

IN THE SUPREME COURT  
STATE OF OHIO

SHELDON ROAD ASSOCIATES, LLC, )

Appellant, )

v. )

CUYAHOGA COUNTY BOARD OF )  
REVISION, CUYAHOGA COUNTY )  
AUDITOR, THE BOARD OF )  
EDUCATION FOR THE BEREA )  
CITY SCHOOL DISTRICT, AND TAX )  
COMMISSIONER OF THE STATE )  
OF OHIO, )

Appellees. )

SUPREME COURT  
CASE NO. 2010-1322

BOARD OF TAX APPEALS  
CASE NUMBER 2009-V-4083

FILED  
AUG 04 2011  
CLERK OF COURT  
SUPREME COURT OF OHIO

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APPELLANT'S LIST OF ADDITIONAL AUTHORITIES TO BE RELIED UPON  
DURING ORAL ARGUMENT

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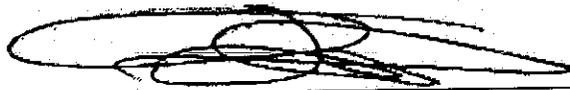
**APPELLANT'S LIST OF ADDITIONAL AUTHORITIES  
TO BE RELIED UPON DURING ORAL ARGUMENT**

Pursuant to Supreme Court Practice Rule IX, Section 8, the following is Appellant's List of Additional Authorities it intends to rely upon during oral argument.

- 1) Walgreen Co. vs. Montgomery County Board of Revision, the Montgomery County Auditor, and the Board of Education for the Northridge Local Schools, Board of Tax Appeals Case No. 2008-M-2401, decided July 13, 2011, Slip Op. (denying motion to dismiss; ordering Board of Revision to supplement record) attached.

Respectfully submitted,

SLEGGs, DANZINGER & GILL, CO., LPA



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**OHIO BOARD OF TAX APPEALS**

Walgreen Co., )  
 )  
Appellant, )  
 )  
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 )  
 )  
Montgomery County Board of Revision, ) (Denying Motion to Dismiss;  
the Montgomery County Auditor, and ) Ordering BOR to Supplement Record)  
the Board of Education for the )  
Northridge Local Schools, )  
 )  
Appellees. )

**APPEARANCE**

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Entered **JUL 13 2011**

This matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed by appellant, Walgreen Co., ("Walgreen"), from a decision of the Montgomery County Board of Revision ("BOR") finding value for certain property for the year 2007.

On July 11, 2011, Walgreen filed a motion to dismiss, which this board has construed as a motion to remand with instructions to dismiss, and a motion to

supplement the transcript. As the matter is scheduled for hearing on August 2, 2011, the board finds no reason to delay the ruling on the motion to dismiss, which it denies. However, the BOR is instructed to supplement the record as requested by Walgreen.

Walgreen argues that the matter should have been dismissed by the BOR as it was a second filing within a triennial. While Walgreen acknowledges the Board of Education of the Northridge Local School District ("BOE") checked a number of boxes on line 14 of its original complaint challenging value with the BOR, Walgreen argues that the BOE checked too many boxes, thereby rendering its complaint defective, and denying the BOR of jurisdiction to consider the matter. For the reasons following, the board finds the motion not well taken.

According to Walgreen, the BOE filed two complaints during the triennium beginning in 2005. Attached to Walgreen's motion are copies of complaint filed for tax years 2006 and 2007. The 2007 complaint also appears as a part of the statutory transcript ("S.T.") filed in this appeal. Line 14 of a complaint form seeks information regarding the reason for filing a second complaint if an earlier complaint on the same parcel had been filed since the last reappraisal or update of the property values in the county (i.e., during the same triennium). On the complaint filed for 2006, the BOE checked three boxes, indicating that, 1) the property was sold in an arm's-length transaction, 2) a substantial improvements had been added to the property, and 3) the property's occupancy had changed by at least 15 percent.

According to the BOE's complaint, the basis for its 2006 filing was the sale of the subject property on July 5, 2006 for a price of \$3,976,000. However, the

decision letter issued on the 2006 complaint reduced value. 2006 decision letter attached to motion to dismiss, Ex. C.

The auditor did change value for tax year 2007. Compare 2006 decision letter attached to motion to dismiss, Ex. C with S.T. The BOE reflected the auditor's assessment on the face of its complaint filed March 18, 2008. Compare column C of the complaint with S.T. The BOE also indicated on line 10 that the property had sold on July 5, 2006 for a sale price of \$3,976,000 and checked the same three boxes under line 14 as it had when it completed its complaint for tax year 2006. The BOE sought a value higher than that assessed by the auditor for tax year 2007. The BOR's decision for tax year 2007 raised value to the sale price.

Walgreen now argues that the BOE's action of checking three boxes on the face of its 2007 complaint caused the complaint to become jurisdictionally invalid. The board does not agree. Initially, the board notes that any response to question 14 was superfluous. Once the auditor changes value within a triennial period, a person or entity may challenge the auditor's newly assessed value without meeting one of the exceptions found in R.C. 5715.19(D). *Lansdowne v. Lorain Cty. Bd. of Revision* (May 18, 2010), BTA No. 2008-K-935, unreported; *Meijer, Inc. v. Clermont Cty. Bd. of Revision* (Interim Order, June 4, 1999), BTA No. 1998-M-671, unreported. As a result, the BOE was authorized to file a complaint challenging the auditor's values.

Therefore, the BOE was not required to present any reason to explain the second filing within the same triennial period. However, Walgreen's argument is that the BOE presented too many reasons, and the additional information negatively affected core procedural efficiency.

Walgreen has not directed this board to a single case where an excess of information has caused this board or reviewing tribunals to conclude that jurisdiction was improper. In *Specialty Restaurants Corp. v. Cuyahoga Cty. Bd. of Revision*, 96 Ohio St.3d 170, 2002-Ohio-4032, the Ohio Supreme Court held that R.C. 5715.19(A)(2) provided a bar to a second filing within a single triennium "unless one or more of the statutory circumstances \*\*\* is alleged." at ¶11. Therefore the board can find no impediment to alleging more than one circumstance listed in R.C. 5715.19(A)(2)(a) through (d) on the face of a complaint. Nevertheless, in the present appeal there was no necessity for identifying any reason under R.C. 5715.19(A)(2), as the auditor's actions in changing value during a triennium was sufficient to permit a additional filings.

Walgreen's request for the supplementation of the record with any information relied upon by the BOR will be granted. The BOR should include any portion of the 2006-complaint proceedings that was relied upon in the consideration of the 2007 valuation challenge.

The matter will be proceed to merit hearing on August 2, 2011 at 9:00 a.m. as previously scheduled.

On behalf of the Board of Tax Appeals;  
pursuant to Ohio Admin. Code 5717-1-10,



Rebecca R. Luck  
Attorney Examiner

**CERTIFICATE OF SERVICE**

A copy of the foregoing Appellant's List of Additional Authorities to be Relied Upon  
During Oral Argument was mailed via facsimile and regular U.S. mail postage prepaid, the  
4th day of August, 2011 to the following:

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