty percent split provision. Your letter and its attachments suggest several possible ways of reading this language. Under all the possible interpretations, it is agreed that amounts collected under the city's two percent municipal income tax, *see* note 1, *supra*, should be included as taxes that are subject to the fifty percent figure, and I concur in that conclusion. The next question is whether any or all of the shared income tax is considered a tax levied and collected by the municipal corporation, so that proceeds of that tax derived from the incomes of new employees are subject to the fifty percent calculation.

A shared income tax is structured as a municipal income tax, but has as one of its purposes "to provide financial assistance to the school district through payment to the district of not less than twenty-five per cent of the revenue generated by the tax." R.C. 718.09(B). A municipal corporation and a city, local, or exempted village school district may agree to share proceeds of a tax under R.C. 718.09 only if there is a high degree of identity between the two entities. By statute, a shared income tax is available only if not more than five percent of the territory of the municipal corporation is located outside the school district and not more than five percent of the territory of the school district is located outside the municipal corporation. R.C. 718.09(A).

Before a shared income tax is adopted, the legislative authority of the municipal corporation negotiates and agrees with the board of education of the school district on matters including the tax rate, the percentage of tax revenue to be paid to the school district, the purpose for which the school district will use the money, and the method and schedule by which the municipal corporation will make payments to the school district. Then the legislative authority of the municipal corporation enacts an ordinance, which includes such information as the tax rate, the percentage of tax revenue to be paid to the school district, and the purpose for which the municipal corporation will use its share of the tax revenue. The legislative authority must also adopt a resolution indicating when the election will be held. R.C. 718.09(B). The levy is submitted to the electors of the municipal corporation and an election is conducted "in the same manner as any other municipal income tax election." R.C. 718.09(C).

Both notice of the election and the ballot language itself must include statements of the income tax rate, the percentage of tax revenue that will be paid to the school district, and the

² It is assumed, for purposes of this opinion, that the annual payroll of new employees equals or exceeds one million dollars.

municipal and school district purposes of the income tax. R.C. 718.09(C). If voter approval is obtained, "the municipal corporation shall impose the income tax." R.C. 718.09(D). "The proceeds of the levy may be used only for the specified purposes, including payment of the specified percentage to the school district." R.C. 718.09(D).

"In the construction of statutes the purpose in every instance is to ascertain and give effect to the legislative intent...." *Carter v. Division of Water, City of Youngstown*, 146 Ohio St. 203, 203, 65 N.E.2d 63, 63 (1946) (syllabus, paragraph 1). The legislative intention is "sought in the language employed and the apparent purpose to be subserved," and the goal is to adopt a construction that "permits the statute and its various parts to be construed as a whole and give effect to the paramount object to be attained." *Cochrel v. Robinson*, 113 Ohio St. 526, 527, 149 N.E. 871, 872 (1925) (syllabus, paragraph 4). It is presumed that, in enacting a statute, the General Assembly intended to reach a "just and reasonable result." R.C. 1.47(C); *see also* R.C. 1.49.

In the instant case, the General Assembly did not specify whether all or part of a shared income tax is included as a tax "levied and collected by the municipal corporation" for purposes of inclusion in the fifty percent allocation calculation. As described above, a shared income tax is adopted and implemented by the municipal corporation and is structured as a municipal income tax. Therefore, a shared income tax is levied and collected by the municipal corporation and appears to come within the language of R.C. 5709.82(D) defining the amounts that are subject to the fifty percent split.

Including the proceeds of a shared income tax in the fifty percent split calculation is a reasonable interpretation of R.C. 5709.82(D) as applied to the amount of tax that is levied and collected by the municipal corporation for its own use and benefit. The portion of a shared income tax that is levied by the municipal corporation on the incomes of new employees and allocated to the municipal corporation is a gain to the municipal corporation resulting from the development that was granted the tax exemption. Proceeds of a shared income tax retained by the city provide the city with the sort of benefit to which the school district compensation provision is directed. The municipal corporation's portion of a shared income tax, therefore, should be included in the allocation calculation.³

³ It might be argued that none of the proceeds of a shared income tax can be included in the allocation calculation because those proceeds are restricted to the purposes specified in the ordinance and ballot language. *See* R.C. 718.09(D); *see also* Ohio Const. art. XII, §5. Under this argument, the portion of the shared income tax allocated to the municipal corporation would be reserved for municipal purposes, as prescribed in the ordinance and ballot language, and could not be paid to the school district. This argument must be rejected, however, because the school district compensation provision does not require that proceeds of a municipal income tax be paid directly to the school district. Instead, it requires that the municipal corporation pay the school district "an amount equal to" fifty percent of the difference prescribed, and provides for the payment to be made "from its general fund or a special fund established for the purpose." R.C. 5709.82(D). Therefore, a municipal corporation may spend its portion of a shared income tax for the purposes for which the tax was adopted and may also include its portion of the shared income tax in the allocation calculation.

A different conclusion must be reached, however, with respect to the portion of the shared income tax that is required to be paid to the school district. Proceeds of that portion of the tax are never available to the municipal corporation, and the municipal corporation receives no benefit from that percentage of the tax as it is imposed on new employees. The purpose of the school district compensation provision -- to require an municipal corporation to share with a school district half the proceeds it receives from income taxes on new employees -- is not served by including in the calculation money that is never available to the municipal corporation for its use. When the voters approved the income tax levy in question, they understood that .47% would be paid to the Euclid City School District and .38% would be available to the municipal corporation. It would be unreasonable to include, as a tax subject to the fifty percent split, the amount of shared income tax that is required to be paid to the school district. Even though the municipal corporation is responsible for the collection and distribution of the shared income tax, the amount that is required by agreement, ordinance, and ballot language to be paid to the school district is never available to the municipal corporation and cannot reasonably be included in the amount to which the fifty percent factor is applied. *See* R.C. 1.47(C); R.C. 1.49.

For these reasons, I conclude that the calculation prescribed by R.C. 5709.82(D) applies to the total amount of income taxes levied and collected by a municipal corporation for its use and benefit, whether under a shared income tax or otherwise, but does not apply to the portion of a shared income tax that is required to be paid to the school district. I conclude, in addition, that nothing in the application of the fifty percent calculation interferes with the allocation to the school district of the amount agreed upon pursuant to R.C. 718.09. Therefore, the fifty percent figure prescribed by R.C. 5709.82(D) for calculating compensation to a school district for tax revenue lost due to property tax exemption programs should be applied to the total amount of income taxes levied and collected by the municipal corporation for its use and benefit, but should not be applied to the portion of a shared income tax that is required by agreement, ordinance, and ballot language to be paid to the school district. Further, the portion of a shared income tax dedicated to a school district pursuant to R.C. 718.09 should be paid to the school district, even if the school district also receives compensation pursuant to R.C. 5709.82(D).

In the situation with which you are concerned, the amount that is subject to the fifty percent calculation is the two percent income tax plus the .38% share that remains with the city. The school district will thus receive one-half of 2.38%, or 1.19%, plus the .47% to which it is entitled under R.C. 718.09, for a total of 1.66%. Amounts of the shared income tax due to the school district -- that is, .47% -- should be paid by the method and in accordance with the schedule adopted under R.C. 718.09. Amounts due to the school district in accordance with the fifty percent calculation -- that is, 1.19% -- are payable on December thirty-first. R.C. 5709.82(D).

Your letter and its attachments contain proposals that amounts other than 1.66% should be paid to the school district. One proposal is that, in addition to the .47% income tax already dedicated to the school district pursuant to R.C. 718.09, fifty percent of the entire 2.85% tax should be paid to the school district. This interpretation finds support in the fact that the entire amount of a shared income tax is levied and collected by the municipal corporation pursuant to R.C. 718.09 and, therefore, the total amount of a shared income tax comes within a literal application of the fifty percent split prescribed by R.C. 5709.82(D). This interpretation must be rejected, however, because it would lead to unreasonable results. *See* R.C. 1.47(C); R.C. 1.49.

The unreasonableness of paying to a school district the amount agreed upon under a shared income tax and also including in the allocation calculation the amount of shared income tax that is required to be paid to the school district is evident from an examination of the facts at issue. If the fifty percent calculation were applied to the City of Euclid's two percent income tax and also to the entire amount of the shared income tax, including the portion that is allocated to the school district, the total amount of tax subject to the calculation would be 2.85%. Fifty percent of that amount, or 1.425%, would be paid to the school district, in addition to the .47% that is allocated to the school district pursuant to R.C. 718.09, for a total of 1.895%. The 1% (half of 2%) figure is undisputed. To require an additional .895% to be paid to the school district would subject the city to paying to the school district more than the total amount of .85% assessed as a shared income tax, thereby penalizing the city for having adopted a shared income tax. This interpretation would result in increasing payments to the school district on the basis of money that had already been dedicated to the school district, in effect allocating some of the money twice. Under this proposal, the city would be required to pay more to the school district under the school district compensation provision because of having entered into a shared income tax levy under R.C. 718.09 than it would have paid if it had not concerned itself with school funding at all but had simply left the school district to seek its own income tax levy pursuant to R.C. Chapter 5748. This could not possibly be what the General Assembly intended. *See* R.C. 1.47(C); R.C. 1.49. The intent of the school district compensation provision is to require a municipal corporation to share with a school district money that the municipal corporation receives from new employees whose hiring results from the granting of a tax abatement. It would be inequitable to use a computation that could require a city to pay more tax than it collects. Therefore, the proposal to include under R.C. 5709.82(D) the entire amount of a shared income tax, while also granting a school district the portion of a shared income tax dedicated to it by agreement, must be rejected.

Another proposal is that only the two percent income tax should be included in the allocation calculation and the entire amount of shared income tax, including the portion allocated to the city and the portion allocated to the school district, should be excluded. Under this proposal, the city would receive 1.38% and the school district would receive 1.47%. This proposal is supported by the argument that, in adopting a shared income tax, the municipal corporation and school district agreed upon an allocation of proceeds of the tax, and that allocation should not be affected by the school district compensation provision. While this argument has some basis in logic, I am not aware of any statutory language indicating that such a result was intended by the General Assembly. As described above, the portion of a shared income tax that is allocated to a municipal corporation is levied and collected by the municipal corporation and comes within a literal reading of R.C. 5709.82(D). Because that portion of the tax is available for the use and benefit of the municipal corporation, it is appropriate to include it in the allocation calculation. *See* note 3, *supra*.

A third proposal is that the fifty percent figure should be applied to the total 2.85% income tax levied and collected by the city, for a figure of 1.425%, but that this amount replaces the division agreed upon for the shared income tax, so that no additional amount of shared income tax is due to the school district. This proposal must be rejected because it renders the provisions of R.C. 718.09 ineffective. As discussed above, R.C. 718.09(D) requires that proceeds of a shared income tax be used only for the specified purposes, including payment of the specified percentage to the school district. To pay a different percentage to the school district would be inconsistent with the statute. The school district compensation provision does not indicate that its provisions are intended to modify any arrangement adopted with respect to

a shared income tax. Rather, related statutes should be read together and harmonized when possible. *See, e.g., State ex rel. Adsmond v. Board of Education*, 135 Ohio St. 383, 387, 21 N.E.2d 94, 96 (1939). An interpretation that nullifies either statute should not be adopted, where a reasonable construction that gives effect to both is possible. *See, e.g., Humphrys v. Winous Co.*, 165 Ohio St. 45, 45, 133 N.E.2d 780, 781 (1956) (syllabus, paragraph 1). A proper construction of R.C. 718.09 and R.C. 5709.82 thus requires that meaning be attached to both statutes. Such a construction requires that a shared income tax be distributed according to the terms under which it was adopted.

The third proposal must be rejected also because it thwarts the purpose of R.C. 5709.82. The intent of the school district compensation provision is to provide a school district with compensation for income lost when a property tax exemption is granted by giving the school district a portion of the income of a municipal corporation. If the allocation agreed upon under the shared income tax were disregarded and the fifty percent split were applied to the portion of the shared income tax dedicated to the school district, the opposite result would be reached. Under this proposal, the .47% dedicated to the school district in the instant case would be divided between the city and the school district, so that a portion of the school district's income would be paid to the city. Rather than receiving compensation to make up for lost income, the school district would forfeit to the city some of the income that had been dedicated to the school district. This interpretation does not effect the legislative intent and, therefore, cannot be accepted.

The purpose of R.C. 5709.82, as expressed in the statute, is to compensate the school district for all or a portion of the tax revenue that the school district would have received if the tax exemption had not been granted. Further, one of the purposes of a shared income tax is "to provide financial assistance to the school district." R.C. 718.09. Under the interpretation adopted in this opinion, the purposes of both statutes are served. The school district compensation provision must be understood as a mechanism to balance the equities between municipal corporations and school districts. The allocation calculation requires the municipal corporation to share with the school district one-half of the income tax that the municipal corporation receives from the income of new employees. Any approach other than that reached in this opinion would reapportion the shares of the municipal corporation and the school district. The General Assembly has prescribed the fifty percent split as the appropriate balance between the municipal corporation's interest in attracting new business and the school district's interest in fiscal stability, absent an agreement between the parties, and this opinion preserves that balance. Furthermore, under R.C. 718.09 the voters of the City of Euclid approved an additional tax burden upon specific representation of the portions to be paid to the city and to the school district. The conclusion reached in this opinion maintains the integrity of the voter-approved distribution of .47% to the school district, while also fulfilling the General Assembly's intent that the city share with the school district the income tax proceeds that accrue to the city.

If, in particular circumstances, the municipal corporation and school district find that an allocation made in accordance with this opinion is unfair or otherwise inappropriate, they may at any time negotiate an acceptable agreement pursuant to R.C. 5709.82(C). The municipal corporation's obligation to make payments under the fifty percent split terminates when such an agreement takes effect. R.C. 5709.82(D).

For the reasons discussed above, it is my opinion, and you are advised, as follows:

1. The fifty percent figure prescribed by R.C. 5709.82(D) for calculating compensation to a school district for tax revenue lost due to property tax exemption programs should be applied to the total amount of income taxes levied and collected by the municipal corporation for its use and benefit, but should not be applied to the portion of a shared income tax that is required by agreement, ordinance, and ballot language to be paid to the school district.
2. The portion of a shared income tax dedicated to a school district pursuant to R.C. 718.09 should be paid to the school district, even if the school district also receives compensation pursuant to R.C. 5709.82(D).