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Stingray Pressure Pumping, L.L.C. v. Harris, 172 Ohio St. 3d 130 (2023)

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Ohio Northern University Law Review

Student Case Notes

Stingray Pressure Pumping, L.L.C. v. Harris 172 Ohio St. 3d 130 (2023)

I. INTRODUCTION

Under Ohio law, the sales tax is applied to all retail sales, unless otherwise exempted by statute.¹ In Ohio, a corresponding use tax is also applied to goods purchased out-of-state for primary use in Ohio.² While most goods sold within the state of Ohio are subject to sales tax, certain transactions are exempt from sales tax due to the nature of the transaction, class of product being sold, or the entity involved.³ Under Ohio law, transactions that are properly exempt from sales tax will also be exempt from the state's corresponding use tax.⁴

In Ohio, a sales tax exemption is recognized for equipment used directly in the production of oil and gas.⁵ However, the exemption's application has been controversial, as the exemption does not apply to all equipment used in the oil and gas industry, but only to equipment that is "directly" involved in

1. The sales tax ranges between 5.25-8% depending on the locality. *State and Permissive Sales Tax Rates, by County*, OHIO DEP'T OF TAXATION, https://tax.ohio.gov/static/tax_analysis/tax_data_series/sales_and_use/Salestaxmap.pdf (last visited January 17, 2024); *Sales and Use-Applying the Tax*, OHIO DEP'T OF TAXATION, <https://tax.ohio.gov/help-center/faqs/sales-and-use-applying-the-tax-what-is-and-isnt-taxable/sales-and-use-applying-the-tax> (last visited January 17, 2024).

2. *Sales and Use-General Information*, OHIO DEP'T OF TAXATION, <https://tax.ohio.gov/help-center/faqs/sales-and-use-general-information/sales-and-use-general-information> (last visited January 17, 2024).

3. Tram Lee, *Sales Tax and Exemptions, Implications for Multistate Taxpayers*, TAXOPS (August 4, 2023) <https://taxops.com/sales-tax-and-exemptions-implications-for-multistate-taxpayers/>.

4. *Sales and Use-General Information*, OHIO DEP'T OF TAXATION, <https://tax.ohio.gov/help-center/faqs/sales-and-use-general-information/sales-and-use-general-information> (last visited January 17, 2024).

5. OHIO REV. CODE ANN. § 5739.02(B)(42)(q) (LexisNexis 2024).

the production of oil and gas.⁶ To clarify the exemption and existing law, the Ohio General Assembly amended the tax statute in 2018 and stated that the amended statute would apply retroactively to all cases on appeal—including *Stingray Pressure Pumping, L.L.C.*⁷ The former statute—enacted in 2014—stated simply that an exemption would apply when “the purpose of the purchaser was ‘to use or consume the thing transferred *directly*’ in the production of crude oil and natural gas.”⁸ The 2018 amendment maintained the former statute’s language and added two non-exhaustive lists to clarify what equipment constitutes a “thing transferred” and what equipment does not.⁹ Equipment constituting a “thing transferred” under the amended statute includes “services provided in the construction of permanent access roads . . . trailers to which production equipment is attached . . . well completion services . . . hydraulic fracturing.”¹⁰ The list including equipment not constituting a “thing transferred” under the amended statute includes equipment more remotely related to oil and gas extraction such as “well site fences . . . trailers used as offices or lodging . . . access ladders.”¹¹ Therefore, when a piece of equipment is categorized as a “thing transferred” under the statute, it simply means that the disputed equipment—if used “directly” in the production of oil and gas—will qualify for the exemption.¹²

In the case at hand, the court was asked to assess whether equipment purchased by a fracking company should be exempt from taxation due to its direct role in the production of oil and gas under the newly amended statute.¹³ Since a basic understanding of fracking and the various types of equipment utilized in fracking is essential to understanding the court’s rationale, a general explanation of the process and equipment in dispute is included in Appendix A.

In *Stingray*, the Ohio Supreme Court held that the blenders, hydration units, chemical-additive units, sand kings, and t-belts purchased by Appellant Stingray Pressure Pumping, L.L.C. (Stingray) were exempt from taxation under Ohio Revised Code 5739.02(B)(42)(q).¹⁴ The court also held that the data van purchased by Appellant Stingray was subject to taxation under Ohio Revised Code 5739.02(B)(42)(q).¹⁵

6. *Id.*

7. *Stingray Pressure Pumping, L.L.C. v. Harris*, 172 Ohio St. 3d 130, 133-34 (2023).

8. OHIO REV. CODE ANN. § 5739.02(B)(42)(a) (amended September 2018) (emphasis added).

9. OHIO REV. CODE ANN. § 5739.02(B)(42)(q)(i)-(ii) (LexisNexis 2024).

10. OHIO REV. CODE ANN. § 5739.02(B)(42)(q)(i) (LexisNexis 2024).

11. OHIO REV. CODE ANN. § 5739.02(B)(42)(q)(ii) (LexisNexis 2024).

12. OHIO REV. CODE ANN. § 5739.02(B)(42)(q) (LexisNexis 2024).

13. *Stingray*, 172 Ohio St. 3d at 130.

14. *Id.* at 144.

15. *Id.*

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Appellant Stingray, is an Ohio business specializing in hydraulic fracturing—an operation commonly known as fracking.¹⁶ Fracking is a process by which oil and gas are extracted from the earth through the high-pressure injection of a hydraulic mixture containing water, sand, and chemicals.¹⁷ In 2012, Stingray purchased various pieces of equipment needed for the performance of its fracking services.¹⁸ The pieces of equipment purchased by Appellant consisted of a data van, blenders, sand kings, t-belts, hydration units, and chemical-additive units.¹⁹ Appellant Stingray did not pay a use tax for the purchased equipment, as it asserted the equipment was exempt from taxation due to its direct role in the production of oil and gas.²⁰ Stingray's claims for exemption were challenged by the tax commissioner, who concluded that all items purchased by Stingray were taxable.²¹ The tax commissioner assessed each piece of equipment and Stingray appealed to the Ohio Board of Tax Appeals (BTA).²² The BTA, a quasi-judicial administrative tax court, affirmed the determinations of the tax commissioner.²³ While the case was pending, the statute containing the exemption was amended by the Ohio General Assembly.²⁴

When the BTA assessed the qualification of Stingray's equipment for tax exemption under the amended statute, the board maintained that the equipment did not constitute a "thing transferred" and denied the exemptions.²⁵ Appellant Stingray then appealed to the Ohio Supreme Court to obtain a final determination on whether the fracking equipment in dispute would qualify for a tax exemption due to the property's role in oil and gas production.²⁶

16. *Id.* at 131.

17. *Ohio Supreme Court takes new approach to statutory construction in applying a sales and use tax exemption statute to fracking activities*, EY (August 14, 2023), <https://taxnews.ey.com/news/2023-1400-ohio-supreme-court-takes-new-approach-to-statutory-construction-in-applying-a-sales-and-use-tax-exemption-statute-to-fracking-activities> [hereinafter *Ohio Supreme Court takes new approach*].

18. *Stingray*, 172 Ohio St. 3d at 132.

19. *Id.* at 131.

20. *Id.* at 133.

21. *Id.*

22. *Id.*

23. *Stingray*, 172 Ohio St. 3d at 133. See Ohio Board of Tax Appeals, Annual Report Fiscal Year 2022, https://bta.ohio.gov/wps/wcm/connect/gov/3e98777a-ae6d-4806-80af-3da0cfc66114/0097_001.pdf?MOD=AJPERES&CVID=oqpS2YP (last visited February 28, 2024).

24. *Stingray*, 172 Ohio St. 3d at 133.

25. *Id.* at 134.

26. *Id.*

III. COURT'S DECISION AND RATIONALE

The opinion of the court was written by Justice DeWine, who was joined by Justice Kennedy, Fischer, and Deters.²⁷ Justice Brunner concurred in the judgment only, while Justice Donnelly concurred in part and dissented in part with an opinion joined by Justice Stewart.²⁸

MAJORITY OPINION BY JUSTICE DEWINE

The Ohio Supreme Court affirmed in part and reversed in part the determination of the BTA.²⁹ The court reversed the BTA's decision in part, by concluding that the blenders, hydration units, chemical-additive units, sand kings, and t-belts purchased by Appellant Stingray were exempt from taxation under Ohio Revised Code 5739.02(B)(42)(q).³⁰ However, the court affirmed the BTA's decision in part by holding that the data van was subject to taxation under Ohio Revised Code 5739.02(B)(42)(q).³¹

Preliminary Matters

In the majority opinion, the court began its analysis by stating that it would utilize a *de novo* standard of review when assessing the legal issues of the case.³² By assessing the case *de novo*, the court was able to make legal determinations without offering any deference to the prior conclusions of the tax commissioner or the BTA.³³

The majority opinion then discussed the principle of construction that should be used when interpreting tax statutes, as the BTA strictly construed the tax exemption in dispute against Appellant.³⁴ While the court acknowledged that tax exemptions have historically been strictly construed against taxpayers, the court emphasized that tax statutes should be interpreted by their plain and ordinary meaning—as it is the court's task to provide a fair reading of legislation, not to make tax policy.³⁵ The court also acknowledged that the newly amended tax exemption statute, R.C. 5739.02(B)(42)(q), was to be applied to this controversy.³⁶

27. *Id.* at 144.

28. *Id.*

29. *Stingray*, 172 Ohio St. 3d at 144.

30. *Id.*

31. *Id.*

32. *Id.* at 134.

33. *Id.*

34. *Stingray*, 172 Ohio St. 3d at 135.

35. *Id.*

36. *Id.*

Competing Arguments

Appellant Stingray asserted that the equipment in dispute was exempt from taxation because each piece qualified as a (1) “thing transferred” according to the amended statute’s enumerated list and (2) was used “directly” in the production of oil and gas.³⁷ Stingray alleged the equipment fell within the exemption because according to Section (i)(VIII) of R.C. 5729.02(B)(42)(q), “hydraulic fracturing. . .and tangible personal property directly used in providing such services” qualify as a “thing transferred.”³⁸

On the contrary, the tax commissioner maintained that the equipment in dispute was subject to taxation.³⁹ The commissioner claimed that (1) none of the equipment fell within the amended statute’s enumerated list of “thing[s] transferred” and that (2) even if the equipment did fall within the list, the equipment did not qualify because it was not used in the “actual extraction of oil and gas from the well.”⁴⁰ In its opinion, the BTA relied on R.C. 5739.02(B)(42)(q)(ii)(II), which states that property will not be considered a “thing transferred”— and thus, will not qualify for the exemption—if the property is “*used primarily in storing, holding, or delivering solutions or chemicals used in well stimulation.*”⁴¹ In relying on that provision, the BTA held that the blenders, hydration units, chemical-additive units, and sand kings purchased by Stingray did not qualify as “thing[s] transferred” because of their *storage* functions.⁴² The BTA also used the provision to rationalize that t-belts could not be categorized as a “thing transferred” because they mainly function by “delivering solutions or chemicals” for well stimulation.⁴³

As previously mentioned, to qualify for the exemption, it must be shown that each piece of equipment (1) constitutes a “thing transferred” within the amended statute and (2) is used “directly” in the production of oil and gas.⁴⁴ In the following paragraphs, the court’s analysis regarding those elements will be summarized.

1. “Thing Transferred”

The court began its “thing transferred” analysis by broadly dismissing the arguments made by the tax commissioner and the BTA in support of their

37. *Id.* at 138.

38. *Id.* (citing OHIO REV. CODE ANN. § 5739.02(B)(42)(q) (LexisNexis 2024)).

39. *Stingray*, 172 Ohio St. 3d at 138.

40. *Id.*

41. *Id.* at 139 (citing OHIO REV. CODE ANN. § 5739.02(B)(42)(q)(ii) (LexisNexis 2024)) (emphasis added).

42. *Id.*

43. *Id.* 139 (citing OHIO REV. CODE ANN. § 5739.02(B)(42)(q)(ii) (LexisNexis 2024)).

44. *Stingray*, 172 Ohio St. 3d at 138.

findings.⁴⁵ The court emphasized that each piece of equipment can serve numerous purposes—which will likely match functions enumerated within both the “thing transferred” and “thing [not] transferred” lists.⁴⁶ After all, most pieces of hydraulic fracturing equipment inadvertently possess a holding, storing, or delivering function—as the hydraulic fracturing process requires the blending of sand, water, and chemicals.⁴⁷ Justice DeWine emphasized that because each piece of equipment can serve numerous purposes, one must only consider an item’s *primary* function when examining the “thing transferred” and “thing [not] transferred” lists.⁴⁸ Ultimately, that is why the amended statute explicitly restricts its application to equipment that is “*used primarily* in the storing, holding, or delivering solutions or chemicals.”⁴⁹

After the court assessed and responded to the various arguments presented, it proceeded to review the BTA’s determinations for each piece of disputed equipment.⁵⁰ In doing so, the Ohio Supreme Court found that the various pieces of equipment purchased by Stingray each played a distinctive role in the hydraulic fracturing process and were not “*used primarily* in the storing, holding or delivering solutions or chemicals.”⁵¹ The Ohio Supreme Court’s assessment of the “thing transferred” requirement for each piece of equipment is listed below. In short, the court found all the disputed equipment to meet the “thing transferred” requirement, except for the data van.⁵²

Blender. The court held that the primary function of the blender was to blend components and that the blenders should not be held subject to taxation simply because they inadvertently hold materials while performing their blending function.⁵³

Hydration Unit. The court found the hydration unit to constitute a “thing transferred” as its primary function was to mix water and friction reducers, not to function as a storage tank.⁵⁴

45. *Id.* at 139-40.

46. *Id.* at 139.

47. *Id.*

48. *Id.* (emphasis added).

49. *Stingray*, 172 Ohio St. 3d at 139 (citing OHIO REV. CODE ANN. § 5739.02(B)(42)(q)(ii) (LexisNexis 2024)) (emphasis added).

50. *Id.* at 139-40.

51. *Id.* at 140-41 (citing OHIO REV. CODE ANN. § 5739.02(B)(42)(q)(ii) (LexisNexis 2024)) (emphasis added).

52. *Id.* at 139.

53. *Id.* at 140.

54. *Stingray*, 172 Ohio St. 3d at 140-141.

Chemical-additive unit. The court held that the chemical additive units constitute a “thing transferred” because they function primarily to transfer chemicals to the hydration unit and blender, not simply to store them.⁵⁵

Sand King. The court held that the sand king qualified as a “thing transferred” because its primary function was to supply sand to the blender, as the sand king only holds the “immediate supply” of sand before it is combined with the hydraulic mixture for injection.⁵⁶ The court also noted that the provision asserted by the BTA did not apply to the sand king as it states no exemption will be applied to items “used primarily in storing, holding, or delivering *solutions or chemicals*,” and sand cannot be categorized as a solution or chemical.⁵⁷

T-belt. The court held that the t-belt, which serves as a conveyor belt for the sand, was not subject to the exclusion for “property used primarily in storing, holding, or delivering *solutions or chemicals*,” as sand cannot be categorized as a chemical or a solution.⁵⁸

Data Van. The court held that the data van, which served as the command center for the well site, did not qualify for a tax exemption because it is a motor vehicle and “motor vehicles of any kind” are explicitly enumerated on the “thing [not] transferred” list.⁵⁹

2. “Directly” used in the Production of Oil and Gas

In addition to claiming that (1) none of the equipment fell within the amended statute’s enumerated list of “thing[s] transferred,” the tax commissioner also asserted that (2) the equipment did not qualify for the exemption because it was not used directly in the production of crude oil and natural gas.⁶⁰ The tax commissioner alleged that the equipment was not used directly in the production of crude oil and natural gas because it was not used in the “actual extraction of oil and gas from the well,” but rather served a preliminary and preparatory function.⁶¹

In response, the court emphasized it would not follow the commissioner’s narrow reading of the statute.⁶² The court alleged that classifying equipment usage and services as preliminary or preparatory would render the non-

55. *Id.* at 141.

56. *Id.*

57. *Id.* (citing OHIO REV. CODE ANN. § 5739.02(B)(42)(q)(ii) (LexisNexis 2024)) (emphasis added).

58. *Id.* at 142 (citing OHIO REV. CODE ANN. § 5739.02(B)(42)(q)(ii) (LexisNexis 2024)) (emphasis added).

59. *Stingray*, 172 Ohio St. 3d at 142-143.

60. *Id.* at 138.

61. *Id.* at 138, 143.

62. *Id.* at 143.

exhaustive “thing transferred” lists, added by the amendment, superfluous.⁶³ For example, the court stated that while the “construction of permanent access roads” is enumerated as a “thing transferred” by the amended statute, the commissioner’s reading of the statute would dismiss the road construction as preliminary.⁶⁴ Additionally, the court reasoned that the equipment, apart from the data van, was “directly” used in the production of oil and gas because each piece functioned in unison to create the hydraulic mixture needed for the extraction of oil and gas.⁶⁵

DISSENT BY JUDGE DONNELLY

With Justice Stewart joining in support, Justice Donnelly wrote a brief opinion concurring and dissenting in part.⁶⁶ Justice Donnelly agreed with the majority’s decision to hold Stingray’s hydration units and blenders exempt due to their ability to constitute a “thing transferred.”⁶⁷ Similarly, Donnelly also agreed with the majority’s decision to subject the data van to taxation because it could not be cleanly classified as a “thing transferred.”⁶⁸ However, in his dissent, Justice Donnelly stated that the sand kings, t-belts, and chemical-additive units did not constitute “thing[s] transferred,” and should not be held exempt from taxation.⁶⁹ Donnelly stated that the sand kings, t-belts, and chemical-additive units should be subject to taxation because they fit within the listing of equipment “that is used primarily in storing, holding, or delivering solutions or chemicals used in hydraulic-fracturing services.”⁷⁰ Additionally, Justice Donnelly emphasized that just because equipment possessing a storage or delivery function has a remote connection with the hydraulic-fracturing process does not make the equipment “directly used in the production of crude oil and natural gas.”⁷¹ If every piece of equipment related to the hydraulic fracturing process was considered applicable for the exemption, the list of items on the “thing [not] transferred” list would be rendered superfluous.⁷²

IV. ANALYSIS

The Ohio Supreme Court held all disputed fracking equipment purchased by Appellant Stingray—except for the data van—to be exempt from taxation

63. *Id.*

64. *Stingray*, 172 Ohio St. 3d at 143.

65. *Id.*

66. *Id.* at 144.

67. *Id.* at 145.

68. *Id.*

69. *Stingray*, 172 Ohio St. 3d at 145.

70. *Id.* (citing OHIO REV. CODE ANN. § 5739.02(B)(42)(q)(ii) (LexisNexis 2024)).

71. *Id.*

72. *Id.*

under Ohio Revised Code 5739.02(B)(42)(q).⁷³ While this decision may be easily overlooked as a mere tax dispute, the broad implications of this decision go beyond that of fracking, and even the realm of taxation. This analysis will (1) argue that the sand kings and t-belts purchased by Appellant Stingray do not constitute a “thing transferred” under Ohio Revised Code 5739.02(B)(42)(q) and (2) discuss the broad implications of this decision on statutory construction.

1. Sand King and T-Belt do not Constitute a “Thing Transferred.”

The Supreme Court of Ohio determined that the blenders, hydration units, chemical-additive units, sand kings, and t-belts purchased by Appellant Stingray were exempt from taxation under Ohio Revised Code 5739.02(B)(42)(q).⁷⁴ In making that determination, the court held that each piece of exempted equipment (1) qualified as a “thing transferred” according to the amended statute and (2) was used “directly” in the production of oil and gas.⁷⁵ This analysis will argue that the court was incorrect in holding that the t-belts and sand kings purchased by Appellant Stingray constituted a “thing transferred” under Ohio Revised Code 5739.02(B)(42)(q).⁷⁶

As previously mentioned, fracking is a process by which oil and gas are extracted from the earth through the injection of a hydraulic mixture containing water, sand, and chemicals.⁷⁷ Throughout that process, a sand king and t-belt work closely together to transport sand into the blender for the creation of the hydraulic mixture.⁷⁸ The sand king operates by feeding sand onto a t-belt, which functions as a conveyor belt and carries sand to the blender.⁷⁹

Under Ohio law, it is stated that equipment will not constitute a “thing transferred”—and will not qualify for an exemption—if it is “used primarily in storing, holding, or delivering solutions or chemicals.”⁸⁰ In *Stingray*, the Ohio Supreme Court found the sand kings purchased by Appellant to be eligible for tax exemption because their primary function did not involve “storing, holding, or delivering” but rather, “supplying” and “feeding”—as they supply an immediate stock of sand to the blender.⁸¹ Additionally, the court stated that the “storing, holding, or delivering” exclusion provision did

73. *Id.* at 131.

74. *Stingray*, 172 Ohio St. 3d at 144.

75. *Id.* at 139, 144.

76. *Id.* at 139.

77. *Id.* at 131.

78. *Id.* at 131-32.

79. *Stingray*, 172 Ohio St. 3d at 131-32.

80. OHIO REV. CODE ANN. § 5739.02(B)(42)(q)(ii) (LexisNexis 2024).

81. *Stingray*, 172 Ohio St. 3d at 141.

not apply to sand kings because sand kings supply sand and the provision only applies to equipment “storing, holding, or delivering *solutions or chemicals*.”⁸² Similarly, the Ohio Supreme Court held that the “storing, holding, or delivering” exclusion provision did not apply to the t-belt because the t-belt supplies sand, not “chemicals or solutions.”⁸³

The court was incorrect in holding that the t-belts and sand kings purchased by Appellant Stingray constituted a “thing transferred” under Ohio Revised Code 5739.02(B)(42)(q).⁸⁴ The court erred in determining that the sand king should be exempt from taxation because “supplying” and “feeding” sand is synonymous with “storing, holding, and delivering” sand.⁸⁵ Therefore, if the law states that equipment used to store, hold, or deliver materials will not constitute a “thing transferred,” then an exemption should not be received by the sand king as it stores and holds an immediate supply of sand before delivering the sand to the t-belt.⁸⁶ Additionally, the court tried to rationalize its decision by stating that sand does not constitute “chemicals or solutions” to prove the inapplicability of the exclusion provision to the t-belt and sand king.⁸⁷ In supporting that assertion, the court stated that an ordinary person would not “describe a walk along a sandy beach as being a walk along solution or chemicals.”⁸⁸ However, that appears to be a misconstrued reading of the materials being dealt with, as hydraulic fracturing requires the use of industrial frac sand which is mined and differs largely from beach sand.⁸⁹ The industrial sand used in hydraulic fracturing contains extremely high concentrations of silicon dioxide (95-99%), giving it the abrasive properties needed to prop open fractures for oil and gas extraction.⁹⁰ Therefore, when the sand king and t-belt supply and transport sand, they are supplying and transporting a chemical—silicon dioxide—and should be held ineligible for the tax exemption under ORC 5739.02(B)(42)(q).⁹¹

82. *Id.* (citing OHIO REV. CODE ANN. § 5739.02(B)(42)(q)(ii) (LexisNexis 2024)) (emphasis added).

83. *Id.* (citing OHIO REV. CODE ANN. § 5739.02(B)(42)(q)(ii) (LexisNexis 2024)).

84. *Id.* at 139.

85. *Id.* at 141 (citing OHIO REV. CODE ANN. § 5739.02(B)(42)(q)(ii) (LexisNexis 2024)).

86. OHIO REV. CODE ANN. § 5739.02(B)(42)(q)(ii) (LexisNexis 2024).

87. *Stingray*, 172 Ohio St. 3d at 141.

88. *Id.*

89. *Frac Sand Mining*, Center for Agricultural and Shale Law-Penn State Law, <https://aglaw.psu.edu/research-by-topic/library-guide/frac-sand-mining/> (Last visited February 29, 2024).

90. Mary Benson & Anna Wilson, *Frac Sand Sources in the United States*, ROCK PRODUCTS MAGAZINE (May 19, 2015), <https://rockproducts.com/2015/05/19/frac-sand-sources-in-the-united-states/>; UNITED STATES GEOLOGICAL SURVEY (May 27, 2015), <https://www.usgs.gov/news/national-news-release/hydraulic-fracturing-frac-sand-sources-and-production-united-states>.

91. OHIO REV. CODE ANN. § 5739.02(B)(42)(q)(ii) (LexisNexis 2024).

2. Implications on Statutory Construction

While it may be difficult to tell in just one reading, one of the most influential takeaways of this decision does not directly pertain to the specific facts of the *Stingray* case, but rather to statutory construction.⁹²

In *Stingray*, the Ohio Supreme Court held that “henceforth it will apply the same rules of construction to tax statutes that it applies to all other statutes” as “tax statutes must be read through a clear lens, not favoring tax collection.”⁹³ In doing so, the court dismissed the use of a historically applied substantive canon, which required tax statutes to be construed narrowly against taxpayers.⁹⁴ The purpose of the substantive canon was to ensure uniformity and equality in matters of taxation—as a low burden of proof could allow some individuals to obtain tax breaks not easily accessible by others.⁹⁵ Additionally, the court adopted the exemption canon, requiring taxpayers to display a “stringent burden of proof,” to ensure that the “primary operation of the provision” is preserved rather than overtaken by exceptions.⁹⁶

While equality and uniformity in taxation are still given great weight by the Ohio judicial system, the court voted to construe tax statutes in the same way as other statutes because it is the court’s job to provide a fair reading of the legislation, not to make tax policy.⁹⁷

While the decision is very significant for taxpayers as it lowers the burden of proof needed to qualify for a tax exemption, it is also very significant for judges and legal practitioners.⁹⁸ This decision is significant for judges, as it brings up an important discussion about the use and weight that should be given to substantive canons.⁹⁹ Traditionally, canons are used by practitioners to fill in statutory gaps, form arguments, and sway the trier of fact.¹⁰⁰ However, this decision by the court has practitioners questioning the efficacy of canon usage in the modern practice of law.¹⁰¹

92. *Stingray*, 172 Ohio St. 3d at 134.

93. *Id.* at 135.

94. *Id.*

95. *Youngstown Metro. Hous. Auth. v. Evatt*, 143 Ohio St. 268, 273 (1944).

96. Lynn Gandhi, *Commonly Used Rules of Statutory Interpretation in State Taxes — Part 1*, TAXNOTES (June 21, 2021), <https://www.taxnotes.com/special-reports/settlements-and-dispute-resolution/commonly-used-rules-statutory-interpretation-state-taxes-part-1/2021/06/18/76m6m>.

97. *Stingray*, 172 Ohio St. 3d at 135.

98. *Id.*

99. Benjamin White, *Ohio Supreme Court Rules Tax Exemptions Will No Longer Be Strictly Construed Against Taxpayers*, THE FEDERALIST SOCIETY (November 15, 2023), <https://fedsoc.org/scdw/ohio-supreme-court-announces-that-tax-exemptions-will-no-longer-be-strictly-construed-against-taxpayers>.

100. Gandhi, *supra* note 96.

101. White, *supra* note 99.

V. CONCLUSION

In *Stingray*, the Ohio Supreme Court set out to determine whether the fracking equipment purchased by Appellant Stingray qualified for tax exemption due to its direct role in the production of oil and gas, under the newly amended 2018 tax statute.¹⁰² To determine the eligibility of each piece of equipment, the court had to assess whether the equipment (1) constituted a “thing transferred” under the Ohio Revised Code and (2) whether the equipment in dispute was used “directly” in the production of oil and gas.¹⁰³ The court held all the equipment purchased by Appellant Stingray in 2012—except for the data van—to be exempt from taxation.¹⁰⁴

In making its determination, the court acknowledged that each piece of equipment can serve multiple uses, but that a proper assessment focuses on the primary use of each piece of equipment—as otherwise the amended statute’s “thing transferred” and “thing [not] transferred” lists would be rendered superfluous.¹⁰⁵ Additionally, the court dismissed the application of a historically applied canon that required tax statutes to be “strictly construed against taxpayers.”¹⁰⁶ The court instead ruled that it will construe tax statutes in the same way it construes other statutes—through a clear, unbiased lens.¹⁰⁷ In the coming days, it will not only be interesting to see how the court will continue to apply and interpret the newly amended tax statute, but also to see how the court continues to develop its new statutory construction methods.

102. *Stingray*, 172 Ohio St. 3d at 130-131.

103. *Id.* at 138.

104. *Id.* at 144.

105. *Id.* at 139.

106. *Id.* at 134.

107. *Stingray*, 172 Ohio St. 3d at 135.

VI. APPENDIX A

Fracking is a process by which oil and gas are extracted from the earth through the high-pressure injection of a hydraulic mixture containing water, sand, and chemicals.¹⁰⁸ By injecting the hydraulic mixture into the earth at extremely high pressures, impermeable rock formations are cracked allowing pockets of previously trapped natural gas and oil to freely flow to the surface.¹⁰⁹ To perform such an extensive extraction method, various types of equipment are utilized. While many pieces of equipment work synchronously together to ensure a successful hydraulic injection, the *blender* is the heart of the mechanistic process, as it is where the water, chemicals, and sand are combined before being transported and pressurized for injection.¹¹⁰ To supply the blender with the water, chemicals, and the sand it needs to create the hydraulic mixture, a *sand king*, a *chemical additive unit*, and a *hydration unit* work collectively to pump, prepare, and transport their designated element into the blender.¹¹¹ The *hydration unit* pumps and prepares fresh water, the *sand king* feeds sand onto a moving belt called the *t-belt* which carries sand to the blender, and the *chemical additive unit* is utilized to add chemicals to the blender.¹¹² While this process occurs, a *data van* is stationed near the well—where an operator monitors data regarding well pressures and the volume of sand and water.¹¹³ It is from the van that orders are conveyed to operators of the *blender*, *sand king*, *t-belt*, *chemical additive unit*, and *hydration unit*.¹¹⁴

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108. *Ohio Supreme Court takes new approach*, *supra* note 17.

109. *Id.*

110. *Stingray*, 172 Ohio St. 3d at 131-32.

111. *Id.*

112. *Id.*

113. *Id.* at 132.

114. *Id.*