

ORIGINAL

IN THE SUPREME COURT OF OHIO

Willis Day Warehousing Co.	:	
	:	
Appellant,	:	Case No. 2010-0115
	:	
Wood County Board of Revision and the	:	
Wood County Auditor	:	Appeal from Decision of Ohio
	:	Board of Tax Appeals
Appellees.	:	

**MERIT BRIEF OF APPELLANT
WILLIS DAY WAREHOUSING CO.**

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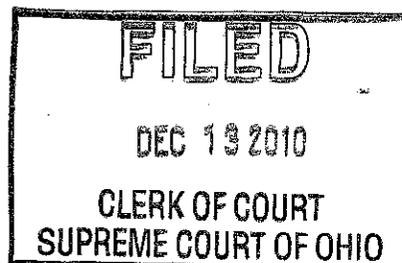


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STATEMENT OF CASE

This case is an appeal from a decision of the Ohio Board of Tax Appeals which presents important procedural and constitutional issues pertaining to the administration of real property tax by County Auditors and County Boards of Revision.

The disputes originated with the filing of a real property tax complaint by Willis Day Warehousing Co., Appellant herein, with the Wood County Board of Revision, Appellee, for tax year 2005. The Complaint contended three parcels of commercial property located in Wood County, Ohio, had been overvalued by the County Auditor.

The Complaint was filed at the invitation of the Auditor and the Wood County Board of Revision as the values of the subject parcels had been unilaterally increased by the County Auditor in June of 2006 which was more than three (3) months after the last day for challenging real property tax valuations for 2005.

The Board of Revision in a decision issued October 6, 2006 affirmed the increased valuations without hearing. (A copy of the Decision is attached hereto, Appx. 13.)

On November 2, 2006 Appellant herein appealed that decision to the Ohio Board of Tax Appeals (BTA Case No. 2006-M-1794).

While the appeal was pending before the Board of Tax Appeals Appellant filed another complaint with the Wood County Board of Revision for tax year 2006 covering the same properties. The Board of Revision in a decision issued August 7, 2007 in effect dismissed Appellant's complaint on the ground that Appellant had previously filed a complaint for 2005, which was the first year of the three year interim period established by ORC Sections 5715.33 and 5715.19(A)(2). (A copy of the Decision is attached hereto, Appx. 14.)

Appellant then appealed that decision to the Ohio Board of Tax Appeals (BTA Case No. 2007-M-868) and the two cases were consolidated.

In a decision issued December 22, 2009, the Board of Tax Appeals dismissed Appellant's appeals. (A copy of the Decision is attached hereto, Appx. 5.) The justification for the dismissal was that the Board lacked jurisdiction over either appeal.

The following Statement of Facts and Argument will demonstrate the error of these decisions.

STATEMENT OF FACTS

Appellant, Willis Day Warehousing Co., has owned and operated a complex of commercial warehouses located in Wood County, Ohio, for many years. Real property taxes related to this enterprise are a significant aspect of the business.

For tax year 2004, the total market value placed on the three parcels of real property at issue here was \$9,947,139.

Under the statutory schedule for the appraisal of real property in Ohio, Wood County conducted its sexennial appraisal of all property in the County as of December 1, 2005. These values would presumably then stay in place until December 1, 2008 when the three year interim update of O.R.C. Sections 5715.33 and 5715.19(A)(2) would apply.

Appellant's tax bill for the first half of 2005 was issued to it due in February of 2006. That tax bill reflected a market value for the three parcels equal to or less than the values set for 2004. The actual market value of property as shown by tax bill was partially masked as the three properties included land which was subject to a reduction in value based on current agricultural use (CAUV) under the statutory scheme of O.R.C. Section 5713.30 et seq.

Under the terms of O.R.C. Section 5715.19, March 31, 2006, was the last day to file a complaint against the Auditor's valuation of real property for tax year 2005. Obviously as of that date Appellant had no basis for challenging the Auditor's determination as the values assessed were equal to or less than in 2004.

The second half tax bill for 2005 was issued to Appellant in July of 2006. This tax bill raised the total valuation of the three parcels in issue to \$14,370,400, an amount \$4.3 million dollars greater than the 2004 valuation. This new tax bill had increased the valuation of Appellant's property three (3) months after the March 31, 2006, deadline for challenging valuations for tax year 2005.

Appellant, upon receipt of the second half tax bills contacted the County Auditor and the Board of Revision to question the valuation change. In response, the Auditor and the Board of Revision notified Appellant that it would accept a complaint challenging this valuation increase even though it was after March 31, 2006.

Appellant filed its Complaint with the Board of Revision on August 9, 2006, seeking only a return to the 2004 values.

As noted above, this Complaint was rejected by the Board of Revision and the new, higher value confirmed in the BOR's October 6, 2006, Decision (Appx. 13). Appellant appealed this Decision to the Ohio Board of Tax Appeals.

As a cautionary measure Appellant then filed a timely Complaint for tax year 2006, again seeking a return to the 2004 tax year values. This Complaint was dismissed by the Board of Revision as an unlawful "second" complaint filed within the three year interim period of O.R.C. Section 5715.19(A)(2). As noted above this Decision was also appealed to the Ohio Board of Tax Appeals.

Appellant's two appeals presented jurisdictional questions which the Ohio Board of Tax Appeals dealt with in its Decision of December 22, 2009. In that Decision the Board of Tax Appeals held the Complaint for 2005 did not effectively invoke the jurisdiction of the Board of Revision since it was filed after March 31, 2006. The Board of Tax Appeals (also BTA) then held that even though the 2005 complaint was ineffective to invoke the jurisdiction of the Board of Revision, it had sufficient "effect" to invalidate any subsequent filing during the three (3) year interim period of O.R.C. Section 5715.19(A)(2). Therefore the BTA held the Board of Revision had properly dismissed the complaint for 2006 as well.

As a result of these decisions the Appellant has been denied any opportunity to be heard with respect to an over Four Million Dollars increase in the valuation of its property for real property tax purposes for the three year period covering 2005, 2006 and 2007. And, as is evident above, the sole cause of this denial was the action of the Wood County Auditor in unlawfully and unilaterally increasing the Appellant's valuations after the March 31, 2006 deadline for appeal.

The following Argument will demonstrate the error of these decisions.

ARGUMENT

PROPOSITION OF LAW NO. 1

THE STATUTORY DEADLINE FOR COMPLAINTS IN O.R.C. SECTION 5715.19 MAY BE TOLLED WHERE AN INCREASE IN THE VALUATION OF REAL PROPERTY IS IMPOSED AFTER THE LAST DAY TO CHALLENGE VALUATIONS SO AS TO PROVIDE PROPERTY OWNERS NOTICE AND AN OPPORTUNITY TO BE HEARD AS REQUIRED BY O.R.C. SECTION 5715.12 AND THE CONSTITUTION'S DUE PROCESS PROVISIONS.

Ohio's statutory scheme for the assessment and collection of real property taxes places mandatory duties on County Auditors and County Boards of Revision. Under that scheme the County Auditor annually compiles a tax list and duplicate. O.R.C. Section 319.28. This tax list is subsequently acted on by the County Board of Revision and the Ohio Tax Commissioner, O.R.C. Sections 5715.06 and 5715.23. Ultimately, on the first day of October, or later if extended, the County Auditor delivers the tax list to the County Treasurer for collection. O.R.C. Sections 319.28 and 323.17. This delivery date has been referred to as the "tax assessment date." See Public Square Tower One v. Cuyahoga County Bd. of Revision (1986), 34 Ohio App.3d 49.

Once the tax duplicate has been certified to the County Treasurer, the County Auditor may correct clerical errors as provided in O.R.C. Section 319.35, but may not make other changes without resort to the Board of Revision. State ex rel. Ney v. DeCourcy (1992), 81 Ohio App.3d 775.

Challenges to valuations set forth on the tax list by property owners may be made by filing a Complaint with the County Board of Revision up to March 31 of the succeeding year. Under this statutory scheme property owners will have received their property tax bills for the

first half of the tax year in sufficient time to meet the deadline of March 31 of the following year. O.R.C. Section 5715.19(A)(1).

In the instant case for tax year 2005 the tax bills for the first half of 2005 received by Appellant did not reflect any increase in tax or valuation over that assessed for tax year 2004. Accordingly, Appellant had no basis to challenge the valuation of the subject parcels by filing a complaint with the Wood County Board of Revision by the statutory deadline of March 31, 2006.

However, as set forth in the Statement of Facts in July of 2006 Appellant received the second half tax bill for 2005. On that bill the valuation of the subject parcels and taxes based on that valuation had been greatly increased over that set forth on the first half bill and greatly increased over the valuation established for 2004.

Receipt of the second half tax bill was the first notice to Appellant of the increase in valuation. Most significantly this notice was issued and received well after the March 31, 2006, deadline for filing Complaints against the valuation of real property for tax year 2005. O.R.C. Section 5715.19(A)(1).

Moreover, at no time did Appellant receive any notice of a correction of the tax list and duplicate due to clerical error as allowed by O.R.C. Section 319.35.

The inescapable conclusion from this set of facts is that the Auditor had unlawfully increased the valuation of Appellant's property without notice or an opportunity to be heard.

As noted in the Statement of Facts Appellant brought this state of affairs to the attention of the Wood County Auditor and Board of Revision and was "invited" to file a complaint after the March 31 deadline. As stated in the minutes of the Board of Revision for October 3, 2006 the Board recognized their error and, "we gave them an opportunity to make an appeal to the

Board for that reason.” (Exhibit E of Transcript of Minutes of Meeting of Wood County Bd. Of Revision dated 10/3/06).

However, although the Board of Revision requested certain information regarding the property, no hearing was ever scheduled or held on Appellant’s complaint. Appellant never had an opportunity to be heard regarding the value of its property by the presentation of appraisal or related evidence nor was it afforded a hearing on the legal effect of the Auditor’s unlawful increase and/or his failure to use the process for correction under O.R.C. Section 319.35.

O.R.C. Section 5715.12 specifically provides in pertinent part:

The county board of revision shall not increase any valuation without giving notice to the person in whose name the property affected thereby is listed and affording him an opportunity to be heard.***

It is evident from the foregoing that the Wood County Auditor and the Wood County Board of Revision acted unlawfully and contrary to statute in raising the valuation of Appellant’s property after the March 31 deadline for complaint had passed.

On appeal of the 2005 tax year to the Ohio Board of Tax Appeals, the BTA compounded the error by denying Appellant a right to be heard. The BTA held that as the Appellant’s complaint was “filed” after March 31, 2006, the jurisdiction of the Board of Revision had not been properly invoked and, therefore, the Board of Tax Appeals lacked jurisdiction of any appeal.

In so ruling the Board of Tax Appeals failed to properly apply the principle of tolling under these extraordinary circumstances.

For example, in Slone v. Bd. Of Embalmers and Funeral Directors of Ohio (1995), 107 Ohio App.3d 628, the Court of Appeals for the Eighth Appellate District, held that the appeal

period from a decision of an administrative agency would be tolled when the agency failed to serve the party affected with notice of the decision.

Although Slone, supra, dealt with appeals under Chapter 119, Ohio Revised Code, the same principles would apply herein. Under both Chapter 119 and Chapter 5715, Ohio Revised Code, affected parties are entitled to notice and an opportunity to be heard. That concept is specifically embodied in O.R.C. Section 5715.12 which precludes an increase in valuation without notice and an opportunity to be heard.

In light of the Auditor's failure to notify Appellant of the increase in valuation of its property, the time frame for appeal set forth in O.R.C. Section 5715.19 was tolled and Appellant's Complaint to the Board of Revision for tax year 2005, filed shortly after receipt of the second half tax bill was timely filed.

Further support for Appellant's position resides in O.R.C. Section 1.47 which provides:

In enacting a statute, it is presumed that:

- (A) Compliance with the constitutions of the state of the United States is intended;
- (B) The entire statute is intended to be effective;
- (C) A just and reasonable result is intended;
- (D) A result feasible of execution is intended.

It is self evident that if O.R.C. Section 5715.19 is construed so as to preclude the application of the doctrine of tolling under these facts, it will result in an unconstitutional, unjust and unreasonable result in conflict with O.R.C. Section 1.47. In this case to refuse to adopt the principal of tolling would permit an increase in valuation of the subject property without notice or an opportunity to be heard in conflict with other Ohio statutes and the Constitutional demands of Due Process.

A recent case in this Court provides additional support for the claim that O.R.C. Section 5715.19 must be construed to permit tolling. In Knickerbocker Properties Inc. XLII vs. Delaware County Bd. Of Revision (2008), 119 Ohio St.3d 233, this Court held that the Board of Revision's failure to provide a property owner with adequate notice of a hearing concerning the increase in value of the property owner's real property due to an erroneous address invalidated the Board's decision. The Court in reaching this decision first held that the Board of Tax Appeals had jurisdiction to review the validity of the Board of Revision's order. The Court then ordered the BTA to remand the case to the Board of Revision for a new hearing where the actual owner would have an opportunity to be heard. The Court held the Board of Revision's original decision violated O.R.C. Section 5715.12 as well as the Due Process rights of the property owner.

The facts in Knickerbocker are analogous to the facts in this case. In Knickerbocker, the owner was denied an opportunity to be heard because of an erroneous address. In the instant case the Appellant was denied a hearing and an opportunity to be heard because of the Auditor's unilateral act of increasing the valuation of the subject property as part of the second half tax billing. In both cases the tax valuation of the subject property was changed without adequate notice to the affected party in direct violation of O.R.C. Sections 5715.12, O.R.C. 5715.19 and the Due Process provisions of the Ohio and United States Constitution. Consequently the results in both cases must be the same.

Moreover, it is pertinent to note that the valuation of the Appellant's property in this case was increased not simply as a result of an "error" or "miscalculation", but rather the overall valuation was increased over the prior year's valuation. Consequently, the increase cannot be "glossed over" as a mechanical or clerical error only. Appellant was clearly denied an

opportunity to be heard on an increase in the value of Appellant's property as a result of substantive act of the Auditor not merely a ministerial act. Oh Const. Art. I, §1, §16.

The decision in Knickerbocker reinforces the position that the Board of Tax Appeals' had jurisdiction to review the order of the Board of Revision. It further supports the position that the Board had the authority to determine that under these facts the period for challenging a valuation under O.R.C. 5715.19 was tolled, thereby validating jurisdiction of Appellant's Complaint before the Board of Revision and ultimately before the Board of Tax Appeals. In the absence of such finding the increase in valuation set forth in the second half bill must be held to be a nullity.

An even more recent case in this Court further supports Appellant's position. In MB West Chester, LLC v. Butler County Board of Revision, et al. (2010), 126 Ohio St.3d 430, this Court reinforced the Board of Tax Appeals' jurisdiction and authority to vindicate the rights of parties where a failure of notice had prevented a party from protecting its right to prosecute or defend a property valuation determination at the Board of Revision and the Board of Tax Appeals. In MB West Chester, supra, this Court held the Board of Tax Appeals had jurisdiction to consider a school board's motion to vacate the BTA's decision on the allocation of values among three parcels of real property. The BTA had previously refused to consider the motion on the ground that it lacked jurisdiction as the thirty day period to appeal their decision had run prior to the filing of the motion. This Court held at 435:

The failure to give the school board notice—both the BOR's failure to notify the school board of the appeal and the BTA's failure to notify the school board of its decision—materially distinguishes the present case from *Lutz*. Because the school board did not receive notice of the filing of the appeal or of the BTA decision, the running of the appeal period does not operate to extinguish the school board's right to participate, nor does the BTA lose jurisdiction to vindicate that right. That is so because, under *Lutz* and similar cases addressing the authority of administrative agencies, the jurisdictional significance of the expiration of the appeal period is that the parties to the appeal have been notified of the agency's decision and have waived any claim of error by not appealing or

otherwise objecting. However, when a statutory party has been unlawfully deprived of notice of both the BTA proceedings and the BTA decision, that party has not waived its right to participate, and the BTA has not lost jurisdiction to vindicate it.

The School Board's motion to vacate in MB West Chester, supra, is directly analogous to the Complaint filed by the Appellant with the Board of Revision in this case. The Complaint filed by Appellant herein was filed after the March 31 deadline, just as the School Board's motion in MB West Chester was outside the appeal period. In both cases the timing of the filing was the result of a failure of notice. In this case the failure concerned an increase in valuation imposed after the deadline had passed. Just as the school board's rights in MB West Chester were not extinguished by the failure to notify, so to in this case the Appellant's statutory right not to have the value of its property increased without notice and an opportunity to be heard cannot be extinguished; nor, as this Court held in MB West Chester did the Board of Tax Appeals lose jurisdiction to vindicate those rights.

In sum, the Board of Tax Appeals erred in refusing to exercise jurisdiction over the Appellant's appeal from the decision of the Wood County Board of Revision with respect to the 2005 tax year. The Board had the authority to recognize a tolling of the statutory deadline. This error must be corrected by this Court by reversing the decision of the Board of Tax Appeals and remanding the case to the Board to hold a hearing not only with respect to the valuation of the subject parcels but also as to the legal effect of the Auditor's unlawful change to the tax list and duplicate which resulted in the increase in Appellant's property valuation and tax liability.

PROPOSITION OF LAW NO. 2

THE FILING OF A REAL PROPERTY TAX VALUATION COMPLAINT OUTSIDE THE TIME PERIOD PROVIDED FOR IN O.R.C. SECTION 5715.19 DOES NOT PRECLUDE THE FILING OF A COMPLAINT FOR A SUBSEQUENT YEAR IN THE INTERIM PERIOD WHERE THE INITIAL FILING WAS CAUSED BY THE AUDITOR'S INCREASE IN VALUE IN VIOLATION OF O.R.C. 5715.12.

The Board of Tax Appeals in its decision of December 22, 2009, also dealt with the Complaint filed by Appellant with the Board of Revision for tax year 2006. This Complaint, timely filed, was filed as a precautionary measure by Appellant once the Board of Revision refused to adjust the Auditor's value for 2005 and Appellant was forced to appeal to the Board of Tax Appeals. Under those circumstances Appellant anticipated the possibility of dealing with the issues discussed in Proposition of Law No. 1 in that if the 2005 Complaint was declared a nullity, its only recourse for tax year 2006 would be the filing of a timely Complaint for 2006. In the event the 2005 Complaint was recognized by the Board of Tax Appeals, the 2006 Complaint would be merely subsumed in the final determination for 2005 as provided for in O.R.C. Section 5715.19(D). Consequently for purposes of this appeal if this Court adopts Appellant's position in Proposition No. 1, this proposition is moot.

However, because of the procedural dilemma caused solely by the actions of the County Auditor, Appellant is forced to deal with jurisdictional issues concerning both 2005 and 2006.

In dealing with the 2006 tax year Complaint filed by Appellant, the Board of Tax Appeals in its decision of December 22, 2009 held that even though it found the 2005 Complaint filed by Appellant to be jurisdictionally defective, it nonetheless was "effective enough" to bar

the filing of a complaint for 2006, a subsequent year within the same three (3) year interim period.

In reaching its decision the Board relied on Elkem Metals Co. L.P. v. Washington County Bd. Of Revision (1998), 81 Ohio St.3d 683. In that case the taxpayer had timely filed a Complaint for tax year 1993, but the Complaint was subsequently found to be deficient in that it failed to set forth a basis for reduction or the amount of the reduction claimed. This Court held that even though the filing was defective, it nonetheless constituted a “filing” and thereby precluded the filing of a new Complaint for a subsequent year within the triennium.

In this case the Board of Tax Appeals erred by relying on Elkem as that case is clearly distinguishable from the instant case in every respect. First, in Elkem the jurisdictional defect lay at the feet of the taxpayer/owner by failing to properly complete the Complaint. In the instant case, however, the Appellant’s inability to timely file a complaint for 2005 was the result of the unlawful acts of the County Auditor and Board of Revision. As is evident from the facts herein Appellant was precluded from timely filing a Complaint with respect to the increased 2005 valuation as those valuations were not increased until after the March 31, 2006 deadline. This distinction renders Elkem inapposite. To permit the County Auditor’s unlawful acts to be the basis for denying Appellant its Due Process rights with respect to tax year 2006 would be patently unjust. Such a result is not sanctioned by the result or analysis in Elkem.

Not only would denying Appellant an opportunity to be heard as to 2006 due to circumstances caused by the County Auditor be unjust, it would be contrary to law. Courts are bound to construe statutes to give a constitutional rather than unconstitutional construction if one is reasonably available. O.R.C. Section 1.47; United Airlines v. Porterfield (1971), 28 Ohio St.2d 97. In the context of the instant case for the BTA to strictly construe the word “filing” in

O.R.C. Section 5715.19(A)(2) and not take into account the context of the filing would result in a clearly unconstitutional result. It would deny Appellant's Due Process right to notice and an opportunity to be heard with respect to increases in valuation of its property for both 2005 and 2006. Such a result could not have been intended by the Legislature in fashioning O.R.C. Section 5715.19.

That this Court recognizes the significance of notice provisions and their relationship to the jurisdiction and authority of the Board of Tax Appeals is clear from the recent decision in MB West Chester, LLC v. Butler County Board of Revision, et al. (2010), 126 Ohio St.3d 430, discussed in Proposition of Law No. 1. There this Court recognized authority in the Board of Tax Appeals to vindicate the rights of parties to real property tax cases where those rights have been prejudiced by the failure of administrative agencies to provide notice and opportunity to be heard. This Court refused to allow agency failures in MB West Chester, supra, to prevent the school board in that case from contesting changes in valuation. So too in this case the Auditor's and Board of Revision's failure to follow statutory procedure with respect to the listing of real property valuations must not be permitted to prevent Appellant from challenging those values. Such a result cannot be countenanced. This Court's decision in MB West Chester is equally applicable here. The holding in MB West Chester that the Board of Tax Appeals has the authority to vindicate such rights supports jurisdiction in the Board of Tax Appeals and the Board of Revision for tax year 2006 in this case even though Appellant "filed" a Complaint for 2005.

Additionally, O.R.C. Section 5715.12 specifically prohibits a Board of Revision from ordering an increase in real property valuation without notice and an opportunity to be heard. A violation of this statute cannot be used as the foundation for precluding Appellant from filing a

Complaint as to either 2005 or 2006 tax years. Knickerbocker Properties v. Delaware County Board of Revision (2008), 119 Ohio St.3d 233. Therefore this Court must determine that the Board of Revision and the Board of Tax Appeals have jurisdiction over the 2006 Complaint even if the “filing” of the 2005 Complaint is found to be ineffective. In sum, the Appellant’s efforts to contest wrongful acts of Appellees as to 2005 must not be used to preclude Appellant from its opportunity to be heard for 2006.

CONCLUSION

With respect to the jurisdictional issues arising out of Appellant’s 2005 tax year complaint (BTA Case No. 2006-M-1794), Appellant submits the Board of Tax Appeals had the authority to recognize that under the facts presented the time for filing a complaint for tax year 2005 was tolled by the actions of the County Auditor such that Appellant’s complaint for that year invoked the jurisdiction of the Board of Revision and the Board of Tax Appeals to consider the Complaint on the merits. To hold otherwise would deny Appellant Due Process of law and countenance a clear violation of O.R.C. Section 5715.12.

Acceptance of Appellant’s Proposition of Law No. 1 would moot all jurisdictional issues pertaining to tax year 2006 as the merits of the valuation of Appellant’s property for that year would be subsumed within the proceedings initiated as to tax year 2005.

In the event this Court rejects Appellant’s position as to Proposition of Law No. 1, Appellant submits this Court must nonetheless hold that the 2005 filing does not, under these circumstances, divest the Board of Revision or the Board of Tax Appeals of jurisdiction over Appellant’s 2006 Complaint (BTA Case No. 2007-M-868). To hold otherwise would be to sanction the denial of Appellant’s rights based on the wrongful acts of Appellees.

In sum Appellant submits this Court must order the Board of Tax Appeals to consider the merits of Appellant's appeal of the Appellee's real property tax valuation for tax years 2005, 2006 and 2007.

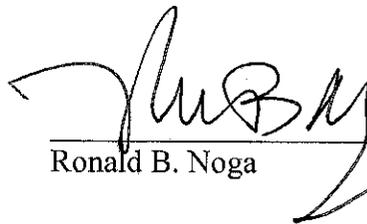
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief of Appellant has been sent by ordinary U.S. mail, postage prepaid, to James Gorry, Wood County Prosecuting Rich & Gills Law Group, LLC, 6400 Riverside Drive, Suite D, Dublin, Ohio 43017, on this 13th day of December, 2010.



Ronald B. Noga

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BOARD OF TAX APPEALS

IN THE SUPREME COURT OF OHIO

2010 JAN 20 PM 2:43

Willis Day Warehousing Co.

FILED

Appellant,

JAN 20 2010

10-0115

vs.

CLERK OF COURT
SUPREME COURT OF OHIO

Case No. _____

Wood County Board of Revision, et al.

Board of Tax Appeal Case
Nos. 2006-M-1794, 2007-M-868

Appellee.

NOTICE OF APPEAL TO THE
SUPREME COURT OF OHIO

Now comes the Appellant Willis Day Warehousing Co., by and through its counsel and pursuant to Section 5717.04, Ohio Revised Code, gives notice of appeal from the decision of the Board of Tax Appeals dated December 22, 2009, a copy of which is attached to this notice of appeal and is hereby incorporated by reference.

The Appellant alleges the following errors in said decision of the Board of Tax Appeals:

1. The Board of Tax Appeals erred to the prejudice of Appellant when it determined as a matter of law it did not have jurisdiction of Appellant's appeal from a decision of the Wood County Board of Revision pertaining to tax year 2005, and concerning the valuation of Appellant's real property, on the ground that the initial complaint was not timely filed in that Auditor's increase in valuation of the Appellant's property was noticed and imposed after the March 31, 2006 statutory date for filing such appeals for 2005. The unreasonable, and unlawful application of the complaint/appeal provisions pertaining to real property in Chapter 57, Ohio Revised Code, denies Appellant Due Process of law and constitutes a taking of Appellant's property in

violation of the Fifth and Fourteenth Amendments of the Constitution of the United States and the Due Process clauses of the Ohio Constitution.

2. The Board of Tax Appeals erred to Appellant's prejudice in failing to find that the time for filing a complaint with the Board of Revision for tax year 2005 had been tolled by the fact that the change in valuation by the Wood County Auditor was the result of a unilateral, unreasonable and unlawful act of the Auditor in violation of Chapter 319, Ohio Revised Code including but not limited to O.R.C. §319.35 and §319.36.

3. The Board of Tax Appeals erred to Appellant's prejudice in failing to determine that the Auditor's increase in the valuation of Appellant's property was contrary to the provisions of Chapter 319, Ohio Revised Code, and violative of the Due Process and Equal Protection provisions of the Constitution of the United States and the Ohio Constitution in that no certificate of change was issued nor were notices and an opportunity to be heard afforded as required by O.R.C. §5715.12.

4. The Board of Tax Appeals erred to Appellant's prejudice by failing to find that the actions of the Wood County Auditor in increasing the valuation of Appellant's property after the March 31, 2006 filing date without notice and an opportunity to be heard was unconstitutional thereby tolling the effect of the filing date such that Appellant's Complaint to the Board of Revision for tax year 2005 was timely.

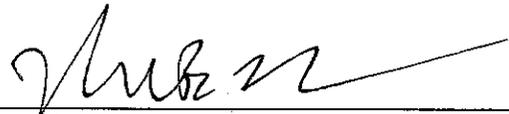
5. The Board of Tax Appeals erred in failing to correct the unlawful actions of Board of Revision and the County Auditor in increasing the valuation of Appellant's property under the Board's statutory authority to oversee the practices of County Auditors and Boards of Revision.

6. The Board of Tax Appeals further erred in holding that a complaint filed after March 31, 2006 as to tax year 2005, which if determined to be void, rendered a complaint timely filed as to tax year 2006 invalid, as such holding violates the Fifth and Fourteenth Amendments of the Constitution of the United States, the Due Process provision of the Ohio Constitution and O.R.C. §5715.12. Said holding further renders O.R.C. §5715.19 unconstitutional on its face and as applied under the Constitution of the United States and the Ohio Constitution as otherwise set forth herein.

7. The Board erred in determining the Appellant's request for documents was moot in that that Request included a demand for documents demonstrating compliance with O.R.C. Sections 319.35 and 319.36 relative to changing valuations.

For all of the above reasons the Decision of the Board of Tax Appeals must be reversed.

Respectfully submitted,



Ronald B. Noga (0013345)
1010 Old Henderson Road, Suite 1
Columbus, Ohio 43220
614/326-1954
Attorney for Appellant

CERTIFICATE OF FILING AND SERVICE

This is to certify a copy of this Notice of Appeal was also filed with the Ohio Board of Tax Appeals this 20 day of January, 2010 and was served by certified mail on January 14, 2010 on the following parties:

Wood County Board of Revision
One Courthouse Square
P. O. Box 368
Bowling Green, Ohio 43402

Wood County Auditor
One Courthouse Square
P. O. Box 368
Bowling Green, Ohio 43402



Ronald B. Noga

OHIO BOARD OF TAX APPEALS

Willis Day Warehousing Co.,)
)
 Appellant,)
)
 vs.) (REAL PROPERTY TAX)
)
) DECISION AND ORDER
 Wood County Board of Revision and the)
 Wood County Auditor,)
)
 Appellees.)

APPEARANCES:

For the Appellant -	Ronald B. Noga, Esq. 1010 Old Henderson Road, Suite 1 Columbus, Ohio 43220
For the County Appellees -	Raymond C. Fisher Wood County Prosecuting Attorney James Gorry, Special Prosecutor 300 East Broad Street, Suite 300 Columbus, Ohio 43215

Entered **DEC 22 2009**

Ms. Margulies and Mr. Johrendt concur; Mr. Dunlap concurs separately.

On September 16, 2008, the Board of Tax Appeals sought input from the parties regarding potential jurisdictional issues affecting the above-captioned appeals. Counsel for the appellant responded to the issues. The board also held an evidentiary hearing. This matter is now considered upon the "show cause" order, the responses thereto, and the record of the hearing held.

The notice of appeal in BTA No. 2006-M-1794 and the statutory transcript submitted by the Wood County Auditor as secretary of the Wood County

Board of Revision ("BOR") called into question the jurisdictional validity of that appeal, as the original complaint was not filed in accordance with the law. The record also calls into question the jurisdictional validity of BTA No. 2007-M-868. When a complaint for an earlier year in a triennial period is filed, a subsequent complaint may not have jurisdictional validity even if the earlier complaint is also found to be jurisdictionally deficient.

R.C. 5715.19 sets forth the requirements for the filing of a complaint with a county board of revision:

"(A)(1) *** a complaint against any of the following determinations for the current tax year¹ 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, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code[.]"

The record supports a finding that the complaint which was the genesis of BTA No. 2006-M-1794 and challenged value for tax year 2005 apparently was filed on August 8, 2006, well after the time period provided by R.C 5715.19(A)(1). The appellant argues, however, that the appeal period should be tolled because actions of the Wood County Auditor created a situation in which it was physically impossible

¹ The relevant triennium for Wood County includes tax years 2005, 2006 and 2007. The complaint which was the genesis of BTA No. 2006-M-1794 challenged value for tax year 2005. The complaint which was the genesis of BTA No. 2007-M-868 challenged value for tax year 2006.

to meet the time limitations provided by statute.

The facts as deduced from the record are as follows: The appellant, Willis Day Warehousing Co. ("Willis Day"), is the owner of certain property located in Wood County. The property in question is subject to a "Current Agricultural Use Valuation" ("CAUV") adjustment. The CAUV adjustment was in existence at the time the first tax bill for tax year 2005 was issued. After that tax bill was issued, the auditor's staff realized the CAUV deduction applied to Willis Day's assessment was not correct because of changes made by a recent software conversion. S.T. BTA No. 2006-M-1794, Ex. E. The auditor's staff corrected the error prior to the issuance of the second-half tax bill. *Id.*

Willis Day received notice of the valuation correction through its second-half bill. After some discussion with the Wood County Auditor, Willis Day filed a complaint challenging the valuation change. S.T. BTA No. 2006-M-1794 Complaint, Cover letter. The BOR considered the complaint, concluding that the auditor's value was correct and Willis Day did not provide sufficient evidence to support a change in value. *Id.* Ex. E. An appeal to this board followed.

A review of the record before this board caused us to question the validity of the BOR's actions. The requirements of R.C. 5715.19 are specific and mandatory in nature. When a statute confers the right of appeal, adherence to the terms and conditions set forth therein is essential to the enjoyment of the right conferred. *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147.

Therefore, the BOR's first action should have been to question its own jurisdiction.

Willis Day claims, however, that the BOR's actions were lawful because case law permits it to file outside the time prescribed by R.C. 5715.19. Willis Day first claims that the auditor's failure to provide notice in sufficient time for the corporation to timely file a real property valuation complaint permits a tolling of the period during which complaints may be filed. In support of this claim, Willis Day cites *Slone v. Bd. of Embalmers and Funeral Directors of Ohio* (1995), 107 Ohio App.3d 628, and *Knickerbocker Properties Inc. XLII v. Delaware Cty. Bd. of Revision*, 119 Ohio St.3d 233, 2008-Ohio-3192. Neither case is apposite.

The gravamen in *Slone* was the failure to serve a determination directly upon the party affected. The Ohio Board of Embalmers and Funeral Directors revoked the license of the appellant in *Slone*, but mailed notice of the revocation by certified mail only to the appellant's counsel. In that case, the appellate court concluded that the 15-day period during which the appellant could have appealed did not begin to run until notice was sent directly to him.² In *Knickerbocker*, the board of revision failed to provide proper notice to the property owner of a complaint filed against the property owner. The court held that jurisdiction was proper because the requirements of the statute had been met. However, the court's decision is applicable to this appeal:

² The holding in *Slone* is consistent with the Ohio Supreme Court's holding in *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033, wherein the court concluded when a county board of revision's decision had not been mailed to all persons identified by former R.C. 5715.20, the filing of a notice of appeal with this board was premature.

“When a *statute* specifically requires a litigant to perform certain acts in order to invoke the jurisdiction of an administrative tribunal (or the jurisdiction of a court to review an administrative decision), the performance of such acts usually constitutes a prerequisite to the tribunal’s jurisdiction. See *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147, ***, paragraph one of the syllabus; *Zier v. Bur. of Unemp. Comp.* (1949), 151 Ohio St. 123, ***, paragraph one of the syllabus. By contrast, this case involves the manner in which the BOE filled out the valuation complaint form prescribed by the Tax Commissioner. Knickerbocker does not cite any statute that requires the complainant to provide an address.” *Id.* at ¶10. (Emphasis sic, parallel citations omitted.)

In the present appeal, R.C. 5715.19 specifically requires that a complaint challenging valuation must be filed by March 31 of the ensuing year. In this matter, the complaint was not filed until August 9 of the ensuing year. Therefore the complaint was untimely.

This is not the board’s first opportunity to consider this issue. In *Edgewater Yacht Club v. Cuyahoga Cty. Bd. of Revision* (June 29, 2001), BTA No. 1997-R-369, unreported, the auditor increased the value of certain property in the second year of a triennium and at the same time included within the tax bill a retroactive increase for the first year of the triennium. The property owner was made aware of the increase when it received its tax bill for the second year. The property owner challenged value for both the first year and the second year of the triennium. As to the jurisdictional validity of the challenge of value for the first year of the triennium, the board held:

“The jurisdiction of the BOR and this Board is established by statute. *** R.C. 5715.19(A)(1) provides that:

“*** 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** ***’

(Emphasis added.)

“Thus, according to the statute, a county board of revision is vested with jurisdiction to consider complaints filed only for the ‘current tax year’ if they are timely filed by March 31 of the subsequent year.

“Edgewater filed its complaint on February 7, 1996. (S.T. Exh. A) Therefore, pursuant to R.C. 5715.19(A)(1), the BOR was not empowered to decide value for 1994, only 1995.*** This proposition is further supported by the case law. *Dublin City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Jan. 14, 2000), B.T.A. Nos. 97-M-960 and 961, unreported; *Fiery v. Lucas Cty. Bd. of Revision* (Sept. 10, 1993), B.T.A. No. 91-R-698, unreported; *Hunt v. Lorain Cty. Bd. of Revision* (Apr. 8, 1988), B.T.A. No. 86-D-709, unreported.” Id. at 3.

In a footnote, the board held:

“The Board acknowledges that the 1995 tax bill was the first notice Edgewater had of a change in the value of the yacht basin for 1994. There may exist an alternative remedy under such circumstances. See R.C. 2723.01.” Id. Footnote 6.

Willis Day also argues that the changes made to the tax duplicate were unlawful. We are unable to reach the substance of the claim, as we must find that the

BOR lacked jurisdiction to consider the matter.

As to the jurisdictional validity of BTA No. 2007-M-868, Willis Day timely filed a complaint challenging value of the same properties for the 2006 tax year. S.T., BTA No. 2007-M-868, Ex. 1. The BOR effectively dismissed the appeal, acknowledging the complaint filed in the earlier year, and stating "Pursuant to ORC 5715.19A(2) a complaint shall not be filed more than once within that three year period [since the last appraisal]." S.T., BTA No. 2007-M-868, Ex. E.

The BOR was correct. In *Elkem Metals Co., L.P. v. Washington Cty. Bd. of Revision* (1998), 81 Ohio St.3d 683, the Ohio Supreme Court rejected the contention that a subsequent complaint filed within the same triennium was jurisdictionally valid when the initial complaint was dismissed as defective. The BTA found that when an initial complaint is jurisdictionally invalid and void ab initio, that complaint did not rise to a "filing" that would invoke the prohibition against a second filing as set forth in R.C. 5715.19(A)(2). The court held otherwise.

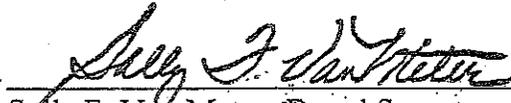
Therefore, this board must find that neither complaint filed with the BOR effectively lodged jurisdiction in that body. The complaint filed in BTA No. 2006-M-1794 was untimely, but, even jurisdictionally defective, served as a bar to the filing of another complaint by Willis Day during the triennium. Therefore, BTA No. 2006-M-1794 is remanded to the BOR with instructions to dismiss the complaint. The

board affirms the actions taken by the BOR in BTA No. 2007-M-868.³

Mr. Dunlap concurs.

I reluctantly concur with the decision dismissing the complaint. The outcome highlights the Board of Tax Appeals' lack of authority to apply the fairness principles of equity to a factual situation requiring a resolution other than the foregoing dismissal.

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


Sally F. Van Meter, Board Secretary

³ The board notes that counsel for Willis Day filed a motion to compel discovery on August 28, 2008. At the evidentiary hearing held on October 30, 2008, counsel for the county appellees sought an additional 10 days to respond to the discovery. The additional time was granted. Through his written brief in support of jurisdiction, counsel informed the board that the discovery was answered but there remained an issue as to an unfulfilled request for the production of certain documents. Our cursory review of the discovery requests revealed sufficient delineation of the issues through the interrogatories. Therefore, the failure to respond to the production requests is deemed, in this instance, moot.



MICHAEL SIBBERSEN
WOOD COUNTY AUDITOR

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Fax 419-354-9370
auditor@co.wood.oh.us

October 6, 2006

Willis Day Warehousing Co.
PO Box 9040
Toledo OH 43697

Ronald B. Noga
700 Ackerman Road #450
Columbus OH 43202

Re: BOR 48-2006

Upon consideration of the evidence provided and a review of the property, it is the decision of the Wood County Board of Revision that the total market value is as follows:

P57-300-260000024000 - \$3,429,600
P57-300-250001009000 - \$9,918,300
P57-300-350000022000 - \$1,022,500

If you should have further questions concerning this matter, please feel free to contact this office.

WOOD COUNTY BOARD OF REVISION

A handwritten signature in cursive script that reads "Michael Sibbersen".

Michael Sibbersen, Secretary

MS:bg
Certified mail

Appx 13

~~Exhibit A~~



MICHAEL SIBBERSEN
WOOD COUNTY AUDITOR

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August 7, 2007

Willis Day Warehousing Co.
PO Box 9040
Toledo OH 43697

Ronald B. Noga
700 Ackerman Road #450
Columbus OH 43202

Re: BOR 26-2007

Mr. Noga filed this claim as a matter of procedure since there is currently a complaint for 2005 at the Board of Tax Appeals in Columbus. The last appraisal for Wood County was for tax year 2005. Pursuant to ORC 5715.19A(2) a complaint shall not be filed more than once within that three year period. Therefore the board's decision is to make no changes at this time.

If you should have further questions concerning this matter, please feel free to contact this office.

WOOD COUNTY BOARD OF REVISION

Michael Sibbersen
Michael Sibbersen, Secretary

MS:bg
Certified mail

Appx. 14

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Oh. Const. Art. I, § 1

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*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

CONSTITUTION OF THE STATE OF OHIO
ARTICLE I. BILL OF RIGHTS

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Oh. Const. Art. I, § 1 (2010)

§ 1. Right to freedom and protection of **property**

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting **property**, and seeking and obtaining happiness and safety.

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Oh. Const. Art. I, § 16

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CONSTITUTION OF THE STATE OF OHIO
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Oh. Const. Art. I, § 16 (2010)

§ 16. Redress in courts

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of **law**, and shall have justice administered without denial or delay.

[Suits against the state.] Suits may be brought against the state, in such courts and in such manner, as may be provided by **law**.

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OHIO REVISED CODE GENERAL PROVISIONS
 CHAPTER 1. DEFINITIONS; RULES OF CONSTRUCTION
 CONSTRUCTION

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ORC Ann. 1.47 (2010)

§ 1.47. Intentions in the enactment of statutes

In enacting a statute, it is presumed that:

- (A) Compliance with the constitutions of the state and of the United States is intended;
- (B) The entire statute is intended to be effective;
- (C) A just and reasonable result is intended;
- (D) A result feasible of execution is intended.

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ORC Ann. 319.28

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TITLE 3. COUNTIES
CHAPTER 319. AUDITOR

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ORC Ann. 319.28 (2010)

§ 319.28. General tax list and general duplicate of real and public utility property; numbering system; request by protected individual for use of initials

(A) Except as otherwise provided in division (B) of this section, on or before the first Monday of August, annually, the county auditor shall compile and make up a general tax list of real and public utility property in the county, either in tabular form and alphabetical order, or, with the consent of the county treasurer, by listing all parcels in a permanent parcel number sequence to which a separate alphabetical index is keyed, containing the names of the several persons, companies, firms, partnerships, associations, and corporations in whose names real property has been listed in each township, municipal corporation, special district, or separate school district, or part of either in the auditor's county, placing separately, in appropriate columns opposite each name, the description of each tract, lot, or parcel of real estate, the value of each tract, lot, or parcel, the value of the improvements thereon, and of the names of the several public utilities whose property, subject to taxation on the general tax list and duplicate, has been apportioned by the department of taxation to the county, and the amount so apportioned to each township, municipal corporation, special district, or separate school district or part of either in the auditor's county, as shown by the certificates of apportionment of public utility property. If the name of the owner of any tract, lot, or parcel of real estate is unknown to the auditor, "unknown" shall be entered in the column of names opposite said tract, lot, or parcel. Such lists shall be prepared in duplicate. On or before the first Monday of September in each

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year, the auditor shall correct such lists in accordance with the additions and deductions ordered by the tax commissioner and by the county board of revision, and shall certify and on the first day of October deliver one copy thereof to the county treasurer. The copies prepared by the auditor shall constitute the auditor's general tax list and treasurer's general duplicate of real and public utility property for the current year.

Once a permanent parcel numbering system has been established in any county as provided by the preceding paragraph, such system shall remain in effect until otherwise agreed upon by the county auditor and county treasurer.

(B) (1) A peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation may submit a written request by affidavit to the county auditor requesting the county auditor to remove the name of the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation from any record made available to the general public on the internet or a publicly accessible database and the general tax list of real and public utility property and the general duplicate of real and public utility property and insert the initials of the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation on any record made available to the general public on the internet or a publicly accessible database and the general tax list of real and public utility property and the general duplicate of real and public utility property as the name of the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation that appears on the deed.

(2) Upon receiving a written request by affidavit described in division (B)(1) of this section, the county auditor shall act within five business days in accordance with the request to remove the name of the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation from any record made available to the general public on the internet or a publicly accessible database and the general tax list of real and public utility property and the general duplicate of real and public utility property and insert initials of the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation on any record made available to the general public on the internet or a publicly accessible database and the general tax list of real and public utility property and the general duplicate of real and public utility property, if practicable. If the removal and insertion is not practicable, the county auditor shall verbally or in writing within five business days after receiving the written request explain to the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation why the removal and insertion is impracticable.

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TITLE 3. COUNTIES
 CHAPTER 319. AUDITOR

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ORC Ann. 319.35 (2010)

§ 319.35. Correction of clerical errors in tax lists and duplicates

From time to time the county auditor shall correct all clerical errors the auditor discovers in the tax lists and duplicates in the name of the person charged with taxes or assessments, the description of lands or other property, the valuation or assessment of property or when property exempt from taxation has been charged with tax, or in the amount of such taxes or assessment, and shall correct the valuations or assessments on the tax lists and duplicates agreeably to amended, supplementary, or final assessment certificates. If the correction is made after a duplicate is delivered to the county treasurer, it shall be made on the margin of such list and duplicate without changing any name, description, or figure in the duplicate, as delivered, or in the original tax list, which shall always correspond exactly with each other.

For the purposes of this section and section 319.36 of the Revised Code, a clerical error is an error that can be corrected by the county auditor from the inspection or examination of documents in the county auditor's office or from the inspection or examination of documents that have been presented to the county auditor and have been recorded by the county recorder. Except as otherwise provided by law, any error in the listing, valuation, assessment, or taxation of real property other than a clerical error constitutes a fundamental error and is subject to correction only by the county board of revision as provided by law.

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§ 323.17. Delay in delivery of tax duplicate; extension of time for paymentCitation: **ORC Ann. 323.17***ORC Ann. 323.17*

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TITLE 3. COUNTIES
CHAPTER 323. COLLECTION OF TAXES
VALUATION OF HOMESTEAD PROPERTY

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ORC Ann. 323.17 (2010)

§ 323.17. Delay in delivery of tax duplicate; extension of time for payment

When any taxing authority in the county has certified to the board of elections a resolution that would serve to place upon the ballot at a general election or at any special election held prior to the general election but subsequent to the first Tuesday after the first Monday in August the question of a tax to be levied on the current tax list and duplicate for any purpose, or if the auditor has not received the certified reduction factors as required by division (D)(2) of section 319.301 [319.30.1] of the Revised Code, the time for delivery of the tax duplicate of [to] the county treasurer by the county auditor as provided in section 319.28 of the Revised Code shall be extended to the first Monday in December. When delivery of the tax duplicate has been so delayed, the times for payment of taxes as fixed by section 323.12 of the Revised Code may be extended to the thirty-first day of January and the twentieth day of July. In case of emergency the tax commissioner may, by journal entry, extend the times for delivery of the duplicate in any county for an additional fifteen days upon receipt of a written application from the county auditor, in the case of a delay in the delivery of the tax duplicate, or from the treasurer regarding an extension of the time for the billing and collection of taxes.

When a delay in the closing of a tax collection period becomes unavoidable, the tax commissioner, upon application of the county auditor and county treasurer, may extend the time for payment of taxes if he determines that penalties have accrued or would otherwise

accrue for reasons beyond the control of the taxpayers of the county. The order so issued by the commissioner shall prescribe the final extended date for the payment of taxes for that collection period.

"Emergency," as used in this section, includes death or serious illness, any organized work stoppage, mechanical failure of office equipment or machinery, or a delay in complying with section 5715.24 or 5715.26 of the Revised Code which will cause an unavoidable delay in the delivery of duplicates or in the billing or collection of taxes. Such application shall contain a statement describing the emergency that will cause the unavoidable delay. Any application from the county auditor for an extension of time for delivery of the duplicate due to an emergency must be received by the tax commissioner on or before the last day of the month preceding the date required for such delivery. When an extension of time for delivery of the duplicate is so granted, the time for payment of taxes shall be extended for a like period of time.

Whenever taxable real property has been destroyed or damaged by fire, flood, tornado, or otherwise, in an amount not less than twenty-five per cent of the value as listed and assessed for taxation but in no event less than two thousand dollars of taxable value, the county board of revision, by resolution, may extend the time for payment of taxes on such property not more than one year after the time fixed by section 323.12 of the Revised Code. The board shall file a copy of such resolution with the county auditor and county treasurer, stating the name of the owner and description as it appears on the tax list, the taxing district, the type and kind of property destroyed or damaged, and the board's estimate of the amount of such destruction or damage.

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§ 323.17. Delay in delivery of tax duplicate; extension of time for payment

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Citation: **ORC Ann. 5715.06**

ORC Ann. 5715.06

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TITLE 57. TAXATION
 CHAPTER 5715. BOARDS OF REVISION; EQUALIZATION OF ASSESSMENTS

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ORC Ann. 5715.06 (2010)

§ 5715.06. Number of experts; compensation; civil service

Each county board of revision shall appoint the number of experts, clerks, and employees that is prescribed for it by the tax commissioner. Such experts, clerks, and employees shall hold their employment for the time that is prescribed by the commissioner. The compensation of such experts, clerks, and employees shall be fixed by the board of county commissioners.

No expert, assistant, clerk, employee, or assistant assessor shall be subject to any civil service law or regulation.

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service**

Citation: **ORC Ann. 5715.12***ORC Ann. 5715.12*

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TITLE 57. TAXATION
CHAPTER 5715. BOARDS OF REVISION; EQUALIZATION OF ASSESSMENTS

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ORC Ann. 5715.12 (2010)

§ 5715.12. Duty to give notice before increasing valuation; service

The county board of revision shall not increase any valuation without giving notice to the person in whose name the property affected thereby is listed and affording him an opportunity to be heard. Such notice shall describe the real property, the tax value of which is to be acted upon, by the description thereof as carried on the tax list of the current year, and shall state the name in which it is listed; such notice shall be served by delivering a copy thereof to the person interested, by leaving a copy at the usual place of residence or business of such person, or by sending the same by registered letter mailed to the address of such person. If no such place of residence or business is found in the county, then such copies shall be delivered or mailed to the agent in charge of such property. If no such agent is found in the county, such notice shall be served by an advertisement thereof inserted once in a newspaper of general circulation in the county in which the property is situated. Notices to the respective persons interested in different properties may be united in one advertisement under the same general heading. Notices served in accordance with this section shall be sufficient.

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Citation: **orc 5715.19**

ORC Ann. 5715.19

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TITLE 57. TAXATION
CHAPTER 5715. BOARDS OF REVISION; EQUALIZATION OF ASSESSMENTS

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ORC Ann. 5715.19 (2010)

§ 5715.19. Complaints; tender of tax; determination of common level of assessment

(A) As used in this section, "member" has the same meaning as in section 1705.01 of the Revised Code.

(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 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:

- (a) Any classification made under section 5713.041 [5713.04.1] of the Revised Code;
- (b) Any determination made under section 5713.32 or 5713.35 of the Revised Code;
- (c) Any recoupment charge levied under section 5713.35 of the Revised Code;

(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;

(e) The determination of the total valuation of any parcel that appears on the agricultural land tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code;

(f) Any determination made under division (A) of section 319.302 [319.30.2] of the Revised Code.

Any person owning taxable real property in the county or in a taxing district with territory in the county; such a person's spouse; an individual who is retained by such a person and who holds a designation from a professional assessment organization, such as the institute for professionals in taxation, the national council of property taxation, or the international association of assessing officers; a public accountant who holds a permit under section 4701.10 of the Revised Code, a general or residential real estate appraiser licensed or certified under Chapter 4763. of the Revised Code, or a real estate broker licensed under Chapter 4735. of the Revised Code, who is retained by such a person; if the person is a firm, company, association, partnership, limited liability company, or corporation, an officer, a salaried employee, a partner, or a member of that person; if the person is a trust, a trustee of the trust; the board of county commissioners; the prosecuting attorney or treasurer of the county; the board of township trustees of any township with territory within the county; the board of education of any school district with any territory in the county; or the mayor or legislative authority of any municipal corporation with any territory in the county may file such a complaint regarding any such determination affecting any real property in the county, except that a person owning taxable real property in another county may file such a complaint only with regard to any such determination affecting real property in the county that is located in the same taxing district as that person's real property is located. The county auditor shall present to the county board of revision all complaints filed with the auditor.

(2) As used in division (A)(2) of this section, "interim period" means, for each county, the tax year to which section 5715.24 of the Revised Code applies and each subsequent tax year until the tax year in which that section applies again.

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

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

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

(c) Substantial improvement was added to the property;

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

(3) If a county board of revision, the board of tax appeals, or any court dismisses a complaint filed under this section or section 5715.13 of the Revised Code for the reason that the act of filing the complaint was the unauthorized practice of law or the person filing the complaint was engaged in the unauthorized practice of law, the party affected by a decrease in valuation or the party's agent, or the person owning taxable real property in the county or in a taxing district with territory in the county, may refile the complaint, notwithstanding division (A)(2) of this section.

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(B) Within thirty days after the last date such complaints may be filed, the auditor shall give notice of each complaint in which the stated amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination is at least seventeen thousand five hundred dollars to each property owner whose property is the subject of the complaint, if the complaint was not filed by the owner or the owner's spouse, and to each board of education whose school district may be affected by the complaint. Within thirty days after receiving such notice, a board of education; a property owner; the owner's spouse; an individual who is retained by such an owner and who holds a designation from a professional assessment organization, such as the institute for professionals in taxation, the national council of property taxation, or the international association of assessing officers; a public accountant who holds a permit under section 4701.10 of the Revised Code, a general or residential real estate appraiser licensed or certified under Chapter 4763. of the Revised Code, or a real estate broker licensed under Chapter 4735. of the Revised Code, who is retained by such a person; or, if the property owner is a firm, company, association, partnership, limited liability company, corporation, or trust, an officer, a salaried employee, a partner, a member, or trustee of that property owner, may file a complaint in support of or objecting to the amount of alleged overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination stated in a previously filed complaint or objecting to the current valuation. Upon the filing of a complaint under this division, the board of education or the property owner shall be made a party to the action.

(C) Each board of revision shall notify any complainant and also the property owner, if the property owner's address is known, when a complaint is filed by one other than the property owner, by certified mail, not less than ten days prior to the hearing, of the time and place the same will be heard. The board of revision shall hear and render its decision on a complaint within ninety days after the filing thereof with the board, except that if a complaint is filed within thirty days after receiving notice from the auditor as provided in division (B) of this section, the board shall hear and render its decision within ninety days after such filing.

(D) The determination of any such complaint shall relate back to the date when the lien for taxes or recoupment charges for the current year attached or the date as of which liability for such year was determined. Liability for taxes and recoupment charges for such year and each succeeding year until the complaint is finally determined and for any penalty and interest for nonpayment thereof within the time required by law shall be based upon the determination, valuation, or assessment as finally determined. Each complaint shall state the amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect classification or determination upon which the complaint is based. The treasurer shall accept any amount tendered as taxes or recoupment charge upon property concerning which a complaint is then pending, computed upon the claimed valuation as set forth in the complaint. If a complaint filed under this section for the current year is not determined by the board within the time prescribed for such determination, the complaint and any proceedings in relation thereto shall be continued by the board as a valid complaint for any ensuing year until such complaint is finally determined by the board or upon any appeal from a decision of the board. In such case, the original complaint shall continue in effect without further filing by the original taxpayer, the original taxpayer's assignee, or any other person or entity authorized to file a complaint under this section.

(E) If a taxpayer files a complaint as to the classification, valuation, assessment, or any determination affecting the taxpayer's own property and tenders less than the full amount of taxes or recoupment charges as finally determined, an interest charge shall accrue as follows:

(1) If the amount finally determined is less than the amount billed but more than the amount tendered, the taxpayer shall pay interest at the rate per annum prescribed by section 5703.47 of the Revised Code, computed from the date that the taxes were due on the difference between the amount finally determined and the amount tendered. This interest charge shall be in lieu of any penalty or interest charge under section 323.121 [323.12.1] of the Revised Code unless the taxpayer failed to file a complaint and tender an amount as taxes or recoupment

charges within the time required by this section, in which case section 323.121 [323.12.1] of the Revised Code applies.

(2) If the amount of taxes finally determined is equal to or greater than the amount billed and more than the amount tendered, the taxpayer shall pay interest at the rate prescribed by section 5703.47 of the Revised Code from the date the taxes were due on the difference between the amount finally determined and the amount tendered, such interest to be in lieu of any interest charge but in addition to any penalty prescribed by section 323.121 [323.12.1] of the Revised Code.

(F) Upon request of a complainant, the tax commissioner shall determine the common level of assessment of real property in the county for the year stated in the request that is not valued under section 5713.31 of the Revised Code, which common level of assessment shall be expressed as a percentage of true value and the common level of assessment of lands valued under such section, which common level of assessment shall also be expressed as a percentage of the current agricultural use value of such lands. Such determination shall be made on the basis of the most recent available sales ratio studies of the commissioner and such other factual data as the commissioner deems pertinent.

(G) A complainant shall provide to the board of revision all information or evidence within the complainant's knowledge or possession that affects the real property that is the subject of the complaint. A complainant who fails to provide such information or evidence is precluded from introducing it on appeal to the board of tax appeals or the court of common pleas, except that the board of tax appeals or court may admit and consider the evidence if the complainant shows good cause for the complainant's failure to provide the information or evidence to the board of revision.

(H) In case of the pendency of any proceeding in court based upon an alleged excessive, discriminatory, or illegal valuation or incorrect classification or determination, the taxpayer may tender to the treasurer an amount as taxes upon property computed upon the claimed valuation as set forth in the complaint to the court. The treasurer may accept the tender. If the tender is not accepted, no penalty shall be assessed because of the nonpayment of the full taxes assessed.

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ORC Ann. 5715.23

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 REVIEW OF ASSESSMENTS BY TAX COMMISSIONER

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ORC Ann. 5715.23 (2010)

§ 5715.23. Abstract of real property transmitted to tax commissioner

Annually, immediately after the county board of revision has acted upon the assessments for the current year as required under section 5715.16 of the Revised Code and the county auditor has given notice by advertisement in two newspapers that the valuations have been revised and are open for public inspection as provided in section 5715.17 of the Revised Code, each auditor shall make out and transmit to the tax commissioner an abstract of the real property of each taxing district in his county, in which he shall set forth the aggregate amount and valuation of each class of real property in such county and in each taxing district therein as it appears on his tax list or the statements and returns on file in his office and an abstract of the current year's true value of land valued for such year under section 5713.31 of the Revised Code as it appears in the current year's agricultural land tax list.

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REVIEW OF ASSESSMENTS BY TAX COMMISSIONER

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ORC Ann. 5715.33 (2010)

§ 5715.33. Sexennial reappraisal; reassessment of improperly assessed property

The tax commissioner shall order a reappraisal of all real property in each county once in each six-year period. The commissioner may order the commencement of any sexennial reappraisal in sufficient time for the county auditor to complete the reappraisal as required by section 5713.01 of the Revised Code. The commissioner may order a reassessment of the real property or any class thereof in any taxing district or subdivision thereof in the third calendar year following the year in which a sexennial reappraisal is completed if in his opinion such property has been unequally or improperly assessed, so that all classes of property in such district shall be assessed in compliance with law.

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