



This Week in State Tax (TWIST)

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Ohio: Fracking Equipment Qualifies for Oil and Gas Production Exemption

The Ohio Supreme Court recently issued its first decision addressing the expanded sales and use tax exemption for oil and gas production. The case focused on whether certain pieces of equipment used in fracking were exempt from sales and use tax. To qualify for the exemption, the purchaser's purpose must be "to use or consume the thing transferred directly" in the production of crude oil and natural gas for sale. In the midst of the dispute, a retroactive amendment to the statute adopted a non-exhaustive list of items that qualified as "things transferred" and things that did not qualify as "things transferred." Applying the revised law, the BTA determined that the items at issue were not "things transferred" because certain pieces of equipment were used for storage and another item was a motor vehicle. The taxpayer appealed.

Under the revised statute, tangible personal property used in hydraulic fracking was a "thing transferred," but property used for storage or delivery purposes generally was not. In this instance, each piece of equipment served multiple purposes and potentially implicated both the thing-transferred and the not-a-thing-transferred categories. Importantly, all of the equipment was undoubtedly used in hydraulic fracturing but also had a storage or delivery function. The court reviewed each of the BTA's determinations and concluded that almost all of the equipment was a "thing transferred" because it was directly used in hydraulic fracking, even if it had an ancillary purpose (e.g., storage). The exception was the taxpayer's data van; a "thing transferred" specifically excluded motor vehicles. The court next addressed the Commissioner's argument that even if the items were "things transferred" they were not used to send material directly into the well and therefore did not qualify for the exemption. The court rejected the Commissioner's narrow interpretation of the amended statute and noted that under his reading of the new statute, the only impact of the statutory amendment would be to *restrict* the items that qualified as tax exempt. The court was not "inclined to believe that the legislature chose to engage in such a pointless exercise."

In an important sidenote, the court explicitly repudiated the traditional rule that statutes granting tax exemptions must be strictly construed against the taxpayer. In its view, this rule was an impermissible exercise of tax policymaking on the part of the judiciary, and that tax statutes should instead be construed using the same methods of construction used for any other statute. Please contact [Dave Perry](#) with questions on *Stingray Pressure Pumping LLC v. Harris*.

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