SUPREME COURT OF OHIO

Cincinnati Golf Management, Inc. v. Testa

132 Ohio St. 3d 299, 2012-Ohio-2846 (Ohio 2012) · No. 2010-0896 · Decided June 27, 2012

SUMMARY

The Supreme Court of Ohio held that an independent contractor managing city-owned golf courses could not claim the city's sales- and use-tax exemption absent proof that it was an actual purchasing agent with authority to bind the city. The court affirmed the Board of Tax Appeals' decision upholding the use-tax assessment against Cincinnati Golf Management, Inc. The court denied as moot the tax commissioner's motion to dismiss the city as a party for lack of standing.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per curiam; Maureen O'Connor, Chief Justice; Lundberg Stratton, J.; O'Donnell, J.; Lanzinger, J.; Cupp, J.; McGee Brown, J.; Pfeifer, J.
JURISDICTION	Ohio
DECIDED	June 27, 2012
DOCKET	2010-0896
DISPOSITION	affirmed
PROCEDURAL POSTURE	Cincinnati Golf Management, Inc. and the City of Cincinnati appealed the Board of Tax Appeals' decision upholding the tax commissioner's use-tax assessment against Cincinnati Golf Management, Inc. The Supreme Court of Ohio affirmed the BTA's decision and denied the commissioner's motion to dismiss the City of Cincinnati as moot.
STANDARD OF REVIEW	The Supreme Court reviewed the BTA's decision to determine whether it acted reasonably and lawfully; the court independently resolved the legal issue concerning the statutory exemption and agency authority.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Ohio; binding Ohio precedent.
PARTIES	Cincinnati Golf Management, Inc., City of Cincinnati v. Testa, Tax Commissioner

TOPICS

sales and use tax | state and local tax | tax exempt organizations | tax court procedure | statutory interpretation

PRACTICE AREAS

sales and use tax | state and local tax | administrative law | municipal law | appellate procedure

QUESTIONS PRESENTED

1. Whether Cincinnati Golf Management, Inc. could claim the City of Cincinnati's political-subdivision sales-and-use-tax exemption under R.C. 5739.02(B)(1) by acting as the city's purchasing agent.
2. Whether the purchases made by Cincinnati Golf Management, Inc. constituted sales to the City of Cincinnati under Ohio's broad statutory definition of sale.
3. Whether the City of Cincinnati's standing issue was moot because Cincinnati Golf Management had undisputed standing and the commissioner had raised the issue belatedly.

HOLDINGS

1. A sale is a sale to a political subdivision under R.C. 5739.02(B)(1) only when the political subdivision is actually the purchaser and consummates the transaction through an agent that has authority to bind the political subdivision and thereby makes the political subdivision primarily liable to the vendor.
2. Cincinnati Golf Management did not establish actual authority to bind the City of Cincinnati to the purchases at issue and therefore was not entitled to claim the city's exemption.
3. The purchases were sales to Cincinnati Golf Management, not to the City of Cincinnati, because Ohio law deems a facilities-management contractor to be the consumer of items purchased for use in performing the contract, regardless of whether title ultimately vests in the contractee.
4. The commissioner's motion to dismiss the city for lack of standing was moot because Cincinnati Golf Management had undisputed standing, the city acted only in concert with it, and resolving the city's standing would not affect jurisdiction, evidence, briefing, or the disposition.

KEY QUOTATIONS

> *"A sale is a sale to a political subdivision under R.C. 5739.02(B)(1) only if the political subdivision is in actuality the purchaser that is consummating the sale by means of its agent—with the city thereby assuming and bearing the primary and essential liability to the vendor (rather than its agent doing so)."* (¶ 23)

> *"Quite simply, our duty is to apply the statute that the General Assembly wrote, not to write a new one based our own policy preferences."* (¶ 35)

> *"We hold that CGMI cannot qualify for the exemption apart from establishing a status as an actual purchasing agent of the city."* (¶ 38)

FACTUAL BACKGROUND

The City of Cincinnati owned seven golf courses and entered into a management contract with Billy Casper Golf Management, Inc.; its subsidiary, Cincinnati Golf Management, Inc., performed the contractor's obligations.

Cincinnati Golf Management purchased payroll services, tangible property, booking-system services, cleaning and landscaping services and supplies, vehicles, and turf equipment without paying sales or use tax, claiming it acted as the city's agent. The management contract provided for reimbursement of golf-course expenses but expressly disclaimed an agency relationship, and the record did not show that Cincinnati Golf Management had authority to bind the city to the purchases.

PROCEDURAL HISTORY

The Ohio Department of Taxation assessed Cincinnati Golf Management, Inc. $167,708.28 in unpaid tax, plus interest and penalty, for purchases made during a general audit covering January 1, 2002, through June 30, 2005. The department upheld the assessment on reassessment, with a partial reduction of the penalty. Cincinnati Golf Management and the City of Cincinnati jointly appealed to the Board of Tax Appeals, which upheld the final determination. They then appealed to the Supreme Court of Ohio.

DISPOSITION

affirmed

CASES CITED

- Performing Arts School of Metro. Toledo, Inc. v. Wilkins, 104 Ohio St. 3d 284, 2004-Ohio-6389, 819 N.E.2d 649
- Miller v. Blackwell, 348 F. Supp. 2d 916, 920 (S.D. Ohio 2004)
- Carey v. Population Servs. Int'l, 431 U.S. 678, 682, 97 S. Ct. 2010, 52 L. Ed. 2d 675 (1977)
- State ex rel. United Auto., Aerospace & Agricultural Implement Workers of Am. v. Bureau of Workers' Comp., 108 Ohio St. 3d 432, 2006-Ohio-1327, 844 N.E.2d 335, ¶ 60
- State ex rel. Kirk v. Burcham, 82 Ohio St. 3d 407, 409, 696 N.E.2d 582 (1998)
- Elyria v. Lorain Cty. Budget Comm., 117 Ohio St. 3d 403, 2008-Ohio-940, 884 N.E.2d 553, ¶ 13
- Polaris Amphitheater Concerts, Inc. v. Delaware Cty. Bd. of Revision, 118 Ohio St. 3d 330, 2008-Ohio-2454, 889 N.E.2d 103, ¶¶ 12-13
- Anderson/Maltbie Partnership v. Levin, 127 Ohio St. 3d 178, 2010-Ohio-4904, 937 N.E.2d 547, ¶ 16
- Ares, Inc. v. Limbach, 51 Ohio St. 3d 102, 104, 554 N.E.2d 1310 (1990)
- NLO, Inc. v. Limbach, 66 Ohio St. 3d 389, 613 N.E.2d 193 (1993)
- United States v. New Mexico, 455 U.S. 720, 736, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982)
- Evans v. Ohio State Univ., 112 Ohio App. 3d 724, 744, 680 N.E.2d 161 (10th Dist. 1996)
- Funk v. Hancock, 26 Ohio App. 3d 107, 110, 498 N.E.2d 490 (12th Dist. 1985)
- Haluka v. Baker, 66 Ohio App. 308, 312, 34 N.E.2d 68 (9th Dist. 1941)
- Hanson v. Kynast, 24 Ohio St. 3d 171, 494 N.E.2d 1091 (1986)
- Baird v. Sickler, 69 Ohio St. 2d 652, 433 N.E.2d 593 (1982)
- Sperl v. C.H. Robinson Worldwide, Inc., 408 Ill. App. 3d 1051, 349 Ill. Dec. 269, 946 N.E.2d 463 (2011)
- Bostic v. Connor, 37 Ohio St. 3d 144, 146, 524 N.E.2d 881 (1988)

- Walker v. Lahoski, 9th Dist. No. 19293, 1999 WL 548978 (July 28, 1999)
- Russell Harp of Ohio, Inc. v. Lindley, 9th Dist. No. 9859, 1981 WL 3979 (May 13, 1981)
- Master Consol. Corp. v. BancOhio Natl. Bank, 61 Ohio St. 3d 570, 574, 575 N.E.2d 817 (1991)
- OCLC Online Computer Library Ctr., Inc. v. Kinney, 11 Ohio St. 3d 198, 464 N.E.2d 572 (1984)
- Joint Hosp. Servs. v. Lindley, 52 Ohio St. 2d 153, 370 N.E.2d 474 (1977)
- Pittsburgh & Conneaut Dock Co. v. Limbach, 18 Ohio St. 3d 320, 481 N.E.2d 579 (1985)
- Carter v. Ohio Dept. of Health, 28 Ohio St. 3d 463, 464, 504 N.E.2d 1108 (1986)
- H.R. Options, Inc. v. Wilkins, 102 Ohio St. 3d 1214, 2004-Ohio-2085, 807 N.E.2d 363, ¶ 2
- A. Schulman, Inc. v. Levin, 116 Ohio St. 3d 105, 2007-Ohio-5585, 876 N.E.2d 928, ¶ 7
- Youngstown Metro. Hous. Auth. v. Evatt, 143 Ohio St. 268, 273, 55 N.E.2d 122 (1944)