

November 19, 2014

The Honorable Paul J. Gains
Mahoning County Prosecuting Attorney
21 West Boardman Street
6th Floor Administration Building
Youngstown, Ohio 44503

SYLLABUS:

2014-042

1. Pursuant to R.C. 5722.03(E) and R.C. 5722.04(C), upon the sale of nonproductive land to an electing subdivision as a result of a foreclosure or forfeiture proceeding, a county auditor shall charge the costs of the foreclosure or forfeiture proceeding to the taxing districts, including the electing subdivision, on the basis of their proportionate interests in all taxes levied on the nonproductive land that are due and payable at the time of the land's sale, without regard to whether those taxes were subject to voter approval.
2. Pursuant to R.C. 5722.03(E) and R.C. 5722.04(C), when a county has created a county land reutilization corporation, the county's proportionate interest in unpaid taxes on nonproductive land that is sold to an electing subdivision is deemed to be that of the county land reutilization corporation, and the county auditor shall charge the county land reutilization corporation costs of the foreclosure or forfeiture proceeding on the basis of the county's proportionate interest in all taxes levied on the nonproductive land that are due and payable at the time of the land's sale, without regard to whether those taxes were subject to voter approval.



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OPINION NO. 2014-042

The Honorable Paul J. Gains
Mahoning County Prosecuting Attorney
21 West Boardman Street
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Dear Prosecutor Gains:

You have requested an opinion about language in R.C. 5722.03(E) and R.C. 5722.04(C), two statutes that address the charging of costs incurred in the foreclosure or forfeiture of nonproductive land and the sale of the land to an electing subdivision.¹ When nonproductive land is sold to an electing subdivision as a result of the land's foreclosure or forfeiture, the county auditor charges taxing districts within the county costs incurred in the matter "in direct proportion to their interest in the taxes, assessments, charges, penalties, and interest on the nonproductive land due and payable at the time the land was sold[.]" R.C. 5722.03(E); *see also* R.C. 5722.04(C). A county is a taxing district for the purpose of being charged these costs. When a county establishes a county land reutilization corporation under R.C. Chapter 1724, *see* R.C. 5722.02(A) and (B), the county land reutilization corporation is "deemed to have the proportionate interest of the county ... in the taxes, assessments, charges, penalties, and interest on the nonproductive land" due and payable at the time the land was sold. R.C. 5722.03(E); R.C. 5722.04(C). The board of county commissioners of Mahoning County has exercised this authority by establishing the Mahoning County Land Reutilization Corporation.

You wish to know whether, for the purpose of charging taxing districts the costs of a foreclosure or forfeiture proceeding in which nonproductive land is sold to an electing subdivision, R.C. 5722.03(C) and R.C. 5722.04(E) distinguish between taxes levied within the ten-mill limitation and taxes levied in excess of the ten-mill limitation when calculating a taxing district's proportionate interest in taxes levied on the land that are due and payable at the time the land is sold to the electing subdivision. Specifically, you ask whether the language, "proportionate interest of the county ... in the taxes," as it appears in R.C. 5722.03(E) and R.C. 5722.04(C), includes a county's proportionate interest in all taxes levied on the nonproductive

¹ In your letter you ask about language in R.C. 5722.03(E). We include R.C. 5722.04(C) in our analysis because its language regarding charging costs to an electing subdivision is identical in all material respects to that in R.C. 5722.03(E).

land, voted and unvoted, that are due and payable at the time the land is sold to an electing subdivision. You identify six taxes, *inter alia*, that are levied upon real property located within Mahoning County pursuant to pertinent provisions in R.C. Chapter 5705: the general levy for current expenses, R.C. 5705.04(B); R.C. 5705.05; the general levy for debt charges within the ten-mill limitation, R.C. 5705.04(A) (which comprises the bond retirement fund, R.C. 5705.09(C)); a special levy for children services, R.C. 5705.24; a special levy for developmental disabilities, R.C. 5705.19(L); R.C. 5705.222; a special levy for alcohol, drug addiction, and mental health services, R.C. 5705.221; and a special levy for tuberculosis treatment and clinics, R.C. 5705.20. *See also* R.C. 339.73; R.C. 339.76.

The general levy for current expenses and the general levy for debt charges are imposed within the ten-mill limitation and are not subject to approval by the electorate. Ohio Const. art. XII, § 2; R.C. 5705.02; R.C. 5705.04(A), (B). Each of the four special levies you have identified is imposed in excess of the ten-mill limitation and is subject to approval by the electorate. R.C. 5705.03(B)(1)-(3); R.C. 5705.19(L) (developmental disabilities programs and services); R.C. 5705.222 (same); R.C. 5705.20 (tuberculosis treatment and clinics); R.C. 5705.221 (alcohol, drug addiction, and mental health services); R.C. 5705.24 (children services).

Tax Levy Law

Article XII, § 5 of the Ohio Constitution provides that “[n]o tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied.” Pursuant to R.C. 5705.03(A), “the taxing authority [such as a board of county commissioners]² of each subdivision [such as a county]³ may levy taxes annually, subject to the limitations of [R.C. 5705.01-47], on the real and personal property within the subdivision for the purpose of paying the current operating expenses of the subdivision and acquiring or constructing permanent improvements.” (Footnotes added.) Additionally, “the taxing authority of each subdivision and taxing unit shall, subject to the limitations of [R.C. 5705.01-47], levy such taxes annually as are necessary to pay the interest and sinking fund on and retire at maturity the bonds, notes, and certificates of indebtedness of such subdivision and taxing unit, including levies in anticipation of which the subdivision or taxing unit has incurred indebtedness.” R.C. 5705.03(A). Thus, taxing authorities of subdivisions may levy certain taxes without the approval of the electors.

Article XII, § 2 of the Ohio Constitution imposes restrictions on the power of state and local taxing authorities to tax real property. One limitation, known as the ten-mill limitation (unvoted taxes or inside millage), provides that, “[n]o property, taxed according to value, shall be

² *See* R.C. 5705.01(C) (defining “[t]axing authority,” as used in R.C. Chapter 5705, to mean, “in the case of any county, the board of county commissioners”).

³ *See* R.C. 5705.01(A) (defining “[s]ubdivision,” as used in R.C. Chapter 5705, to include “any county”).

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.” Ohio Const. art. XII, § 2; *see* R.C. 5705.02; R.C. 5705.03; R.C. 5705.07. Under this constitutional mandate, up to ten mills of “property taxes may be levied without the approval of the voters, and this inside millage is allocated among various taxing authorities.” 2005 Op. Att’y Gen. No. 2005-024, at 2-246; *see* R.C. 5705.31; R.C. 5705.32; 2014 Op. Att’y Gen. No. 2014-004, at 2-25 n.4; 2010 Op. Att’y Gen. No. 2010-031, at 2-227; 2005 Op. Att’y Gen. No. 2005-043, at 2-464 and 2-465; *see also Berea City Sch. Dist. v. Budget Comm’n of Cuyahoga Cnty.*, 60 Ohio St. 2d 50, 52, 396 N.E.2d 767 (1979) (“[w]here subdivisions overlap, . . . the total unvoted millage cannot exceed ten mills and the rate at which each particular subdivision taxes its property must be uniform throughout. Thus, R.C. 5705.31 requires the budget commission to reduce unvoted levies where necessary so that the ten-mill limit is not exceeded, particularly in the areas of subdivision overlap”).

Authority to levy taxes beyond the ten-mill limitation is contingent upon voter approval. R.C. 5705.19 authorizes a taxing authority of any subdivision that is subject to the statute to declare by resolution that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision and that it is necessary to levy a tax in excess of that limitation. Once the resolution is certified to the board of elections, the levy issue is submitted to the voters for approval. *See* R.C. 5705.19. Other statutes specifically authorize voter-approved levies to support the provision of particular services, when the amount of taxes that are raised within the ten-mill limitation will be insufficient to support those services. *See, e.g.,* R.C. 5705.20 (tuberculosis treatment and clinics); R.C. 5705.221 (alcohol, drug addiction, and mental health services); R.C. 5705.222 (developmental disabilities services); R.C. 5705.24 (children services). R.C. 5705.04 requires the taxing authority of each subdivision to divide the taxes it levies into one of the following five categories: the general levy for debt charges within the ten-mill limitation, the general levy for current expense within the ten-mill limitation, special levies authorized by statute within the ten-mill limitation, the general levy for debt charges authorized by law or by vote of the people in excess of the ten-mill limitation, and other special or general levies authorized by law or by vote of the people in excess of the ten-mill limitation. R.C. 5705.04(A)-(E).

A County Land Reutilization Corporation Succeeds to the Proportionate Interest of the County in Unpaid Taxes

You have informed us that in Mahoning County the board of county commissioners has established a county land reutilization corporation. R.C. 5722.02(A) states that “[a]ny municipal corporation, county, or township may elect to adopt and implement the procedures set forth in [R.C. 5722.02-.15] to facilitate the effective reutilization of nonproductive land situated within its boundaries.” *See* R.C. 5722.01(F) (defining “[n]onproductive land” as that term is used in R.C. Chapter 5722 (land reutilization program)). A municipal corporation shall make the election by ordinance, and a county or township shall make the election by resolution. R.C.

5722.02(A). The ordinance or resolution shall state that “the existence of nonproductive land within [the] boundaries [of the municipal corporation, county, or township] is such as to necessitate the implementation of a land reutilization program to foster either the return of such nonproductive land to tax revenue generating status or the devotion thereof to public use.” *Id.*⁴ Upon the effective date of the ordinance or resolution adopted pursuant to R.C. 5722.02(A), “the foreclosure, sale, management, and disposition of all nonproductive land situated within the electing subdivision’s boundaries shall be governed by the procedures set forth in [R.C. 5722.02-.15], and, in the case of a county land reutilization corporation, as authorized under [R.C. Chapter 1724].” R.C. 5722.02(C).

A county that adopts a resolution pursuant to R.C. 5722.02(A) may direct in the resolution that a county land reutilization corporation be organized pursuant to R.C. Chapter 1724 “to act on behalf of and cooperate with the county in exercising the powers and performing the duties of the county under [R.C. Chapter 1724].”⁵ R.C. 5722.02(B); *see* R.C. 1724.04 (a county with a population of more than 60,000 that elects to adopt and implement the procedures set forth in R.C. 5722.02-.15 may organize a county land reutilization corporation); R.C. 1724.10 (authorizing a county to designate the county land reutilization corporation as the agency for the reclamation, rehabilitation, and reutilization of vacant, abandoned, tax-foreclosed, or other real property in the county). For the purpose of R.C. 5722.03(E) and R.C. 5722.04(C), a county land reutilization corporation is “deemed to have the proportionate interest of the county ... in the taxes, assessments, charges, penalties, and interest on the nonproductive land[.]” R.C. 5722.03(E); R.C. 5722.04(C).

⁴ For the purpose of R.C. Chapter 5722, “[l]and reutilization program” means the procedures and activities concerning the acquisition, management, and disposition of affected delinquent lands set forth in R.C. 5722.02-.15. R.C. 5722.01(D). When a municipal corporation enacts an ordinance, or a township or county adopts a resolution, pursuant to R.C. 5722.02(A), for purposes of adopting and implementing the procedures set forth in R.C. 5722.02-.15, the municipal corporation, township, or county becomes an “electing subdivision.” *See* R.C. 5722.01(A) (defining “[e]lecting subdivision” as that term is used in R.C. Chapter 5722).

⁵ County land reutilization corporations are also known as county land banks. *Rokakis v. Circle Dev. Group, Inc.*, Case Nos. CV 10 729690 and CV 10 729846, 2011 Ohio Misc. LEXIS 698 (C.P. Cuyahoga County Oct. 12, 2011), *5, at n.10 (“[l]and bank’ is the colloquial appellation for a county land reutilization corporation”). A “county land reutilization corporation organized by a county and designated to act on behalf of the county pursuant to [R.C. 5722.02(B)] shall be deemed the electing subdivision for all purposes of [R.C. Chapter 5722], except as otherwise expressly provided.” R.C. 5722.01(A). Thus, for the purpose of R.C. Chapter 5722, when a county organizes a county land reutilization corporation, the county land reutilization corporation is treated as the electing subdivision.

Sale of Nonproductive Lands to an Electing Subdivision as a Result of a Foreclosure or Forfeiture Proceeding

R.C. 5722.03 addresses the sale to an electing subdivision of nonproductive land that is the subject of a foreclosure proceeding and has not been forfeited to the state pursuant to R.C. 5723.01. R.C. 5722.04 addresses the sale to an electing subdivision of nonproductive land that has been forfeited to the state pursuant to R.C. 5723.01.

R.C. 5722.03(A) provides that, on or after the effective date of an ordinance or resolution indicating the election of a municipal corporation, county, or township to adopt a land reutilization program,

nonproductive land within an electing subdivision's boundaries that the subdivision wishes to acquire and that has either been advertised and offered for sale or is otherwise available for acquisition pursuant to a foreclosure proceeding as provided in [R.C. 323.25, enforcement of county tax lien by foreclosure action], [R.C. 323.65 to R.C. 323.79, county foreclosure of abandoned land], or [R.C. 5721.18, delinquent tax foreclosure action], but is not sold or transferred for want of a minimum bid, shall be sold to the electing subdivision in the manner set forth in this section or [R.C. 323.65 to R.C. 323.79].

Language in R.C. 5722.04(A) and (B) parallels that of R.C. 5722.03(A) with respect to the disposition of nonproductive land that has been forfeited to the state in accordance with the terms of R.C. 5723.01.

Upon receipt of an ordinance or resolution pursuant to R.C. 5722.02, the prosecuting attorney shall compile and deliver to the electing subdivision a list of all delinquent land within the electing subdivision with respect to which a foreclosure proceeding pursuant to R.C. 323.25, R.C. 323.65-.79, or R.C. 5721.18 has been instituted and is pending. R.C. 5722.03(B); *see also* R.C. 5722.04(A) (requiring county auditor to provide the same notice to electing subdivisions as to lands that have been forfeited to the state pursuant to R.C. 5723.01).

An electing subdivision is authorized to select, from the lists of nonproductive lands provided by the prosecuting attorney, the nonproductive lands that the subdivision seeks to acquire. R.C. 5722.03(C) (selection from lists of foreclosed lands); R.C. 5722.04(A) (selection from lists of forfeited lands). The electing subdivision shall notify the prosecuting attorney of its selection prior to the advertisement and sale of the nonproductive lands pursuant to the foreclosure or forfeiture proceeding, or as otherwise provided in R.C. 323.65-.79. R.C. 5722.03(C); R.C. 5722.04(A). At the sale of the nonproductive land, the officer conducting the sale shall announce the bid of the electing subdivision at the sale, and then report the proceedings to the court for confirmation of sale. R.C. 5722.03(D); *see also* R.C. 5722.04(B) (requiring auditor to announce the bid at the sale, declare the selected nonproductive land to be sold to the electing subdivision, and deliver to the electing subdivision a certificate of sale).

R.C. 5722.03(E) governs the allocation of the costs of the foreclosure proceeding following the sale of nonproductive land to an electing subdivision:

Upon the sale or transfer of any nonproductive land to an electing subdivision, the county auditor shall charge the costs, as determined by the court, incurred in the foreclosure proceeding instituted under [R.C. 323.25], [R.C. 323.65 to R.C. 323.79], or [R.C. 5721.18] and applicable to the nonproductive land to the taxing districts, including the electing subdivision, in direct proportion to their interest in the taxes, assessments, charges, penalties, and interest on the nonproductive land due and payable at the time the land is sold pursuant to the foreclosure proceeding. The interest of each taxing district in the taxes, assessments, charges, penalties, and interest on the nonproductive land shall bear the same proportion to the amount of those taxes, assessments, charges, penalties, and interest that the amount of taxes levied by each district against the nonproductive land in the preceding tax year bears to the taxes levied by all such districts against the nonproductive land in the preceding tax year. For the purposes of this division, a county land reutilization corporation shall be deemed to have the *proportionate interest of the county* on whose behalf it has been designated and organized *in the taxes, assessments, charges, penalties, and interest on the nonproductive land in that county*. In making a semiannual apportionment of funds, the auditor shall retain at the next apportionment the amount charged to each such taxing district, except that in the case of a county land reutilization corporation acting on behalf of a county, the auditor shall provide an invoice to the corporation for the amount charged to it. (Emphasis added.)

When nonproductive land is forfeited to the state under R.C. 5723.01, R.C. 5722.04(C) similarly allocates the costs of the forfeiture proceeding and the sale of nonproductive land to an electing subdivision; the language of R.C. 5722.04(C) is substantially the same as that of R.C. 5722.03(E).⁶ See R.C. 5722.04(C) (requiring the county auditor, upon delivery of a deed conveying any forfeited nonproductive land to an electing subdivision, to charge all costs incurred in any proceeding instituted under R.C. 5721.14 or R.C. 5721.18, or incurred as a result of the forfeiture and sale of the nonproductive land, to the taxing districts, including the electing subdivision).

⁶ The language in R.C. 5722.03(E) is “costs ... incurred in the foreclosure proceeding,” whereas the language in R.C. 5722.04(C) is “costs ... incurred as a result of the forfeiture and sale” of the nonproductive land. R.C. 5722.03(E) omits the term “sale.” In this opinion we use the construction foreclosure or forfeiture costs but recognize that costs of the sale of nonproductive land to an electing subdivision as a result of a forfeiture proceeding shall be charged to the taxing districts under R.C. 5722.04(C) along with the costs of the forfeiture proceeding.

Pursuant to R.C. 5722.03(E) and R.C. 5722.04(C), when nonproductive land is sold to an electing subdivision as a result of a foreclosure or forfeiture, the costs of the proceeding shall be charged to the relevant taxing districts, including the electing subdivision.⁷ Costs are charged to the taxing districts in “direct proportion” to each of their interests in the taxes levied on the nonproductive land that are due and payable at the time the land is sold to the electing subdivision. R.C. 5722.03(E); R.C. 5722.04(C). The proportionate interest of each taxing district in the taxes is determined by comparing the amount of taxes levied by each taxing district against the nonproductive land in the preceding tax year with the taxes levied by all taxing districts against the nonproductive land in the preceding tax year. R.C. 5722.03(E); R.C. 5722.04(C). A county land reutilization corporation is deemed to have the “proportionate interest of the county on whose behalf it has been designated and organized in the taxes, assessments, charges, penalties, and interest on the nonproductive land in that county.” R.C. 5722.03(E); *see* R.C. 5722.04(C).⁸ Thus, when charging costs of a foreclosure or forfeiture proceeding following the sale of nonproductive land to an electing subdivision, a county land reutilization corporation is charged the amount of costs that would have been charged to the county, had the county not organized a county land reutilization corporation.

Taxes in Which a Taxing District, Including a County, Has a Proportionate Interest

You ask whether the language “proportionate interest of the county ... in the taxes,” as it appears in R.C. 5722.03(E) and R.C. 5722.04(C), refers to a county’s proportionate interest in all taxes, voted and unvoted, that have been levied upon nonproductive land that are due and payable at the time the land is sold to the electing subdivision, or whether that language refers to a county’s interest in unpaid taxes that were levied without voter approval, to the exclusion of the county’s proportionate interest in unpaid taxes that were levied with voter approval.

R.C. 5722.03(E) and R.C. 5722.04(C) refer to a taxing district’s “interest in the taxes” due and payable with respect to the nonproductive land that has been the subject of a foreclosure

⁷ The General Assembly has not separately defined the term “taxing districts” as that term is used in R.C. 5722.03 and R.C. 5722.04. Thus, the term must “be read in context and construed according to the rules of grammar and common usage.” R.C. 1.42. “Taxing district” commonly refers to a “subdivision or other unit of government that is authorized to levy taxes on territory within its boundaries.” 2005 Op. Att’y Gen. No. 2005-043, at 2-455. Additionally, as the term is used in R.C. Chapter 5705, R.C. 5705.01(H) defines “[t]axing unit” as “any subdivision [separately defined in R.C. 5705.01(A) to include any county, municipal corporation, township, or other specified governmental entity] or other governmental district having authority to levy taxes on the property in the district or issue bonds that constitute a charge against the property of the district, including conservancy districts, metropolitan park districts, sanitary districts, road districts, and other districts.”

⁸ R.C. 5722.04(C) states “proportionate interest *as* the county” (emphasis added), which we view as a typographical error, because use of the word “as” in the phrase makes no sense. We read the phrase to be “proportionate interest of the county.”

or forfeiture, respectively. Neither R.C. 5722.03(E) nor R.C. 5722.04(C) distinguish between a taxing district's interest in taxes levied with voter approval and a taxing district's interest in taxes levied without voter approval. Further, we find no such qualification or distinction imposed within the other sections in R.C. Chapter 5722, or for that matter, elsewhere within R.C. Title 57. The absence of such a qualification demonstrates the intention of the General Assembly that a taxing district's "interest in the taxes" levied upon nonproductive land sold to an electing subdivision extends to all taxes levied upon the land, without regard to whether those taxes were subject to voter approval. See *State v. Jackson*, 102 Ohio St. 3d 380, 2004-Ohio-3206, 811 N.E.2d 68, at ¶ 34 (2004) ("[t]he paramount consideration in determining the meaning of a statute is legislative intent"); *State ex rel. Cuyahoga Cnty. v. State Pers. Bd. of Review*, 82 Ohio St. 3d 496, 499, 696 N.E.2d 1054 (1998) ("[i]t is the duty of the court to give effect to the words used and not to insert words not used"). Had the General Assembly wanted to make this distinction, it would have included language to that effect within the pertinent statutes. Thus, it follows that, for the purpose of R.C. 5722.03(E) and R.C. 5722.04(C), a taxing district's "interest in the taxes" levied upon nonproductive land sold to an electing subdivision as a result of a foreclosure or forfeiture proceeding extends to all taxes levied upon the land that are due and payable at the time of the land's sale, without regard to whether those taxes were subject to voter approval.

Consequently, pursuant to R.C. 5722.03(E) and R.C. 5722.04(C), upon the sale of nonproductive land to an electing subdivision as a result of a foreclosure or forfeiture proceeding, a county auditor shall charge the costs of the sale to the taxing districts, including the electing subdivision, on the basis of their proportionate interests in all taxes levied on the nonproductive land that are due and payable at the time of the land's sale, without regard to whether those taxes were subject to voter approval. When a county has created a county land reutilization corporation, the county's proportionate interest in unpaid taxes on nonproductive land that is sold to an electing subdivision is deemed to be that of the county land reutilization corporation, and the county auditor shall charge the county land reutilization corporation the costs of the foreclosure or forfeiture proceeding on the basis of the county's proportionate interest in all taxes levied on the nonproductive land that are due and payable at the time of the land's sale, without regard to whether those taxes were subject to voter approval.

In this matter, therefore, the costs of a foreclosure or forfeiture proceeding charged to the Mahoning County Land Reutilization Corporation in its capacity as an electing subdivision will be calculated on the basis of Mahoning County's proportionate interest in each of the six taxes you have identified—the general levy for current expenses, the general levy for debt charges within the ten-mill limitation, and the special levies for children services, developmental disabilities, alcohol, drug addiction, and mental health services, and tuberculosis treatment and clinics.

Conclusions

For the reasons set forth above, it is my opinion, and you are advised that:

1. Pursuant to R.C. 5722.03(E) and R.C. 5722.04(C), upon the sale of nonproductive land to an electing subdivision as a result of a foreclosure or forfeiture proceeding, a county auditor shall charge the costs of the foreclosure or forfeiture proceeding to the taxing districts, including the electing subdivision, on the basis of their proportionate interests in all taxes levied on the nonproductive land that are due and payable at the time of the land's sale, without regard to whether those taxes were subject to voter approval.
2. Pursuant to R.C. 5722.03(E) and R.C. 5722.04(C), when a county has created a county land reutilization corporation, the county's proportionate interest in unpaid taxes on nonproductive land that is sold to an electing subdivision is deemed to be that of the county land reutilization corporation, and the county auditor shall charge the county land reutilization corporation the costs of the foreclosure or forfeiture proceeding on the basis of the county's proportionate interest in all taxes levied on the nonproductive land that are due and payable at the time of the land's sale, without regard to whether those taxes were subject to voter approval.

Very respectfully yours,



MICHAEL DEWINE
Ohio Attorney General