

IN THE SUPREME COURT OF OHIO

06-2230

BOARD OF EDUCATION FOR THE ORANGE
CITY SCHOOL DISTRICT

CASE NO. _____

Appellant/Appellee,

Appeal from the Ohio
Board of Tax Appeals

and

OLYMPIC STEEL, INC.,

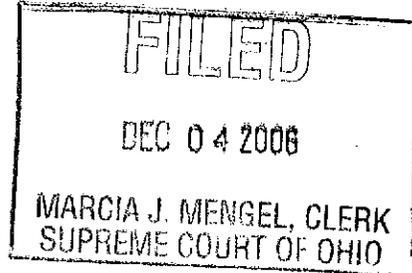
Appellee/Appellant,

v.

CUYAHOGA COUNTY BOARD OF REVISION
AND CUYAHOGA COUNTY AUDITOR
AUDITOR AND WILLIAM W. WILKINS
TAX COMMISSIONER.

Board of Tax Appeals
Case Nos. 2004-A-748/738/742 and
Case Nos. 2004-A-747/739/743

Appellees.



NOTICE OF APPEAL OF APPELLEE/APPELLANT OLYMPIC STEEL, INC.

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TAX COMMISSIONER OF OHIO

Notice of Appeal of Appellant

Appellee/Appellant, Olympic Steel, Inc., hereby gives notice of its appeal as of right, pursuant to R.C. §5717.04, to the Supreme Court of Ohio, from two Interlocutory Orders of the Board of Tax Appeals. The Board of Tax Appeals journalized a Certification and Order in Case Nos. 2004-A-748/738/742 and 2004-A-747/739/743 on November 3, 2006 incorporating and merging its Order of August 5, 2005. True copies of the two orders of the Board of Tax Appeals being appealed are attached hereto as Exhibit A and incorporated herein by reference.

The, Appellee/Appellant, Olympic Steel, Inc., complains of the following errors in the Orders of the Board of Tax Appeals:

1. The Board of Tax Appeals has failed to certify copies of its Orders dated August 5, 2005 and November 3, 2006 to the Tax Commissioner as required by R.C. §5717.03(B).
2. Under R.C. §§5717.03(B) and 5717.04, the Tax Commissioner is a necessary party to appeals from the Board of Tax Appeals to the Ohio Supreme Court. See *Olympic Steel, Inc. v. Cuyahoga Cty. Bd. of Revision*, (2006) 110 Ohio St.3d 1242, 2006-Ohio-4091, *Bd. of Edn. of the Olentangy Local School Dist. v. Delaware Cty. Bd. Of Revision*, (2006) 111 Ohio St.3d 1213, 2006-Ohio-5605 and *Mentor Exempted Village School Dist. Bd. of Edn. v. Lake Cty. Bd. of Revision*, (2006) 111 Ohio St.3d 1218, 2006-Ohio-5613.

3. It was unlawful and unreasonable for the Board of Tax Appeals to issue decisions and orders on the Olympic Steel appeals without certifying the decisions and orders via certified mail to the Tax Commissioner, a necessary party, as required by R.C. §5717.03(B).
4. Pursuant to *Cleveland Electric Illuminating Co. v. Lake County Bd. Of Revision*, (2000), 96 Ohio St.3d 165, 2002-Ohio-4022, the appeal time is tolled on all orders of the Board of Tax Appeals until the Board of Tax Appeals certifies its Orders and decisions to the Tax Commissioner via certified mail as required by R.C. §5717.03(B).
5. The failure of the Board of Tax Appeals to certify its Orders of August 5, 2005 and November 3, 2006 to the Tax Commissioner via certified mail has resulted in the appeal time for the attached Orders being tolled.
6. Since the Board of Tax Appeals failed to certify its' Orders of August 5, 2005 and November 3, 2006 to the Tax Commissioner via certified mail the Orders are Interlocutory Orders and not final orders until properly certified to the Tax Commissioner.
7. The failure to apply the ruling of *Cleveland Electric Illuminating Co. v. Lake County Bd. Of Revision*, (2000), 96 Ohio St.3d 165, 2002-Ohio-4022 to the within case would result in a disparate treatment of Olympic Steel and would violate Olympic's due process rights and equal protection rights granted under U.S. Constitution Amendment XIV, §1 and Ohio Constitution Art. I, §§2 and 16.

Appellee/Appellant, Olympic Steel, Inc. requests that the Court reverse the unreasonable and unlawful decision of the Board of Tax Appeals and remand the matter to the Board of Tax Appeals with instructions to the Board of Tax Appeals to serve both Interlocutory Orders to the Ohio Tax Commissioner via certified mail as required under R. C. §5717.03(B).

Respectfully submitted,



Karen H. Bauernschmidt, #0006774

Counsel of Record

COUNSEL FOR APPELLEE/APPELLANT,
OLYMPIC STEEL, INC.

PROOF OF SERVICE

I hereby certify that a copy of this Notice of Appeal was sent by certified mail, return receipt requested this 1st day of December, 2006 to:

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Tax Commissioner Of Ohio



Karen H. Bauernschmidt,
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COUNSEL FOR APPELLEE/APPELLANT,
OLYMPIC STEEL, INC.

OHIO BOARD OF TAX APPEALS

Board of Education for the Orange City)
School District,)
Appellant/Appellee,)
and)
Olympic Steel, Inc.,)
Appellee/Appellant,)
vs.)
Cuyahoga County Board of Revision and)
Cuyahoga County Auditor,)
Appellees.)

CASE NOS. 2004-A-738, 739,
742, 743, 747, 748

(REAL PROPERTY TAX)

CERTIFICATION AND
ORDER

APPEARANCES:

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Entered NOV 3 2006

Ms. Margulies, Mr. Eberhart, and Mr. Dunlap concur.

This cause and matter came on to be considered once again by the Board of Tax Appeals following the receipt of a judgment entry and reconsideration entry of the Supreme Court of Ohio, in the case of *Board of Education for the Orange City School District and Olympic Steel, Inc., Appellants v. Cuyahoga County Board of Revision and Cuyahoga County Auditor, Appellees*, Case No. 05-1639 on the docket of that court.

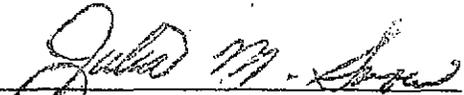
Upon consideration thereof, this board finds that under date of August 5, 2005, it journalized an order in which this board remanded the instant cases to the Cuyahoga County Board of Revision with orders to vacate its previous decisions rendered in those matters and dismiss the underlying complaints in each for lack of jurisdiction. Thereafter, and within the time prescribed by law, the property owner filed an appeal with the above-named court from the board's order.

Under date of August 16, 2006, said court dismissed the property owner's appeal and directed that a mandate be sent to this board to carry its judgment into execution. A copy of the judgment entry was received by this board on October 23, 2006. Further, under date of October 18, 2006, the court denied the property owner's motion for reconsideration. A copy of the reconsideration entry was received by this board on October 23, 2006, as well as the associated record in this matter.

Giving effect to the decision of the Supreme Court and acting under pertinent provisions of R.C. 5717.04, this matter is hereby certified to the

Cuyahoga County Board of Revision with orders to give effect to this board's decision.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



Julia M. Snow, Board Secretary

OHIO BOARD OF TAX APPEALS

Board of Education for the Orange City School District, Appellant/Appellee, and Olympic Steel, Inc., Appellee/Appellant, vs. Cuyahoga County Board of Revision and Cuyahoga County Auditor, Appellees.

CASE NOS. 2004-A-738, 739, 740, 741, 742, 743, 746, 747, 748

(REAL PROPERTY TAX)

ORDER

(Granting Motion to Dismiss, in part)

APPEARANCES:

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For the County Appellees - William D. Mason Cuyahoga County Prosecuting Attorney Timothy J. Kollin Assistant Prosecuting Attorney 1200 Ontario Street, 9th Floor Cleveland, Ohio 44113

Entered AUG 5 2005

Ms. Margulies, Mr. Eberhart, and Mr. Dunlap concur.

This cause and matter came on to be considered by the Board of Tax Appeals upon a motion to dismiss¹ filed by the board of education (“BOE”). This matter has been submitted to us upon such motion and memorandum in support, a reply filed by the property owner, Olympic Steel, Inc. (“Olympic”), and surreplies by both the BOE and Olympic.

Specifically, the BOE’s motion [to remand] is based upon the following facts, as set forth, in pertinent part, in the BOE’s memorandum supporting its motion:

“In mid-2002, the Auditor adjusted the value of the [subject] property for tax years 2000, 2001, and 2002 due to an error in that certain buildings had not been included in the Auditor’s assessed value for those tax years. ***

“On or about March 31, 2003, the property owner filed real estate tax complaints for tax years 2000, 2001, and 2002. As shown by the complaint numbers, the complaint for tax year 2000 *** was filed first, the complaint for tax year 2001 *** was filed second, and the complaint for tax year 2002 *** was filed last.

“The 2002 Complaint does not check any boxes under item 14 with regard to the four enumerated exceptions to the prohibition on multiple filings in a given triennium. Each complaint filed by the property owner requests a decrease in the market value of the property from \$10,854,200 to \$7,200,000. The 2000 Complaint and the 2001 Complaint both further reference the phrase ‘Ad Bill’, an apparent reference to the adjustment of the value of the subject property by the Auditor in mid-2002, for tax years 2000 and 2001.” Motion at 2.

¹ Although characterized as a motion to dismiss, appellant’s motion actually seeks an order from this board remanding the instant matters to the board of revision for dismissal of the underlying complaints; therefore, we will treat the subject motion as a motion to remand with instructions to dismiss the underlying complaints.

Based upon the foregoing facts, the BOE contends that the board of revision did not have jurisdiction to hear the complaints filed by Olympic for tax years 2000 and 2001 in March of 2003 because the BOR is only empowered to hear complaints for the current tax year. Further, the BOE contends that the 2002 complaint should have been dismissed by the BOR as a prohibited multiple filing within a triennium, pursuant to R.C. 5715.19(A).

First, it is necessary to clarify that the auditor, in assessing the property owner for buildings that had been incorrectly omitted from the tax list, was acting pursuant to R.C. 5713.20, which provided, in pertinent part, at the time the auditor took action, as follows:

“If the county auditor discovers that any building, structure, or tract of land or any lot or part of either, has been omitted from the list of real property, the auditor shall add it to the list, with the name of the owner, and ascertain the taxable value thereof and place it opposite such property. The county auditor shall compute the sum of the simple taxes for the preceding years in which such property was omitted from the list of real property, not exceeding five years, unless in the meantime the property has changed ownership, in which case only the taxes chargeable since the last change of ownership shall be computed. No penalty or interest shall be added to the amount of taxes so computed.

“The county auditor shall order the county treasurer to correct the duplicate of real property accordingly, and shall certify to the county treasurer the sum of taxes determined by the county auditor under this section to be due on the omitted property. The county treasurer thereupon shall notify the owner by certified mail, return receipt requested, of the sum of taxes due, and inform the owner that the owner may enter into a delinquent tax contract with the county treasurer to pay the taxes in installments, or that the

owner, if the owner desires, may pay the amount of such taxes into the county treasury.”

Olympic, in its description of what occurred in the instant matter, has characterized the auditor’s action as an assessment made to correct a fundamental error, pursuant to R.C. 319.35. We disagree. It is a well-settled legal principle that special statutory provisions relating to a particular subject take precedence over general statutes, even if the general statutes are broad enough to include the particular subject governed by the special statutes. *Leach v. Collins* (1931), 123 Ohio St. 530; *Pilgrim Distributing Corp. v. Galsworthy, Inc.* (1947), 148 Ohio St. 567. Further, regardless of what statute the auditor acted under, there is no recourse available to the property owner to challenge the auditor’s determinations. We discussed this state of the law in our decision in *Bd. of Education of the Dublin City School District v. Franklin Cty. Bd. of Revision* (Jan. 14, 2000), BTA Nos. 1997-M-963, et seq., unreported, where we considered actions taken pursuant to R.C. 5713.20, 319.35, 5715.15, and 319.39:

“When the auditor discovers omitted property, R.C. 5713.20 directs the auditor to add the previously omitted property to the tax list and compute simple taxes for the preceding years. R.C. 319.35 provides for the auditor from time to time, to correct the tax list and duplicate for clerical errors. If a correction is made to a duplicate delivered to the treasurer, R.C. 319.35 instructs the treasurer to make the correction in the margin of the appropriate duplicate. R.C. 5715.15 makes provision for the discovery by the board of revision that taxable property has escaped taxation or has been listed at less than taxable value. Finally, R.C. 319.39 requires the auditor to keep a record of ‘additions and deductions’ in which the auditor is to enter all corrections made to the general duplicate after delivery of such duplicates to the treasurer, which increase or diminish the amount of tax or the assessments. In addition to the

marginal corrections, he also issues a certificate of the correction to the treasurer. None of these provisions lend any support to the BOE's argument. Review of these provisions indicates that corrections are made from time to time by the auditor upon the tax list and duplicate in which an omission has occurred. Ultimately determinative of the issue posed by the instant appeals, however, is that *there is no statutory provision for review of the auditor's action in correcting the tax list*, as he has done in the instant appeals, either by the board of revision or the board of tax appeals." (Emphasis added.)

Thus, we find that Olympic's filings in 2003 for tax years 2000 and 2001 are prohibited by the specific language of R.C. 5715.19(A), which requires that a complaint for the "current tax year" must be filed by March 31 of the "ensuing year," i.e., March 31, 2001 for a tax year 2000 complaint and March 31, 2002, for a tax year 2001 complaint. See *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 105 Ohio St.3d 404, 2005-Ohio-2285. Cf. *Healthhaven Corporation v. Kinney* (Jan. 20, 1981), BTA No. 1979-E-490, unreported, wherein this board held that when a party sought remission of taxes assessed pursuant to R.C. 5713.20 and paid years later than they would have originally been due, remission should be denied, citing the Supreme Court decision in *Heuck v. Cincinnati Model Home Co.* (1936), 130 Ohio St. 378. In *Heuck*, the court held that "[t]he plain meaning and a liberal construction of Revised Code §§ 5713.20 and 319.40 provides that *previously omitted taxes cannot be considered current taxes, but are to be assessed with the current taxes when the omission is discovered*. Therefore, the omitted taxes for tax years prior to 1976 cannot be remitted pursuant to Revised Code §5713.081." (Emphasis added.) Olympic's complaints for tax years 2000 and 2001, although assessed with the current

taxes, are not for the "current tax year" and therefore did not meet statutory, jurisdictional requirements for the board of revision.

With regard to the 2002 complaint, it is the BOE's contention that said complaint failed to invoke the jurisdiction of the BOR, as a multiple filing within a triennial period. Specifically, R.C. 5715.19(A)(2) provides in pertinent part that:

"No person, board, or officer shall file a complaint against the valuation or assessment of any parcel that appears on the tax list if it filed a complaint against the valuation or assessment of that parcel for any prior tax year in the same interim period, unless the person, board, or officer alleges that the valuation or assessment should be changed due to one or more of the following circumstances that occurred after the tax lien date for the tax year for which the prior complaint was filed and that the circumstances were not taken into consideration with respect to the prior complaint:

"(a) The property was sold in an arm's length transaction, as described in section 5713.03 of the Revised Code;

"(b) The property lost value due to some casualty;

"(c) Substantial improvement was added to the property;

"(d) An increase or decrease of at least fifteen per cent in the property's occupancy has had a substantial economic impact on the property."

As stated earlier, Olympic filed decrease complaints for the three tax years under consideration on March 28, 2003. In mid-2002, the auditor adjusted the subject property's valuation, assigning three separate valuations for tax years 2000 (\$7,597,600), 2001 (\$8,140,400), and 2002 (\$10,854,200). The BOE argues that the

2002 complaint should be dismissed as being a second filing of a complaint for the same property in the same triennial, specifically herein, tax years 2000 through 2002. However, our review of the record before us does not indicate a legally sufficient reason for the dismissal of the instant cases regarding tax year 2002.

This board has clearly held in the past that the provisions of R.C. 5715.19(A)(2) cannot be applied to prohibit a second filing within a triennial period if a change in the valuation of the subject property is made by the auditor in that same period; the complainant is making a second filing, but on a different valuation of the subject property. As we stated in *Meijer, Inc. v. Clermont Cty. Bd. of Revision* (Interim Order, June 4, 1999), BTA No. 1998-M-671, unreported, “[N]otwithstanding the fact that the property owner filed a complaint for the first year of the triennial, the assessment which it now challenges is a new assessment not previously considered by the BOR. Therefore, the exceptions listed in R.C. 5715.19(A)(2) do not apply as that portion of the statute is not applicable.” See *Bd. of Edn. of the Berea City School Dist. v. Cuyahoga Cty. Bd. of Revision* (Interim Order, June 14, 1996), BTA Nos. 1994-G-1343, et seq., unreported; *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (May 30, 2003), BTA No. 2002-A-2251, unreported.

Thus, based upon the foregoing, the BOE’s motion [to remand] with regard to BTA Nos. 2004-A-738, 739, 742, 743, 747, and 748 is hereby granted. Such cases must be and hereby are remanded to the Cuyahoga County Board of Revision with orders to vacate its previous decisions rendered in those matters and dismiss the underlying complaints in those matters for lack of jurisdiction. With regard to BTA

Nos. 2004-A-740, 741, and 746, the BOE's motion is denied. Therefore, such matters will proceed to merit hearing in the normal course of the board's business.

BOARD OF TAX APPEALS			
RESULT OF VOTE	YES	NO	DATE
Ms. Margulies	plm		7/29/05
Mr. Eberhart	RJL		8/5/05
Mr. Dunlap	WES		7-28-05

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.


Julia M. Snow, Board Secretary

CCY
WJS