

OPINION NO. 2000-038**Syllabus:**

The State Racing Commission is not authorized to include debt service as part of the approved and certified cost to which a minor tax abatement applies under R.C. 3769.08(J).

To: Clifford A. Nelson II, Executive Director, State Racing Commission, Columbus, Ohio
By: Betty D. Montgomery, Attorney General, September 20, 2000

We have received your request for a formal opinion concerning the costs and expenses to which a minor tax abatement applies. Following discussions with your representative, we have phrased your question as follows: Does the State Racing Commission have authority to include debt service as part of the approved and certified cost to which a minor tax abatement applies under R.C. 3769.08(J)? For purposes of this opinion, we use the word "abatement" to refer to tax benefits also described as "reductions." See R.C. 3769.08(J); R.C. 3769.20.

In order to address your concerns, we must first look to the relevant statute. R.C. 3769.08 contains a number of provisions governing persons who hold permits to conduct horse-racing meetings with pari-mutual wagering. R.C. 3769.08; *see also* R.C. 3769.06. Pursuant to R.C. 3769.08(B) and (C), each permit holder must pay a tax based upon the amount wagered each day.

Division (J) of R.C. 3769.08 provides for a tax abatement when a permit holder constructs a new race track or makes capital improvements to an existing race track. The

abatement is in an amount of three-fourths of one percent of the total amount wagered and is commonly known as a minor abatement. "Capital improvement" is defined as "an addition, replacement, or remodeling of a structural unit of a race track facility costing at least one hundred thousand dollars" and does not include the cost of ordinary repairs, painting, and maintenance. R.C. 3769.08(J).

Under the terms of the minor abatement statute, however, the benefits it provides "apply only to tax reductions approved by the state racing commission prior to the effective date of this amendment," which was September 19, 1996. R.C. 3769.08(J); see 1995-1996 Ohio Laws, Part III, 5881, 5894 (Sub. H.B. 561, eff. Sept. 19, 1996). Hence, the State Racing Commission cannot now grant new minor abatements under R.C. 3769.08(J), but can only administer those abatements that were approved prior to September 19, 1996. We examine your question, therefore, as it relates to the administration of abatements that were approved in a timely manner.

The statute requires a permit holder seeking a minor tax abatement to apply to the State Racing Commission, provide full details of the new race track or capital improvement, and "set forth the costs and expenses incurred in connection therewith." R.C. 3769.08(J). If the Commission approves the application, the tax abatement starts "from the day racing is first conducted following the date actual construction of the new race track or each capital improvement is completed and the construction cost has been certified by the racing commission," except as otherwise provided. R.C. 3769.08(J). The tax abatement continues for a prescribed period of ten, fifteen, or twenty-five years or "until the total tax reduction reaches seventy per cent of the cost of the new race track or new capital improvement." *Id.* The "total amount of the tax adjustment authorized" is limited to "seventy per cent of the approved cost of the new track or capital improvement." *Id.* Thus, the maximum amount of minor tax abatement that may be granted is seventy percent of the construction cost of the new track or capital improvement, as approved and certified by the State Racing Commission.¹

The statutory provisions governing minor tax abatements do not expressly mention debt service.² Therefore, it is not clear from the language of the statute whether debt service is included within the cost that may be approved and certified for tax abatement. The fact that the term "construction" is used to modify "cost" in the minor tax abatement statute suggests that cost might be restricted to amounts expended directly for construction. Alternatively, it might be argued that it is common for a construction project to require debt service, and that debt service should be considered part of the cost of construction.

Thus, the minor tax abatement statute is ambiguous on the issue of debt service. Therefore, it is appropriate to look at a related statute in which the term "debt service" appears. See, e.g., R.C. 1.49; *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 463, 132 N.E.2d 191, 192 (1956) (syllabus, paragraph 2) ("[s]tatutes relating to the same matter or subject, although passed at different times and making no reference to each other, are *in pari materia*

¹Pursuant to R.C. 3769.10, both the State Racing Commission and the Tax Commissioner have authority to enforce R.C. Chapter 3769. The Tax Commissioner's authority includes the enforcement and administration of taxes levied by R.C. 3769.08. R.C. 3769.10.

²The term "debt service" is not defined by statute, but in common usage is defined to mean "funds needed to meet a long-term debt's annual interest expenses, principal payments, and sinking-fund contributions" or "[p]ayments due on a debt, including interest and principal." *Black's Law Dictionary* 412 (7th ed. 1999).

and should be read together to ascertain and effectuate if possible the legislative intent"); *State v. Cravens*, 42 Ohio App. 3d 69, 72, 536 N.E.2d 686, 689 (Hamilton County 1988) ("[t]he interpretation [of a statute] starts and ends with the words chosen by the legislature, but is not limited to the words alone, because the whole context of the enactment must be considered"); 1985 Op. Att'y Gen. No. 85-069; 1980 Op. Att'y Gen. No. 80-031.

R.C. 3769.20 provides for what is commonly known as a major tax abatement that is, an abatement in the amount of one percent of the total amount wagered for permit holders who carry out a major capital improvement project. R.C. 3769.20(A). A major capital improvement project must cost at least six million dollars, which is an amount considerably greater than the threshold of eligibility for minor abatements. R.C. 3769.20(F); see R.C. 3769.08(J). In other respects, the intent and operation of a major tax abatement is similar to that of a minor tax abatement, and much of the language of R.C. 3769.20 is analogous to that of R.C. 3769.08(J).³

The statute governing major tax abatements states that an application for a major tax abatement must include full details of the major capital improvement project, including a breakdown of proposed costs. R.C. 3769.20(D). The major tax abatement starts from the day racing is first conducted following the date on which the project is completed and the construction cost has been certified by the State Racing Commission, except as otherwise provided. R.C. 3769.20(A). The abatement continues "until the total tax reduction equals the cost of the major capital improvement project plus debt service applicable to the project," but, except for reduction balances, not past December 31, 2014. *Id.* (emphasis added).

This language contrasts with the language governing minor tax abatements because it expressly includes not only the cost of the project but also "debt service applicable to the project." *Id.* The fact that debt service is mentioned in R.C. 3769.20 and not in R.C. 3769.08(J) suggests that the General Assembly intended to include debt service in the calculation of a major tax abatement and not in the calculation of a minor tax abatement. Had the General Assembly intended that debt service, in addition to cost, be used to calculate a minor tax abatement, it could easily have so stated. See, e.g., *Scovern v. State*, 6 Ohio St. 288, 293 (1856). The absence of such a statement by the General Assembly indicates that such a result was not intended. Thus, a reasonable reading of the statutes leads to the conclusion that debt service is not included among the amounts to which a minor tax abatement may apply.

The history of the tax abatement statutes provides support for this conclusion. Legislation authorizing minor tax abatements was initially enacted in 1975. See 1975-1976 Ohio Laws, Part II, 2249, 2256-58 (Am. Sub. H.B. 287, eff. Oct. 30, 1975). It did not specifically mention debt service, and we are informed that the State Racing Commission consistently excluded any debt service from the amounts for which minor tax abatements were granted.⁴

³Tax abatements under R.C. 3769.20 are available to permit holders who commenced construction of a major capital improvement project or had the application for the project approved by the Commission prior to March 29, 1988. R.C. 3769.20(D). In addition, abatements under R.C. 3769.20 are available "for the cost to the permit holder of any cleanup, repair, or improvement required as a result of damage caused by the 1997 Ohio river flood to the place, track, or enclosure for which the permit is issued." R.C. 3769.201; see R.C. 3769.20(H). A tax abatement granted pursuant to R.C. 3769.20 is in addition to any tax abatements provided for in R.C. 3769.08 and approved by the Commission prior to March 29, 1988. R.C. 3769.20(C).

⁴We note that courts grant deference to a statutory interpretation adopted by a governmental entity with responsibility for administering the statute, provided that the interpreta-

Legislation authorizing major tax abatements came into effect in 1984. *See* 1983-1984 Ohio Laws, Part II, 4317, 4333-36 (Am. H.B. 639, eff. March 1, 1984). It stated expressly that the tax abatement "shall continue for a period of ten years or until the total tax reduction equals the cost of the major capital improvement project plus debt service applicable to the project, whichever occurs first," thus specifying that the abatement applies to debt service. *Id.* at 4333. Although the reference to a ten-year period has since been deleted, the phrasing of the major tax abatement statute continues to indicate that debt service is an item separate from, and in addition to, the cost of the major capital improvement project. R.C. 3769.20(A). The characterization of debt service as an item separate from cost is consistent with an interpretation of R.C. 3769.08(J) under which minor tax abatements apply to the approved and certified cost of a project but, because debt service is not mentioned, do not apply to debt service applicable to the project.

Both the minor tax abatement statute and the major tax abatement statute provide that the cost and expenses to which a tax abatement applies "shall be determined by generally accepted accounting principles" and, upon completion of the project, shall be verified by an audit of the permit holder's records, either by the State Racing Commission or by an independent certified public accountant selected by the permit holder and approved by the Commission. R.C. 3769.08(J); R.C. 3769.20(G). Thus, in determining the approved cost to which a major or minor abatement applies, the Commission must follow generally accepted accounting principles.

We do not find, however, that the accounting requirement affects our analysis regarding debt service. The State Racing Commission may grant tax abatements only to the extent that it has statutory authority to do so, and the application of accounting principles cannot expand the authority granted by statute. *See, e.g., State v. Cravens*, 42 Ohio App. 3d at 72, 536 N.E.2d at 689 (the words of a statute serve as guides to discovery of the legislature's purpose and as limitations on the extent of the statute's applications); 1995 Op. Att'y Gen. No. 95-034, at 2-178 (as a creature of statute, the State Racing Commission has only those powers that are conferred upon it by statute). Therefore, before generally accepted accounting principles may be applied, it is necessary to determine which costs and expenses are made eligible for a tax abatement by the language of the relevant statutory provisions.

By expressly mentioning debt service in R.C. 3769.20(A), the General Assembly has directed that the cost of a major capital improvement project and the debt service applicable to the project are both eligible for a major tax abatement, and that the amounts of cost and debt service should be determined by generally accepted accounting principles. The absence of any reference to debt service in R.C. 3769.08(J) indicates that a minor tax abatement applies to costs and expenses of a project but not to any debt service. Thus, with respect to a minor tax abatement, the amounts of costs and expenses are determined by generally

tion is reasonable and not in conflict with other provisions of law. *See* R.C. 1.49(F); *Industrial Comm'n v. Brown*, 92 Ohio St. 309, 311, 110 N.E. 744, 745 (1915) ("[a]dministrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do"); *Lopez v. Ohio Dep't of Human Servs.*, 88 Ohio App. 3d 231, 234, 623 N.E.2d 689, 691 (Defiance County 1993) (if a statute is ambiguous, the agency's interpretation is given due deference, because the agency, in exercising the day-to-day responsibility of implementing the legislative intent, has acquired expertise); 1980 Op. Att'y Gen. No. 80-031. *See generally* 1994 Op. Att'y Gen. No. 94-059.

accepted accounting principles, but debt service is not included among costs and expenses that may be approved and certified by the State Racing Commission.⁵

Therefore, it is my opinion, and you are advised, that the State Racing Commission is not authorized to include debt service as part of the approved and certified cost to which a minor tax abatement applies under R.C. 3769.08(J).

⁵This conclusion is consistent with the general principle that exemptions from taxation are to be construed strictly against granting an exemption. *See, e.g., American Soc'y for Metals v. Limbach*, 59 Ohio St. 3d 38, 40, 569 N.E.2d 1065, 1067 (1991); 1980 Op. Att'y Gen. No. 80-031, at 2-135 to 2-136.