

IN THE SUPREME COURT OF OHIO

2200 CARNEGIE LLC

) Case No. 2011-2147

)

) On appeal from the Cuyahoga County
) Court of Appeals, Eighth District

vs.

)

CUYAHOGA COUNTY BOARD
OF REVISION, et al.

)

)

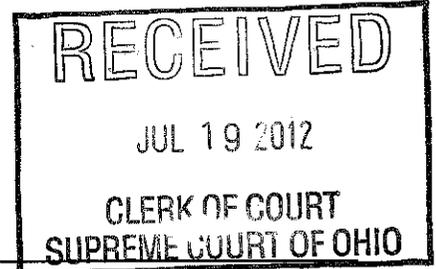
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Court of Appeals
Case No. 96646



REPLY BRIEF OF APPELLANT, BOARD OF EDUCATION
OF THE CLEVELAND MUNICIPAL SCHOOL DISTRICT

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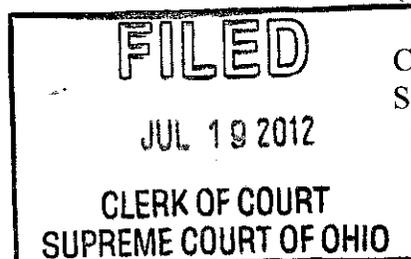


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This case presents the question of whether the failure by the county board of revision to provide timely notice of a valid complaint as required by statute deprives the board of revision of jurisdiction to conduct a hearing and issue a decision. In the alternative, and as held by the Eighth District Court of Appeals held, does the failure of the board of revision to provide notice of a valid complaint require the complaint be dismissed. The appellant, the Board of Education of the Cleveland Municipal School District (“BOE”), the appellees, the Cuyahoga County Board of Revision and Cuyahoga County Fiscal Officer, and amicus curiae, the State of Ohio, argue the first alternative, that the complaint should not be dismissed. The appellee, 2200 Carnegie, LLC, argues that the court of appeals was correct in holding that the complaint itself must be dismissed if the board of revision fails to provide notice as required by R.C. 5715.19(B).

The BOE now submits the following in reply to the brief of the appellee, 2200 Carnegie, LLC. Unless otherwise indicated, the BOE is not responding to the brief of the county appellees.

I. REPLY TO STATEMENT OF THE FACTS.

The statement of the facts as set forth by the BOE in its initial brief are largely undisputed and the will not be repeated in this reply. The BOE makes only the following comment in response to 2200 Carnegie’s “Statement of the Facts”, Merit Brief of Appellee 2200 Carnegie, LLC, pages 1-3.

2200 Carnegie, LLC asserts on page 2 of its brief that “the only way to properly give notice and obtain jurisdiction over 2200 Carnegie was for the BOE to re-file its

Complaint so that the BOR could comply with R.C. 5715.19(B) . . .” The BOE submits this is an incorrect statement of Ohio law. As argued in its initial brief and further argued below, the BOE submits that the board of revision obtained jurisdiction to hear and decide the BOE”s complaint once notice of the complaint was provided to 2200 Carnegie.

II. LAW AND ARGUMENT

A. Reply to 2200 Carnegie’s response to the BOE’s first proposition of law.

Appellant’s Proposition of Law No. 1:

A failure by a board of revision to provide notice of the filing of a valid complaint as required by R.C. 5715.19(B) does not mandate the dismissal of the complaint, but instead requires the board of revision to provide notice prior to conducting a hearing and issuing a decision.

The BOE argued in its first proposition of law that the failure of a board of revision to provide notice of a complaint does not require dismissal of the complaint. Instead, the failure requires the board of revision to provide notice prior to hearing the complaint. 2200 Carnegie, LLC has responded to the BOE’s argument and set forth in its own proposed proposition of law:

Boards of revisions are creatures of statute and full and complete compliance with the service mandates contained in R.C. 5715.19(B) is necessary for a board of revision to have jurisdiction over a property owner and act on the merits of a claim.

Brief of Appellee, page 3

In its response, 2200 Carnegie, LLC makes two interwoven arguments. First, 2200 Carnegie argues that taxing statutes must be strictly construed against the board of revision, and when the board of revision fails to provide a party notice of a third-

party complaint within the time limits of R.C. 5715.19(B), an otherwise valid complaint must be dismissed. Second, 2200 Carnegie, LLC argues that as the property owner, it has constitutional due process rights in a tax case such as the one at hand, and these rights would be violated if the board of revision were permitted to send notice of the BOE's complaint after the thirty day period set forth in R.C. 5715.19(B). The BOE submits that neither of these argument have merit, and that none of the case law upon which 2200 Carnegie relies actually supports 2200 Carnegie's position.

Before addressing 2200 Carnegie's specific arguments, the BOE would note that while it disagrees with 2200 Carnegie's legal analysis, it does not necessarily disagree with its proposed proposition of law. R.C. 5715.19(B) does require notice of a complaint be sent to other parties. If notice is not sent, then the board of revision does not have jurisdiction to "act on the merits of a claim." Appellee's Proposed Proposition of Law 1. This does not mean that the board of revision has no jurisdiction over the complaint, only that until notice is sent it does not have jurisdiction to act on the merits; i.e., the board of revision can not conduct a hearing and issue a valid final order until notice is provided. Once notice is provided, the board of revision can proceed.

The BOE would also note that the issue in this case is not whether 2200 Carnegie, LLC, as the property owner, was prejudiced since it could not file a counter-complaint and could not participate in the proceedings that were commenced when the BOE filed its complaint. 2200 Carnegie did file a counter-complaint, did participate in the proceedings before the board of revision, and did have the right to appeal the

resulting decision by the board of revision. In fact, and regardless if it ever filed a counter-complaint, as the owner of the property which was the subject of the BOE's complaint, 2200 Carnegie, LLC always had the right to participate in the proceedings before the board of revision on the BOE's complaint, and had the right to appeal any decision by the board of revision. R.C. 5715.12 ("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."); *Columbus Apartments Assoc. v. Franklin Cty. Bd. of Revision*, 67 Ohio St.2d 85, 423 N.E.2d 147 (1981), syllabus.

Turning to 2200 Carnegie's arguments in support of its position, the BOE state the following in reply.

1. Neither Chapter 5715 of the Revised Code nor the decisions by the Supreme Court mandate the dismissal of a valid complaint for failure of the board of revision to provide the property owner timely notice of a third party's complaint.

2200 Carnegie argues in response to the BOE's first proposition of law that taxing statutes must be strictly construed against the board of revision. Therefore, the court of appeals was correct when holding that the failure of the board of revision to provide it with notice of the BOE's complaint within thirty days after the last day for filing, or April 30, 2007, required the dismissal of the BOE's complaint.

In support of this argument, 2200 Carnegie directs the court's attention to a number of its decisions. A review of these opinions show that none support the

argument that the BOE's complaint should have been dismissed as a result of the failure by the board of revision to provide timely notice.¹

After noting that boards of revision are creatures of statute and quasi-judicial bodies, and the BOE agrees, 2200 Carnegie asserts that strict compliance with R.C. 5715.19 is required. Page 4, Brief of Appellee, 2200 Carnegie, LLC. In support of this argument, 2200 Carnegie relies on several decisions by this property tax decisions, namely *Elkem Metals Company v. Washington Cty. Bd. of Revision*, 81 Ohio St.3d 683, 693 N.E.2d 276 (1998) and *C.I.A. Properties v. Cuyahoga Cty. Auditor*, 89 Ohio St.3d 363, 731 N.E.2d 680 (2000). An examination of these decisions shows that neither stand for the proposition that the board of revision loses jurisdiction to consider the merits of a valid complaint if it fails to send a required notice. Instead, both stand for the proposition that the complaint must fully comply with R.C. 5715.19 if it is to invoke the jurisdiction of a board of revision.

In *Elkem* the complainant filed a second complaint in the same interim period and failed to establish cause as required by R.C. 5715.19(A)(2). As a result, the complaint was dismissed. This was a defect in the original complaint, and not by the board of revision. This court stated:

As part of its jurisdiction to hear and rule on complaints, a board of revision must undertake a two-step analysis. First, the board of revision must examine the complaint to determine whether it meets the jurisdictional requirements set forth by statute. Second, if the complaint meets the jurisdictional

¹2200 Carnegie does not dispute that the BOE's complaint fully complied with R.C. 5715.19, and was valid when filed, nor does 2200 Carnegie deny, or even mention, that it purchased the subject property \$520,000, being the value requested in the BOE's complaint.

requirements, the board of revision is empowered to proceed to consider the evidence and determine the true value of the property.

Elkem Metals Company at 686, 693 N.E.2d 276.

The BOE submits this case supports the BOE's argument. If the complaint complies with statute, which it did in the case at hand, then the board of revision must "proceed to consider the evidence and determine the true value of the property."

Granted, the property owner, namely 2200 Carnegie, was entitled to notice of the BOE's complaint, and the board of revision could not proceed until this notice was provided, once notice was given the board could and did proceed on the merits.

Similarly, in *C.I.A. Properties v. Cuyahoga Cty. Auditor*, 89 Ohio St.3d 363, 731 N.E.2d 680 (2000) the court also did not hold that the board of revision could divest itself of jurisdiction over a valid complaint. Instead, the issue was whether a complaint filed under R.C. 5715.19(B) (the counter-complaint) could survive where the original complaint was jurisdictionally defective. The court held that the counter-complaint could not survive. *Id.*, syllabus. Again, it was the original complaint as filed by the complainant that was invalid; the court neither held nor addressed the question of whether a board of revision could dismiss a valid complaint.

Also see *Sharon Village Ltd. v. Licking County Bd. of Revision*, 78 Ohio St.3d 479, 678 N.E.2d 932 (1997), where the court dismissed a complaint for being the unauthorized practice of law, and *Stanjim Co. v. Mahoning Cty. Bd. of Revision*, 38 Ohio St.2d 233, 313 N.E.2d 14 (1974), where the court dismissed a complaint for not containing sufficient required information, cases which 2200 Carnegie cite as support

for its argument that a board of revision must dismiss a valid complaint if it fails to provide notice within the time period set forth in R.C. 5715.19(B). The BOE submits 2200 Carnegie's argument that these cases support dismissal is incorrect. Unlike the case at hand, in both of these cases the complaint itself failed to invoke the jurisdiction of the board of revision. In *Sharon Village* the complaint was never valid in the first place since it constituted the unauthorized practice of law. In *Stanjim* the complaint was never valid as it failed to provide the required information. Neither is applicable to the case at hand, where the BOE's complaint fully complied with the requirements of R.C. 5715.19 and it was the tribunal with whom the complaint was filed, namely the board of revision, that failed to send notice within thirty days.

Similarly, 2200 Carnegie's reliance on the Ohio Rules of Civil Procedure is inapplicable to the case at hand. At page 10 of its brief, 2200 Carnegie states:

Here, the first step, notice of the filing of the complaint against valuation, was not perfected in a timely fashion. Just as the rules of civil procedure require that service of summons be perfected by a date certain (one year from the filing of the complaint per Civ. R. 3(A)), R.C. 5715.19(B) also requires that service be perfected by a date certain, i.e., within thirty days of the last date to file such complaints, March 31 of the ensuing tax year.

The BOE submits this argument is incorrect. First, the board of revision is not a court and the civil rules do not apply to proceedings before it. *Meadows Development, L.L.C. v. Champaign Cty. Bd. of Revision*, 124 Ohio St.3d 349, 2010-Ohio-249, 922 N.E.2d 209, ¶14; *Tower City Properties v. Cuyahoga Cty. Bd. of Revision*, 49 Ohio St.3d 67, 551 N.E.2d 122 (1990). Second, there is no need to look to the rules of civil procedure for guidance as R.C. 5715.19(B) specifically provides

for the giving of notice by the board of revision. See, e.g., *Meadows Development, L.L.C.* at ¶15. Third and finally, unlike R.C. 5715.19, under the civil rules it is the responsibility of the party seeking to ensure service has been made, and the party is required to show good cause for a failure of service within six months. Civ.R. 4(E). There is no such provision under R.C. 5715.19, nor any provision for the original complainant to force the board of revision to send notice. While the original complainant may not be able to force the board of revision to provide service and comply with R.C. 5715.19(B), the board of revision cannot proceed until the notice is provided.

In sum, it is the position of the BOE that while strict compliance with R.C. 5715.19 is required, this strict compliance means that a board of revision does not require or even permit the board of revision to dismiss a valid complaint. Instead, R.C. 5715.19(B) requires the board of revision issue notice to certain interested parties when a complaint is filed; to the board of education when the property owner files a complaint or the property owner when the board of revision files a complaint (presuming the complaint seeks a change of over \$17,500 in assessed value). Until there is compliance with this notice provision, the board of revision does not have the authority, i.e., jurisdiction, to conduct a hearing and issue a decision. However, once notice is given, the board of revision must proceed on the merits of the complaint.

2. 2200 Carnegie's due process rights were not violated by the board of revision providing late notice of the BOE's complaint.

2200 Carnegie also argues that as the property owner it has constitutional due process rights with respect to property valuation cases. Brief of Appellee, page 7. The BOE does not disagree. Similarly, the BOE has statutory due process rights to be heard with respect to property valuation cases that concern its taxing district. *MB West Chester, L.L.C. v. Butler Cty. Bd. of Revision*, 126 Ohio St.3d 430, 2010-Ohio-3781, 934 N.E.2d 928, ¶21. However, and as noted above, 2200 Carnegie could and did file a counter-complaint, was a party to the proceedings before the board of revision, and had and exercised its rights to appeal. Even if 2200 Carnegie never filed a counter-complaint, as the property owner it would still be a party to the proceedings before the board of revision and would still have the right to appeal. R.C. 5715.12; *Columbus Apartments Assoc. v. Franklin Cty. Bd. of Revision*, 67 Ohio St.2d 85, 423 N.E.2d 147 (1981).

In support of its due process argument, 2200 Carnegie relies on the property tax cases *MB West Chester, L.L.C. v. Butler Cty. Bd. of Revision*, 126 Ohio St.3d 430, 2010-Ohio-3781, 934 N.E.2d 928, and *Cincinnati School Dist. Bd. of Education v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 721 N.E.2d 140 (2000), the workers' compensation case *State ex rel. Haylett v. Ohio Bur. of Workers' Comp.*, 87 Ohio St.3d 325, 720 N.E.2d 901 (1999), and the Ohio Constitution, Article I, Section 16. Brief of Appellant, pages 7, 10. While the BOE agrees that 2200 Carnegie has due process rights in property tax cases that concern its property, the BOE submits

that there was no due process violation when the board of revision sent notice of the BOE's complaint after the thirty-day time limit.

An examination of the two tax cases upon which 2200 Carnegie relies shows that neither supports its argument that a failure of the board of revision to provide timely notice is a due process violation requiring dismissal of the underlying complaint.

In *MB West Chester, L.L.C. v. Butler Cty. Bd. of Revision*, 126 Ohio St.3d 430, 2010-Ohio-3781, 934 N.E.2d 928, the board of education filed a complaint with the board of revision, the complaint was heard and a decision issued, and the property owner appealed to the board of tax appeals. The board of education was never notified of the appeal, did not enter an appearance on appeal, and first learned of the appeal when the board of revision mailed out notice of a stipulation entered into by the county appellees and the property owner appellant at the board of tax appeals. This notification was received well after the appeal time had run on the stipulation and order. The board of education moved the BTA for leave to intervene and to vacate the stipulated order, which was denied on the grounds that the appeal period had run. *Id.* at ¶7-11. The board of education appealed to this court.

Following 2200 Carnegie's argument, the original appeal to the board of tax appeals by the property owner should have been dismissed since the board of education was never notified of the appeal as required by statute. This was not done. Instead, the court held "that the BTA lacked jurisdiction to issue its June 23 decision, because the school board had not been notified of the pending appeal as required by

R.C. 5717.01.” Id. at ¶37. The decision by the BTA was reversed and the matter was “remand[ed] with the instruction that the motion be granted . . .” Id. at ¶38.

This is quite similar to what occurred in the case at hand. The board of revision was required by statute to provide notice to 2200 Carnegie of the BOE’s complaint. Until this notice was provided, the board of revision had no jurisdiction to issue a final order. Once notice was provided, the board of revision had jurisdiction to hear and decide the BOE’s complaint. As argued above and in the BOE’s initial brief, the failure to provide notice resulted in a lack of jurisdiction to conduct a hearing, and not a lack of jurisdiction over the BOE’s complaint itself.

Similarly, 2200 Carnegie’s reliance on *Cincinnati School Dist. Bd. of Education v. Cuyahoga Cty. Bd. of Revision*, 87 Ohio St.3d 363, 721 N.E.2d 40 (2000), is also misplaced. In this case, the board of education filed a complaint with the board of revision and identified the wrong property owner on its complaint. The true property owner was never notified of either the board of education’s complaint or the board of revision hearing. After the appeal time had run, the true property owner, Candlewood, Ltd., was finally given notice. It filed a counter-complaint, the board of revision vacated its first order, held another hearing, and issued a new decision. Id. at 364, 721 N.E.2d 40. On appeal to the BTA, the board of education argued that the board of revision lacked jurisdiction to issue its second decision. The BTA disagreed, finding that the board of revision had no jurisdiction to issue the first decision, the one that was made prior to the owner being given notice. Id. at 365, 721 N.E.2d 40. This court reversed, holding that the BTA had no authority to review the first board of

revision decision since the appeal time had already run when the appeal was filed. *Id.* at 369, 721 N.E.2d 40. While not directly related to the court's ultimate holding, the court also stated:

Because the notices required by R.C. Chapter 5715 were not given to Candlewood prior to the BOR's July 2, 1997 hearing and after its August 18, 1997 decision, and no voluntary appearance was made by Candlewood, the BOR's August 18, 1997 decision is a nullity and void as regards Candlewood.

Id. at 367, 721 N.E.2d 40.

Notably, the court did not say the board of education's complaint was invalid, even though the complaint had failed to name the true property owner. Instead, the court stated that the board of revision's decision was void. Again, this is quite similar to what occurred in the case at hand. When 2200 Carnegie first appealed the decision by the board of revision, the court of common pleas vacated the board of revision's decision and remanded for notice to be provided. Once notice was provided, the board of revision could proceed on the merits. The BOE would also note that in *MB West Chester, L.L.C. v. Butler Cty. Bd. of Revision*, 126 Ohio St.3d 430, 2010-Ohio-3781, 934 N.E.2d 928, the court stated that its decision in *Cincinnati School Dist. Bd. of Education v. Cuyahoga Cty. Bd. of Revision*, 87 Ohio St.3d 363, 721 N.E.2d 40 (2000), had been modified by *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033, 772 N.E.2d 1160, stating at ¶25:

Because the board of revision in *Cincinnati School Dist.* failed to certify its decision to the owner, the period for appealing from that decision would never have begun to run under *Cleveland Elec. Illum. Co.* As a result, the jurisdictional bar we recognized in *Cincinnati School Dist.* would not arise again because, under *Cleveland Elec. Illum. Co.*, the appeal period would never have begun to run.

To the extent *Cincinnati School Dist. Bd. of Education v. Cuyahoga Cty. Bd. of Revision*, 87 Ohio St.3d 363, 721 N.E.2d 40 (2000), is applicable to the case at hand or even still good law, the BOE submits it supports the BOE's position and not that of 2200 Carnegie, LLC. If the board of revision fails to provide notice to the property owner, any resulting decision is void and without effect and the appeal time does not even begin to run. It is only after the notice is given that the board of revision is empowered to conduct a decision and issue a final order. This is what occurred in the case at hand.

In none of the tax cases cited by 2200 Carnegie, LLC has the court held that a board of revision can dismiss a valid complaint; in none of these cases did the court hold that a failure of a board of revision to provide notice to a property owner of a third party's complaint resulted in the dismissal of the complaint. Instead, the failure of notice meant that the board of revision did not have jurisdiction to hear the complaint. Once notice was provided, the board of revision could proceed. See, e.g., *Knickerbocker Properties, Inc., XLII v. Delaware Cty. Bd. of Revision*, 119 Ohio St.3d 233, 2008-Ohio-3192, 893 N.E.2d 457

For the reasons set forth above and in the BOE's initial brief, the BOE submits that the decision by the court of appeals that the failure of the board of revision to provide notice within the time period set forth in R.C. 5715.19(B) requires dismissal of a valid complaint is incorrect. As there is no authority whereby a county board of revision can completely and permanently divest itself of jurisdiction over a valid

complaint, the decision by the court of appeals should be reversed and the decision by the court of common pleas reinstated.

B. Reply to 2200 Carnegie's response to the BOE's second proposition of law.

Appellant's Proposition of Law No. 2:

The doctrine of the law of the case applies to proceedings that originate with the board of revision, and a decision by a reviewing court is the law of that case for all subsequent proceedings.

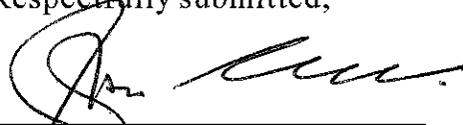
The BOE argued in its second proposition of law that since 2200 Carnegie, LLC did not appeal the first decision by the court of common pleas, its appeal in this case was barred by the law of the case. 2200 Carnegie, LLC has now responded arguing that this case involves a question of subject matter jurisdiction, and subject matter jurisdiction cannot be waived. Brief of Appellee, pages 16-17. The BOE relies on the argument set forth in its initial merit brief and will make no further response in its reply to the second proposition of law.

III. CONCLUSION

In the case at hand, the Eighth District Court of Appeals has held that a failure of a county board of revision to provide notice of a third party's complaint within thirty days after the last day for filing the complaint mandates a dismissal of the complaint. Notably, the Eighth District has ruled that the board of revision, by its own actions, can dismiss an otherwise valid complaint, and the Eighth District's ruling is applicable whenever the board of revision fails to provide timely notice. This decision would also mandate the dismissal of any complaint requesting a change of over \$17,500 in assessed value that has been filed by a property owners when the

board of revision fails to provide a board of education with notice of the complaint. The BOE submits that this is not a result contemplated by the General Assembly when it enacted R.C. 5715.19, and is not a result supported by any prior decisions of this court. Therefore, the appellant, the Board of Education of the Cleveland Municipal School District, respectfully requests the Supreme Court of Ohio to reverse the decision by the Eighth District Court of Appeals and reinstate the decision by the Cuyahoga County Court of Common Pleas.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Reply Brief of Appellant, Board of Education of the Cleveland Municipal School District" has been served upon the following this 1st day of July, 2012 by ordinary U.S. mail delivery:

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APPENDIX

Westlaw

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Baldwin's Ohio Revised Code Annotated Currentness

Title LVII. Taxation

⁶ Chapter 5715. Boards of Revision; Equalization of Assessments (Refs & Annos) ⁶ County Board of Revision →→ **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.

CREDIT(S)

(1953 H 1, eff. 10-1-53; GC 5599)

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▶ Baldwin's Ohio Revised Code Annotated Currentness

Title LVII. Taxation

▣ Chapter 5715. Boards of Revision; Equalization of Assessments (Refs & Annos)

▣ Practice and Procedure

→→ **5715.19 Complaints; tender of tax or lesser amount; penalties; common level of assessment to be determined**

(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 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 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 Re-

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vised 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.

(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 com-

plaint 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 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 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 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.

CREDIT(S)

(2006 H 294, eff. 9-28-06; 2002 H 390, eff. 3-4-02; 1998 H 694, eff. 3-30-99; 1988 H 603, eff. 6-24-88; 1984 H 379; 1983 H 260; 1982 H 379; 1981 S 6; 1980 H 736, H 1238; 1978 H 648; 1977 H 1; 1976 H 920; 1974 S 423; 1971 S 428, H 931; 131 v H 337; 129 v 582; 128 v 410; 127 v 65; 1953 H 1; GC 5609)

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Constitution of the State of Ohio (Refs & Annos)

▣ Article I. Bill of Rights (Refs & Annos)

→→ **O Const I Sec. 16 Redress for injury; due process**

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

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(1912 constitutional convention, am. eff. 1-1-13; 1851 constitutional convention, adopted eff. 9-1-1851)

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Rules of Civil Procedure (Refs & Annos)

■ Title II. Commencement of Action and Venue; Service of Process; Service and Filing of Pleadings and Other Papers Subsequent to the Original Complaint; Time

→→ Civ R 4 Process: summons

(A) Summons: issuance

Upon the filing of the complaint the clerk shall forthwith issue a summons for service upon each defendant listed in the caption. Upon request of the plaintiff separate or additional summons shall issue at any time against any defendant.

(B) Summons: form; copy of complaint.

The summons shall be signed by the clerk, contain the name and address of the court and the names and addresses of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the times within which these rules or any statutory provision require the defendant to appear and defend, and shall notify the defendant that in case of failure to do so, judgment by default will be rendered against the defendant for the relief demanded in the complaint. Where there are multiple plaintiffs or multiple defendants, or both, the summons may contain, in lieu of the names and addresses of all parties, the name of the first party on each side and the name and address of the party to be served.

A copy of the complaint shall be attached to each summons. The plaintiff shall furnish the clerk with sufficient copies.

(C) Summons: plaintiff and defendant defined

For the purpose of issuance and service of summons "plaintiff" shall include any party seeking the issuance and service of summons, and "defendant" shall include any party upon whom service of summons is sought.

(D) Waiver of service of summons

Service of summons may be waived in writing by any person entitled thereto under Rule 4.2 who is at least eighteen years of age and not under disability.

(E) Summons: time limit for service

If a service of the summons and complaint is not made upon a defendant within six months after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion. This division shall not apply to out-of-state service pursuant to Rule 4.3 or to service in a foreign country pursuant to Rule 4.5.

(F) Summons: revivor of dormant judgment

Upon the filing of a motion to revive a dormant judgment the clerk shall forthwith issue a summons for service upon each judgment debtor. The summons, with a copy of the motion attached, shall be in the same form and served in the same manner as provided in these rules for service of summons with complaint attached, shall command the judgment debtor to serve and file a response to the motion within the same time as provided by these rules for service and filing of an answer to a complaint, and shall notify the judgment debtor that in case of failure to respond the judgment will be revived.

CREDIT(S)

(Adopted eff. 7-1-70; amended eff. 7-1-71, 7-1-73, 7-1-75, 7-1-84, 7-1-08)

Current with amendments received through January 1, 2012.

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