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IN THE SUPREME COURT OF OHIO

Appeal From the Ohio Board of Tax Appeals

SOUTHSIDE COMMUNITY DEVELOPMENT CORPORATION,	:	S. Ct. Case No. 2007-1722
	:	
	:	
Appellant,	:	Appeal from Board of Tax Appeals
	:	Case No. 2006-T-635
	:	
v.	:	
	:	
WILLIAM W. WILKINS, TAX COMMISSIONER OF OHIO,	:	
	:	
	:	
and	:	
	:	
YOUNGSTOWN CITY SCHOOL DISTRICT	:	
	:	
Appellees.	:	

BRIEF OF APPELLEE

INTRODUCTION

Mahoning County (“Mahoning”) was not the owner at the time the application for exemption was filed, did not file as a party before the end of the year the application was filed, didn’t own the property at the time the then owner appealed to the BTA and thus has a mere economic interest in the outcome of an exemption case filed by the property’s former owner. Therefore, the BTA correctly found that Mahoning lacks standing to be a party in this case. *Performing Arts School of Metro. Toledo, Inc. v. Wilkins*, 104 Ohio St.3d 284, 2004-Ohio-6389.

Mahoning has admitted that it did not own the property at the time the application for exemption was filed. Further, Mahoning did not move to become a party in the case until after December 31 of the year in which the application for exemption was filed. In fact, Mahoning

purchased the property approximately three months after the Tax Commissioner issued a final determination denying the exemption and more than one month after the former owner had filed the appeal to the BTA. Further, Mahoning didn't qualify as an entity able to appeal to the BTA under R.C. 5717.02. Even if it had qualified to appeal to the BTA, Mahoning's purchase of the property was after the sixty day period to appeal had ended and Mahoning would have lacked jurisdiction to appeal at that point.

But further, this case doesn't belong before the Court and should be dismissed. Mahoning appealed from an interim order of the Board of Tax Appeals ("BTA") denying the right to intervene in a case concerning an exemption of real property from taxation. R.C. 5717.04 only authorizes appeals from the final order of the BTA, in which the BTA determines the issues raised in the notice of appeal from the final determination of the Tax Commissioner. The interim order dismissing Mahoning's attempt to intervene as a party is not determinative of the issues raised in the notice of appeal. For that reason, this Court should dismiss the appeal as requested by the Tax Commissioner in an earlier motion.

STATEMENT OF FACTS

Southside Community Development Corporation ("Southside") filed an application for an exemption under R.C. 5709.12 on December 24, 2004. The Tax Commissioner issued a Final Determination denying the exemption on April 7, 2006. On May 3, 2006, Southside filed bankruptcy. Andrew W. Suhar, Esq., Chapter 7 Trustee ("Trustee") filed a notice of appeal from the Final Determination to the BTA on June 1, 2006. Subsequently, Mahoning purchased the property from the bankruptcy trustee on July 27, 2006, more than three months **after** the Tax Commissioner issued the final determination.

On June 25, 2007, Mahoning moved to intervene in the case before the BTA titled *Southside Community Development Corporation v. William Wilkins*. Mahoning County has consistently acknowledged that it was not the owner¹ of the property at the time Southside filed for exemption. It also acknowledges that it was not the owner of the property when the Trustee appealed from the final determination of the Tax Commissioner to the BTA. The case can continue as it is based upon the use of the property by the former owner during the exemption period.

The Tax Commissioner filed a memorandum in opposition to Mahoning's motion to intervene. The Tax Commissioner based his argument on the fact that Mahoning County was not the owner of the property in January, 2004, and had no standing to apply for an exemption under R.C. 5715.27(A). In addition, the Tax Commissioner pointed out that Mahoning had purchased the property after the sixty-day period for filing an appeal from the Tax Commissioner's final determination had ended.

The BTA issued an Interim Order on August 24, 2007 denying Mahoning's motion to intervene. Citing *Performing Arts School of Metro Toledo, Inc. v. Wilkins*, supra, the BTA decided that Mahoning lacks standing to participate as a party in the exemption hearing because Mahoning was not the owner of the property when the exemption was filed. As the BTA pointed out, "Mahoning County held no interest in the subject at the time of application, throughout the commissioner's review of the application, or at the close of the period during which an appeal

¹ Further, until July 27, 2007, Mahoning was in a legal battle as to whether or not it could properly purchase the property. The Ohio Valley Mall Co. had filed a lawsuit against Mahoning's purchase of the property on August 7, 2006. County Auditor Michael Sciortino had refused to issue the \$75,000 check to for the purchase of the property. Judge Markus issued a ruling said that the purchase was within the proper scope of the County Commissioners and that the County Commissioners had made an adequate investigation of the risks and costs of the purchase. Therefore, it could clearly be argued that Mahoning did not have clear title to the property until the end of July, 2007. (Second Supp. at 1-3).

from the commissioner's determination could be filed with this board." (Interim Order at 4). The BTA based its decision upon this Court's interpretation of R.C. 5715.27, which governs the filing of an application for exemption.

The denial of the motion to intervene was also based on the BTA's own review of R.C. 5717.02, which authorizes appeals from final orders of the Tax Commissioner. The BTA pointed out that Mahoning would not fall into the category of persons authorized to appeal from a final order of the Tax Commissioner under R.C. 5717.02, "it was precluded from participating in the appeal as an intervenor."

There has been no final Decision and Order on the facts of the case. Mahoning appealed to this Court from the Interim Order denying its motion to intervene. On October 1, 2007, the Tax Commissioner moved the Ohio Supreme Court to dismiss the notice of appeal. This Court has not decided the Tax Commissioner's motion and it is still pending.

Because this Court did not stay the briefing schedule when the Tax Commissioner filed his motion to dismiss, the briefs on the issue raised by Mahoning continued to be due according to the timetable of the rules. Mahoning filed its brief in a timely manner. While the Tax Commissioner urges this Court to dismiss the case, based upon the fact that Mahoning appealed from an interim order rather than a final order, the Tax Commissioner is also filing his brief on the merits in a timely manner. In this brief, the Tax Commissioner is respectfully requesting the Court to affirm the reasonable, lawful decision of the BTA, if the Court determines it has the jurisdiction to determine the issue.

LAW AND ARGUMENT

PROPOSITION OF LAW 1:

The BTA reasonably and lawfully determined that Mahoning lacked standing as Mahoning was not an owner for purposes of filing the application for exemption during the period the case was before the Tax Commissioner and that Mahoning lacked standing to file to the BTA under R.C. 5717.02.

A. The BTA's denial of the motion to intervene was reasonable and lawful.

For purposes of a review of a final order from the BTA, this Court has often said that its role is not to be a trier of fact *de novo* but, instead, its role under R.C. 5717.04 is limited to determining whether the decision of the BTA is reasonable and lawful. *Episcopal Parish v. Kinney* (1979), 58 Ohio St.2d 199. This Court has not made the same statement about an interim order issued by the BTA, as the usual understanding is that there is no appeal from such an order under R.C. 5717.04. However, should this Court determine that in this specific instance, an interim order is final and worthy of appeal, this Court should then affirm the BTA's decision that Mahoning lacked standing, as the decision reasonable and lawful.

B. Under R.C. 5715.27(A) only the owner of the property can file for an exemption for the property. Mahoning could not file the application requesting a charitable exemption for the property in question in 2004 because it was not the owner at that time.

Mahoning lacks standing to be a party in this case because it was not the owner of the property at the time the application for exemption was filed or at any time during the year the application for exemption was filed. Only owners of property may apply for an exemption from real property taxation under R.C. 5715.27(A). R.C. 5715.27(A) defines who may apply for an exemption. The statute reads, in pertinent part, as follows:

(A) The owner of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted from taxation and that unpaid taxes and penalties be remitted as provided in division (B) of section 5713.08 of the Revised Code.

Ownership of property is a threshold requirement for the Department of Taxation to have jurisdiction to consider the appeal. *Performing Arts School of Metro. Toledo, Inc. v. Wilkins*, 104 Ohio St.3d 284, 2004-Ohio-6389 at ¶ 6, 13-15. Citing its holding in *Victoria Plaza Ltd. Liab. Co. v. Cuyahoga Cty. Bd. of Revision* (1999), 86 Ohio St.3d 181, this Court reiterated that “the owner of an equitable interest in real property does not have standing to file a complaint.” *Id* at ¶ 12. Therefore, unless there is a statute specifying an alternative method of applying for and obtaining an exemption from real-property taxation, an application for tax exemption must comply with R.C. 5715.27(A). *Bd. of Ed. v. Wilkins*, 106 Ohio St. 3d 200, 2005-Ohio-4556 at ¶ 8.

There is no case law or statute permitting a new owner to intervene in a case in which the former owner had applied for an exemption. It is the owner’s use of the property on January 1 of each year that determines the status of the property for purposes of taxation. R.C. 5713.08(B); *Ursuline Academy of Cleveland v. Bd. of Tax Appeals* (1943), 141 Ohio St. 563, 567. The exemption does not run with the land because the exemption is granted to the owner of the property based upon the owner’s use of the property. Because the owner’s use of the property may change from year to year or one owner may sell to another, the exempt status of property may change, based upon whether or not the property continues to qualify for an exemption. R.C. 5713.08(A); R.C. 5715.27(E). Thus, the exemption does not run with the property as it is solely the owner’s use that determines whether the property qualifies for the exemption.

Just as an exemption for real property does not inure to a third party that is not the owner and user of the property, such an entity has no standing to intervene as a party in a hearing where its interest is minimal or merely monetary. This Court has already held an entity with a mere equitable interest in real property does not have standing to file a complaint or an application for exemption. *Performing Arts School of Metro. Toledo, Inc. v. Wilkins*, 2004-Ohio-6389 at ¶ 12. Therefore, barring a statute permitting a non-owner to participate as a party in an exemption hearing, an entity lacking ownership or other substantial rights in the property has no standing to intervene in a hearing before the BTA concerning the possible exempt use of the property.

Further, in as much R.C. 5709.01 makes exemptions the exception to the rule of taxation, the owner of the property at the time the application is filed has the burden of proving that the property is deserving of the exemption. R.C. 5715.271. This is a heavy burden under Ohio law. See, e.g. *Transue & Williams v. Lindley* (1978), 54 Ohio St.2d 351,353; *Natl. Tube Co. v. Glander* (1952), 157 Ohio St. 407.

Mahoning admits that it was not the owner of the property at the time the application for exemption was filed. Mahoning lacked the jurisdiction to apply for an exemption from taxation for the time-period before the Tax Commissioner. Therefore, Mahoning is not the owner that has the burden of proof under R.C. 5715.271. The burden of proof is on the owner who filed the application for exemption.

In an attempt to give its argument legitimacy, Mahoning states that its recent purchase of the property allows it to “stand in the shoes” of the properties previous owner for purposes of that owner’s application for exemption. Mahoning states that it is in privity with the former owner of the property and therefore maintains the identical rights and position as the previous

owner. In reality, Mahoning is merely a transferee, having purchased a bundle of property rights and corresponding obligations from the bankruptcy court.

By using the word “privity,” Mahoning is trying to convince this Court that a judgment regarding the use of the property in 2004, the year the application for exemption was filed, would be justly conclusive upon Mahoning. It would not be. If the property becomes exempt because of its use in 2004, Mahoning’s purchase of the property would return it to the tax list. Mahoning, as a new owner, would have to file and would bear the burden of proving that its use of the property qualified the property for an exemption. For purposes of an exemption from taxation, the exemption cannot “run with the land.”

This is not to say that the application for exemption or any litigation dies with a transfer of ownership. It does not. The former owner retains the right to litigate to receive an exemption for those years in which it owned and used the property.

The critical point is that Mahoning was not the owner at the time the application for exemption was filed. Mahoning did not purchase the property until years after the exemption was filed. Therefore, Mahoning could not cure the application for exemption by filing as owner before the end of the year in which it was filed, a limitation pointed out by this Court in *Performing Arts*. 2004-Ohio-6389 at ¶ 18.

Mahoning lacked standing to intervene as a party. Therefore, the BTA’s decision to that effect was reasonable and lawful and should be affirmed.

C. Mahoning lacked standing to file an appeal to the BTA as Mahoning's legal relationship with the property did not begin until after the time period for filing had run and because Mahoning did not qualify under R.C. 5717.02 as an entity eligible to file an appeal.

The BTA indicated that Mahoning lacked standing to intervene as a party for another reason. In its interim order denying standing, the BTA points out that R.C. 5717.02 limits appeals from the Tax Commissioner to the BTA to "the person to whom notice of the tax assessment, reassessment, valuation, determination, finding, computation or order by the commissioner is required by law to be given, by the director of budget and management * * * by the county auditors * * * by the enterprise to which notice of the redetermination is required by law to be given * * * by a school district * * *" In other words, the appellant must be an entity to whom the Tax Commissioner is required to give notice of a final order or whom is permitted by statute to file when the Tax Commissioner issues such an order.

The BTA reviewed R.C. 5717.02 and found that Mahoning would not have not qualified to appeal under R.C. 5717.02, the statute that authorizes appeals from the Tax Commissioner's final orders. Mahoning did not own the property within the time period for filing the appeal. Mahoning was not an entity to which notice of the final order had to be given. Mere notice that its motion to intervene is denied does not qualify the property to be a party.

That Mahoning did not qualify to appeal to the BTA is a jurisdictional problem that cannot be easily cured because there is no inherent right to appeal a tax determination, only a statutory right. *Avon Lake City School Dist. v. Limbach* (1988), 35 Ohio St.3d 118, 119. It is well settled that the Board of Tax Appeals, like any other statutorily created body, is permitted to exercise only those powers with which it has been specifically invested by the General Assembly. *Steward v. Evatt* (1944), 143 Ohio State 547. Mere economic interest is not sufficient

to trigger a right of appeal when the statute doesn't allow for such. See, e.g., *Cooke v. Kinney* (1981), 65 Ohio St. 2d 7; *Clarke v. Warren County Bd. Of Comm'rs*, 2000 Ohio App. LEXIS 4199; discretionary appeal not allowed (2001), 91 Ohio St.3d 1419; *Wyder v. Cleveland Psychiatric Inst.* (1982), 1982 Ohio App. LEXIS 12334.

Mahoning's argument that it is a taxpayer and therefore qualified to appeal under R.C. 5717.02 can not stand because of its lack of ownership of the property during the critical time of application for exemption and, later, appeal. At best, Mahoning has an interest as an owner purchasing property upon which a lien from the former owner remains. That interest is not sufficient to overturn the decision of the BTA. For this second reason, the interim order of the BTA is lawful and reasonable and should stand.

PROPOSITION OF LAW 2:

Mahoning appealed from an interim order of the BTA and, for that reason, this case should be dismissed.

The Tax Commissioner previously filed a motion to dismiss based upon the fact that Mahoning had appealed from an interim order of the BTA. Because the Court has yet to decide that issue and because the Court has recently issued decisions distinguishing interim from final orders, the Tax Commissioner is briefly repeating the argument made in its motion to dismiss. To date, this Court has not issued a decision that would change an interim order denying a motion to intervene under both statutes and the rules of the particular an administrative agency into a final order. Appeals are clearly controlled by statute and by the Ohio Constitution. *Avon Lake City School Dist. v. Limbach*, 35 Ohio St.3d at 119. Under Section 3(B)(2), Article IV of the Ohio Constitution, courts of appeals have "such jurisdiction as may be provided by law to

review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district."

Because Mahoning was not the owner in 2004 or at the time of the appeal to the BTA, Mahoning did not have a substantial right to the property or to the exemption **for the years during which it did not own the property.** The interim order dismissing its motion to intervene would not qualify as a final order under R.C. 2505.02 as it did not affect a substantial right of Mahoning, a non owner during the period for which the then owner claimed an exempt use of the property.

It is important to remember that the decision was issued by the BTA, an administrative agency created by statute and its powers are defined by statute as interpreted by the BTA's rules. R.C. 5703.02; see, e.g. *National Tube Co. v. Ayers* (1949), 152 Ohio St. 255, 264-268. Ohio Adm. Code 5717-01-10(A) permits the BTA to delegate to hearing examiners the ability to issue interim procedural orders "on all motions or other pleadings which do not terminate the appeals and may include, but not be limited to, motions to consolidate, to compel discovery, and for sanctions." (emphasis added). A BTA-issued interim order does not terminate the appeal and is, therefore, not "determining appeals." Therefore, an interim order only ends a particular issue, not the appeal and cannot be considered a final decisions.

R.C. 5717.04 governs appeals of right from the BTA to the Ohio Supreme Court or to an appellate court. The phrase in R.C. 5717.04, "appeals from decisions of the board determining appeals from final determinations by the tax commissioner," clearly determines what type of order issuing from the BTA this Court has the jurisdiction to hear. There has been no decision of the BTA determining whether the final determination of the Tax Commissioner denying the exemption was lawful or legal.

The BTA issued only an interim order, denying Mahoning the right to intervene as a party in the case. This order does not qualify under the clear wording of R.C. 5717.04 as a determination of an appeal from the Tax Commissioner's final determination. The appeal in question does not immediately advance the ultimate termination of the case at the BTA as appealed from the Tax Commissioner's final determination. As a result, an interim order as permitted under Ohio Adm. Code 5717-01-10 is not an appealable decision under R.C. 5717.04.

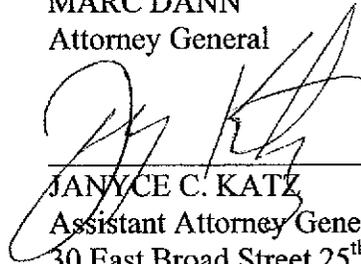
Finally, because Mahoning had no ownership interest in the property until after the notice of appeal to the BTA had been filed, the Notice of Appeal to the BTA had been filed, Mahoning is, therefore, not a "person" with a right to appeal to the Supreme Court under R.C. 5717.04. This Court lacks the jurisdiction to entertain Mahoning's appeal and should, therefore, dismiss it.

CONCLUSION

For all the above reasons, this Court should dismiss the Notice of Appeal filed by Mahoning County or, in the alternative, affirm the decision of the BTA.

Respectfully submitted,

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TITLE 25. COURTS -- APPELLATE
CHAPTER 2505. PROCEDURE ON APPEAL

ORC Ann. 2505.02 (2007)

§ 2505.02. Final order

(A) As used in this section:

(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, a prima-facie showing pursuant to *section 2307.85 or 2307.86 of the Revised Code*, a prima-facie showing pursuant to *section 2307.92 of the Revised Code*, or a finding made pursuant to division (A)(3) of *section 2307.93 of the Revised Code*.

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

(5) An order that determines that an action may or may not be maintained as a class action;

(6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234 [2305.23.4], 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 4705.15, and 5111.018 [5111.01.8], and the enactment of *sections 2305.113 [2305.11.3], 2323.41, 2323.43, and 2323.55 of the Revised Code* or any changes made by Sub. S.B. 80 of the 125th general assembly, including the amendment of *sections 2125.02, 2305.10, 2305.131 [2305.13.1], 2315.18, 2315.19, and 2315.21 of the Revised Code*.

(7) An order in an appropriation proceeding that may be appealed pursuant to division (B)(3) of *section 163.09 of the Revised Code*.

(C) When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.

(D) This section applies to and governs any action, including an appeal, that is pending in any court on July 22, 1998, and all claims filed or actions commenced on or after July 22, 1998, notwithstanding any provision of any prior statute or rule of law of this state.

TITLE 57. TAXATION
CHAPTER 5703. DEPARTMENT OF TAXATION

ORC Ann. 5703.02 (2007)

§ 5703.02. Powers and duties of board of tax appeals

There is hereby created the board of tax appeals, which shall exercise the following powers and perform the following duties:

(A) Exercise the authority provided by law to hear and determine all appeals of questions of law and fact arising under the tax laws of this state in appeals from decisions, orders, determinations, or actions of any tax administrative agency established by the law of this state, including but not limited to appeals from:

- (1) Actions of county budget commissions;
- (2) Decisions of county boards of revision;
- (3) Actions of any assessing officer or other public official under the tax laws of this state;
- (4) Final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by him;
- (5) Adoption and promulgation of rules of the tax commissioner.

(B) Appoint a secretary of the board of tax appeals, who shall serve in the unclassified civil service at the pleasure of the board, and any other employees as are necessary in the exercise of the powers and the performance of the duties and functions that the board is by law authorized and required to exercise, and prescribe the duties of all employees, and to fix their compensation as provided by law;

(C) Maintain a journal, which shall be open to public inspection and in which the secretary shall keep a record of all of the proceedings and the vote of each of its members upon every action taken by it;

(D) Adopt and promulgate, in the manner provided by *section 5703.14 of the Revised Code*, and enforce all rules relating to the procedure of the board in hearing appeals it has the authority or duty to hear, and to the procedure of officers or employees whom the board may appoint; provided that *section 5703.13 of the Revised Code* shall apply to and govern the procedure of the board.

TITLE 57. TAXATION
CHAPTER 5709. TAXABLE PROPERTY -- EXEMPTIONS

ORC Ann. 5709.01 (2007)

§ 5709.01. Taxable property entered on general tax list and duplicate

(A) All real property in this state is subject to taxation, except only such as is expressly exempted therefrom.

(B) Except as provided by division (C) of this section or otherwise expressly exempted from taxation:

(1) All personal property located and used in business in this state, and all domestic animals kept in this state and not used in agriculture are subject to taxation, regardless of the residence of the owners thereof.

(2) All ships, vessels, and boats, and all shares and interests therein, defined in *section 5701.03 of the Revised Code* as personal property and belonging to persons residing in this state, and aircraft belonging to persons residing in this state and not used in business wholly in another state, other than aircraft licensed in accordance with *sections 4561.17 to 4561.21 of the Revised Code*, are subject to taxation.

(C) The following property of the kinds mentioned in division (B) of this section shall be exempt from taxation:

(1) Unmanufactured tobacco to the extent of the value, or amounts, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof.

(2) Spirituous liquor, as defined in division (B)(5) of *section 4301.01 of the Revised Code*, that is stored in warehouses in this state pursuant to an agreement with the division of liquor control.

(3) Except as otherwise provided in *section 5711.27 of the Revised Code*, all other such property if the aggregate taxable value thereof required to be listed by the taxpayer under Chapter 5711. of the Revised Code does not exceed ten thousand dollars.

(a) If the taxable value of such property exceeds ten thousand dollars only such property having an aggregate taxable value of ten thousand dollars shall be exempt.

(b) If such property is located in more than one taxing district as defined in *section 5711.01 of the Revised Code*, the exemption of ten thousand dollars shall be applied as follows:

(i) The taxable value of such property in the district having the greatest amount of such value shall be reduced until the exemption has been fully utilized or the value has been reduced to zero, whichever occurs first;

(ii) If the exemption has not been fully utilized under division (C)(3)(b)(i) of this section, the value in the district having the second greatest value shall be reduced until the exemption has been fully utilized or the value has been reduced to zero, whichever occurs first;

(iii) If the exemption has not been fully utilized under division (C)(3)(b)(ii) of this section, further reductions shall be made, in repeated steps which include property in districts having declining values, until the exemption has been fully utilized.

(D) All property mentioned as taxable in this section shall be entered on the general tax list and duplicate of taxable property.

TITLE 57. TAXATION
CHAPTER 5709. TAXABLE PROPERTY – EXEMPTIONS

ORC Ann. 5709.12 (2007)

§ 5709.12. Exemption of property used for charitable or public purposes

(A) As used in this section, "independent living facilities" means any residential housing facilities and related property that are not a nursing home, residential care facility, or adult care facility as defined in division (A) of *section 5701.13 of the Revised Code*.

(B) Lands, houses, and other buildings belonging to a county, township, or municipal corporation and used exclusively for the accommodation or support of the poor, or leased to the state or any political subdivision for public purposes shall be exempt from taxation. Real and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation, including real property belonging to an institution that is a nonprofit corporation that receives a grant under the Thomas Alva Edison grant program authorized by division (C) of *section 122.33 of the Revised Code* at any time during the tax year and being held for leasing or resale to others. If, at any time during a tax year for which such property is exempted from taxation, the corporation ceases to qualify for such a grant, the director of development shall notify the tax commissioner, and the tax commissioner shall cause the property to be restored to the tax list beginning with the following tax year. All property owned and used by a nonprofit organization exclusively for a home for the aged, as defined in *section 5701.13 of the Revised Code*, also shall be exempt from taxation.

(C) (1) If a home for the aged described in division (B)(1) of *section 5701.13 of the Revised Code* is operated in conjunction with or at the same site as independent living facilities, the exemption granted in division (B) of this section shall include kitchen, dining room, clinic, entry ways, maintenance and storage areas, and land necessary for access commonly used by both residents of the home for the aged and residents of the independent living facilities. Other facilities commonly used by both residents of the home for the aged and residents of independent living units shall be exempt from taxation only if the other facilities are used primarily by the residents of the home for the aged. Vacant land currently unused by the home, and independent living facilities and the lands connected with them are not exempt from taxation. Except as provided in division (A)(1) of *section 5709.121 [5709.12.1] of the Revised Code*, property of a home leased for nonresidential purposes is not exempt from taxation.

(2) Independent living facilities are exempt from taxation if they are operated in conjunction with or at the same site as a home for the aged described in division (B)(2) of *section 5701.13 of the Revised Code*; operated by a corporation, association, or trust described in division (B)(1)(b) of that section; operated exclusively for the benefit of members of the corporation, association, or trust who are retired, aged, or infirm; and provided to those members without charge in consideration of their service, without compensation, to a charitable, religious, fraternal, or educational institution. For the purposes of division (C)(2) of this section, "compensation" does not include furnishing room and board, clothing, health care, or other necessities, or stipends or other de minimis payments to defray the cost thereof.

(D) (1) A private corporation established under federal law, *defined in *36 U.S.C. 1101*, Pub. L. No. 102-199, *105 Stat. 1629*, as amended, the objects of which include encouraging the advancement of science generally, or of a particular branch of science, the promotion of scientific research, the improvement of the qualifications and usefulness of scientists, or the increase and diffusion of scientific knowledge is conclusively presumed to be a charitable or educational institution. A private corporation established as a nonprofit corporation under the laws of a state, that is exempt from federal income taxation under *section 501(c)(3) of the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C.A. 1*, as amended, and has as its principal purpose one or more of the foregoing objects, also is conclusively presumed to be a charitable or educational institution.

The fact that an organization described in this division operates in a manner that results in an excess of revenues over expenses shall not be used to deny the exemption granted by this section, provided such excess is used, or is held for use, for exempt purposes or to establish a reserve against future contingencies; and, provided further, that such excess may not be distributed to individual persons or to entities that would not be entitled to the tax exemptions provided by this chapter. Nor shall the fact that any scientific information diffused by the organization is of particular interest or

benefit to any of its individual members be used to deny the exemption granted by this section, provided that such scientific information is available to the public for purchase or otherwise.

(2) Division (D)(2) of this section does not apply to real property exempted from taxation under this section and division (A)(3) of *section 5709.121 [5709.12.1] of the Revised Code* and belonging to a nonprofit corporation described in division (D)(1) of this section that has received a grant under the Thomas Alva Edison grant program authorized by division (C) of *section 122.33 of the Revised Code* during any of the tax years the property was exempted from taxation.

When a private corporation described in division (D)(1) of this section sells all or any portion of a tract, lot, or parcel of real estate that has been exempt from taxation under this section and *section 5709.121 [5709.12.1] of the Revised Code*, the portion sold shall be restored to the tax list for the year following the year of the sale and a charge shall be levied against the sold property in an amount equal to the tax savings on such property during the four tax years preceding the year the property is placed on the tax list. The tax savings equals the amount of the additional taxes that would have been levied if such property had not been exempt from taxation.

The charge constitutes a lien of the state upon such property as of the first day of January of the tax year in which the charge is levied and continues until discharged as provided by law. The charge may also be remitted for all or any portion of such property that the tax commissioner determines is entitled to exemption from real property taxation for the year such property is restored to the tax list under any provision of the Revised Code, other than sections 725.02, 1728.10, 3735.67, 5709.40, 5709.41, 5709.62, 5709.63, 5709.71, 5709.73, 5709.78, and 5709.84, upon an application for exemption covering the year such property is restored to the tax list filed under *section 5715.27 of the Revised Code*.

(E) Real property held by an organization organized and operated exclusively for charitable purposes as described under *section 501(c)(3) of the Internal Revenue Code* and exempt from federal taxation under *section 501(a) of the Internal Revenue Code*, 26 U.S.C.A. 501(a) and (c)(3), as amended, for the purpose of constructing or rehabilitating residences for eventual transfer to qualified low-income families through sale, lease, or land installment contract, shall be exempt from taxation.

The exemption shall commence on the day title to the property is transferred to the organization and shall continue to the end of the tax year in which the organization transfers title to the property to a qualified low-income family. In no case shall the exemption extend beyond the second succeeding tax year following the year in which the title was transferred to the organization. If the title is transferred to the organization and from the organization to a qualified low-income family in the same tax year, the exemption shall continue to the end of that tax year. The proportionate amount of taxes that are a lien but not yet determined, assessed, and levied for the tax year in which title is transferred to the organization shall be remitted by the county auditor for each day of the year that title is held by the organization.

Upon transferring the title to another person, the organization shall file with the county auditor an affidavit affirming that the title was transferred to a qualified low-income family or that the title was not transferred to a qualified low-income family, as the case may be; if the title was transferred to a qualified low-income family, the affidavit shall identify the transferee by name. If the organization transfers title to the property to anyone other than a qualified low-income family, the exemption, if it has not previously expired, shall terminate, and the property shall be restored to the tax list for the year following the year of the transfer and a charge shall be levied against the property in an amount equal to the amount of additional taxes that would have been levied if such property had not been exempt from taxation. The charge constitutes a lien of the state upon such property as of the first day of January of the tax year in which the charge is levied and continues until discharged as provided by law.

The application for exemption shall be filed as otherwise required under *section 5715.27 of the Revised Code*, except that the organization holding the property shall file with its application documentation substantiating its status as an organization organized and operated exclusively for charitable purposes under *section 501(c)(3) of the Internal Revenue Code* and its qualification for exemption from federal taxation under *section 501(a) of the Internal Revenue Code*, and affirming its intention to construct or rehabilitate the property for the eventual transfer to qualified low-income families.

As used in this division, "qualified low-income family" means a family whose income does not exceed two hundred per cent of the official federal poverty guidelines as revised annually in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C.A. 9902, as amended, for a family size equal to the size of the family whose income is being determined.

CHAPTER 5713. ASSESSING REAL ESTATE

ORC Ann. 5713.08 (2007)

§ 5713.08. List of exempted property; annual abstract; duties of tax commissioner

(A) The county auditor shall make a list of all real and personal property in the auditor's county, including money, credits, and investments in bonds, stocks, or otherwise, which is exempted from taxation. Such list shall show the name of the owner, the value of the property exempted, and a statement in brief form of the ground on which such exemption has been granted. It shall be corrected annually by adding thereto the items of property which have been exempted during the year, and by striking therefrom the items which in the opinion of the auditor have lost their right of exemption and which have been reentered on the taxable list. No additions shall be made to such exempt lists and no additional items of property shall be exempted from taxation without the consent of the tax commissioner as is provided for in *section 5715.27 of the Revised Code* or without the consent of the housing officer under *section 3735.67 of the Revised Code*. When any personal property or endowment fund of an institution has once been held by the commissioner to be properly exempt from taxation, it is not necessary to obtain the commissioner's consent to the exemption of additional property or investments of the same kind belonging to the same institution, but such property shall appear on the abstract filed annually with the commissioner. The commissioner may revise at any time the list in every county so that no property is improperly or illegally exempted from taxation. The auditor shall follow the orders of the commissioner given under this section. An abstract of such list shall be filed annually with the commissioner, on a form approved by the commissioner, and a copy thereof shall be kept on file in the office of each auditor for public inspection.

The commissioner shall not consider an application for exemption of property unless the application has attached thereto a certificate executed by the county treasurer certifying one of the following:

(1) That all taxes, assessments, interest, and penalties levied and assessed against the property sought to be exempted have been paid in full to the date upon which the application for exemption is filed, except for such taxes, interest, and penalties that may be remitted under division (B) of this section;

(2) That the applicant has entered into a valid delinquent tax contract with the county treasurer pursuant to division (A) of *section 323.31 of the Revised Code* to pay all of the delinquent taxes, assessments, interest, and penalties charged against the property, except for such taxes, interest, and penalties that may be remitted under division (B) of this section. If the auditor receives notice under *section 323.31 of the Revised Code* that such a written delinquent tax contract has become void, the auditor shall strike such property from the list of exempted property and reenter such property on the taxable list. If property is removed from the exempt list because a written delinquent tax contract has become void, current taxes shall first be extended against that property on the general tax list and duplicate of real and public utility property for the tax year in which the auditor receives the notice required by division (A) of *section 323.31 of the Revised Code* that the delinquent tax contract has become void or, if that notice is not timely made, for the tax year in which falls the latest date by which the treasurer is required by such section to give such notice. A county auditor shall not remove from any tax list and duplicate the amount of any unpaid delinquent taxes, assessments, interest, or penalties owed on property that is placed on the exempt list pursuant to this division.

(3) That a tax certificate has been issued under *section 5721.32 or 5721.33 of the Revised Code* with respect to the property that is the subject of the application, and the tax certificate is outstanding.

(B) Any taxes, interest, and penalties which have become a lien after the property was first used for the exempt purpose, but in no case prior to the date of acquisition of the title to the property by the applicant, may be remitted by the commissioner, except as is provided in division (A) of *section 5713.081 [5713.08.1] of the Revised Code*.

TITLE 57. TAXATION
CHAPTER 5715. BOARDS OF REVISION; EQUALIZATION OF ASSESSMENTS
REVIEW OF ASSESSMENTS BY TAX COMMISSIONER

ORC Ann. 5715.27 (2005)

§ 5715.27. Application for exemption; rights of board of education; complaint against exemption

(A) Except as provided in *section 3735.67 of the Revised Code*, the owner of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted from taxation and that taxes and penalties be remitted as provided in division (B) of *section 5713.08 of the Revised Code*.

(E) A complaint may also be filed with the commissioner by any person, board, or officer authorized by *section 5715.19 of the Revised Code* to file complaints with the county board of revision against the continued exemption of any property granted exemption by the commissioner under this section .

TITLE LVII [57] TAXATION
CHAPTER 5715: BOARDS OF REVISION; EQUALIZATION OF ASSESSMENTS
[APPEALS TO BOARD OF TAX APPEALS]

ORC Ann. 5715.271 (Anderson 2003)

[§ 5715.27.1] § 5715.271 Burden of proof on owner.

In any consideration concerning the exemption from taxation of any property, the burden of proof shall be placed on the property owner to show that the property is entitled to exemption. The fact that property has previously been granted an exemption is not evidence that it is entitled to continued exemption.

TITLE 57. TAXATION
CHAPTER 5717. APPEALS

ORC Ann. 5717.02 (2007)

§ 5717.02. Appeals from final determinations; procedure; hearing

Except as otherwise provided by law, appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be taken to the board of tax appeals by the taxpayer, by the person to whom notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner is required by law to be given, by the director of budget and management if the revenues affected by such decision would accrue primarily to the state treasury, or by the county auditors of the counties to the undivided general tax funds of which the revenues affected by such decision would primarily accrue. Appeals from the redetermination by the director of development under division (B) of section 5709.64 or division (A) of *section 5709.66 of the Revised Code* may be taken to the board of tax appeals by the enterprise to which notice of the redetermination is required by law to be given. Appeals from a decision of the tax commissioner concerning an application for a property tax exemption may be taken to the board of tax appeals by a school district that filed a statement concerning such application under division (C) of *section 5715.27 of the Revised Code*. Appeals from a redetermination by the director of job and family services under *section 5733.42 of the Revised Code* may be taken by the person to which the notice of the redetermination is required by law to be given under that section.

Such appeals shall be taken by the filing of a notice of appeal with the board, and with the tax commissioner if the tax commissioner's action is the subject of the appeal, with the director of development if that director's action is the subject of the appeal, or with the director of job and family services if that director's action is the subject of the appeal. The notice of appeal shall be filed within sixty days after service of the notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner or redetermination by the director has been given as provided in *section 5703.37, 5709.64, 5709.66, or 5733.42 of the Revised Code*. The notice of such appeal may be filed in person or by certified mail, express mail, or authorized delivery service. If the notice of such appeal is filed by certified mail, express mail, or authorized delivery service as provided in *section 5703.056 [5703.05.6] of the Revised Code*, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. The notice of appeal shall have attached thereto and incorporated therein by reference a true copy of the notice sent by the commissioner or director to the taxpayer, enterprise, or other person of the final determination or redetermination complained of, and shall also specify the errors therein complained of, but failure to attach a copy of such notice and incorporate it by reference in the notice of appeal does not invalidate the appeal.

Upon the filing of a notice of appeal, the tax commissioner or the director, as appropriate, shall certify to the board a transcript of the record of the proceedings before the commissioner or director, together with all evidence considered by the commissioner or director in connection therewith. Such appeals or applications may be heard by the board at its office in Columbus or in the county where the appellant resides, or it may cause its examiners to conduct such hearings and to report to it their findings for affirmation or rejection. The board may order the appeal to be heard upon the record and the evidence certified to it by the commissioner or director, but upon the application of any interested party the board shall order the hearing of additional evidence, and it may make such investigation concerning the appeal as it considers proper.

TITLE 57. TAXATION
CHAPTER 5717. APPEALS

ORC Ann. 5717.04 (2007)

§ 5717.04. Appeal from decision of board of tax appeals to supreme court; parties who may appeal; certification

The proceeding to obtain a reversal, vacation, or modification of a decision of the board of tax appeals shall be by appeal to the supreme court or the court of appeals for the county in which the property taxed is situate or in which the taxpayer resides. If the taxpayer is a corporation, then the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the supreme court or to the court of appeals for the county in which the property taxed is situate, or the county of residence of the agent for service of process, tax notices, or demands, or the county in which the corporation has its principal place of business. In all other instances, the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the court of appeals for Franklin county.

Appeals from decisions of the board determining appeals from decisions of county boards of revision may be instituted by any of the persons who were parties to the appeal before the board of tax appeals, by the person in whose name the property involved in the appeal is listed or sought to be listed, if such person was not a party to the appeal before the board of tax appeals, or by the county auditor of the county in which the property involved in the appeal is located.

Appeals from decisions of the board of tax appeals determining appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be instituted by any of the persons who were parties to the appeal or application before the board, by the person in whose name the property is listed or sought to be listed, if the decision appealed from determines the valuation or liability of property for taxation and if any such person was not a party to the appeal or application before the board, by the taxpayer or any other person to whom the decision of the board appealed from was by law required to be certified, by the director of budget and management, if the revenue affected by the decision of the board appealed from would accrue primarily to the state treasury, by the county auditor of the county to the undivided general tax funds of which the revenues affected by the decision of the board appealed from would primarily accrue, or by the tax commissioner.

Appeals from decisions of the board upon all other appeals or applications filed with and determined by the board may be instituted by any of the persons who were parties to such appeal or application before the board, by any persons to whom the decision of the board appealed from was by law required to be certified, or by any other person to whom the board certified the decision appealed from, as authorized by *section 5717.03 of the Revised Code*.

Such appeals shall be taken within thirty days after the date of the entry of the decision of the board on the journal of its proceedings, as provided by such section, by the filing by appellant of a notice of appeal with the court to which the appeal is taken and the board. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten days of the date on which the first notice of appeal was filed or within the time otherwise prescribed in this section, whichever is later. A notice of appeal shall set forth the decision of the board appealed from and the errors therein complained of. Proof of the filing of such notice with the board shall be filed with the court to which the appeal is being taken. The court in which notice of appeal is first filed shall have exclusive jurisdiction of the appeal.

In all such appeals the tax commissioner or all persons to whom the decision of the board appealed from is required by such section to be certified, other than the appellant, shall be made appellees. Unless waived, notice of the appeal shall be served upon all appellees by certified mail. The prosecuting attorney shall represent the county auditor in any such appeal in which the auditor is a party.

The board, upon written demand filed by an appellant, shall within thirty days after the filing of such demand file with the court to which the appeal is being taken a certified transcript of the record of the proceedings of the board pertaining to the decision complained of and the evidence considered by the board in making such decision.

If upon hearing and consideration of such record and evidence the court decides that the decision of the board appealed from is reasonable and lawful it shall affirm the same, but if the court decides that such decision of the board is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter final judgment in accordance with such modification.

The clerk of the court shall certify the judgment of the court to the board, which shall certify such judgment to such public officials or take such other action in connection therewith as is required to give effect to the decision. The "taxpayer" includes any person required to return any property for taxation.

Any party to the appeal shall have the right to appeal from the judgment of the court of appeals on questions of law, as in other cases.

OHIO ADMINISTRATIVE CODE

5717 Board of Tax Appeals
Chapter 5717-1 General Provisions

OAC Ann. 5717-1-10 (2007)

5717-1-10. Interim procedural orders.

(A) The board may delegate to its attorney examiners, with respect to all appeals, the authority to issue interim procedural orders on all motions or other pleadings which do not terminate the appeals and may include, but not be limited to, motions to consolidate, to compel discovery, and for sanctions. Said orders have the same force and effect as any order issued by the board. A party may, by written motion, seek the reconsideration by the board of the interim order. A motion for reconsideration shall not be the basis for continuance of a matter scheduled for hearing.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Appellee was sent by regular U.S. mail to Andrew W. Suhar, Suhar & Macejko, LLC, 1101 Metropolitan Tower, P. O. box 1497, Youngstown, Ohio 44501-1497, attorney for appellant, Linette M. Stratford and Karen Markulin Gaglione, Mahoning County Prosecutor's Office, 21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503, attorneys for Mahoning County, and Jackie Lynn Hager, Martin Hughes & Associates, 1550 East Wilson Bridge Road, Suite 300, Worthington, Ohio 43085, attorney for Youngstown City School District Board of Education, on this 7th day of December, 2007.



JANCYE C. KATZ
Assistant Attorney General