IN THE SUPREME COURT OF OHIO

IBM Corporation, Plaintiff-Appellant, -v- Board of Revision of Franklin County, Ohio, and Board of Education for the South-Western City School District, Defendants-Appellees.	:	SUPREME COURT CASE NO.: 07-0076 On Appeal from the Franklin County Court of Appeals, Tenth Appellate District Court of Appeals Case No. 06AP-108

APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION

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EXPLANATION OF WHY THIS CASE IS OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This case presents a critical issue for real property owners in Ohio: whether O.R.C. § 5715.19(A)(1)(d) entitles a taxpayer to challenge a retroactive real property tax assessment levied by a county auditor for prior tax years following a retroactive change to a parcel's tax valuation.

In this case, the Court of Appeals of Ohio, Tenth Appellate District, reversed the decision of the Franklin County Court of Common Pleas and held that the Franklin County Board of Revision lacked subject matter jurisdiction to consider a taxpayer's challenge to an auditor's correction and aggregate retroactive tax assessment of more than five hundred thousand dollars for tax years 2000, 2001 and 2002 because the time period set forth in O.R.C. § 5715.19(A)(1)(d) for challenging the original valuations and assessments for those years had expired.

By its ruling, the Tenth District Court of Appeals has issued a decision contrary to the plain language of the statute, which states that a taxpayer has until March 31 of the following year to challenge either a valuation or an assessment made in the current year, and has effectively denied Ohio real property owners the right to challenge retroactive valuation adjustments and tax assessments. The implications of this decision affect every individual and corporate owner of real property in Ohio. If allowed to stand, the decision of the Tenth District Court of Appeals will allow county auditors to adjust valuations after the fact and levy substantial retroactive tax assessments with no right of challenge by the taxpayer. Considering the far-reaching implications of this case, it is clearly one of both great public interest and broad general significance.

This case also involves a substantial constitutional question. The Tenth District's decision substantiates a process that offends procedural due process rights guaranteed by both the Ohio and United States constitutions by allowing the state to deprive taxpayers of tangible property rights without being afforded any opportunity to be heard. The core concept of procedural due process is that before one can be deprived of a property right by the state, they must be afforded the opportunity for a meaningful hearing. By denying the appellant in this case such an opportunity when it is clearly being deprived of a substantial property right by the state, the decision of the Tenth District Court of Appeals justifies denying the appellant its constitutional rights to due process.

STATEMENT OF THE CASE AND FACTS

This case arises from three Complaints Against the Valuation of Real Property filed by IBM with the Franklin County Board of Revision on June 19, 2003 (the "Complaints"). The Complaints were filed in response to an April 29, 2003 letter IBM received from the Franklin County Auditor stating that due to a clerical error, IBM's taxes related to certain real property it owns in Franklin County were improperly determined for tax years 2000, 2001 and 2002. The Board of Revision determined it had jurisdiction to consider the Complaints and the Franklin County Court of Common Pleas held the same. Reversing the Franklin County Court of Common Pleas, the Tenth District Court of Appeals held that the Board of Revision did not have jurisdiction to consider the Complaints because they were time-barred by O.R.C. § 5715.19(A)(1). In deciding the matter solely on these jurisdictional grounds, the Tenth District Court of

Appeals did not address the underlying facts or reasoning which were the basis of the Complaints.

In 1999, IBM entered into an agreement with Bank One Corporation ("Bank One") to make certain improvements and renovations to an IBM data processing facility located at 4499 Fisher Road, Columbus, Franklin County, Ohio, Franklin County tax parcel numbers 570-223345-80 and 570-223345-90 (the "Property"). Under the agreement, Bank One was to lease the Property from IBM for use in its data processing operations. In connection with the agreement with Bank One, IBM received an "Enterprise Zone" tax abatement (the "Abatement") from the City of Columbus whereby IBM was to receive an abatement of 60% of the increase in the value of the Property during the term of the Abatement. IBM completed its improvements to the Property in 2000; however, Bank One notified IBM in 2002 that it no longer needed the Property and terminated the agreement. IBM subsequently notified the taxing authorities and the Abatement was terminated effective tax year 2003.

On April 29, 2003, the Franklin County Auditor notified IBM by letter that it had mistakenly abated 60% of the *entire* value of the Property, rather than 60% of the *increase* in value, for tax years 2000, 2001, and 2002. As a result, the Auditor adjusted the total tax valuations of the Property accordingly and assessed IBM an additional $539,081.20 in the second half of tax year 2002. According to the Auditor's letter, IBM had until June 20, 2003, to file complaints challenging the correction and assessment.

IBM filed the Complaints on June 19, 2003, in order to challenge the Auditor's purported valuation of the Property for tax years 2000, 2001, and 2002 and

subsequent assessment. The Complaints were consolidated and placed on the docket of the Franklin County Board of Revision as Case No. 02-1152A&B. Counter-Complaints were filed by Appellee South-Western City Schools Board of Education ("South-Western").

A hearing was held before the Board of Revision on April 1, 2004, with respect to the issues raised by IBM's Complaints and South-Western's Counter-Complaints. At the hearing, IBM presented testimony from Robert J. Feeley, an appraisal expert with U.S. Realty Consultants, Inc who was retained by IBM to retroactively appraise the fair market value of the Property for tax years 2000, 2001, and 2002. Mr. Feeley testified that the Auditor's valuations for these years were excessive, as the Property is highly specialized in nature, contains numerous unmarketable superadequacies and is obsolete in size for all but a very small handful of potential buyers.

At the Board of Revision hearing, South-Western argued that the Board lacked subject matter jurisdiction over the Complaints because they were time-barred by O.R.C. § 5715.19(A)(1) in that they were not filed by March 31 of the year following each of the years in question. The Board of Revision exercised jurisdiction over the Complaints after South-Western declined to brief the jurisdictional issue, but upheld the Auditor's valuations of the Property for the years in question and exercised its continuing jurisdiction to also uphold the Auditor's valuation of the Property for tax year 2003.

IBM timely appealed the Board of Revision's decision as to each tax year and parcel to the Franklin County Court of Common Pleas pursuant to O.R.C. § 5717.05. These appeals were consolidated and placed on the docket of Judge Peterson as Case No.

04 CVF-10-11075. In its trial brief submitted to the Court of Common Pleas, South-Western again raised the issue of jurisdiction relating to O.R.C. § 5715.19(A)(1). In its January 5, 2006 Decision and Judgment Entry, the Court of Common Pleas rejected this argument, holding that because the assessment of IBM's property tax liability for tax years 2000, 2001 and 2002 was determined and levied by way of the Auditor's correction in 2003, IBM's Complaints were timely filed on June 19, 2003. The Court of Common Pleas, however, affirmed the Board of Revision's decision on the merits.

IBM timely appealed the decision of the Franklin County Court of Common Pleas with respect to the merits of the case to the Franklin County Court of Appeals, Tenth Appellate District. The appeal was placed on the Court's docket as Case No. 06AP-108. South-Western did not cross-appeal Judge Peterson's ruling on the jurisdictional issue, but raised the issue in its Brief. Declining to address the merits of IBM's Complaints, the Tenth District Court of Appeals reversed the judgment of the Court of Common Pleas and held that the Board of Revision did not have jurisdiction to consider the Complaints because they were time-barred under O.R.C. § 5715.19(A)(1) and this Court's holding in *Cleveland Municipal School Dist. v. Cuyahoga Cty. Bd. of Revision* (2005), 105 Ohio St.3d 404, 2005-Ohio-2285 [Opinion and Judgment Entry attached hereto at Tab A]. In so ruling, IBM respectfully asserts that the Court of Appeals erred.

In support of its position on this issue, IBM presents the following argument.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

<u>Proposition of Law No. 1</u>: For purposes of O.R.C. § 5715.19(A)(1)(d), a parcel's total valuation or assessment is determined in the year the auditor issues an adjustment to the valuation and assessment, and the aggrieved taxpayer has until March 31 of the following year to challenge said determination.

O.R.C. § 5715.19(A)(1) provides, in pertinent part:

> Subject to division (A)(2) of this section, a complaint against any of the following determinations for the current tax year shall be filed with the county auditor on or before the thirty-first day of March of the ensuing tax year or the date of closing of the collection for the first half of real and public utility property taxes for the current tax year, whichever is later:
>
> ***
>
> (d) The determination of the total valuation or assessment of any parcel that appears on the tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code[.]

In holding that IBM's Complaints were time-barred under the foregoing statute, and that the Board of Revision thus lacked subject matter jurisdiction to consider them, the Tenth District Court of Appeals relied on this Court's decision in *Cleveland Municipal School Dist. v. Cuyahoga Cty. Bd. of Revision* (2005), 105 Ohio St.3d 404, 2005-Ohio-2285. In *Cleveland Municipal*, Royal Financing, LLC, a property owner, filed a complaint with the Board of Revision challenging the tax valuation of the subject property for 1997 through 1999. *Id.* at 406. Even though Royal Financing did not file its complaint for these years until June 27, 2000, it argued that its challenge was precluded by section 5715.19(A)(1). Because a previous owner of the property had filed a complaint challenging its valuation in 1994 and the Board of Tax Appeals did not finally adjudicate that complaint until 1998, Royal Financing argued that the Board of Revision

had continuing jurisdiction to consider challenges to valuation through at least 1998 pursuant to O.R.C. § 5717.19(D). *Id.* at 407. The Court rejected this argument on the basis that while the continuing-complaint rule set forth in section 5717.19(D) applies to preserve the Board's jurisdiction to adjust property valuations determined pursuant to the original complaint through the year in which the original complaint is fully adjudicated, it does not apply to establish a basis for jurisdiction over a new complaint seeking a new valuation different than that established through adjudication of the original complaint. *Id.* at 408-09. In so holding, the Court found that Royal Financing's 2000 complaint was time-barred under section 5715.19(A)(1) and affirmed the finding of the Board of Tax Appeals that the Board of Revision lacked subject matter jurisdiction. *Id.* at 409.

The underlying basis of the Court's holding in the *Cleveland Municipal* case is distinguishable from the case at hand and IBM respectfully asserts that the holding is thus inapplicable. In *Cleveland Municipal,* the property owner attempted to use the continuing-complaint rule as a basis for establishing the Board of Revision's jurisdiction over a new complaint seeking a new valuation for years for which the March 31 deadline had already expired. The case at hand is not, however, a case involving application of the continuing-complaint rule. Rather, it is one necessitating an interpretation of the meaning and scope of section 5715.19(A)(1): whether a property owner has until March 31 of the year following an auditor's correction and adjustment of a parcel's tax valuation and assessment to file a complaint challenging the valuation and assessment so adjusted.

In April, 2003, the Franklin County Auditor notified IBM that due to a clerical error it had misapplied the Abatement and would thus reallocate and adjust the taxable value of the Property. In so doing, the Auditor determined a new valuation of the

Property and levied an assessment to IBM. O.R.C. § 5715.19(A)(1)(d) is clear: an aggrieved taxpayer has until March 31 of the year following, "[t]he determination of the total valuation or assessment of any parcel that appears on the tax list" to bring a complaint challenging the valuation or assessment. Clearly, in this instance, the determination of total tax valuation and assessment of the Property was made on April 29, 2003 when the Franklin County Auditor realized its error, adjusted the Property's valuation accordingly (as shown by the letter) and levied an assessment against IBM.

As the Court of Common Pleas noted in its Decision, an "assessment" can be defined as:

> [D]etermining the share of a tax to be paid by each of many persons; or apportioning the entire tax to be levied among the different taxable persons, establishing the proportion due from each. (Black's Law Dictionary (6Ed.1990) 116-117.)

Under this definition, the "assessment", or IBM's share of the property taxes it owed for 2000, 2001 and 2002, was determined by the Auditor in 2003 and IBM thus had until March 31, 2004 to file its Complaints. To interpret 5715.19(A)(1) to deny a taxpayer the right to challenge a parcel's valuation when the auditor makes an adjustment to that valuation and levies an enormous retroactive assessment simply because the time period for challenging the original valuation and assessment has expired is contrary to the plain language of the statute and places property owners in the untenable position of being left completely without remedy in such a situation.

The record shows that the determination of the total valuation of the Property and IBM's assessed tax liability thereon was made by the Franklin County Auditor on April 29, 2003. Under the unambiguous language of O.R.C. § 5715.19(A)(1),

IBM had until March 31, 2004 to file complaints challenging this valuation and assessment. IBM's Complaints, filed June 19, 2003, were made more than nine months before that deadline and IBM should not be denied the opportunity to have its Complaints determined on their merits.

<u>Proposition of Law No. 2</u>: As a matter of procedural due process, a taxpayer has the right to challenge a retroactive adjustment to a parcel's tax valuation and assessment.

IBM acknowledges that if there had been no intervening adjustment to the Property's tax valuation and assessment, and it had filed the Complaints as simply an attempt to retroactively reduce its tax bill, the Complaints would be time-barred by O.R.C. § 5715.19(A)(1). However, that is not what has occurred in this case. The Franklin County Auditor, by its April 29, 2003 letter to IBM, adjusted the tax valuation of the Property and sought to impose on IBM an additional and unanticipated tax assessment of more than five hundred thousand dollars.

The result of the Tenth District Court of Appeals' interpretation of 5715.19(A)(1) is that even though the Auditor retroactively increased the taxable value of the Property for tax years 2000-2002, resulting in an additional tax assessment of $539,081.20, IBM is not permitted to challenge the valuation and assessment in any way. This interpretation is a violation of IBM's due process rights under the Ohio and United States constitutions. If allowed to stand, Ohio taxpayers will have no opportunity to challenge adjustments to valuation and unexpected and perhaps burdensome retroactive tax assessments made "down the road" for prior years after March 31 of the years in question.

The core concept with regard to both state and federal due process is that the Government cannot deprive property rights once conferred without granting, at a minimum, the opportunity to be heard:

> Although the concept is flexible, at its core, procedural due process under both the Ohio and United States Constitutions requires, at a minimum, an opportunity to be heard when the state seeks to infringe a protected liberty or property right. . . Further, the opportunity to be heard must occur at a meaningful time and in a meaningful manner. . . The right to procedural due process is conferred not by legislative grace, but by constitutional guarantee. Thus, while the legislature may elect not to confer a particular property right, it may not constitutionally authorize the deprivation of a property interest, once conferred, without appropriate procedural safeguards.

Ohio v. Cowan (2004), 103 Ohio St. 3d 144, 146.

Clearly, IBM, and all Ohio property owners, have a constitutionally protected property right with respect to the taxes assessed to them by county auditors. In issuing a correction notice by which it adjusted the Property's valuation and retroactively assessing IBM more than five hundred thousand dollars, the Franklin County Auditor clearly deprived IBM of a property right. If IBM is denied the opportunity to challenge this deprivation by arguing the merits of its Complaints before the Board of Revision and following through with the statutory appeals process, its procedural due process rights are unconstitutionally denied. In holding that IBM is not entitled to this opportunity, the Tenth District Court of Appeals has denied IBM these rights.

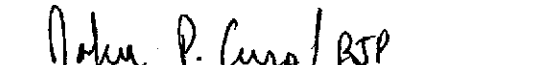
CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest and a substantial constitutional question. Appellant IBM Corporation requests that this Court accept jurisdiction in this case so that the important

issues presented will be reviewed on their merits.

Respectfully submitted,

John P. Curp, Counsel of Record



COUNSEL FOR APPELLANT,
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Certificate of Service

I certify that a copy of the foregoing Memorandum in Support of Jurisdiction has been sent, via U.S. mail, postage prepaid, this 16th day of January, 2007 to:

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

IBM Corporation,	:	
Appellant-Appellant,	:	
		No. 06AP-108
v.	:	(C.P.C. No. 04CVF-10-11075)
Board of Revision of Franklin County et al.,	:	(REGULAR CALENDAR)
	:	
Appellees-Appellees.	:	

JUDGMENT ENTRY

For the reasons stated in the opinion of this court rendered herein on November 30, 2006, it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is reversed, and this matter is remanded to that court with instructions to vacate the orders of the BOR and to remand this matter to the BOR to dismiss the complaints for lack of jurisdiction. In light of our disposition of the jurisdictional issue, we do not reach the merit issues alleged as error under appellant's assignments of error. Costs are assessed against appellant.

BROWN, FRENCH & McCORMAC, JJ.

Judge Susan Brown

McCORMAC, J., retired of the Tenth Appellate District, assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution.

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

IBM Corporation,	:	
Appellant-Appellant,	:	
v.	:	No. 06AP-108 (C.P.C. No. 04CVF-10-11075)
Board of Revision of Franklin County et al.,	:	(REGULAR CALENDAR)
Appellees-Appellees.	:	

O P I N I O N

Rendered on November 30, 2006

Taft, Stettinius & Hollister, LLP, John P. Curp, and *Benjamin J. Parsons*, for appellant.

Rich, Crites & Dittmer, LLC, Mark H. Gillis, and *Kelley A. Gorry*, for appellee Board of Education for the South-Western City School District.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} This is an appeal by plaintiff-appellant, IBM Corporation, from a judgment of the Franklin County Court of Common Pleas affirming orders of the Franklin County Board of Revision ("BOR"), which left unchanged the taxable value assigned by the Franklin County Auditor ("auditor") to property owned by appellant for tax years 2000, 2001, and 2002.

{¶2} Appellant is the owner of Parcel No. 570-223345, located at 4499 Fisher Road, Columbus, Ohio (hereafter "the property"). The auditor determined the total appraised value of the property to be $12,638,000 for both tax years 2000 and 2001, and $13,269,900 for tax year 2002.

{¶3} In 1999, the city of Columbus granted appellant a tax abatement with respect to the value of improvements to the property, exempting from taxation 60 percent of the value of any new improvements appellant added to the property after 1999. Appellant subsequently made improvements, but the abatement was terminated in 2003, when the promise of new jobs, as a condition of abatement, did not come to fruition after Bank One Corporation, which had entered into an earlier agreement with appellant, informed appellant it was no longer interested in using the property as a data processing facility.

{¶4} On April 29, 2003, the auditor sent appellant a letter, notifying it that the auditor's office had made a clerical error with respect to the tax abatement. More specifically, the auditor informed appellant that the abatement it had received was "for 60% of the increase in value added to the existing building," and that the auditor's office "mistakenly abated 60% of the entire building value instead of 60% of the *increase in value*." (Emphasis sic.) Because of the error, the auditor informed appellant that its property had been "re-allocated based upon the Enterprise Zone agreement," and, as a result, the auditor's office assessed an additional $539,081.20 to appellant's second half 2002 tax bill. The auditor's letter also stated that appellant "may file an appeal concerning the new valuation with the Franklin County Board of Revision."

{¶5} On June 19, 2003, appellant filed three complaints with the BOR challenging the valuation of the property for tax years 2000, 2001, and 2002, on the basis that "[t]he property's assessed value exceeds its full value for each of the three tax years * * * in which the auditor seeks to change the valuation." In its complaint contesting the valuation for tax year 2001, appellant indicated that improvements in the amount of $25,127,161.97 had been made in the last three years. On June 20, 2003, appellee, the Board of Education for the South-Western City School District ("South-Western"), filed three counter-complaints regarding tax years 2000, 2001, and 2002 (i.e., one complaint for each year).

{¶6} The matter came for hearing before the BOR on April 1, 2004. At the hearing, South-Western argued that the BOR lacked jurisdiction to consider the valuation of the property for years 2000, 2001, and 2002, because appellant failed to file timely complaints for those years under the provisions of R.C. 5715.19 and 5715.13. South-Western further contended that the auditor was without authority to bestow jurisdiction on the BOR by virtue of the April 29, 2003 letter.

{¶7} During the hearing, appellant presented the testimony of Robert Feeley, an appraiser with US Realty, who conducted an appraisal of the property on behalf of appellant, and who also prepared a "summary appraisal report." In the report, Feeley concluded that the value of the property was $6,900,000 as of January 1, 2000, and $6,600,000 as of January 1, 2002. The BOR issued a decision on September 23, 2004, leaving unchanged the auditor's valuations for the years 2000, 2001, and 2002.

{¶8} On October 21, 2004, appellant filed an appeal with the trial court from the decision of the BOR. Both parties submitted trial briefs for the court's review. By decision

and entry filed January 5, 2006, the trial court affirmed the orders of the BOR. In its decision, the trial court rejected South-Western's contention that appellant was jurisdictionally barred from challenging the valuations for 2000, 2001, and 2002. The court concluded, however, that appellant had failed to meet its burden of presenting reliable, probative evidence that the auditor had overvalued the property for those years.

{¶9} On appeal, appellant sets forth the following two assignments of error for review:

> 1. The trial court erred to the prejudice of Appellant IBM Corporation by valuing the subject property based upon its use by its present owner, therefore unlawfully disregarding the property's true value if sold on the open market as required by the Supreme Court of Ohio in *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1972), 32 Ohio St.2d 28.
>
> 2. The trial court erred to the prejudice of Appellant IBM Corporation and abused its discretion by unreasonably and arbitrarily refusing to give due consideration to the expert appraisal report of Robert J. Feeley, which was the only evidence presented as to the fair market value of the subject property.

{¶10} At the outset, we address a jurisdictional issue raised by South-Western, in which it argues the BOR had no statutory authority under R.C. 5715.19(A)(1) to determine the true value of appellant's property for tax years 2000, 2001, and 2002. Specifically, South-Western argues, as it did before the trial court and at the BOR hearing, that appellant failed to file timely complaints challenging the valuations for those years.

{¶11} In response, appellant contends in its reply brief that South-Western is barred from raising a jurisdictional argument before this court because it did not file a cross-appeal from the trial court's determination on this issue. We disagree.

{¶12} Complaints filed under R.C. 5715.19 and 5715.13 are jurisdictional. *Buckeye Foods v. Cuyahoga Cty. Bd. of Revision* (1997), 78 Ohio St.3d 459, 461. As such, the Ohio Supreme Court has held that " 'full compliance with R.C. 5715.19 and 5715.13 is necessary before a county board of revision is empowered to act on the merits of a claim.' " Id., quoting *Stanjim Co. v. Mahoning Cty. Bd. of Revision* (1974), 38 Ohio St.2d 233, 235. Further, under Ohio law, "[s]ubject matter jurisdiction is never waived, and neither a court nor the parties may confer jurisdiction where none existed originally." *Hirt's Greenhouse, Inc. v. City of Strongsville* (Sept. 7, 1995), Cuyahoga App. No. 68374. Thus, "the lack of jurisdiction can be raised at any time, even for the first time on appeal." *State ex rel. Tubbs Jones v. Suster* (1998), 84 Ohio St.3d 70, 75. See, also, *Hirt's Greenhouse,* supra ("the filing of a cross appeal is not a prerequisite to challenging the subject matter jurisdiction of this court").

{¶13} R.C. 5715.19(A)(1) states, in pertinent part:

> Subject to division (A)(2) of this section, a complaint against any of the following determinations for the current tax year shall be filed with the county auditor on or before the thirty-first day of March of the ensuing tax year or the date of closing of the collection for the first half of real and public utility property taxes for the current tax year, whichever is later:
>
> * * *
>
> (d) The determination of the total valuation or assessment of any parcel that appears on the tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code[.]

{¶14} South-Western notes that, subsequent to the trial court's decision in this case, the Ohio Supreme Court issued its decision in *Cleveland Mun. School Dist. Bd. of*

Edn. v. Cuyahoga Cty. Bd. of Revision, 105 Ohio St.3d 404, 2005-Ohio-2285. In *Cleveland Mun.*, the previous owner of an office building had filed a complaint with the Cuyahoga County BOR for tax year 1994. After the Cuyahoga County BOR upheld the county auditor's valuation, the owner appealed to the Board of Tax Appeals ("BTA"). While the appeal was pending, the parties stipulated that the true value of the property was $2,650,000. In 1998, the BTA ordered the county auditor to correct his tax records to reflect the stipulated value, "which was to 'be carried forward according to law.' " Id., at ¶4.

{¶15} More than two years later, the county auditor notified the previous owner that, as a result of a review of the BTA's decision, the market value of the property had been revised from $6,200,000 to $3,800,000 for tax years 1997 through 1999, and the county auditor's letter indicated that the tax amount would be adjusted through a revised bill for the second-half tax collection. The appellant, Royal Financing, LLC ("Royal"), became involved with the tax situation after it became an owner. On June 27, 2000, Royal filed a complaint with the Cuyahoga County BOR, asserting that the true value of the property was lower for tax years 1997 through 1999 (i.e., $2,200,000 for those tax years). A counter-complaint was filed by the Cleveland Municipal School District Board of Education ("school board"), in which the school board argued that the auditor's $3,800,000 assessment was the true property value.

{¶16} Following a hearing, the Cuyahoga County BOR determined that the true value of the property for tax year 1997 was $3,000,000. Royal and the school board both filed appeals regarding the valuation, and the school board additionally argued that the Cuyahoga County BOR lacked jurisdiction to consider Royal's valuation complaint for tax

years 1997 and 1998. The BTA agreed with the school board on the jurisdictional issue, and ordered the Cuyahoga County BOR to dismiss Royal's complaint for tax years 1997 and 1998. The BTA also ordered reinstatement of the county auditor's valuations for tax years 1997 and 1998.

{¶17} On further appeal, the Ohio Supreme Court held that "R.C. 5715.19(A)(1) requires that a complaint for the current tax year be filed by March 31 of the ensuing year." *Cleveland Mun.*, at ¶13. Thus, under the facts of that case, in order for the Cuyahoga County BOR to have jurisdiction over a complaint concerning a property valuation for tax year 1997, the complaint was required to have been filed with the Cuyahoga County BOR by March 31, 1998. Accordingly, Royal's June 27, 2000 complaint did not meet the requirements of R.C. 5715.19(A)(1) for the filing of a complaint regarding tax years 1997 and 1998, and the Ohio Supreme Court affirmed the BTA's decision granting the motion to dismiss Royal's June 2000 complaint.

{¶18} In the instant case, South-Western argues that the complaints filed by appellant on June 19, 2003, contesting the original appraised values for tax years 2000, 2001 and 2002, were untimely under the applicable statutory language. South-Western further argues that the auditor could not bestow jurisdiction on the BOR by agreement with appellant, nor could the auditor vest the BOR with jurisdiction over the previously determined true value of the property by merely reallocating that value to a taxable portion and an exempt portion of the property.

{¶19} Based upon the provisions of R.C. 5715.19, and the holding in *Cleveland Mun.*, we agree with South-Western's contention that the complaints were untimely filed and, therefore, the BOR lacked authority to make revisions to the property valuations for

tax years 2000, 2001, and 2002. As previously noted, "full compliance" with R.C. 5715.19 and 5715.13 is a prerequisite to a county BOR acting on the merits of a claim. *Buckeye Foods,* supra, at 461. Here, in the absence of effective complaints, "the BOR had nothing to hear and determine." *Gammarino v. Hamilton Cty. Bd. of Revision* (1997), 80 Ohio St.3d 32, 34. Further, where a party fails to properly invoke the jurisdiction of the BOR, dismissal of the complaint is appropriate. *F&R Ltd. Partnership v. Bd. of Revision of Hamilton Cty.* (Sept. 25, 1998), Hamilton App. No. C-970888 ("If the complaint does not meet the statutory jurisdictional requirements, it must be dismissed"), citing *Elkem Metals Co., L.P. v. Washington Cty. Bd. of Revision* (1998), 81 Ohio St.3d 683.

{¶20} Accordingly, the judgment of the Franklin County Court of Common Pleas is reversed, and this matter is remanded to that court with instructions to vacate the orders of the BOR and to remand this matter to the BOR to dismiss the complaints for lack of jurisdiction. In light of our disposition of the jurisdictional issue, we do not reach the merit issues alleged as error under appellant's assignments of error.

Judgment reversed
and cause remanded with instructions.

FRENCH and McCORMAC, JJ., concur.

McCORMAC, J., retired of the Tenth Appellate District, assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution.

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