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Ohio Supreme Court Denies Village of Obetz Attempt to Reinstate Expired TIF Exemption.

A recent decision by the Ohio Supreme Court addressed whether a municipality can retroactively reinstate an expired TIF exemption by amending the legislation that authorized the original exemption. The case arose from a TIF ordinance passed by the Village of Obetz in April 1997, which enacted a TIF arrangement related to the development of a warehouse located in the Village. The TIF ordinance provided for a 25 percent exemption of the increase in true value from the improvements for a period of 16 years. However, when the tax commissioner granted the exemption in October 1999, the commissioner inexplicably ordered a 100 percent exemption to last for the shorter of *30 years* or the end of the obligation to make service payments. In 2017, after being notified that the 16-year exemption had expired in 2015, the Village attempted to pass another ordinance, this time seeking to amend the original 1997 legislation. The Village's latest ordinance sought to extend the exemption from 16 to 30 years and increase the exemption from 25 percent to 100 percent, effectively trying to effectuate the tax commissioner's erroneous determination through 2017. The tax commissioner denied the Village's application, reasoning that retroactively approving this exemption would violate Ohio's TIF laws.

The Supreme Court agreed with the tax commissioner's denial, finding that retroactively applying the exemption would have violated Section 5709.40(G) of the Ohio Revised Code, which states that "[a]n exemption from taxation […] commences with the tax year specified in the ordinance so long as the year specified in the ordinance commences *after* the effective date of the ordinance." The Court reasoned that despite the tax commissioner's error in 1999, the plain language of the 1997 ordinance specified that the exemption would expire after 16 years, period. Accordingly, the Village's 2017 ordinance would have effectively created a new exemption. And under R.C. 5709.40(G), this new exemption could not commence until the year after the ordinance's effective date. In other words, because the ordinance was passed in 2017, the earliest the TIF exemption could commence was 2018. Thus, the Court denied the Village's attempt to extend its earlier TIF and rejected any application of the exemption retroactively to 2015, 2016 and 2017.

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