

IN THE SUPREME COURT OF OHIO

IBM Corporation, : Case No. 07- 0076
Appellant, :
v. : Appeal from the Franklin County
Board of Revision of Franklin County, : Court of Appeals - Tenth District
et al., : Case No. 06AP-108
Appellees. :

MEMORANDUM IN OPPOSITION TO JURISDICTION
OF APPELLEE BOARD OF EDUCATION OF THE
SOUTH-WESTERN CITY SCHOOL DISTRICT

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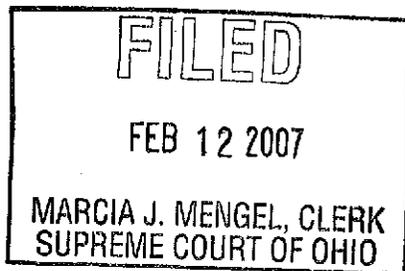


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THIS IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST
AND DOES NOT INVOLVE A CONSTITUTIONAL QUESTION

The issue which Appellant attempts to bring to this Court has already been decided twice before by this Court. The issue is whether a county board of revision has statutory jurisdiction to hear and decide a board of revision complaint filed for prior tax years when R.C. 5715.19(A)(1) allows such a complaint to be filed “for the current tax year.”

This Court recently decided this very issue in *Cleveland Mun. Sch. Dist. Bd. of Educ. v. Cuyahoga County Bd. of Revision*, 105 Ohio St. 3d 404, 2005 Ohio 2285, 827 N.E.2d 306 (the *Royal Financing* decision), where this Court held that a county board of revision had no statutory jurisdiction to hear and decide a complaint for any year other than the “current tax year.” In fact, the issue was decided long before that in *Swetland Co. v. Evatt* (1941), 139 Ohio St. 6, 21 Ohio Op. 511, 37 N.E.2d 601, where this Court held that “the jurisdiction of a county board of revision *** is limited to correcting the valuation or assessment of the real property for the then current year set out in the complaint” (paragraph 5 of the syllabus). Following this precedent, the Franklin County Court of Appeals below held that a county board of revision had no statutory jurisdiction to hear and decide complaints filed for prior tax years.

Appellant attempts to distinguish this precedent by arguing that a taxpayer has a right to “challenge a retroactive real property tax assessment levied by a county auditor” (Memorandum, p. 1). While this might be a debatable proposition itself, it is not involved or implicated in this appeal. Appellant did not challenge the “retroactive assessment” made by the Franklin County Auditor in this case, but rather challenged only the Franklin County Auditor’s appraisal of the true value of its property for the prior tax years, which had not been changed by the Auditor, and which had not been

previously contested by IBM, and which had nothing to do with the “retroactive assessment” which was made by the County Auditor in this case. Appellant simply attempted to use the County Auditor’s correction of a clerical error in determining the amount of a percentage tax abatement which applied to Appellant’s property to challenge the Auditor’s prior and unchanged determination of the true value of its property for the previous tax years.

Because there is no new, important, or significant issue involved in this appeal, Appellee respectfully requests this Court to deny Appellant’s motion to certify the record to this Court.

STATEMENT OF THE FACTS

The City of Columbus created an Enterprise Zone for the IBM property in 1999 and granted IBM a partial tax abatement or tax exemption. The tax abatement exempted from real property taxation 60 percent of the value of any new improvements which IBM added to the property after 1999. IBM added extensive new improvements to the property in 2001, which the Auditor valued for the first time for tax year 2002.

However, starting in tax year 2000, the Franklin County Auditor mistakenly applied the tax abatement to 60 percent of the total true value of all of the improvements on the property (which included the true value of \$11,500,000 for the existing building located on the property) rather than to 60 percent of the value of just the new improvements which were added to the property. As a result of this error, IBM improperly received a 60 percent tax exemption on the true value of the existing building for tax years 2000 and 2001, when IBM was not entitled to any tax abatement at all. IBM never brought this error to the attention of the County Auditor. The same error was made by the Auditor for tax 2002.

The County Auditor discovered the error in April, 2003, and on April 29, 2003, the Auditor sent IBM a letter stating that “[o]ur office mistakenly abated 60% of the entire building value instead of 60% of the increase in value” (due to any new improvements). The letter informed IBM that the amount of the tax abatement was “re-allocated based upon the Enterprise Zone agreement.” As a result of correcting the clerical error made in the calculation of the tax abatement, IBM was assessed “omitted taxes” for tax years 2000 through 2002 under R.C. 319.40.

IBM has not contested the correction of the clerical error which was made in calculating the amount of the tax abatement and has not contested the Auditor’s assessment of the omitted taxes on the property for the prior tax years. Instead, in June, 2003, IBM filed complaints with the Franklin County Board of Revision retroactively contesting the County Auditor’s determination of the true value in money of its property for the prior tax years of 2000, 2001, and 2002. In its Memorandum (pp. 7-8), IBM claims that “the Auditor determined a new valuation of the Property and levied an assessment to IBM.” However, the Auditor did not change the true value of the property when the Auditor recalculated the amount of the tax abatements. All the Auditor did was to recalculate the amount of the tax abatement and then charge IBM omitted taxes on the previously established valuation of the existing improvements which had illegally escaped taxation for the prior tax years.

If IBM had objected to the Auditor’s determination of the true value of its property for the prior tax years, then it obviously could have filed a board of revision complaint against the value of the property for each year under R.C. 5715.19(A)(1); but IBM never did so.

LAW AND ARGUMENT

Reply To Appellant's Proposition of Law No. 1:

A county board of revision does not have jurisdiction under R.C. 5715.19(A)(1) to hear and decide a complaint challenging the county auditor's determination of the true value of a property for prior tax years, even when the auditor corrects a clerical error made in the calculation of the amount of a tax abatement which was given to the property for prior tax years.

Appellant filed its board of revision complaints for tax years 2000, 2001, and 2002 on June 19, 2003. R.C. 5715.19(A)(1) allows a complaint "for the current tax year" to be filed "on or before the thirty-first day of March of the ensuing tax year." This provision reads as follows:

"(1) 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:

(d) The determination of the total valuation or assessment of any parcel that appears on the tax list
***."

The words "determination of the total valuation" in R.C. 5715.19(A)(1)(d), set out above, refer to the county auditor's determination of "true value in money" of the property. Article XII, section 2, of the Ohio Constitution provides that "[l]and and improvements thereon shall be taxed by uniform rule according to value" and the first sentence of Section 2 refers to "true value in money" ("No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money"). See *Western Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340, 342, 10 O.O.2d 427, 164 N.E.2d 741. As required by the Constitution, R.C. 5713.03 then provides that "[t]he county auditor, from the best sources of information available, shall determine,

as nearly as practicable, the true value of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon ***.”

In order to contest the County Auditor’s original valuation of its property for tax year 2000 under R.C. 5715.19(A)(1)(d), IBM was required to file a board of revision complaint on or before March 31, 2001, which was “the thirty-first day of March of the ensuing tax year”; and in order to contest the value for tax year 2001, the complaint had to be filed by March 31, 2002; and to contest the value for tax year 2002, the complaint had to be filed by March 31, 2003. IBM did not file any complaints for tax year 2000 and 2001, and it filed a complaint for tax year 2002 after the filing deadline of March 31, 2003.

This specific issue raised by IBM was first decided back in 1941 in *Swetland Co. v. Evatt* (1941), 139 Ohio St. 6, 21 Ohio Op. 511, 37 N.E.2d 601, where paragraph five of the syllabus reads as follows:

“5. Under Section 5597, General Code, the jurisdiction of a county board of revision to hear complaints relating to the valuation or assessment of real property is limited to correcting the valuation or assessment of the real property for the then current year set out in the complaint.”

In *Cleveland Mun. Sch. Dist. Bd. of Educ. v. Cuyahoga County Bd. of Revision*, 105 Ohio St. 3d 404, 2005 Ohio 2285, 827 N.E.2d 306 (*Royal Financing*), this Court held that a county board of revision has no jurisdiction under R.C. 5715.19 to retroactively change a valuation for a prior tax year when a complaint had not been timely under R.C. 5715.19(A)(1).

Following this precedent, the Franklin County Court of Appeals below held that IBM’s complaints for the prior tax years did not vest the Board of Revision with statutory jurisdiction to hear and decide the complaints. According to the Court below (pp. 7-8):

“[P18] 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.

[P19] 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.”

In *Royal Financing*, supra, the county auditor retroactively changed the true value of a property for tax years 1997, 1998, and 1999, based on a BTA decision for tax year 1994, and sent a letter to the property owner to that effect on April 18, 2000. The Auditor’s letter said that Royal Financing could file complaints for the prior years if it disagreed with the values set forth in the letter (see decision, [P6]), just as did the letter sent to IBM by the Franklin County Auditor. The property owner then filed board of revision complaints for the prior tax years on June 27, 2000, and the Board of Revision assumed jurisdiction for the prior tax years and granted a further reduction in value for each such prior year. However, the BTA and this Court held that the complaints for the prior tax years were invalid under R.C. 5715.19(A)(1), with this Court stating as follows:

“[P14] Thus, for the BOR to have jurisdiction over a complaint concerning a property valuation for tax year 1997, the complaint had to be filed with the BOR by March 31, 1998. Likewise, a complaint for a 1998 tax year valuation had to be filed with the BOR by March 31, 1999. Royal’s June 27,

2000 complaint does not meet the requirements of R.C. 5715.19(A)(1) for the filing of a complaint concerning tax years 1997 and 1998.”

The property owner in *Royal Financing*, supra, presented an even stronger case than does Appellant for filing a complaint for prior tax years. The Cuyahoga County Auditor, in April, 2000, actually changed the true value of the property belonging to Royal Financing for the prior tax years of 1997, 1998, and 1999. In Appellant’s case, the Franklin County Auditor did not change the true value of Appellant’s property from the values originally determined for the prior tax years in question. While IBM appears to claim that the County Auditor changed the taxable value of its property when the Auditor levied omitted taxes against the improvements which were illegally exempted from taxation for the prior tax years, IBM could never contest the taxable value of its property without first contesting the Auditor’s prior determination of the true value in money of the property, which is precisely what it cannot do for prior tax years under R.C. 5715.19(A)(1).

Appellant attempts to distinguish *Royal Financing*, supra, by claiming that it dealt with the issue of a “continuing-complaint” and that “[t]he case at hand is not, however, a case involving application of the counter-complaint rule” (Memorandum, p. 7). However, the fact that there was continuing complaint in *Royal Financing* had nothing to do with the issue of whether the new complaints filed for the prior tax years were valid complaints. Two issues were present in *Royal Financing*. First, as indicated above, Royal Financing filed its own complaints in June, 2000, for the prior tax years of 1997, 1998, and 1999, after the County Auditor had changed the true value of the property for those years. These complaints for the prior tax years were held to be invalid. Second, the prior owner in *Royal Financing* had previously filed a complaint for tax year 1994, which was not decided by the BTA until January, 1998. Royal Financing, therefore, had a continuing complaint

before the Board of Revision under R.C. 5715.19(D), which independently vested the Board of Revision with jurisdiction over tax years 1997 and 1998. In noting the existence of the continuing complaint in *Royal Financing*, this Court stated “[t]he continuing complaints for 1997 and 1998 remain open until the auditor has complied with the January 30, 1998 order of the BTA” [P22]. The fact that a continuing complaint may have existed in *Royal Financing*, supra, was not relevant to the issue of the statutory validity of the new complaints which were filed by Royal Financing, and which were then held to be invalid.

IBM also claims that when the Franklin County Auditor recalculated the amount of the tax abatement in April, 2003, and assessed the omitted taxes for the prior years, this was a current “assessment” for tax year 2003, which IBM could take to the Board of Revision by filing a complaint on or before March 31, 2004 (Memorandum, p. 8). This was actually the same unsuccessful argument made by Royal Financing in its case: that a retroactive change in value was actually a change for the “current tax year” because the resulting change in the taxes first appeared on the tax list for the current tax year. However, in IBM’s case, what appeared on the tax list for the current tax year was the “assessment” made by the Franklin County Auditor of the “omitted taxes” for the prior tax years, and IBM has never complained about the “assessment” of the omitted taxes for the prior tax years. What IBM could not do, however, was to file complaints against the County Auditor’s determination of the true value of its property for the prior tax years. The true value was not involved in the recalculation of the omitted taxes for the prior tax years.

Reply To Appellant's Proposition of Law No. 2:

A property owner has no due process right to contest the determination of the true value of its property for prior tax years when a county auditor corrects an error in the calculation of a tax abatement which does not cause a change in the true value of the property for the prior tax years.

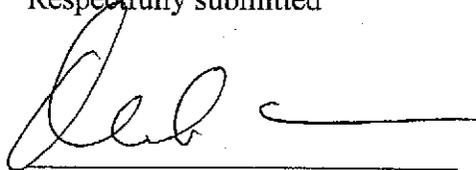
IBM claims that it has some kind of "due process" right to retroactively contest the Auditor's determination of the true value of its property for the prior tax years (Memorandum, p. 9). First, IBM cannot rely upon such a claim to vest a county board of revision with jurisdiction that it does not have under the statutes. The board of revision is a creature of statute and has only those powers given to it by statute and its jurisdiction is specifically limited by statute. See *Kalmbach Wagner Swine Research Farm v. Board of Revision of Wyandot County* (1998), 81 Ohio St. 3d 319; 322, 1998 Ohio 475, 691 N.E.2d 270. This Court has consistently held that "a litigant has no inherent right of appeal or review" of a tax determination and "where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." See *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147, 34 O.O. 8, 70 N.E.2d 93, paragraph one of the syllabus; *Cooke v. Kinney* (1981), 65 Ohio St.2d 7, 8, 417 N.E.2d 106; and *Makowski v. Limbach* (1992), 62 Ohio St.3d 412, 583 N.E.2d 1302.

Second, IBM never sought to challenge what it calls the "burdensome retroactive tax assessments" in question - the assessment of the omitted taxes - but rather sought to challenge the County Auditor's determination of the true value in money of its property for prior tax years, which it could have done, and should have done, in a timely fashion in each of those prior tax years.

CONCLUSION

This Court is respectfully requested to deny Appellant's motion to certify the record. The decision of the Court of Appeals below was based on well-established precedent and was correct in all respects.

Respectfully submitted

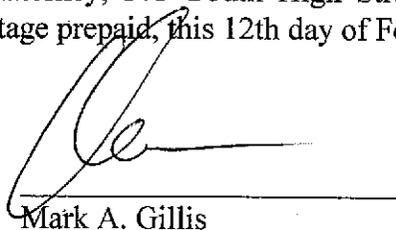


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CERTIFICATION OF SERVICE

I hereby certify that a true and complete copy of the foregoing brief was served upon John P. Curp, Taft, Stettinius & Nollister, 21 East State Street, Columbus, Ohio, 43215-4221, and upon Paul M. Stickel, Assistant County Prosecuting Attorney, 373 South High Street, 20th Floor, Columbus, Ohio, 43215, by regular U.S. Mail, postage prepaid, this 12th day of February, 2007.



Mark A. Gillis