

DEMYSTIFYING INSIDE MILLAGE

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I. INTRODUCTION

Ohio's a "voter referendum" state. Early Ohio settlers—veterans of the American Revolution—came to Ohio wary of the government's ability to levy taxes without a vote and sought various limits on that over time.

- A. Constitutional Principles. Two principles from the Ohio Constitution are key in the property tax area:
1. Uniformity of Taxation. This principle is found in Ohio Constitution Article XII, Section 2. This principle is particularly important for townships which may have township-wide voted property tax levies, e.g. fire, as well as levies confined to a particular, typically unincorporated subset, e.g. road districts or police districts. Regardless of the taxing district in question, the tax rate is to be uniform across such taxing district.¹
 2. Levies in Excess of the Ten-Mill Limitation. Ohio Constitution Article XII, Section 2 also provides that property may not be taxed in excess of one per cent of its true value without a vote. This was codified in RC 5705.02, albeit at ten mills of assessed value. These provisions are commonly known as the "ten mill limit" and the unvoted property tax so authorized is commonly referred to as "inside millage." This millage, commonly referred to as "inside millage," is divided among the overlapping political subdivisions pursuant to a statutory formula in Ohio Revised Code ("R.C.") § 5705.31(D). In most areas of Ohio, the full ten mills is levied annually.

Millage in excess of a political subdivision's share of the ten mills must be voted.

- B. Statutory Home Rule. Ohio townships, unlike Ohio municipalities, do not have constitutional "home rule" power. Townships have "limited home rule" under Ohio Revised Code ("R.C.") Chapter 504, but that authority does not supersede Ohio's property tax levy laws. In this area, townships are entirely subject to the control of the state legislature, which strictly limits the ways in which Townships can levy taxes and borrow money.

II. PRACTICAL APPLICATION

- A. Overlapping Political Subdivisions. In most places in Ohio, the full ten mills of inside millage is levied annually and shared between the political subdivisions overlapping every parcel of real estate. At a minimum, a parcel would be in three

¹ *Deerfield Twp. v Testa*, (2014 WL 5406660 (Ohio Bd. of Tax Appeals) affirms that a township has no authority to levy inside millage for current expenses in a township on a non-uniform basis, i.e. excluding a municipality that has not withdrawn from the township. Distinguish this from use of inside millage for special purposes, as discussed below.

overlapping political subdivisions—a township, school district and county. There may also be an overlapping village or city.

- B. Allocation of Inside Millage. R.C. 5705.31(D) establishes the formula for allocating inside millage, which relates back to the conversion of the prior fifteen mill limit to ten mills in 1933. The allocations of inside millage under the formula are generally guaranteed, although certain annexations and other territory attachments and detachments can either create political subdivision that did not legally exist when the allocations were established, e.g. joint vocational school districts, or involuntarily cause non-uniform inside millage in contravention of the rule of uniform taxation also contained in Article XII, Section 2 of the Ohio Constitution. R.C. 5705.311, R.C. 5705.315 and case law over the years have favored results that preserve the higher inside millage of the combined territory if it can be done without reducing the guaranteed allocations of the other overlapping political subdivisions.

Inside millage is important since such millage is not subject to the reduction factors of RC 319.301, which subtract inflationary growth from the tax base for voted millage.

III. REQUESTING ADDITIONAL INSIDE MILLAGE

- A. Available Millage. In most places in Ohio the full ten inside mills is levied and allocated among the overlapping political subdivisions. Appearances can be deceiving; however, since some counties with sales taxes do not have their inside millage allocations levied, but reserve that ability under R.C. 5705.313 thus precluding any overlapping political subdivision from requesting it for operating purposes. If a political subdivision wants to see the allocation of inside millage within its county or counties, it should request DTE 515s for every taxing district from the Division of Tax Equalization of the Ohio Department of Taxation.
- B. Process. If a political subdivision determines that the full ten inside mills is not being levied in its county or counties, the political subdivision may formally request additional inside millage from the county budget commission of its dominant county under R.C. 5705.31(D). In order to so request, the political subdivision will need to demonstrate all of the following: (1) the additional inside millage can be levied uniformly across the political subdivision without exceeding ten mills in the aggregate amongst the overlapping political subdivisions; (2) the political subdivision has a need for the additional inside millage; and (3) the timing fits within the statutory property tax levy process.

IV. USE OF INSIDE MILLAGE

- A. Current Expenses. Typically, inside millage is used for operating expenses (General Fund). Additionally, R.C. 5705.14(E) permits a fund transfer from the General Fund to any other fund of the political subdivision upon majority vote of the board of township trustees.

- B. Special Purposes. Inside millage may also be formally allocated to special purposes authorized by law, e.g. a township park district under R.C. 511.27, cemetery purposes under R.C. 517.03 and, most commonly, road and bridge purposes under R.C. 5573.211.
- C. Road and Bridge. A township may formally allocate inside millage for road and bridge purposes under R.C. 5705.06(F) and such allocation covers the entire township. If a township wants to have a road levy on just the unincorporated portion of the township, it can proceed under either R.C. 5575.10, R.C. 5573.13 or R.C. 5573.21 to allocate a portion of its inside millage to that purpose. Then it may levy up to three mills of inside millage for road purposes. A transfer of the road funds back to the General Fund or elsewhere must follow the process outlined in R.C. 5705.16. Under *Deerfield*, any such transfer must match the taxing district which generated the tax revenue.
- D. Debt Service. Inside millage is also used to satisfy the Article XII, Section 11 requirement of the Ohio Constitution that general obligation debt be secured by the levy of a tax. When a political subdivision is issuing unvoted debt, it pledges its inside millage to pay debt service unless that debt service is paid from other available sources such as special assessments. If the debt service requires more than the political subdivision's allocation of inside millage and it does not have other funds available, the county budget commission may increase the political subdivision's inside millage allocation and reduce the allocations of the overlapping political subdivisions. The county auditor is responsible for tracking the debt service pledges of inside millage for all the overlapping political subdivisions to prevent the aggregate amount from exceeding ten mills. This is often referred to as the "indirect debt limitation" since it is not simply a direct percentage of tax valuation.