

OPINION NO. 77-020

Syllabus:

1. Under the provisions of R.C. 5713.31, the county auditor shall make an original determination as to whether land qualifies for valuation at its current agricultural use value. The determination of the county auditor is subject to the direction and supervision of the ~~Commisisoner~~ Commissioner of Tax Equalization and to various statutory procedures for review.

2. Exceptions under 5713.31 should be strictly construed in accordance with the wording of Ohio Constitution, Article II, Section 36 (effective January 1, 1974) and the rules of the Board of Tax Appeals should be interpreted narrowly in the interest of achieving uniformity of assessment within and between the 88 counties of Ohio.

3. The determination of the county auditor as to whether land is being used "exclusively for agricultural purposes with no other influences being present" in accordance with BTA-6.01 II is subject to both the direction and supervision of the Commissioner of Tax Equalization and various statutory methods of review, including appeal to the Board of Tax Appeals.

4. The word "exclusively", as used in R.C. 5713.30, should be construed strictly and given its plain meaning.

5. A factual determination is necessary as to whether the non-use of a portion of a tract, lot or parcel of land is consistent with the devotion of the entire tract, lot or parcel to exclusively agricultural use. Where non-use of a portion includes any purpose inconsistent with the devotion of the entire tract to agricultural use, no part of such tract, lot or parcel is used and devoted exclusively to agricultural use for the purposes of R.C. 5713.30.

6. The county auditor may exercise discretion under R.C. 5713.01 in determining whether any other influence is present under BTA-6.01, subject to the direction and supervision of the Commissioner of Tax Equalization.

To: Stephan M. Gabalac, Summit County Pros. Atty., Akron, Ohio
By: William J. Brown, Attorney General, April 25, 1977

I have before me your request for my opinion on a series of questions pertaining to R.C. 5713.30 et seq., the Agricultural Farm Bill. Your questions may be stated as follows:

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1. Is the County Auditor the final authority in determining whether a property qualifies under R.C. 5713.31 and following?
2. Must R.C. 5713.31 be interpreted strictly in accordance with the wording of the amendment and the rules of the Department of Tax Equalization?
3. Is the County Auditor the final judge as to whether or not land is being used exclusively for agricultural purposes with no other influence being present in accordance with the rule of the Department of Tax Equalization, OAC 5705-5-01 (previously BTA-6.01 II)?
4. What is the meaning of the word "exclusively" as used in the statute?
5. Where a small part of the land is devoted to agricultural uses as defined in R.C. 5713.30(A)(1), and a larger portion is unused for any purposes, does the fact that a part of the land so used is devoted to agricultural use mean that the entire tract is thus, "used and devoted exclusively to agricultural use?"

Note that we are talking in the above paragraph of land of thirty acres or more. I believe there is no dispute as to the standard to be applied to lands of less than thirty acres.

6. Does the Auditor have discretion under R.C. 5713.01 to use his judgment in determining whether any other influence is present under the wording of OAC 5705-5-01 (previously BTA-6-01) which says: "if the highest and best use was exclusively agricultural with no other influence being present?"
7. May the Auditor review previous applications, correct errors, and revalue and assess, at any time, all or any part of such real estate which is claimed to be devoted exclusively to agricultural use?

It should be noted at the outset that the statutory provisions applicable to your questions have been amended since your request by Am. Sub. H.B. 920, effective October 11, 1976. Under the provisions of Section 3 of Am. Sub. H.B. 920, the administrative functions of the Board of Tax Appeals enumerated within the act were transferred to the newly created office of Commissioner of Tax Equalization at the effective date. Section 4 specifies that the office of Commissioner of Tax Equalization shall be deemed and held to constitute the continuation of the Board of Tax Appeals for the purpose of succession to the administrative functions, powers, duties and obligations set forth in Section 1 of the act. Section 4 further specifies that:

All rules, regulations, acts, determinations, and decisions of the board of tax appeals pertaining to the functions transferred and assigned by this act to the commissioner of tax equalization in force at the time of such transfer, assignment, assumption, or devolution shall continue in force and effect as rules, regulations, acts, determinations, and decisions of the commissioner until duly modified or repealed by the commissioner.

Inasmuch as no modification or repeal of rules promulgated by the Board of Tax Appeals relative to the administrative functions

discussed at length below has yet occurred, the discussion below will refer to the applicable rules of the Board of Tax Appeals. Clarity, however, requires a recognition that the administrative functions and duties previously reposed in the Board of Tax Appeals are currently vested in the Commissioner of Tax Equalization. Further, it must be noted that renumbering of administrative agency rules under the guidelines established by the Legislative Reference Bureau has occurred since your request. Discussion of pertinent rules of the Department of Tax Equalization will therefore, note both the old and new numeration.

Under the authority of Article II, Section 36, Constitution of Ohio, the provisions of R.C. 5713.31, et seq., have been enacted to specify that land devoted exclusively to agricultural use be valued for real property taxes at the current value such land has for agricultural purposes. Since the procedures set forth therein vary from the usual practice of valuation at the highest and best use, a substantial tax savings generally occurs when an owner of agricultural land files an application under R.C. 5713.31 and the county auditor determines that land shall be valued for the purposes of real property tax at its current value for agricultural purposes. With this framework in mind, I now turn to your specific questions.

1. Is the county auditor the final authority in determining whether a property qualifies under R.C. 5713.31 et seq.?

Pursuant to R.C. 5713.31, the auditor determines whether land is devoted exclusively for agricultural use. If he so determines, then the value of the land for real property tax purposes shall be the current value such land has for agricultural use as if no other influence is present, thereby yielding a tax less than would be the case if the property were taxed at its highest and best use. However, he makes such determination and appraises the land in accordance with rules adopted by the Commissioner of Tax Equalization. R.C. 5715.01 gives the Commissioner this authority:

"The commissioner of tax equalization shall direct and supervise the assessment for taxation of all real property. The commissioner shall adopt, prescribe, and promulgate rules for the determination of true value and taxable value of real property by uniform rule for such value which shall first be applied in a county in determining the new taxable values to be placed on the tax list and duplicate in or after tax year 1972, by order of the commissioner of tax equalization, following the completion of the county's sexennial reappraisal and for the determination of the current agriculture use value of land devoted exclusively to agricultural use. . . . County auditors shall, under the direction and supervision of the board, be the chief assessing officers of their respective counties, and shall list and value the real property within their respective counties for taxation in accordance with this section and sections 5713.03 and 5713.31 of the Revised Code and with such rules of the commissioner of tax equalization. . . ."

(Emphasis added.)

R.C. 5713.30 requires the Commissioner to furnish forms:

"The commissioner of tax equalization shall prescribe for and furnish to all . . . county auditors, . . . forms for . . . all other documents, files, and records authorized or required by any law which relates to the assessment, levy, or collection of taxes or the reduction of taxes or by any rules, regulations, orders, or instructions of the commissioner. . . ."

R.C. 5715.29 places a further duty on the Commissioner to enforce his rules and regulations and specifically requires the forms prescribed by him to be observed and used:

"The commissioner of tax equalization shall prescribe such general and uniform rules and regulations and issue such orders and instructions, not inconsistent with law, as he deems necessary, as to the duties of all officers which relate to the assessment of property and the levy and collection of taxes. The commissioner shall cause the rules and regulations prescribed by him to be observed, the orders and instructions issued by him to be obeyed, and the forms prescribed by him to be observed and used."

R.C. 5713.31 enables the Commissioner:

"To enforce his rules, regulations, orders, instructions and compel the observance and use of the forms prescribed by him, the commissioner of tax equalization may institute or cause to be instituted any civil or criminal proceedings provided by law as a punishment for the failure to obey any lawful requirement or order made by the commissioner or as a means of preventing the violation or disobedience of such orders or compelling their enforcement. All such provisions of law shall be deemed to apply to the enforcement of the rules, regulations, orders, and instructions of the commissioner prescribed or issued under section 5715.29 of the Revised Code."

In following such prescribed rules, regulations, orders, instructions or forms as may be promulgated by the Commissioner of Tax Equalization, the auditor has the power to make the determination of "land devoted exclusively to agricultural use." Since R.C. 5715.19 allows a process for taxpayer complaint, when the auditor determines that the land is not devoted exclusively to agricultural use thereby triggering R.C. 5713.32, the county auditor makes a determination with contingent review. R.C. 5715.19 also allows any taxpayer as well as certain enumerated public officials to file a complaint as to the determination affecting another's real property. The auditor then presents these complaints to the county board of revision so as to initiate

a hearing. R.C. 5717.01 allows for an appeal from the decision of the county board of revision to the Board of Tax Appeals.

In summary, under the provisions of R.C. 5713.31, it is the county auditor who makes the original determination as to whether land qualifies for valuation at its current agricultural use value. The determination of the county auditor, however, is subject to the direction and supervision of the Commissioner of Tax Equalization and to administrative review by appeal to the county board of revision pursuant to R.C. 5715.19.

2. Must R.C. 5713.31 be interpreted strictly in accordance with the wording of the amendment (Ohio Constitution, Article II, Section 36 amended, effective January 1, 1974) and the rules of the Department of Tax Equalization?

Article II, Section 36, with amendment underlined, reads as follows:

"§36 Conservation of natural resources.

Laws may be passed to encourage forestry and agriculture, and to that end areas devoted exclusively to forestry may be exempted, in whole or in part, from taxation. Notwithstanding the provisions of Section 2 of Article XII, laws may be passed to provide that land devoted exclusively to agricultural use be valued for real property tax purposes at the current value such land has for such agricultural use. Laws may also be passed to provide for the deferral or recoupment of any part of the difference in the dollar amount of real property tax levied in any year on land valued in accordance with its agricultural use and the dollar amount of real property tax which would have been levied upon such land had it been valued for such year in accordance with section 2 of Article XII. Laws may also be passed to provide for converting into forest reserves such lands or parts of lands as have been or may be forfeited to the state, and to authorize the acquiring of other lands for that purpose; also, to provide for the conservation of the natural resources of the state, including streams, lakes, submerged and swamp lands and the development and regulation of water power and the formulation of drainage and conservation districts; and to provide for the regulation of methods of mining, weighing, measuring and marketing coal, oil, gas and all other minerals."

This constitutional provision is implemented by R.C. 5713.31 which effects a reduction of taxes on some properties. It is important to note that Section 36 uses the words "exempted, in whole or in part, from taxation" in regard to forestry. There is merely discussion of an exception to "value" for agricultural use. Therefore, "agricultural use" is an exception to "highest and best use" and is not a true exemption for taxation. Even so, exemptions from and exceptions to taxation have been similarly construed. See National Tube Co. v. Glander, 157 Ohio St. 407, Syl. 2, (1952). As such the rules of construction applicable to exemptions would apply to this exception.

"[T]his court is traditionally committed to the proposition that exemption statutes must be strictly construed and that no presumption favorable to the exemption of property will be indulged. This must necessarily be the rule in order to preserve equality in the burden of taxation."

The court further held in Pfeiffer, et al. v. Jenkins, et al., 141 Ohio St. 66, 68, (1943), that "[i]t is axiomatic that exemptions from taxation are not favored by the law. Such an intention must be expressed clearly. . . ." R.C. 5713.31, having the effect of reducing taxes on some properties through exception, is in the nature of an exemption and should also be construed strictly, allowing only what is specifically authorized. As to the rules of the Commissioner of Tax Equalization, it would be unreasonable to encourage a county auditor to interpret such rules broadly. A broad interpretation would remove the import of the rules which are promulgated in the interest of achieving uniformity of assessment within and between the 88 counties of Ohio. See, Board of Tax Appeals entry in Case No. 76-04-0169, to the amendment and adoption of rules for the assessment of real property, (April 15, 1976).

3. Is the county auditor the final judge as to whether land is being used "exclusively for agricultural purposes with no other influence being present" in accordance with rule OAC 5705-5-01 (previously Board of Tax Appeals Rule No. BTA-6-01-II)?

OAC 5705-5-01 defines the current agricultural use value of land as follows:

The current agricultural use value of land devoted exclusively to agricultural use of a parcel is the current market value or fair market value of the land considering only those factors that affect the parcel's value from an agricultural standpoint. It is the price at which the property would change hands on the open market between a willing buyer and seller, neither being under any compulsion to buy or sell, and both having knowledge of any relevant facts, if the highest and best use was exclusively agricultural with no other influence being present. Usually this value will be highly dependent on the soil productivity of the parcel.

(Emphasis added.)

Once the auditor, under the direction and supervision of the Commissioner, determines that the land is within the parameters of R.C. 5713.31 then he must, according to OAC 5705-5-01, determine the value as if no other influence is present. Further, as noted in my discussion of your first question, the determination of the auditor is subject to a variety of procedures for appeal and review.

4. What is the meaning of the word "exclusively" as it appears in R.C. 5713.30 modifying "agricultural use"?

R.C. 5713.30(A) defines "land devoted exclusively to agricultural use" to mean:

(1) Tracts, lots, or parcels of land totaling not less than thirty acres which, during the three calendar years prior to the year in which application is filed under section 5713.31 of the Revised Code, and through the last day of May of such year, were devoted exclusively to commercial animal or poultry husbandry, the production for a commercial purpose of field crops, tobacco, fruits, vegetables, timber, nursery stock, ornamental trees, sod, or flowers or that were devoted to and qualified for payments of other compensation under a land retirement or conservation program under an agreement with an agency of the federal government;

(2) Tracts, lots, or parcels of land totaling less than thirty acres that, during the three calendar years prior to the year in which application is filed under section 5713.31 of the Revised Code and through the last day of May of such year, were devoted exclusively to commercial animal or poultry husbandry, the production for a commercial purpose of field crops, tobacco, fruits, vegetables, timber, nursery stock, ornamental trees, sod, or flowers, where such activities produced an average yearly gross income of at least twenty-five hundred dollars during such three year period or where there is evidence of an anticipated gross income of such amount from such activities, during the tax year in which application is made, or that were devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agreement with an agency of the federal government;

(3) A tract, lot, or parcel of land taxed under sections 5713.22 to 5713.26 of the Revised Code is not land devoted exclusively to agricultural use."

(Emphasis added.)

Since both R.C. 5713.30(A) (1) and (A) (2) specify that land devoted exclusively to agricultural use means land devoted to the enumerated agricultural production purposes, your question hinges upon the construction which is to be given to the term "exclusively."

In order to avoid confusion, it should be noted that the specific uses of particular portions of a tract or parcel of land devoted to agricultural production will vary with the type and location of the farming operation. As an example, the specific needs for pasture lands or lands planted in feed crops of a dairy farm will vary from those of an orchard operation. The specific needs for diverse uses of particular portions of a tract of land devoted exclusively to agricultural purposes will be discussed more fully below in addressing your fifth question. However, in analyzing the construction to be given the word "exclusively" as used in R.C. 5713.30, clarity requires that it be kept in mind that a single agricultural operation will generally encompass several specific uses.

Turning now to the construction of "exclusively" as used in R.C. 5713.30, Black's Dictionary, Fourth Edition, defines "exclusive" as "appertaining to the subject alone; not including, admitting, or pertaining to any others," "purely," and "solely."

As discussed in a number of decisions of the Ohio Supreme Court, including Columbus Metropolitan Housing Authority v. Thatcher, 140 Ohio St. 38, (1942) and Pfeiffer v. Jenkins, 141 Ohio St. 66, (1943), it is axiomatic in Ohio that exemptions from taxation are to be strictly construed. While the provisions of the agricultural farm bill, R.C. 5713.30, et seq., operate as an exception to the general practice of taxing real property at its highest and best use rather than as a direct exemption from taxes, the principles which dictate strict construction apply fully. It follows that the word "exclusively" as used in R.C. 5713.30 should be construed strictly and given its plain meaning.

5. Where a small part of over 30 acres of land is devoted to agricultural uses as defined in R.C. 5713.30 (A)(1), and a larger portion is unused for any purposes, is the entire tract, lot or parcel "used and devoted exclusively to agricultural use"?

As discussed above in analyzing the construction to be given the word "exclusively" for the purposes of R.C. 5713.30 et seq., a single tract of land devoted exclusively to agricultural use will generally encompass several specific uses of land. As set forth in OAC 5705-3-05(C) (previously BTA-5-05(C)), which specifies information, which must be collected in land valuation, a variety of factors - including land use - enter into the valuation of agricultural land.

OAC 5705-3-05 specifies that each county auditor shall adopt and maintain a system of property records which, in conjunction with the actual viewing of property, shall be used in estimating the true value in money of each parcel of real property in the county. OAC 5705-3-05 (C) requires that each such record of agricultural land shall reflect the following factors:

(C) Agricultural Land Factors

- (1) soil type
- (2) topography
- (3) erosion
- (4) drainage
- (5) land use (number of acres) classified as follows:
 - (a) homesite
 - (b) tillable land
 - (c) orchard
 - (d) permanent pasture
 - (e) woodland
 - (f) waste
- (6) The computation of agricultural land value shall include the following, insofar as applicable:
 - (a) Price per acre for each grade and use of land.
 - (b) total land value for each tract of land different grade and use.
 - (c) Total land value for entire parcel.

It is clear that, for example, a form of one hundred acres may contain fifty acres of tillable land, thirty acres of permanent pasture, ten acres of woodland and ten acres of waste. These use factors will obviously vary widely with the type and location of the particular farming operation involved.

Under certain circumstances, it is possible that a large portion of a tract of over thirty acres of land may be unused - or unusable - for any purposes and that such non-use will be entirely consistent with the devotion of the entire tract of land exclusively to agricultural use. On the other hand, depending upon the soil type, erosion, topography and similar factors, there will also be situations where the lack of use of a portion of a tract of land is inconsistent with a conclusion that such tract is land devoted exclusively to agricultural use.

Your question, therefore, is one which requires a factual determination which must be made ultimately upon the basis of whether the tract, lot or parcel of land in question is devoted exclusively to agricultural use. Where non-use of a portion of a tract, lot or parcel of land is inconsistent with an assertion that such tract is devoted exclusively to agricultural use, none of such tract is so used for the purposes of R.C. 5713.30, et seq. For further definition of portions of land which comprise a tract, lot or parcel, see OAC 5705-5-01, (previously BTA 6-01-II).

The lack of use of a portion of a tract, lot or parcel of land does not, however, in itself, negate a conclusion that such tract, lot or parcel is devoted exclusively to agricultural use. In evaluating whether the non-use of a portion of such a tract is consistent with a conclusion that the tract is land devoted exclusively to agricultural purposes, a factual determination as to whether such non-use includes any use but agricultural is necessary.

6. Does the auditor have discretion under R.C. 5713.01 in determining whether any other influence is present under OAC 5705-5-01 (previously BTA-6-01) which reads "if the highest and best use was exclusively agricultural with no other influence being present."

As indicated earlier in this opinion, the auditor does have discretion within the framework of OAC 5705-5-01 (previously BTA-6-01II). It is the auditor who makes the determination, but he may not liberally construe the rules of the Commissioner of Tax Equalization. His discretion is subject to the direction and supervision of the Commissioner.

In respect to the seventh question, it is my understanding that subsequent to your request, the county has become involved in litigation on this point, which is currently pending in the Court of Common Pleas of Summit County. As discussed in 1972 Op. Att'y. Gen. No. 72-098, it has been the position of this office that in almost all cases it would be improper for the Attorney General to express an opinion on a question which is at that time pending in a court proceeding. For this reason, I make no comment upon this matter.

In summary, it is my opinion, and you are so advised that:

1. Under the provisions of R.C. 5713.31, the county auditor shall make an original determination as to whether land qualifies for valuation at its current agricultural use value. The determination of the county auditor is subject to the direction and supervision of the Commissioner of Tax Equalization and to various statutory procedures for review.

2. Exceptions under 5713.31 should be strictly construed in accordance with the wording of Ohio Constitution Article II, Section 36 (effective January 1, 1974) and the rules of the Department of Tax Equalization should be interpreted narrowly in the interest of achieving uniformity of assessment within and between the 88 counties of Ohio.

3. The determination of the county auditor as to whether land is being used "exclusively for agricultural purposes with no other influences being present" in accordance with OAC 5705-5-01 (previously BTA-6-01III) is subject to both the direction and supervision of the Commissioner of Tax Equalization and various statutory methods of review, including appeal to the Board of Tax Appeals.

4. The word "exclusively", as used in R.C. 5713.30, should be construed strictly and given its plain meaning.

5. A factual determination is necessary as to whether the non-use of a portion of a tract, lot or parcel of land is consistent with the devotion of the entire tract, lot or parcel to exclusively agricultural use. Where non-use of a portion includes any purpose inconsistent with the devotion of the entire tract to agricultural use, no part of such tract, lot or parcel is used and devoted exclusively to agricultural use for the purposes of R.C. 5713.30.

6. The auditor may exercise discretion under R.C. 5713.01 in determining whether any other influence is present under OAC 5705-5-01 (previously BTA-6-01), subject to the direction and supervision of the Commissioner of Tax Equalization.