

February 1, 2016

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SYLLABUS: 2016-002

1. R.C. 3709.28 and R.C. 3709.29 do not require a county budget commission to reduce the amount of a general health district appropriation measure that the county auditor apportions to a township under R.C. 3709.28(C) to an amount that does not exceed the revenue generated by the township general levy for current expenses within the ten-mill limitation.
2. The amount of a general health district appropriation measure that has been apportioned to a township by the county auditor pursuant to R.C. 3709.28(C) may be adjusted, as necessary, by the county budget commission when the commission reviews a township tax budget pursuant to R.C. 5705.32(A). An adjustment should be made to ensure that the deductions taken from the township's real property tax revenue at the semiannual apportionment of funds do not exceed the amount of revenue that may be used for those deductions and that the township is left with sufficient general levy revenue for other appropriations that the county budget commission determines may be made from the township general fund. At the semiannual apportionment of funds, the county auditor shall retain one-half of the amount of the general health district appropriation measure that has been apportioned to a township as adjusted by the county budget commission pursuant to R.C. 5705.32(A).

Michael Vaccaro, Law Director  
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3. Revenue that is generated by a special levy shall be used for the purpose specified in the language of the ballot or resolution authorizing the levy. Revenue generated by the special levy may not be used for the amount of a general health district appropriation that has been apportioned to a township if the purpose of the special levy is unrelated to the general health district's expenses.
4. R.C. 3709.29 requires the board of health of a general health district to certify an insufficiency to the board of county commissioners when the board of health determines that the moneys in the district health fund will not meet the health district's expenses because the taxes levied within the ten-mill limitation are insufficient to pay those expenses.



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OPINION NO. 2016-002

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Dear Law Director Vaccaro, Law Director Hall, and Law Director Williams:

You have requested an opinion on behalf of Jackson, Perry, and Plain Townships<sup>1</sup> about the apportionment of the Stark County Combined General Health District aggregate appropriation measure among the townships and municipal corporations of the district. Your letter states that after deducting the portion of the health district appropriation that has been apportioned to Jackson, Perry, and Plain Townships, a negative balance results in the townships' general funds. You believe that R.C. 3709.28(C) and R.C. 3709.29 require the county budget commission to reduce the amount of the general health district aggregate appropriation measure that is apportioned to the townships. You assert that under R.C. 3709.28(C) and R.C. 3709.29 the amount of a general health district appropriation measure that is apportioned to each subdivision should not exceed the amount of revenue that may be generated by each subdivision's general levy for current expenses within the ten-mill limitation.

You ask the following questions:

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<sup>1</sup> Jackson, Perry, and Plain Townships have adopted a limited home rule government pursuant to R.C. 504.01.

1. Do R.C. 3709.28(C) and R.C. 3709.29 limit the amount of a general health district appropriation measure that is apportioned to a township or municipal corporation to an amount that does not exceed the revenue generated by that subdivision's general levy for current expenses within the ten-mill limitation?<sup>2</sup>

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<sup>2</sup> In your letter, you question whether a township's share of the general health district appropriation measure may exceed the township's "general fund, inside millage." "Inside millage" is the tax revenue that is generated within the ten-mill limitation. *See Sanborn v. Hamilton Cnty. Budget Comm'n*, 142 Ohio St. 3d 20, 2014-Ohio-5218, 27 N.E.3d 498, at ¶ 7. The ten-mill limitation is created by Ohio Const. art. XII, § 2, which states:

No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation.

*See also* R.C. 5705.02 ("[t]he aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit shall not in any one year exceed ten mills on each dollar of tax valuation of such subdivision or other taxing unit, except for taxes specifically authorized to be levied in excess thereof"). The ten-mill limitation applies to both general levies and special levies. *See* R.C. 5705.04; 2013 Op. Att'y Gen. No. 2013-005, at 2-50 ("[l]evies in excess of the ten-mill limitation that are authorized by the electorate may be either general or special levies").

Every township is required to establish eight funds, one of which is a general fund. R.C. 5705.09. A township's general fund is composed of tax revenue from general levies for current expenses within and in excess of the ten-mill limitation, as well as, moneys "from sources other than the general property tax" that have not been designated by law to be used for a particular purpose. R.C. 5705.10(A). Moneys in a township's general fund resulting from a general levy for current expenses shall be used for any of the current expenses of the township and their expenditure may not be restricted to particular purposes in a resolution or by ballot language. 2013 Op. Att'y Gen. No. 2013-005, at 2-51; *see* R.C. 5705.05 ("[t]he purpose ... of the general levy for current expenses is to provide one general operating fund ... from which any expenditures for current expenses of any kind may be made"). *But see* 2011 Op. Att'y Gen. No. 2011-026, at 2-217 to 2-218 n.5 (accounts may be established in a general fund to set apart moneys that are appropriated for certain purposes). The taxing authority of a political subdivision shall include in the general levy for current expenses "[t]he amounts necessary for boards and commissioners of health[.]". R.C. 5705.05(C). For the purpose of this opinion, we understand your use of the term "general fund, inside millage" to mean revenue from a township general levy for current expenses within the ten-mill limitation.

2. May tax revenue that is generated by a township special levy within the ten-mill limitation be restricted to uses other than the expenses of the combined general health district?
3. When the board of health of a combined general health district determines that the taxes levied by the townships and municipal corporations within the ten-mill limitation will be insufficient to meet the expenses of the district, does R.C. 3709.29 require the board of health to certify that insufficiency to the board of county commissioners for the purpose of placing upon the ballot a special levy for a tax in excess of the ten-mill limitation?

**Limitation upon the Aggregate Appropriation Measure of a General Health District and the Amount of the Appropriation Apportioned to Individual Subdivisions of the General Health District**

The territory of the state is divided into health districts, with each city constituting a city health district, and the townships and villages of each county constituting a general health district. R.C. 3709.01. One or more city health districts may join with a general health district. R.C. 3709.07. “The combined district shall constitute a general health district[.]” *Id.* Jackson, Perry, and Plain Townships are part of the Stark County Combined General Health District, which was formed pursuant to R.C. 3709.07 by combining the general health district with three city health districts located in Stark County.

According to R.C. 3709.28(F):

[w]hen any general health district has been united with ... a city health district located therein, the chief executive of the city shall, annually ... certify to the county auditor the total amount due for the ensuing fiscal year from the municipal corporations and townships in the district as provided in the contract between such city and the district advisory council of the original general health district. After approval by the county budget commission, the county auditor shall thereupon apportion the amount certified to the townships and municipal corporations, and shall withhold the sums apportioned as provided in this section.

Numbered paragraph six of the contract forming the Stark County Combined General Health District states, in part, that “the necessary funds to meet the [combined general health district’s] budget shall be apportioned by the county auditor on the basis of taxable valuations among each township, village and city composing the combined general health district and paid into the district health fund, as provided by [R.C. 3709.28].”

Pursuant to R.C. 3709.28(A), “[i]f a general health district will receive any part of its revenue for a fiscal year from an appropriation apportioned among the townships and municipal corporations composing the district, the board of health of the district shall adopt an itemized appropriation

measure[.]” A general health district’s itemized appropriation measure “shall set forth the amounts for the current expenses of the district for the ensuing fiscal year.” R.C. 3709.28(B). Once the appropriation measure has been adopted by the board of health, the board shall certify the measure to the county auditor, along with an estimate of revenue that may be received by the district from all other sources.<sup>3</sup> *Id.* The county auditor then submits the appropriation measure to the county budget commission, “which may reduce the appropriation to be apportioned among the townships and municipal corporations composing the district in accordance with [R.C. 3709.28(C)].” R.C. 3709.28(B).

The revenue that is available to the general health district from state subsidies, health district fees, and taxes, including any unencumbered revenue that remains from a previous appropriation, shall be deducted from the aggregate appropriation that is approved by the county budget commission. R.C. 3709.28(C). The county auditor shall allocate a portion of the aggregate appropriation measure to each of the townships and municipal corporations comprising the general health district. *Id.* The share of the aggregate appropriation measure that is allocated to each township or municipal corporation is determined “on the basis of the taxable valuations in such townships and municipal corporations.” *Id.*

In February and August of each year, the county auditor and county treasurer settle the real and public utility property taxes and assessments that have been collected. R.C. 319.43(A); R.C. 321.24(A), (C). As soon as the settlement is completed, “the county treasurer shall pay to the township fiscal officer, or the treasurer of a municipal corporation … all moneys in the county treasury payable to such … subdivisions.” R.C. 321.31; *see also* 1985 Op. Att’y Gen. No. 85-067, at 2-261. “The [county] auditor, when making the auditor’s semiannual apportionment of funds, shall retain at each semiannual apportionment one-half of the amount [of the general health district appropriation] apportioned to each township and municipal corporation.” R.C. 3709.28(C). The moneys retained by the county auditor “shall be placed in a separate fund to be known as the ‘district health fund.’” *Id.*

If the expenses of the health district will not be met by the moneys in the district health fund because the tax revenues that are generated within the ten-mill limitation by the subdivisions of the

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<sup>3</sup> Other sources of revenue that may be available to a general health district include subsidies from the state paid pursuant to R.C. 3709.32, fees the health district may charge for services, and taxes “levied for the benefit of the district[.]” R.C. 3709.28(B). Special tax levies may be imposed for the benefit of a general health district under the authority provided in R.C. 3709.29, which authorizes imposing a special levy in excess of the ten-mill limitation “in order to provide the board of health [of a general health district] with sufficient funds[,]” or R.C. 5705.191, which authorizes a subdivision to impose a special levy in excess of the ten-mill limitation “to supplement the [subdivision’s] general fund for the purpose of making appropriations for … health[.]”

general health district are insufficient, “the board of health [of the health district] shall certify the fact of such insufficiency to the board of county commissioners of the county in which such district is located.” R.C. 3709.29. When a certification of insufficiency has been submitted to the board of county commissioners, the board of county commissioners has a mandatory duty to pass a resolution to place upon the ballot a special levy in excess of the ten-mill limitation for the benefit of the general health district. *Id.*; 2001 Op. Att'y Gen. No. 2001-013 (syllabus).

A county budget commission is not required to reduce a general health district appropriation measure when it exceeds the amount of tax revenue that may be generated by the townships and municipal corporations within the ten-mill limitation. Before the aggregate appropriation measure is allocated among the townships and municipal corporations of the general health district, revenues from other sources, such as state subsidies, fees charged by the health district, any unencumbered balance in the district health fund from a prior year, and any taxes that may be levied for the benefit of the health district, are deducted from the appropriation measure that is fixed by the county budget commission. R.C. 3709.28(B)-(C). Insofar as a general health district has revenue available to it from those sources, the district may meet its expenses even if the expenses exceed the revenue that may be generated from taxes levied within the ten-mill limitation.

In addition, the plain language of R.C. 3709.29 is recognition that a general health district’s aggregate appropriation measure may exceed the revenue that may be generated by taxes levied within the ten-mill limitation. Indeed, the purpose of a tax levied pursuant to R.C. 3709.29 is to provide for the expenses of a general health district when the amount of revenue generated by taxes levied by the subdivisions of the general health district within the ten-mill limitation is insufficient to pay those expenses. *See* 1986 Op. Att'y Gen. No. 86-022, at 2-119 (a special levy is imposed pursuant to R.C. 3709.29 “because of the inability of townships and municipalities within the district to adequately fund the district with taxes within the ten-mill limitation”). If the county budget commission were required to reduce the amount of a general health district appropriation measure whenever it exceeded the amount of tax revenue that may be generated within the ten-mill limitation, there would never be a reason to apply the provisions of R.C. 3709.29. It is well accepted that “the General Assembly is not presumed to do a vain or useless thing, and ... when language is inserted in a statute it is inserted to accomplish some definite purpose.” *State ex rel. Cleveland Elec. Illuminating Co. v. Euclid*, 169 Ohio St. 476, 479, 159 N.E.2d 756 (1959).

Neither R.C. 3709.28(C) nor R.C. 3709.29 limits the amount of a general health district appropriation measure that may be apportioned by the county auditor to an individual township based upon the amount of revenue that may be generated from that township’s general levy for current expenses within the ten-mill limitation. R.C. 3709.28(B) and (C) authorize a county budget commission to reduce the overall appropriation measure of the general health district. *See* R.C. 3709.28(B) (“the county budget commission ... *may reduce the appropriation* to be apportioned among the townships and municipal corporations” (emphasis added)); R.C. 3709.28(C) (“[t]he aggregate appropriation, as fixed by the commission ... shall be apportioned by the county auditor among the townships and municipal corporations” (emphasis added)). The apportionment, or the

share of the aggregate appropriation that is allocated to the townships and municipal corporations, is determined “on the basis of taxable valuations[.]” R.C. 3709.28(C). Thus, under R.C. 3709.28 the only way to reduce the amount apportioned to a township or municipal corporation is to reduce the total appropriation measure. As we have already explained, however, a county budget commission is not required to reduce the total amount of a general health district appropriation measure when that amount exceeds the revenue from taxes levied within the ten-mill limitation.<sup>4</sup>

R.C. 3709.29 authorizes a special levy in excess of the ten-mill limitation to provide for an expense of the general health district when the moneys from taxes levied within the ten-mill limitation are insufficient to meet the health district’s expenses. The statute does not address the amount of a general health district appropriation measure that may be apportioned to a particular township. Rather, R.C. 3709.29 provides a mechanism for the general health district to meet its expenses when the moneys retained by the county auditor under R.C. 3709.28(C) and credited to the district health fund are not sufficient to meet the expenses. Therefore, R.C. 3709.28 and R.C. 3709.29 do not require a county budget commission to reduce the amount of a general health district appropriation measure that is apportioned to a township under R.C. 3709.28(C) to an amount that does not exceed the revenue generated by the township general levy for current expenses within the ten-mill limitation.<sup>5</sup>

Nevertheless, R.C. 3709.28 and R.C. 3709.29 must be read *in pari materia* with R.C. 5705.28 through R.C. 5705.39. *See* 1937 Op. Att’y Gen. No. 997, vol. II, p. 1744, 1746. Subject to certain exceptions, R.C. 5705.28 requires every taxing authority to adopt a tax budget for the subdivision. A tax budget shall contain, *inter alia*, “[a] statement of the necessary current operating expenses for the

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<sup>4</sup> A county budget commission has discretion to reduce the total appropriation measure of a general health district. R.C. 3709.28(B). Several factors may influence that decision, including the amount of revenue generated by taxes levied within the ten-mill limitation. However, R.C. 3709.28 does not require a county budget commission to reduce the appropriation measure based upon that amount.

<sup>5</sup> The special levy in excess of the ten-mill limitation that is authorized by R.C. 3709.29 shall be relied upon when tax revenues generated within the ten-mill limitation are insufficient to satisfy a general health district’s expenses. From the language of R.C. 3709.29 we may infer that a township is permitted, but not required, to meet its share of the general health district appropriation measure out of township revenues received from sources other than taxes levied within the ten-mill limitation. A township may use other moneys in its general fund that are not required to be used for another purpose to satisfy its share of the general health district appropriation measure. *See generally*, R.C. 5705.10(A) (moneys composing a township general fund). Alternatively, a board of township trustees may adopt a resolution that states that a levy in excess of the ten-mill limitation is necessary to meet the current expenses of the township, R.C. 5705.19(A), or to supplement the township general fund in order to make appropriations for health, R.C. 5705.191.

ensuing fiscal year for each department and division of the subdivision ... and the fund from which such expenditures are to be made.” R.C. 5705.29(A)(1). To assist in the preparation of a township tax budget, the general health district is required to submit “an estimate of contemplated revenue and expenditures for the ensuing fiscal year” to the board of township trustees. R.C. 5705.28(C)(1). This ensures that a township tax budget includes the township’s share of the general health district appropriation measure. 1999 Op. Att’y Gen. No. 99-015, at 2-118; 1937 Op. Att’y Gen. No. 997, vol. II, p. 1744, 1747 (the amount that a general health district requires from each subdivision within the district should be requested from the subdivision in accordance with G.C. 5625-20, the predecessor of R.C. 5705.28, “so that the annual tax budget of each subdivision may show the amount which that subdivision must raise for the benefit of a health district”).

Revenues from a township general levy for current expenses within the ten-mill limitation, which are paid into the township general fund, may be used to pay a township’s share of the general health district appropriation measure. *See* R.C. 5705.05(C); R.C. 5705.10(A). Accordingly, the amount apportioned to a township for a general health district appropriation measure and the amount of revenue anticipated from the township general levy for current expenses shall be included in the township tax budget each year. *See* R.C. 5705.29(B)(2); 1999 Op. Att’y Gen. No. 99-015, at 2-119 (“[t]ownship moneys paid to the board of health of a general health district pursuant to R.C. 3709.28 are clearly included within the official certificate of estimated resources”); 1986 Op. Att’y Gen. No. 86-022, at 2-117 to 2-118 (tax revenue retained by the county auditor under R.C. 3709.28(C) is included in a township’s budget even if it is not paid directly by the township); 1954 Op. Att’y Gen. No. 3525, p. 59, 62 (“when an obligation imposed by law on a township or other subdivision is to be paid on its behalf by the county auditor, out of funds which belong to it, these are expenditures of the subdivision and under any process of accounting would be considered as monies received and paid by the subdivision, just as completely as though they actually passed through the hands of the clerk or treasurer of the subdivision”).

Once a township tax budget is adopted by the board of township trustees, the tax budget is submitted to the county auditor, who presents the tax budget to the county budget commission. R.C. 5705.30-.31. “The budget commission shall examine such budget and ascertain the total amount proposed to be raised in the county for the purposes of each subdivision and other taxing units in the county.” R.C. 5705.31. In reviewing a township tax budget, “[t]he county budget commission shall adjust the estimated amounts required from the general property tax for each fund ... so as to bring the tax levies required therefor within the limitations specified in [R.C. 5705.01-.47.]” R.C. 5705.32(A). In addition, the county budget commission shall determine the appropriations that may be made from each fund of the township. R.C. 5705.32(A); R.C. 5705.35(A).

The purpose of the county budget commission’s review of a subdivision’s tax budget is to ensure that taxes are levied within statutory and constitutional limitations and to allocate revenue from real property taxes among the subdivisions and taxing units. *See* 2010 Op. Att’y Gen. No. 2010-031,

at 2-227 (“the amount of inside millage available to a city is contingent upon the amount of inside millage sought by the county and other overlapping taxing units”); 1937 Op. Att’y Gen. No. 997, vol. II, p. 1744, at 1747 (“[t]he budget commission is the county financial coordinating body for the revision and readjustment of estimates and generally to see that all necessary items for debt charges and current expenses are contained in the various budgets of the local taxing authorities and to see that the same are within the limitations imposed by the State Constitution”). In reviewing a tax budget, a county budget commission determines that the taxes have been properly authorized. *See R.C. 5705.31; R.C. 5705.341* (taxes must be “clearly required” by a tax budget). This involves a determination that the moneys generated by the tax are needed by the taxing authority and budgeted for the purpose of meeting that need. *Vill. of S. Russell v. Budget Comm’n of Geauga Cnty.*, 12 Ohio St. 3d 126, 132, 465 N.E.2d 876 (1984). The county budget commission also ensures that the expenditures of a subdivision do not exceed the subdivision’s resources. *See* 1999 Op. Att’y Gen. No. 99-020, at 2-142 (“the adoption of a tax budget subjects the finances of the subdivision or taxing unit to public view, to ensure, among other things, the proper expenditure of the moneys of the subdivision or taxing unit and to prevent the expenditures of the subdivision or taxing unit from exceeding its available resources”).

After the county budget commission completes its review of a township tax budget, it shall certify the results of its review to the board of township trustees, which “shall authorize the necessary tax levies and certify them to the county auditor[.]” R.C. 5705.34. The board of township trustees “shall revise its tax budget … so that the total contemplated expenditures from any fund during the ensuing fiscal year will not exceed the total appropriations that may be made from such fund, as determined by the budget commission in its certification[.]” R.C. 5705.35(A). This revised tax budget is “the basis of the annual appropriation measure” that is adopted by a board of trustees. *Id.*; *see also* R.C. 5705.38(A). “The total appropriations from each fund shall not exceed the total of the estimated revenue available for expenditure therefrom, as certified by the budget commission[.]” R.C. 5705.39.

In reading R.C. 3709.28 and R.C. 5705.28 through R.C. 5705.39 *in pari materia*, we must endeavor to construe the statutes harmoniously and in such a way as to give effect to all parts of the statutes. *Johnson’s Markets, Inc. v. New Carlisle Dep’t of Health*, 58 Ohio St. 3d 28, 35, 567 N.E.2d 1018 (1991). The amount of a general health district appropriation that is paid with revenue from a township general levy for current expenses within the ten-mill limitation is limited by other demands on the township general levy for current expenses within the ten-mill limitation. *See R.C. 5705.05* (revenue from the general levy for current expenses shall be used to pay any current expense of the subdivision); 2007 Op. Att’y Gen. No. 2007-036, at 2-370 (“[t]he amounts so apportioned among the townships and municipal corporations [for a general health district appropriation measure] are levied within the ten-mill limitation and thus are limited by other demands upon inside millage”). If the amount of a general health district appropriation measure that has been apportioned to a township consumes all or most of the revenue from the township general levy for current expenses within the ten-mill limitation, the township will be left without enough general levy moneys to meet its other current expenses. The county auditor also may not be able to retain the amount of moneys that he is

required to retain at the semiannual apportionment of funds from the moneys that may be used for that purpose. Additionally, if a county auditor is required to retain the amount of a general health district appropriation that has been apportioned to a township regardless of how the revenue from the township general levy was allocated in the township tax budget, the authority of the county budget commission to balance the appropriations that may be made from the general fund for the other expenses of the township will be nullified.

Although no statute explicitly requires a county budget commission to adjust the amount of a general health district appropriation apportioned to an individual township, we believe that a county budget commission has the authority to make such an adjustment pursuant to R.C. 5705.28 through R.C. 5705.39. The duties assigned to a county budget commission pursuant to R.C. 5705.28 through R.C. 5705.39 place the initial responsibility upon a county budget commission of ensuring that sufficient tax revenues are raised by a township and that expenditures included in a township tax budget do not exceed those revenues. Thus, to give effect to all the provisions in R.C. 3709.28 and R.C. 5705.28 through R.C. 5705.39, we conclude that when the county budget commission reviews a township tax budget pursuant to R.C. 5705.32(A), the county budget commission may adjust, as necessary, the amount of a general health district appropriation measure that has been apportioned to a township. An adjustment should be made to ensure that the deductions taken from the township's real property tax revenue at the semiannual apportionment of funds do not exceed the amount of revenue that may be used for those deductions and that the township is left with sufficient general levy revenue for other appropriations that the county budget commission determines may be made from the township general fund. At the semiannual apportionment of funds, the county auditor shall retain one-half of the amount of the general health district appropriation measure that has been apportioned to a township as determined by the county budget commission pursuant to R.C. 5705.32(A).<sup>6</sup> The county auditor shall not retain moneys to meet the township's one-half share of the general health district appropriation measure from tax revenue that is required to be paid to a special fund of the township,<sup>7</sup> the purpose of which is unrelated to the general health district appropriation measure.<sup>7</sup>

### **Use of Revenue from a Special Levy within the Ten-Mill Limitation**

Your next question asks whether the use of tax revenue that is generated by a township special levy within the ten-mill limitation may be restricted to a particular purpose that does not include a

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<sup>6</sup> When a county budget commission reduces the amount of the general health district appropriation measure that has been apportioned to a specific township, the moneys comprising the district health fund will be insufficient to meet the expenses of the general health district, which will require the general health district to apply the provisions of R.C. 3709.29.

<sup>7</sup> Further discussion of the use of revenue from a special levy or moneys credited to a special fund is presented below.

general health district appropriation measure. The following taxes may be levied by the taxing authority of a subdivision:<sup>8</sup>

- (A) The general levy for debt charges within the ten-mill limitation;
- (B) The general levy for current expense within the ten-mill limitation;
- (C) Special levies authorized by [R.C. 5705.01-.47], within the ten-mill limitation;
- (D) The general levy for debt charges authorized by law or by vote of the people in excess of the ten-mill limitation;
- (E) Other special or general levies authorized by law or vote of the people in excess of the ten-mill limitation.

R.C. 5705.04. Every tax that is levied by a subdivision shall identify the purpose for which it is enacted and the revenue generated by the tax shall be used only for the purpose for which the tax was imposed. Ohio Const. art. XII, § 5; 2010 Op. Att'y Gen. No. 2010-028, at 2-206; 1999 Op. Att'y Gen. No. 99-015, at 2-115 n.1.

“The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures *for current expenses of any kind* may be made.” R.C. 5705.05 (emphasis added). “A special levy is a tax that is levied for a special purpose.” 1999 Op. Att'y Gen. No. 99-015, at 2-115. Whether a tax is levied for a special purpose is determined by examining the resolution of the taxing authority, and where a special levy is presented to the electorate, the ballot language. 2010 Op. Att'y Gen. No. 2010-028, at 2-205 to 2-206. Although the language of the resolution or ballot need not use the term “special levy,” if the language designates a particular purpose for the tax revenue, other than the current expenses of the subdivision, the levy will be deemed a special levy. *Id.*; cf. 2013 Op. Att'y Gen. No. 2013-005, at 2-51 (proceeds of a general levy for current expenses “must remain available for all current expenses of the subdivision, rather than being earmarked for a particular purpose” (quoting 1988 Op. Att'y Gen. No. 88-101, 2-498 n.1)).

To ensure that tax revenue is used only for the purpose for which the tax was imposed, the revenue shall be paid into certain funds of the subdivision. See R.C. 5705.10. Revenue from a general levy for current expenses within or in excess of the ten-mill limitation shall be paid to the subdivision’s general fund. R.C. 5705.10(A). Revenue from a special levy within or in excess of the ten-mill limitation shall be credited to a special fund that is created for each special levy. R.C.

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<sup>8</sup> A township is a “subdivision” and the board of township trustees is the “taxing authority” for the purpose of R.C. Chapter 5705. R.C. 5705.01(A); R.C. 5705.01(C).

5705.10(C). “Money paid into any fund shall be used only for the purposes for which such fund is established.” R.C. 5705.10(I). Therefore, in response to your question, revenue that is generated by a special levy shall be used for the purpose specified in the language of the ballot or resolution authorizing the levy. Revenue generated by the special levy may not be used for the amount of a general health district appropriation that has been apportioned to a township if the purpose of the special levy is unrelated to the general health district’s expenses.

### **Special Levy Pursuant to R.C. 3709.29**

Your final question asks whether R.C. 3709.29 requires the board of health of a general health district to certify an insufficiency to the board of county commissioners for the purpose of placing upon the ballot a special levy for a tax in excess of the ten-mill limitation when the board of health determines that the taxes levied by the townships and municipal corporations within the ten-mill limitation will be insufficient to meet the expenses of the district. R.C. 3709.29 states, in pertinent part:

If the estimated amount of money necessary to meet the expenses of a general health district program will not be forthcoming to the board of health ... out of the district health fund because the taxes within the ten-mill limitation will be insufficient, the board of health *shall certify* the fact of such insufficiency to the board of county commissioners of the county in which such district is located. (Emphasis added.)

“It is axiomatic that when it is used in a statute, the word ‘shall’ denotes that compliance with the commands of that statute is *mandatory*.” *Dept. of Liquor Control v. Sons of Italy Lodge 0917*, 65 Ohio St. 3d 532, 534, 605 N.E.2d 368 (1992). Nothing within the context of R.C. 3709.29 indicates that a contrary meaning was intended by the General Assembly. Therefore, when the board of health of a general health district determines that the moneys comprising the district health fund will not meet the expenses of the health district because the taxes levied within the ten-mill limitation are insufficient, R.C. 3709.29 requires the board of health to certify the insufficiency to the board of county commissioners.

The special levy authorized by R.C. 3709.29 may be resorted to only after it is determined that “the estimated amount of money necessary to meet the expenses of a general health district program will not be forthcoming to the board of health of such district out of the district health fund because the taxes within the ten-mill limitation will be insufficient[.]” See 2001 Op. Att’y Gen. No. 2001-013, at 2-79 (“board of county commissioners would have no duty, and indeed no authority, to pass a resolution submitting the question of the tax levy to the voters if there were no insufficiency of funds within the ten-mill limitation to meet the expenses of the health district”). A township or municipal corporation may not create this insufficiency by levying less than the maximum permissible amount of taxes within the ten-mill limitation. R.C. 5705.05(C) requires the subdivisions to include in their

general levy for current expenses an amount sufficient to pay their share of the general health district appropriation. In addition, a board of health of a general health district may not forgo revenues generated by the townships and municipal corporations within the ten-mill limitation and instead rely solely upon a special levy authorized by R.C. 3709.29 for satisfaction of its appropriation measure. 1953 Op. Att'y Gen. No. 2569, p. 163, 167 (“the board [of health of a general health district] has no right to resort to the extra tax levy ... until it has allocated to its requirements the funds provided by the regular levies, and it has been determined that there will be a deficiency”). It follows that the townships and municipal corporations shall have levied the maximum permissible amount of taxes within the ten-mill limitation before it may be determined that the taxes within the ten-mill limitation will be insufficient to meet a general health district’s expenses pursuant to R.C. 3709.29.

### **Conclusions**

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. R.C. 3709.28 and R.C. 3709.29 do not require a county budget commission to reduce the amount of a general health district appropriation measure that the county auditor apportions to a township under R.C. 3709.28(C) to an amount that does not exceed the revenue generated by the township general levy for current expenses within the ten-mill limitation.
2. The amount of a general health district appropriation measure that has been apportioned to a township by the county auditor pursuant to R.C. 3709.28(C) may be adjusted, as necessary, by the county budget commission when the commission reviews a township tax budget pursuant to R.C. 5705.32(A). An adjustment should be made to ensure that the deductions taken from the township’s real property tax revenue at the semiannual apportionment of funds do not exceed the amount of revenue that may be used for those deductions and that the township is left with sufficient general levy revenue for other appropriations that the county budget commission determines may be made from the township general fund. At the semiannual apportionment of funds, the county auditor shall retain one-half of the amount of the general health district appropriation measure that has been apportioned to a township as adjusted by the county budget commission pursuant to R.C. 5705.32(A).
3. Revenue that is generated by a special levy shall be used for the purpose specified in the language of the ballot or resolution authorizing the levy. Revenue generated by the special levy may not be used for the amount of a general health district appropriation that has been apportioned to a township if the purpose of the special levy is unrelated to the general health district’s expenses.

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4. R.C. 3709.29 requires the board of health of a general health district to certify an insufficiency to the board of county commissioners when the board of health determines that the moneys in the district health fund will not meet the health district's expenses because the taxes levied within the ten-mill limitation are insufficient to pay those expenses.

Very respectfully yours,



MICHAEL DEWINE  
Ohio Attorney General