

## KARVO PAVING APPEAL DISMISSED BY OHIO SUPREME COURT

APRIL 24, 2020



RICHARD C. FARRIN, JD  
MEMBER



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On April 22, 2020, the Ohio Supreme Court granted a motion to dismiss the appeal filed by the Tax Commissioner from a decision of the Ninth District Court of Appeals in *Karvo Paving Co. v. Testa*. The Tax Commissioner appealed the Ninth District’s holding on the proper venue issue under the certified conflict jurisdiction of the Ohio Supreme Court. However, the Tax Commissioner did not appeal the decision of the Ninth District on the merits issues (see merits issues discussion below).

While the appeal was pending before the Ohio Supreme Court, the Tax Commissioner filed a motion to dismiss its appeal, stating that it agreed with the Ninth District’s holding on the proper venue issue. The Ohio Supreme Court granted the motion and dismissed the appeal. The result is that the Ninth District’s decision on the merits is final.

As discussed in an earlier BUZZ ([Court of Appeals Paves the Way for Resale of Traffic Control Equipment, Expands Affiliate Definition and Remands Casual Lease Issue](#), October 14, 2019), the Tax Commissioner had appealed an adverse decision of the Board of Tax Appeals (“BTA”) to the Ninth District and also filed a protective notice of appeal with the Tenth District Court of Appeals. The Tax Commissioner filed in both courts because of uncertainty as to which district court was the proper court to consider the appeal. The Ninth District addressed the Tax Commissioner’s argument that that court did not have jurisdiction to consider the appeal under the venue language in R.C. 5717.04, relying on an earlier decision

by the Tenth District Court of Appeals. The Ninth District disagreed with the Tenth District's decision and held that the appeal was properly filed in the Ninth District.

In addition to the venue issue, the case involved traffic maintenance equipment, employment services and the casual sale exemption. The Ninth District held that Karvo's purchase of the traffic maintenance equipment was excepted from sales tax because it was purchased for resale and that its provision of employment services was not subject to sales tax because it was provided to affiliates. Karvo cross-appealed the decision of the BTA holding that Karvo's sales of certain equipment did not qualify for the casual sale exemption from sales tax. The Ninth District found that the BTA did not address all the arguments on this issue and remanded the case to the BTA to fully address the issue.

**If you have any questions regarding the *Karvo* case or any other state and local tax matter, please contact [John Trippier](#), [Rich Farrin](#) or any other [ZHF professional](#).**

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