

Internal Revenue Service

Department of the Treasury

P.O. Box 2506, Cincinnati, OH 45201

District Director

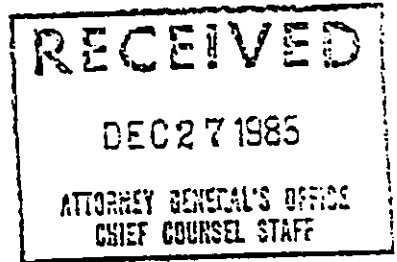
The Honorable Anthony J. Celebrezza, Jr.
Attorney General of Ohio
Columbus, Ohio 43266-0410

Person to Contact:
James L. Herbst
Telephone Number:
513-684-2501

Refer Reply to:
EP/EO

Date:

DEC 24 1985



Dear Mr. Attorney General:

This is in reply to your letter dated December 4, 1985 (which we received on December 16), concerning the status, for Federal tax purposes, of the 38 colleges and universities which have been established under various sections of the Ohio Revised Code and are currently assisted and/or supported by the State of Ohio. The specific institutions in question are listed on EXHIBIT A of this letter.

You state that these institutions are instrumentalities or political subdivisions of the State of Ohio. Further, your office is their general counsel and sole legal representative.

Section 115 of the Internal Revenue Code of 1954 provides, in part:

Gross income does not include income derived from any public utility or the exercise of any essential governmental function and accruing to a State or any political subdivision thereof.....

* * * * *

Section 170(b)(1) of the Code provides, in part:

In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

(A) General rule. — Any charitable contribution to --

* * * * *

(ii) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on,

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* * * * *

shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

Section 501(c)(3) of the Code describes certain organizations which can qualify for exemption from Federal income tax (if a proper exemption application is filed with the Internal Revenue Service) as:

Corporations, and any community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

Section 509(a) of the Code provides, in part:

For purposes of this title, the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than--

- (1) an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii);

* * * * *

Section 511(a) of the Code provides, in part:

- (1) Imposition of tax.--There is hereby imposed for each taxable year on the unrelated business taxable income (as defined in section 512) of every organization described in

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paragraph (2) & tax computed as provided in section 11. In making such computation for purposes of this section, the term "taxable income" as used in section 11 shall be read as "unrelated business taxable income".

(2) Organizations subject to tax.—

* * * * *

(3) State colleges and universities.— The tax imposed by paragraph (1) shall apply in the case of any college or university which is an agency or instrumentality of any government or any political subdivision thereof, or which is owned or operated by a government or any political subdivision thereof, or by any agency or instrumentality of one or more governments or political subdivisions. Such tax shall also apply in the case of any corporation wholly owned by one or more such colleges or universities.

Based on the information furnished and the law cited above, it is our conclusion that the colleges and universities listed on EXHIBIT A of this letter are political subdivisions or instrumentalities of the State of Ohio. As such:

1. They are not subject to Federal income tax, except as provided in section 511 of the Code, since they come within the purview of section 115 of the Code,
2. They are educational organizations described in sections 509(a)(1) and 170(b)(1)(A)(ii) of the Code, and
3. Contributions to them for exclusively public purposes are deductible by donors to the extent provided by section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to them or for their use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

Further, organizations which are exempt from Federal income tax under the provisions of section 501(a) of the Code, including those described in section 501(c)(3) of the Code, can make grants or other distributions to the above colleges and universities without jeopardizing their (the grantors') exemption.


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In an attachment to your letter, you indicated that the Internal Revenue Service will not accept an exemption application, Form 1023, filed by a college or university which is an instrumentality or political subdivision of a State. We do not encourage or deem it necessary for a political subdivision or an instrumentality thereof to file an exemption application.

However, there is no provision in the Code which prohibits them from filing an exemption application or receiving a ruling or determination letter as to their exempt status if they otherwise meet all the requirements, organizational and operational, for the subsection of section 501(c) of the Code under which they applied. In fact, we have issued a considerable number of favorable exemption letters to State, County, or City owned and operated colleges/universities, libraries, hospitals, mental health boards, etc. The general bar to receiving a favorable exemption letter results from various enforcement or police powers which are inherent in most political subdivisions or instrumentalities thereof.

If you have any further questions, please contact James Herbst at the telephone number or address shown in the heading of this letter

Sincerely yours,


James J. Ryan
District Director

Enclosure



Attorney General
Anthony J. Celebrezze, Jr.

EXHIBIT A
OHIO'S 38 INSTITUTIONS OF HIGHER EDUCATION

<u>STATE UNIVERSITY</u>	<u>COUNTY</u>	<u>OHIO REVISED CODE SECTION</u>
University of Akron	Summit	3359 & 3345
Bowling Green State University	Wood	3341 & 3345
Central State University	Greene	3343 & 3345
Cleveland State University	Cuyahoga	3344 & 3345
Cincinnati University	Hamilton	3361 & 3345
Kent State University	Portage	3341 & 3345
Miami University	Butler	3339 & 3345
Ohio State University	Franklin	3335 & 3345
Ohio University	Athens	3337 & 3345
University of Toledo	Lucas	3360 & 3345
Wright State University	Montgomery Greene	3352 & 3345
Younstown State University	Mahoning	3356 & 3345
<u>FREE-STANDING</u> <u>MEDICAL SCHOOLS</u>		
Medical College of Ohio at Toledo	Lucas	3350.01
Northeastern Ohio College of Medicine	Portage	3350.05
<u>STATE COMMUNITY COLLEGES</u>		
Edison State Community College	Miami	3358

Shawnee State Community College Scioto 3358

Southern State Community College Brown 3358

COMMUNITY COLLEGES

Cuyahoga Community College Cuyahoga 3354

Lakeland Community College Lake 3354

Lorain County Community College Lorain 3354

Rio Grande Community College Gallia 3354

Sinclair Community College Montgomery 3354

TECHNICAL COLLEGES

Belmont Technical College Belmont 3357

Central Ohio Technical College Licking 3357

Columbus Technical Institute Franklin 3357

Cincinnati Technical College Hamilton 3357

Clark Technical College Clark 3357

Hocking Technical College Hocking 3357

Lima Technical College Allen 3357

Marion Technical College Marion 3357

Jefferson Technical College

Jefferson

3357

Muskingum Area Technical College	Muskingum	3357
North Central Technical College	Richland	3357
Northwest Technical College	Henry	3357
Owens Technical College	Lucas	3357
Stark Technical College	Stark	3357
Terra Technical College	Sandusky	3357
Washington Technical College	Washington	3357

* Exhibit A represents an attachment of 3 pages to a 12-4-85 letter to James Herbst, Internal Revenue Service.

§ 5709.07 Exemption of schools, churches, and colleges. (CC § 5349)

Public schoolhouses and houses used exclusively for public worship, the books and furniture therein, and the ground attached to such buildings necessary for the proper occupancy, use, and enjoyment thereof, and not leased or otherwise used with a view to profit, public colleges and academies and all buildings connected therewith, and all lands connected with public institutions of learning, not used with a view to profit, shall be exempt from taxation. This section shall not extend to leasehold estates or real property held under the authority of a college or university of learning in this state; but leaseholds, or other estates or property, real or personal, the rents, issues, profits, and income of which is given to a municipal corporation, school district, or subdistrict in this state exclusively for the use, endowment, or support of schools for the free education of youth without charge shall be exempt from taxation as long as such property, or the rents, issues, profits, or income thereof is used and exclusively applied for the support of free education by such municipal corporation, district, or subdistrict.

HISTORY: RS § 2732; S&S 761; S&C 1440; 61 v 39, § 3; 68 v 95; 91 v 393, 216; 99 v 449; CC § 5349; Bureau of Code Revision Eff 10-1-53.

Held unconstitutional in part: State ex rel. *Boaz v. Hess*, 113 O. 32, 148 NE 347; See case note 7 below.

Cross-References to Related Sections

"Exclusive use" defined, RC § 5709.12.1.

Ohio higher educational facility commission, exempted real or personal property of, RC § 3377.12.

Ohio Constitution

Exemptions, OConst art XII, § 2

Comparative Legislation

Exempt property:

CA—Rev & Tax Code § 202 et seq

FL—Stat Ann § 196.001 et seq

IL—Ann Stat ch 120, § 500 et seq

IN—Code § 6-1.1-10-1 et seq

KY—Const § 170

MI—Comp Laws Ann §§ 211.7, 211.9

NY—Real Prop Tax Law § 400 et seq

PA—CSA tit 72, § 5020-204

Research Aids