

**IN THE SUPREME COURT OF OHIO**

MDM HOLDINGS, LLC,	)	CASE NO. 2015-1065
	)	
Appellant,	)	
	)	Appeal from the Ohio Board of Tax Appeals
-vs-	)	
	)	
CUYAHOGA COUNTY BOARD OF	)	Board of Tax Appeals Case No.
REVISION, THE CUYAHOGA COUNTY	)	2015-60
FISCAL OFFICER, CLEVELAND	)	
MUNICIPAL SCHOOL DISTRICT	)	
BOARD OF EDUCATION AND TAX	)	
COMMISSIONER OF OHIO	)	
	)	
Appellees.	)	

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**MDM HOLDINGS, LLC'S MERIT BRIEF**

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## STATEMENT OF FACTS

On March 5, 2012, Appellant MDM Holdings LLC (“MDM”) filed a complaint with the Cuyahoga County Board of Revision (“BOR”) challenging Cuyahoga County’s valuation of the subject property for the 2011 tax year. Supp. 1. The Property Owner requested a value of \$463,000 based upon market information related to a sales comparison approach as well as an income capitalization approach.

On May 25, 2012, the Board of Education for the Cleveland Municipal School District (“School Board” or “BOE”) filed a counter complaint with the BOR requesting that the Cuyahoga County’s valuation of the subject property be retained for the 2011 tax year at \$688,300. Supp. 2.

The BOR conducted a hearing on the 2011-tax-year complaints on May 10, 2013, which was more than 90 days after the BOE filed its counter-complaint. Thus, the automatic continuing complaint doctrine was triggered vesting jurisdiction in every subsequent tax year until the 2011-tax-year complaints were finally determined. *See* R.C. 5715.19(C). Appx. 29.

The BOR rendered its decision on May 13, 2013 reducing the value from \$688,300 to \$605,000. Appx. 13. On June 11, 2013, MDM appealed the BOR’s decision to the Board of Tax Appeals (“BTA”). Appx. 17-18. On May 17, 2014, the 2011 tax year case was finally determined when the BTA issued an order approving MDM’s Notice of Voluntary Dismissal. Appx. 7-9.

On January 15, 2015, the Property Owner submitted a written request to the BOR for a hearing on the 2012-tax-year invoking the continuing complaint doctrine set forth in R.C. 5715.19(D). Appx. 14. Jurisdiction over the 2012-tax-year had already automatically vested at the Board of Revision prior to the time the Property Owner’s submitted its January 15, 2015 request for a hearing on a continuing complaint. Supp. 4-5.

On January 16, 2015, the BOR issued an email effectively dismissing the 2012 tax year continuing complaint for lack of jurisdiction indicating the Property Owner’s written request was not timely since it was “received more than 30 days after the Board of Revision, Board of Tax Appeals or Common Pleas Court decision date.” Appx. 14.

On January 16, 2015, MDM requested clarification for the basis of the BOR’s email. Supp. 8. On January 23, 2015, the Cuyahoga County Prosecutor’s office responded indicating that “No statutory obligation requires the Board of Revision to exercise continuing complaint jurisdiction more than 30 days after the BTA order.” Appx. 15.

The Property Owner timely appealed the BOR’s January 16, 2015 dismissal to the BTA on January 26, 2015. Appx. 19-22.

On appeal, the BTA affirmed the BOR’s “decision *not* to hear the complaint” finding that there was no jurisdiction over the 2012-tax-year continuing complaint. Appx. 10-12. The BTA upheld the BOR’s dismissal for lack of jurisdiction. Appx. 10-12. However, the BTA set forth a rule different than the BOR finding that “the BOR’s continuing complaint jurisdiction ended at the end of 2014—the year in which the tax year 2011 complaint was finally decided.” Appx. 10-12.

R.C. 5715.19(D) has no deadline for requesting a hearing on a continuing complaint. The BTA has misinterpreted and/or misapplied *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, 936 N.E.2d 472. Appx. 29-30. In fact, the BTA’s Decision and Order stated: “[w]e acknowledge that the statute does not establish an outer deadline for requesting that a complaint be deemed continuing; however, in *AERC*, supra, the court stated that the original complaint ‘continues as a valid complaint *through the year in which the final decision ... is rendered.*’”<sup>1</sup> (Emphasis original.) Appx. 10-12.

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<sup>1</sup> In a related case also presently before the Court, the BTA’s Decision and Order stated: “[w]e acknowledge that the statute does not definitively set forth a deadline for invoking jurisdiction

Since R.C. 5715.19(D) has no deadline and the BTA misinterpreted and/or misapplied *AERC Saw Mill Village*, the BOR had no authority to dismiss the complaint for lack of jurisdiction and the BTA's affirmation of the BOR's dismissal was unlawful and unreasonable.

### **LAW & ARGUMENT**

#### **PROPOSITION OF LAW 1:**

#### **THE BTA'S ORDER UNLAWFULLY AND UNREASONABLY INTERPRETED AND APPLIED R.C. 5715.19(D) IN A MANNER THAT RESULTED IN THE DISMISSAL OF THE PROPERTY OWNER'S CONTINUING COMPLAINT.**

The BOR and the BTA cannot read words into a statute where none appear. R.C. 5715.19(D) contains no deadline for requesting a hearing on a continuing complaint. The BTA "acknowledge[d] that the statute does not establish an outer deadline for requesting that a complaint be deemed continuing" under R.C. 5715.19(D).

R.C. 5715.19(D) is unambiguous as it contains no deadline for a property owner (or other authorized entity) to request a hearing on a continuing complaint. The General Assembly included other deadlines in R.C. Chapter 5715. Thus, the absence of a deadline in R.C. 5715.19(D) is notable.

Not only did the General Assembly include other deadlines in R.C. Chapter 5715, but some deadlines are very precise. *See e.g.*, R.C. 5715.16 ("On the second Monday of June, annually"); R.C. 5715.19(A)(1) ("on or before the thirty-first day of March of the ensuing tax year"); R.C. 5715.19(B) ("Within thirty days after the last date such complaints may be filed"); R.C. 5715.19(C) ("not less than ten days prior to the hearing" and "the board shall hear and render its decision within ninety days after such filing"); R.C. 5715.22 ("the county auditor shall, within thirty days after the certification"); R.C. 5715.24 ("The determination shall be made prior to the

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under R.C. 5715.19(D)." *See Life Path Partners, Ltd. v. Cuyahoga Cty. Bd. of Revision, et al.*, Case No. 2015-0759.

first Monday in August”); R.C. 5715.251 (“The appeal shall be taken within thirty days after receipt of the statement by the county auditor” and “The commissioner... shall within thirty days after the filing of such demand file with the board a certified transcript”); R.C. 5715.26 (“within ninety days”); R.C. 5715.27(B) (“The commissioner or auditor shall mail the reports by the fifteenth day of the month following the end of the month in which the commissioner or auditor receives the applications”); R.C. 5715.27(C) (“The statements shall be filed prior to the first day of the third month following the end of the month in which that application was docketed”); R.C. 5715.27(F) (“shall be filed prior to the thirty-first day of December of the tax year for which exemption is requested”); R.C. 5715.34(A) (“within sixty days of receipt of such order”); R.C. 5715.34(B) (“within sixty days after receiving the order”); R.C. 5715.34(C) (“within sixty days after receiving such order”); R.C. 5715.39 (“The taxpayer, upon application within sixty days after the mailing of the county auditor's or board of revision's decision”).

The string citation to deadlines set forth above was not intended to be a full and complete iteration of each statutory deadline set forth in R.C. Chapter 5715. Further, the list does not address all of the deadlines that were included in the statutes related to appeals from the boards of revision, which are set forth in R.C. Chapter 5717. Rather, the citations were set forth to illustrate that the legislature is well aware of the need for deadlines in various tax valuation matters.

Since the statute is clear, the statute is unambiguous. Where the words of a statute are unambiguous and the meaning of the statute is clear and definite, the judicial inquiry is complete and the statute must be applied *as written*. *State ex rel. Moorehead v. Indus. Comm.*, 112 Ohio St.3d 27, 2006-Ohio-6364, 857 N.E.2d 1203.

A cardinal rule of statutory construction is that an unambiguous statute means what it says. *State v. Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471. Unambiguous statutes

are to be applied according to the plain meaning of the words used. *State v. Lowe*, 112 Ohio St. 3d 507, 2007-Ohio-606, 861 N.E.2d 512. For a statute to be unambiguous, it need only be plain to anyone reading the statute that it permits the conduct at issue. *Salinas v. U.S.*, 522 U.S. 52, 118 S. Ct. 469, 139 L.Ed.2d 352 (1997).

When a statute is unambiguous, there is no need to apply the rules of statutory interpretation or conduct further investigation. And when a statute is unambiguous, the court should not look to legislative intent, legislative history, public policy, consequences of an interpretation, or any other statutory factors governing construction of ambiguous statutes. Absent an initial finding that the language of the statute is itself capable of more than one meaning, the statute must be applied as written. *In re Adoption of Baby Boy Brooks*, 136 Ohio App.3d 824, 828, 737 N.E.2d 1062 (10<sup>th</sup> Dist. 2000).

The BOR conducted a hearing on the 2011-tax-year complaints on May 10, 2013, which was more than 90 days after the BOE filed its counter-complaint. Thus, the continuing complaint doctrine set forth in 5715.19(D) was *automatically* triggered. Accordingly, jurisdiction vests *automatically* for every tax year following the 2011-tax-year complaints until such complaints are finally determined. *See* R.C. 5715.19(C).

It was beyond the BOR or the BTA's authority to construe a statute to achieve what the BOR and BTA believes is the preferred or intended result of a statute. As such, the BOR and the BTA erred by interpreting R.C. 5715.19(D) to find that the Appellant Property Owner's request for a hearing on the 2012 continuing complaint was filed too late when there is no deadline to request a hearing set forth in the authorizing statute.

The BOR's and the BTA's creation of a filing deadline alters the plain meaning of the statute. This Court found that jurisdiction under R.C. 5715.19(D) vested automatically without

the complainant needing to do anything if the BOR failed to comply with the 90-day deadline set forth in R.C. 5715.19(C). A complainant's request for a hearing under the continuing complaint doctrine does not vest jurisdiction it invokes the jurisdiction that previously vested.

As explained, jurisdiction is automatic and the complainant need only invoke that existing jurisdiction by requesting a hearing or determination of value for any year that falls within the continuing complaint jurisdiction. If Ohio's General Assembly had desired to include a time limitation, then it could have easily included additional language in the statute.

It is not the prerogative of the BOR or BTA to add or insert a term or phrase into a statute that was not included by the legislature. *State v. Shackelford*, 100 Ohio App. 487, 137 N.E.2d 637 (7th Dist. 1955). It is to be presumed that the legislature advisedly and intelligently used the language contained in a statute and that the legislature intended the statute to mean what it says. *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 122 S.Ct. 941, 151 L.Ed.2d 908 (2002).

Courts and/or quasi-judicial administrative bodies are forbidden to add a nonexistent provision to the plain language of a statute. *In re Regency Village Certificate of Need Application*, 10<sup>th</sup> Dist. No. 11AP-4L 2011-Ohio-5059.

Additionally, to the extent that there is an ambiguity in the statute, "Remedial laws and all proceedings under them shall be liberally construed in order to promote their object and assist the parties in obtaining justice." R.C. 1.11. Appx. 14. The Cuyahoga County Prosecutor agreed as it recognized "the Court's liberal interpretation of the continuing complaint [doctrine] jurisdiction to the present matter." Appx. 15-16. This Court has held that the real property's value should be "front and center both before the board of revision and at the BTA." *Ginter v. Auglaize Cty. Bd. of Revision*, Slip Opinion No. 2015-Ohio-2571, ¶15.

Creating a deadline (whether it's the BOR's or the BTA's deadline) into R.C. 5715.19(D) is improper since it would deny property owners constitutional relief when their real estate has been patently overvalued. Further, this Court has recently held that the BOR has limited authority to dismiss a complaint. *Ginter, supra*.

Boards of revision do not have authority to dismiss a request for a hearing on a continuing valuation complaint for a perceived failure to timely file a request for a hearing on a continuing complaint as there is no statutory basis for a deadline to make such request.

It is clear that jurisdiction over the 2012 tax year had automatically vested at the Board of Revision prior to the time the Property Owner's submitted its request for a hearing on a continuing complaint. Thus, this case centers on whether boards of revision and/or the BTA have discretionary authority to *retroactively revoke jurisdiction*. That is, can a board of revision dismiss a request for a hearing on a continuing complaint based on the complainant's perceived failure to submit a "timely" request for a hearing? Such an action is, in essence, a dismissal based on a failure to prosecute.

Since R.C. 5715.19 does not contain a deadline, boards of revision have no authority to dismiss a continuing complaint based on "timeliness." For these reasons, the BOR should have conducted a hearing and rendered a decision on the merits. Since the BOR rejected the case and the BTA affirmed the BOR's dismissal, this Court must vacate the Board of Tax Appeals' decision and remand the cause to the Cuyahoga County Board of Revision for a hearing on the 2012 tax year.

Moreover, the BOR's dismissal and the BTA's decision "distracts from the proper focus: the valuation of the property." *Ginter, supra* at ¶12. *Ginter's* rationale is particularly relevant since the Court noted that "boards of revision are creatures of statute imbued only with the powers

granted by their enabling laws.... The statutes do not specifically confer a power to dismiss for failure to prosecute. Logic dictates, therefore, that boards of revision lack authority to dismiss for failure to prosecute.” *Ginter, supra* at ¶6 (citing *Steward v. Evatt*, 143 Ohio St. 547, 56 N.E.2d 159 (1944), paragraph one of the syllabus; *Kohl's Illinois, Inc. v. Marion Cty. Bd. of Revision*, 140 Ohio St.3d 522, 2014-Ohio-4353, 20 N.E.3d 711, ¶ 23).

Applying the *Ginter* rationale to the facts in this appeal requires that the Court find that neither R.C. 5715.19(D) nor any of the other empowering statutes specifically confer on the boards of revision the power to dismiss a continuing complaint for failure to request a hearing by a certain date.

Thus, under *Ginter*, the BOR has no power or authority to dismiss the Property Owner’s continuing complaint for tax year 2012 for a perceived failure to request a hearing by a certain date. As noted by this Court, the continuing complaint doctrine automatically vests jurisdiction without the Property Owner needing to do anything. *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, 936 N.E.2d 472, ¶¶ 10-14.

The BOR and the BTA stated that its concern is that a complainant should not have “in perpetuity” to request a hearing on a continuing complaint. Appx. 11. However, this approach looks for a problem where none exists. Further, the BOR and the BTA’s actions raise troubling questions. How many similar requests has this BOR (or any of the other 87 Ohio boards of revision) received and similarly dismissed? What was the BOR’s rationale in those other cases? What was the BOR’s deadline in those other cases? If a deadline is appropriate, who should draft it, what should the timing be and should it be uniform throughout the State?

Additionally, the BOR’s 30-day-deadline is unworkable since the parties in a BTA matter have thirty days to file a notice of appeal from the BTA. If the notice of appeal was filed by any

party, the matter would not be finally determined. And the request for the continuing complaint would be premature. Further, the non-appealing party may not receive notice of service of the notice of appeal within the BOR's 30-day-deadline period. Moreover, a county auditor or board of revision may carry forward the decision on its own without receiving a request by the complainant for a continuing complaint. Requiring the complainant to invoke the continuing complaint jurisdiction within 30 days of a decision would potential waste the county's and the complainant's time and resources.

As to the BTA's decision and order, how would the BTA's ruling apply in a scenario where the BTA reached a final determination on MDM's 2011-tax-year complaint on December 23, 2014 (instead of the actual decision date of February 19, 2014)?

Under this hypothetical, would MDM have thirty days (i.e., until January 22, 2015) to request a hearing under the continuing complaint doctrine using the BOR's newly created ruled? Under this hypothetical, would MDM only have eight days (i.e., until December 31, 2014) to request a hearing under the continuing complaint doctrine using the BTA's newly created ruled? Under the hypothetical scenario, how does the fact that one or more parties can appeal the BTA decision within 30 days or by January 22, 2015 impact the BTA's ruling? Under the hypothetical scenario, the BTA's newly-created rule would appear unworkable. Further, would MDM have thirty days (i.e., until January 22, 2015) to request a hearing under the continuing complaint doctrine using the BOR's newly created ruled?

The reality is that the delay in requesting a hearing in this case was caused by the two-and-a-half-year delay from filing the complaint to reaching resolution. The protracted handling of a case is compounded by the rule limiting the numbers of times and periods of time that property owners can file valuation complaints. Property owners often mistakenly, but understandably,

believe that a pending valuation complaint addresses any year up until their complaint is finally decided. Sophisticated real estate professionals (let alone individual whose only real estate is their home) are often confused by the nuances of the intertwined statutes and court holdings.

This Court has acknowledged that “in some cases, months or years could pass before jurisdiction could be ascertained.” *Soyko Kulchystsky, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 141 Ohio St.3d 43, 21 N.E.3d 297, 2014-Ohio-4511 at ¶48. Likely, this unavoidable delay is the rationale behind the legislature’s decision to not provide a specific “outer” deadline to invoke the jurisdiction created through the continuing complaint doctrine.

The BOR and the BTA’s interpretation and application of R.C. 5715.19(D) requires that the BOR and the BTA add or insert a phrase that limits the time period in which request for a hearing can be made. These actions are unlawful. Accordingly, the BTA erred when it created a time limitation into R.C. 5715.19(D). As written, the statute does not include any such words and the BOR and the BTA exceeded their authority by adding such provisions that resulted in the rejection (i.e., dismissal) of the property owner’s 2012 continuing complaint.

**PROPOSITION OF LAW 2:**

**THE BOR AND BTA UNLAWFULLY AND UNREASONABLY INTERPRETED AND APPLIED *AERC SAWMILL VILLAGE* IN A MANNER THAT RESULTED IN THE DISMISSAL OF THE PROPERTY OWNER’S CONTINUING COMPLAINT.**

The BTA’s Decision and Order misinterpreted and misapplied *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, 936 N.E.2d 472. Appx. 10-12. The BTA’s Decision and Order selectively quoted *AERC Saw Mill Village* when it states: “[w]e acknowledge that the statute does not establish an outer deadline for requesting that a complaint be deemed continuing, however, in *AERC*, supra, the court stated that the original

complaint ‘continues as a valid complaint *through the year in which the final decision ... is rendered.*’ Appx. 12.

Focusing on the phrase: “through the year in which the final decision ... is rendered,” the BTA mistakenly interpreted this portion of *AERC Saw Mill Village, supra* to mean that a party has until December 31 of the year in which the matter becomes final to request a hearing on the continuing complaint. However, this quoted section of *AERC Saw Mill Village* dealt with the *tax years* over which the boards of revision had jurisdiction not the year in which the matter was finally determined/resolved.

The continuing complaint doctrine set forth in R.C. 5715.19(D) was analyzed by the Court in *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision, supra*. As set forth above, R.C. 5715.19 has no deadline before which a taxpayer must request a hearing on a continuing complaint. This Court, in *AERC Saw Mill Village*, declined to find a date or time limit as to when a taxpayer may request a hearing on a continuing complaint. Recently, in a unanimous decision, this Court held:

The case law also establishes that after the BTA case has terminated, the taxpayer may invoke the continuing-complaint provision at the board of revision itself after the BTA has issued a final, dispositive order for the original tax year. *1495 Jaeger L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 132 Ohio St.3d 222, 2012-Ohio-2680, ¶20.

This Court set no date or time limit in *1495 Jaeger L.L.C.* as to when a taxpayer must “invoke the continuing-complaint.” Further, Justice Pfeiffer, in his concurring opinion, states that the only complaint filing limit is set forth in R.C. Chapter 5715, which is March 31 of the ensuing year. Justice Pfeiffer found that that limit is not applicable to a continuing complaint. Justice Pfeiffer stated:

In *Columbus Bd. of Edn.*, we rejected the BTA's conclusion that its decision on the earlier complaint had terminated the proceedings with respect to

subsequent years that were subject to the continuation of the complaint. *Id.* at 307, 720 N.E.2d 517. Therefore, although it did not address the later years, the BTA's decision in the present case does not preclude proceedings on the continuing complaint at the BOR. *Moreover, because there is no need to file a fresh complaint for the later years, the usual deadline of March 31 in the ensuing year does not apply.* R.C. 5715.19(A)(1); see *AERC*, ¶ 7. Finally, when the BOR issues its decision for one of the later years, that decision may be appealed to the BTA pursuant to R.C. 5717.01. (Emphasis added.)

*Id.* at ¶28.

If the General Assembly had intended to include a deadline to invoke the continuing complaint creating a jurisdictional barrier regarding a taxpayer's exercise of the continuing complaint provision, then it would have done so. The silence of the General Assembly regarding a deadline, and the declination of the Court to find one, does not mean that the BOR or the BTA can unilaterally create their own jurisdictional and due process rules without statutory authority. Accordingly, both the BOR's denial of the Property Owner's request for hearing on the continuing complaint and the BTA's affirmance is unreasonable and unlawful.

**PROPOSITION OF LAW 3:**

**THE BOR'S DECISION AND THE BTA'S DECISION AND ORDER UNLAWFULLY AND UNREASONABLY EXCEEDED THEIR RULEMAKING AUTHORITY BY CREATING A DEADLINE FOR REQUESTING A HEARING ON A CONTINUING COMPLAINT WHEN JURISDICTION IS AUTOMATICALLY VESTED.**

The BOR's decision and the BTA's decision and order unilaterally created a time limitation or deadline for requesting a hearing on a continuing complaint. Such an action is wholly outside the BTA's rulemaking authority. The present matter requires a review of the enabling and relevant authority statutes applicable to boards of revision. The Ohio General Assembly authorized the creation of the boards of revision in R.C. 5715.01(B). Similarly, the General Assemble created the Board of Tax Appeals when it enacted R.C. 5703.02, which requires that rules come from the

tax commissioner. Appx. 25-26. Further, proposed rules must be subject to the appropriate review before they can be enforced.

It is well established that the BOR and the BTA are creatures of statute and that they are limited to the powers conferred upon them by statute. *Ginter v. Auglaize Cty. Bd. of Revision*, Slip Opinion No. 2015-Ohio-2571, ¶6. The statutory rulemaking authority for the BTA is set forth in R.C. 5703.02(D)(3). Appx. 25-26. To be a valid rule, the BTA must comply with R.C. 5703.14. Appx. 27. The BTA's newly created deadline that retroactively divests jurisdiction was created by its decision and order. The newly created deadline is a rule that was not properly and lawfully adopted or promulgated as required by R.C. 5703.14. Appx. 27. Thus, both rules are invalid and unenforceable.

This Court has held that the boards of revision must make a determination of value whenever a complaint properly invokes its jurisdiction. *Ginter, supra* at ¶1. Likewise, the BTA has a statutory duty to hear appeals. R.C. 5703.02. Appx. 25-26. And it is clear that a taxpayer has the right to invoke the continuing complaint provision at the board of revision after the BTA has issued a final, dispositive order for the original tax year. *See 1495 Jaeger L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 132 Ohio St.3d 222, 2012-Ohio-2680, ¶20.

In the present matter, the Property Owner attempted to exercise its right to invoke the continuing complaint provision, but the BOR dismissed the Property Owner's continuing complaint for lack of jurisdiction and the BTA affirmed that dismissal. Appx. 14-15 and 10-12, respectively. The BTA's decision is unreasonable and unlawful since the BTA had jurisdiction to hear the complaint and the Property Owner is entitled to due process.

The BTA's dismissal of the Property Owner's continuing complaint ***retroactively revokes jurisdiction that had already automatically vested***. Thus, the unilaterally created time limitation

on jurisdiction is much more than an administrative rule intended for limited procedural or administrative purposes. Accordingly, the BTA exceeded its rulemaking authority set out in R.C. 5703.02(D), which means the BTA's denial of the request for hearing on the continuing complaint is unreasonable and unlawful.

Further, the Tenth District Court of Appeals in *Nelson v. Mohr*, 2013-Ohio-4506, ¶14 set forth the purposes and limitations of agency rule-making:

The purpose of administrative rule-making is to facilitate the administrative agency's placing into effect the policy declared by the General Assembly in the statutes to be administered by the agency. In other words, administrative agency rules are an administrative means for the accomplishment of a legislative end. *Carroll v. Dept. of Adm. Servs.*, 10 Ohio App.3d 108, 110 (10th Dist.1983). It is well-established that when by statutory authority an administrative agency promulgates rules and regulations governing its activities and procedures, such rules are valid and enforceable unless they are unreasonable or in conflict with statutory enactments covering the same subject matter. *State ex rel. De Boe v. Indus. Comm.*, 161 Ohio St. 67 (1954). ***An administrative rule cannot add or subtract from the legislative enactment.*** *Cent. Ohio Joint Vocational Sch. Dist. Bd. of Edn. v. Admr., Bur. of Emp. Servs.*, 21 Ohio St.3d 5, 10 (1986). An administrative rule also cannot exceed the rule-making authority delegated by the General Assembly. *Sterling Drug, Inc. v. Wickham*, 63 Ohio St.2d 16, 19 (1980). (Emphasis added.)

The *Nelson* rationale and holding is directly applicable to this case. Even if the BOR's or the BTA's newly created time limitation rules on jurisdiction were a valid procedural rule properly promulgated by either the BOR or the BTA, "a board of revision should not dismiss a case for failure of a party to comply with a procedural rule." *Friendly's v. Franklin Cty. Bd. of Revision*, 10th Dist. No. 94APH03-347 (Sept. 20, 1994), unreported.

Under *Nelson*, the BOR and the BTA's time limitations cutting off jurisdiction to invoke the continuing complaint provision were unlawful. Thus, the BOR and the BTA's rules that a hearing on a continuing complaint must be submitted to the board of revision within thirty days of a decision (BOR) or by December 31<sup>st</sup> of the year that the Board of Tax Appeals matter is finally

determined (BTA) conflicts with, or adds to, R.C. 5715.19(D) and/or R.C. 5703.02. Accordingly, the BOR and the BTA exceeded their rulemaking authority, which means the denial of the request for a hearing on the tax year 2012 continuing complaint is unreasonable and unlawful.

**PROPOSITION OF LAW 4:**

**THE UNDERLYING DECISIONS UNLAWFULLY AND UNREASONABLY CREATED A JURISDICTIONAL BARRIER.**

The BOR and the BTA's decisions created an unlawful and unreasonable jurisdictional barrier preventing a continuing complaint from being decided on its merits. The BTA in *N. Royalton City Sch. Dist. v. Verizon Business Network Services, Inc.* (Jan. 4, 2008), BTA No. 2006-Z-2342, stated, prior to the enactment of R.C. 323.66(B)(1):

While it may be implied that such boards have the authority to adopt reasonable procedural rules by which their hearings will be conducted, these rules *may neither restrict nor expand the jurisdiction with which they have been vested by the General Assembly.*" (Emphasis added.)

Similarly, R.C. 5703.02 vests the BTA with the authority and duty to hear property tax appeals. Appx. 25-26. In the present matter, the BTA's creation of a time limitation upon the Property Owner's right to request a hearing on its continuing complaint serves as a jurisdictional bar. As a result, the BOR and the BTA have avoided their statutory duty by failing to hear the merits of the Property Owner's challenge to the county's valuation of its real property.

In *Nucorp, Inc. v. Montgomery Cty. Bd. of Revision*, 64 Ohio St.2d 20, 22, 412 N.E.2d 947 (1980), this Court stated:

While this court has never encouraged or condoned disregard of procedural schemes logically attendant to the pursuit of a substantive legal right, it has also been *unwilling to find or enforce jurisdictional barriers not clearly statutorily or constitutionally mandated, which tend to deprive a supplicant of a fair review of his complaint on the merits.* (Emphasis added.)

In the present matter, the BOR and the BTA created jurisdictional barriers not set forth in any statute or anywhere in Ohio's Constitution. The BOR has an express duty to make a determination of value on a complaint that properly invokes its jurisdiction and R.C. 5703.02 imposes a similar duty upon the BTA to hear tax valuation appeals from county boards of revision.

Thus, the BOR and the BTA's creation of a jurisdictional barrier deprives the Property Owner of a fair review and/or hearing on the continuing complaint's merits. Accordingly, in consideration of *Nucorp*, the BTA's affirmation of the dismissal of the Property Owner's request for hearing on the continuing complaint is unreasonable and unlawful, a violation of the Property Owner's due process rights—i.e., the right to be heard—and an unlawful taking of Property Owner's property.

### **CONCLUSION**

Since neither the BOR nor the BTA can create a deadline when the authorizing statutes contain none, the BTA's affirmation of the BOR's dismissal of the Appellant's 2012 continuing complaint was unreasonable and unlawful. Accordingly, the Appellant requests that the Court vacate the Board of Tax Appeals' Decision and Order. Additionally, Appellant requests that the Court instruct the Board of Tax Appeals to remand the underlying matter to the Board of Revision so that the Board of Revision can conduct a hearing on the merits of the Property Owner's continuing complaint for tax year 2012. Anything less would result in a violation of the Property Owner's due process rights and an unlawful taking of Property Owner's property.

While ignorance of the law is no defense, the confusion caused by the staggered triennial update and reappraisal years for Ohio's eighty-eight counties, the multiple-filing rule, the continuing-complaint doctrine, the carry-over provision, etc. all contribute to a hyper-technical

**PROOF OF SERVICE**

I hereby certify that a copy of the *Appellant MDM Holdings, LLC's Merit Brief* was sent this 30<sup>th</sup> day of November, 2015 by email to:

Sandra Curtis-Patrick  
Assistant Cuyahoga County Prosecutor  
8th Floor - Justice Center  
1200 Ontario Street  
Cleveland, OH 44113

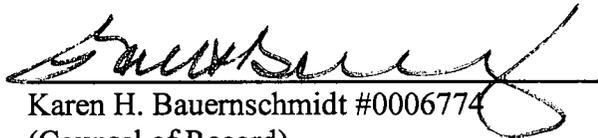
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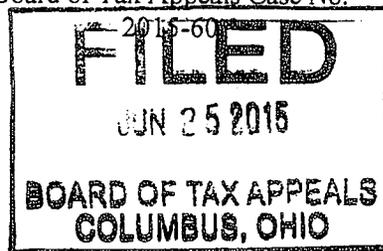
IN THE SUPREME COURT OF OHIO

MDM HOLDINGS, LLC, )  
)  
Appellant, )  
)  
-vs- )  
)  
CUYAHOGA COUNTY BOARD OF )  
REVISION, THE CUYAHOGA COUNTY )  
FISCAL OFFICER, CLEVELAND )  
MUNICIPAL SCHOOL DISTRICT BOARD )  
OF EDUCATION AND TAX )  
COMMISSIONER OF OHIO )  
)  
Appellees. )

CASE NO. \_\_\_\_\_

Appeal from the Ohio Board of Tax Appeals

Board of Tax Appeals Case No.



NOTICE OF APPEAL OF MDM HOLDINGS, LLC

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School District Board of Education

## NOTICE OF APPEAL OF APPELLANT

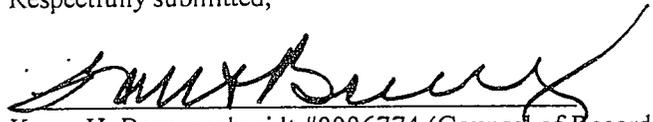
Appellant MDM Holdings, LLC hereby gives notice of its appeal as of right under R.C. § 5717.04 to the Supreme Court of Ohio from a Decision and Order of the Board of Tax Appeals journalized in Case No. 2015-60 on June 2, 2015. A true copy of the Decision and Order of the Board being appealed is attached hereto as Exhibit A and incorporated herein by reference. Appellant hereby complains of the following errors in the Decision and Order of the Board of Tax Appeals:

1. The Board of Tax Appeals' decision affirming the Cuyahoga County Board of Revision's decision is unreasonable and unlawful since the Board of Revision improperly denied a hearing on the Property Owner's continuing complaint for the 2012 tax year.
2. The Board of Tax Appeals' decision is unreasonable and unlawful since it incorrectly interpreted R.C. 5715.19(D) and *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, 936 N.E.2d 472 to deny the Property Owner a hearing on the merits of its continuing complaint.
3. The Board of Tax Appeals' decision is unreasonable and unlawful since the Board of Tax Appeals while acknowledging R.C. 5715.19 does not establish an outer deadline for requesting a continuing complaint, lacks the statutory authority to create a "deadline" that is not expressly set forth in R.C. 5715.19(D), et seq.
4. The Board of Tax Appeals' decision is unreasonable and unlawful since the Board of Tax Appeals first found that the Board of Revision had jurisdiction over the 2012 tax year, but then arbitrarily found that the Property Owner's request for a hearing was barred by the Board of Tax Appeals' newly-created "deadline," (December 31, 2014 in this case) which is not set forth in R.C. 5715.19(D).
5. The Board of Tax Appeals' decision is unreasonable and unlawful since it advances the Board of Tax Appeals interpretation of the policy and wisdom of R.C. 5715.19(D), which is the exclusive jurisdiction of the legislative branch of the government.
6. The Board of Tax Appeals' decision is unreasonable and unlawful since any interpretation of R.C. 5715.19(D) by the Board of Tax Appeals—to the extent such interpretation is found to be lawful—cannot be applied retroactively.
7. The Board of Tax Appeals' decision is unreasonable and unlawful since any interpretation of R.C. 5715.19(D) by the Board of Tax Appeals—to the extent such interpretation is found to be lawful—cannot deny a hearing when the Board of Tax Appeals expressly found that the Board of Revision had jurisdiction over the continuing complaint.

8. The Board of Tax Appeals' decision violates the Property Owner's right to due process under the Ohio and U.S. Constitutions and, as a result, is unreasonable and unlawful.

For these reasons, Appellant requests that the Court vacate the Board of Tax Appeals' Decision and Order and instruct the Board of Tax Appeals to remand the underlying matter to the Board of Revision so that the Board of Revision can render a decision on the merits of the Property Owner's continuing complaint.

Respectfully submitted,



Karen H. Bauernschmidt #0006774 (Counsel of Record)  
Stephen M. Nowak #0078349

**Attorneys for Appellant**

OHIO BOARD OF TAX APPEALS

MDM HOLDINGS, LLC, (et. al.),

CASE NO(S). 2015-60

Appellant(s),

(REAL PROPERTY TAX)

vs.

DECISION AND ORDER

CUYAHOGA COUNTY BOARD OF REVISION,  
(et. al.),

Appellee(s).

APPEARANCES:

For the Appellant(s)

- MDM HOLDINGS, LLC  
Represented by:  
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For the Appellee(s)

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Entered Tuesday, June 2, 2015

Mr. Williamson, Ms. Clements, and Mr. Harbarger concur.

Appellant appeals the board of revision's ("BOR") denial of its request to conduct a hearing on the valuation of the subject property, i.e., parcel number 028-23-009, for 2012. The county appellees move this board to dismiss the matter for lack of jurisdiction, arguing that appellant has failed to appeal a final, appealable decision by the BOR. Appellant, on the other hand, moves this board to remand the matter to the BOR with instructions to decide the underlying complaint on its merits. We proceed to consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01, the motions, and the response thereto.

The underlying facts are as follows. MDM Holdings, LLC ("MDM"), the appellant in this matter, timely

filed a tax year 2011 complaint against the valuation of the subject property in March 2012. The BOR issued a decision on May 13, 2013, which MDM then appealed to this board. On February 19, 2014, this board issued an order dismissing the appeal at MDM's request. Nearly a year later, on January 15, 2015, MDM made a written request to the BOR to conduct a hearing on the value of the property for tax year 2012 pursuant to its continuing complaint jurisdiction under R.C. 5715.19(D). Through an email on January 16, 2015, the BOR denied the request to continue the complaint, stating: "We have been advised by the Cuyahoga County Prosecutor that the Board of Revision should deny a request for a continuing complaint hearing received more than 30 days after the Board of Revision, Board of Tax Appeals or Common Pleas Court decision date, including a decision on appeal through the court system." Appellant's Brief in Opposition at Ex. B (emphasis sic). In response to MDM's request for a legal basis for such decision, the county prosecutor's office sent a letter dated January 23, 2015 to MDM citing the Supreme Court's decision in *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, as the basis for the BOR's decision. The letter further stated that, "[a]pplying the Court's liberal interpretation of the continuing complaint jurisdiction to the present matter, at the very latest, the end of 2014 terminated the BOR's continuing complaint jurisdiction." Appellant's Brief in Opposition at Ex. D. On January 23, 2015, MDM filed a notice of appeal with this board, citing the January 16, 2015 email and January 23, 2015 letter as the "decision" from which it appealed.

The county appellees assert that neither the email nor the letter were decisions of the BOR from which MDM could properly appeal under R.C. 5717.01. Through its motion, the county cites this board's decision in *Kinlock EG v. Bd. of Revision of Perry Cty.* (May 12, 1995), BTA No. 1994-N-1236, unreported, finding that a letter rescheduling a BOR hearing was not an appealable decision, and the 10th District Court of Appeals' decision in *Singh v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 03AP-795, 2004-Ohio-1139, affirming this board's holding that a BOR's mistakenly sending a letter scheduling a hearing on a matter over which it did not properly have jurisdiction was not an appealable decision. In response, MDM argues that both cases are readily distinguishable and that the BOR's denial of a hearing on tax year 2012 "is a de facto dismissal for lack of jurisdiction." Appellant's Brief in Opposition at 5.

Given the unique facts of this case, we find the BOR's denial of MDM's request for a hearing on tax year 2012 to be an appealable decision of the BOR. While the BOR argues that the BOR did not render a *decision* on a 2012 complaint, the email and letter denying MDM's request to conduct proceedings on 2012 was just that – a decision *not* to hear the complaint. In *Kinlock*, supra, this board noted the interim nature of the letter issued; here, it is clear that the BOR would take no further action on MDM's request. We agree with MDM's characterization of the BOR's email and subsequent letter as a "de facto dismissal for lack of jurisdiction." Accordingly, the county's motion to dismiss is not well taken and is hereby denied.

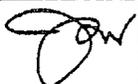
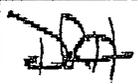
Turning to the merits of the appeal, MDM moves to remand this matter to the BOR with instructions to conduct proceedings on tax year 2012 pursuant to continuing complaint jurisdiction under R.C. 5715.19(D). That section states, in pertinent part:

"If a complaint filed under this section for the current year is not determined by the board within the time prescribed for such determination [(90 days)], 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 \*\*\*. In such case, the original complaint shall continue in effect without further filing by the original taxpayer \*\*\*."

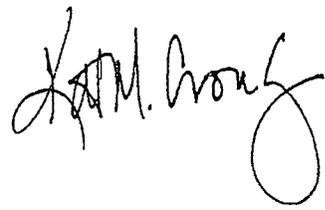
As explained above, a final decision on MDM's tax year 2011 complaint was issued by this board on February 19, 2014. Nearly a year later, on January 15, 2015, MDM requested that its 2011 complaint be deemed continuing for tax year 2012. MDM's position is that it can request that its 2011 complaint be deemed continuing in perpetuity. We cannot agree with such a reading of the statute and relevant case

law. We acknowledge that the statute does not establish an outer deadline for requesting that a complaint be deemed continuing; however, in *AERC*, supra, the court stated that the original complaint “continues as a valid complaint *through the year in which the final decision\*\*\* is rendered.*” *AERC*, supra, at ¶12. We concur with the county appellees’ conclusion that the BOR’s continuing complaint jurisdiction ended at the end of 2014 – the year in which the tax year 2011 complaint was finally decided. Accordingly, because MDM failed to request that its tax year 2011 complaint be deemed continuing prior to December 31, 2014, the BOR lacks jurisdiction to consider MDM’s request for tax year 2012.

Based upon the foregoing, MDM’s motion to remand is hereby denied and the decision of the BOR is hereby affirmed.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Ms. Clements		
Mr. Harbarger		

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.



Kathleen M. Crowley, Board Secretary

**OHIO BOARD OF TAX APPEALS**

MDM HOLDINGS LLC, (et. al.),	)	CASE NO(S). 2013-1619
	)	
Appellant(s),	)	
	)	(REAL PROPERTY VALUATION)
vs.	)	
	)	ORDER
CUYAHOGA COUNTY BOARD OF	)	
REVISION, (et. al.),	)	(Voluntary Dismissal)
	)	
Appellee(s).	)	

**APPEARANCES:**

For the Appellant(s) -	KAREN H. BAUERNSCHMIDT. KAREN H. BAUERNSCHMIDT CO., LPA 1370 WEST 6TH STREET, SUITE 200 CLEVELAND, OH 44113
For the County -	TIMOTHY J. MCGINTY CUYAHOGA COUNTY, PROS. ATTY. SAUNDRA CURTIS-PATRICK ASSISTANT PROSECUTING ATTORNEY 1200 ONTARIO STREET, 8TH FLOOR CLEVELAND, OH 44113
For the Appellee(s) -	DAVID H. SEED BRINDZA, MCINTYRE & SEED, LLP 1111 SUPERIOR AVENUE, SUITE 1025 CLEVELAND, OH 44114

Entered

Mr. Williamson, Mr. Johrendt, and Mr. Harbarger concur.

Pursuant to the voluntary request submitted, it is hereby ordered that this matter be dismissed.

I hereby certify the foregoing to be a true and complete copy of the action this day 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.

---

A.J. Groeber, Secretary

## BTA Case Details

Appeal Year: 2013 | Appeal Number: 1619 | Case Name: MDM HOLDINGS LLC VS. CUYAHOGA COUNTY BOARD OF REVISION

### **Consolidated:**

Stand Alone

### **Phase:**

Award

### **Stage:**

**Voluntary Resolution - Dismissal**

The board has approved a dismissed appeal.

### **Party Details**

#### **Appellant (s)**

1 . MDM HOLDINGS LLC

Representative: KAREN H. BAUERNSCHMIDT

#### **Appellee (s)**

1 . CUYAHOGA COUNTY BOARD OF REVISION

Representative: TIMOTHY MCGINTY

2 . CLEVELAND MUNICIPAL SCHOOL DISTRICT BOARD OF EDUCATION

Representative: DAVID H. SEED

**Filing Date**

:  
11-Jun-2013

**Appealed Decision Type**

:  
Board of Revision

**Active / Inactive**

:  
Inactive

- [Tasks \(0\)](#)
- [Actions](#)
- [Timeline View](#)
- [Documents](#)
- [Case Details](#)

Name	Document Type	Role	Date Of Submission	Status	Actions
<a href="#">2013-1619.pdf</a>	Decision	Ohio BTA Admin	17-May-2014 03:25PM		
<a href="#">Close</a>					

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**OHIO BOARD OF TAX APPEALS**

MDM HOLDINGS, LLC, (et. al.),

CASE NO(S). 2015-60

Appellant(s),

(REAL PROPERTY TAX)

vs.

DECISION AND ORDER

CUYAHOGA COUNTY BOARD OF REVISION,  
(et. al.),

Appellee(s).

**APPEARANCES:**

For the Appellant(s)

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Represented by:  
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CLEVELAND, OH 44114

Entered Tuesday, June 2, 2015

Mr. Williamson, Ms. Clements, and Mr. Harbarger concur.

Appellant appeals the board of revision's ("BOR") denial of its request to conduct a hearing on the valuation of the subject property, i.e., parcel number 028-23-009, for 2012. The county appellees move this board to dismiss the matter for lack of jurisdiction, arguing that appellant has failed to appeal a final, appealable decision by the BOR. Appellant, on the other hand, moves this board to remand the matter to the BOR with instructions to decide the underlying complaint on its merits. We proceed to consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01, the motions, and the response thereto.

The underlying facts are as follows. MDM Holdings, LLC ("MDM"), the appellant in this matter, timely

filed a tax year 2011 complaint against the valuation of the subject property in March 2012. The BOR issued a decision on May 13, 2013, which MDM then appealed to this board. On February 19, 2014, this board issued an order dismissing the appeal at MDM's request. Nearly a year later, on January 15, 2015, MDM made a written request to the BOR to conduct a hearing on the value of the property for tax year 2012 pursuant to its continuing complaint jurisdiction under R.C. 5715.19(D). Through an email on January 16, 2015, the BOR denied the request to continue the complaint, stating: "We have been advised by the Cuyahoga County Prosecutor that the Board of Revision should deny a request for a continuing complaint hearing received more than 30 days after the Board of Revision, Board of Tax Appeals or Common Pleas Court decision date, including a decision on appeal through the court system." Appellant's Brief in Opposition at Ex. B (emphasis sic). In response to MDM's request for a legal basis for such decision, the county prosecutor's office sent a letter dated January 23, 2015 to MDM citing the Supreme Court's decision in *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, as the basis for the BOR's decision. The letter further stated that, "[a]pplying the Court's liberal interpretation of the continuing complaint jurisdiction to the present matter, at the very latest, the end of 2014 terminated the BOR's continuing complaint jurisdiction." Appellant's Brief in Opposition at Ex. D. On January 23, 2015, MDM filed a notice of appeal with this board, citing the January 16, 2015 email and January 23, 2015 letter as the "decision" from which it appealed.

The county appellees assert that neither the email nor the letter were decisions of the BOR from which MDM could properly appeal under R.C. 5717.01. Through its motion, the county cites this board's decision in *Kinlock EG v. Bd. of Revision of Perry Cty.* (May 12, 1995), BTA No. 1994-N-1236, unreported, finding that a letter rescheduling a BOR hearing was not an appealable decision, and the 10th District Court of Appeals' decision in *Singh v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 03AP-795, 2004-Ohio-1139, affirming this board's holding that a BOR's mistakenly sending a letter scheduling a hearing on a matter over which it did not properly have jurisdiction was not an appealable decision. In response, MDM argues that both cases are readily distinguishable and that the BOR's denial of a hearing on tax year 2012 "is a de facto dismissal for lack of jurisdiction." Appellant's Brief in Opposition at 5.

Given the unique facts of this case, we find the BOR's denial of MDM's request for a hearing on tax year 2012 to be an appealable decision of the BOR. While the BOR argues that the BOR did not render a *decision* on a 2012 complaint, the email and letter denying MDM's request to conduct proceedings on 2012 was just that – a decision *not* to hear the complaint. In *Kinlock*, supra, this board noted the interim nature of the letter issued; here, it is clear that the BOR would take no further action on MDM's request. We agree with MDM's characterization of the BOR's email and subsequent letter as a "de facto dismissal for lack of jurisdiction." Accordingly, the county's motion to dismiss is not well taken and is hereby denied.

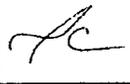
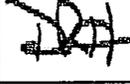
Turning to the merits of the appeal, MDM moves to remand this matter to the BOR with instructions to conduct proceedings on tax year 2012 pursuant to continuing complaint jurisdiction under R.C. 5715.19(D). That section states, in pertinent part:

"If a complaint filed under this section for the current year is not determined by the board within the time prescribed for such determination [(90 days)], 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 \*\*\*. In such case, the original complaint shall continue in effect without further filing by the original taxpayer \*\*\*."

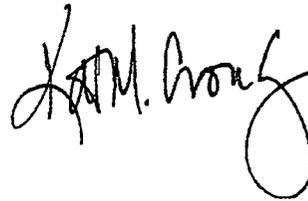
As explained above, a final decision on MDM's tax year 2011 complaint was issued by this board on February 19, 2014. Nearly a year later, on January 15, 2015, MDM requested that its 2011 complaint be deemed continuing for tax year 2012. MDM's position is that it can request that its 2011 complaint be deemed continuing in perpetuity. We cannot agree with such a reading of the statute and relevant case

law. We acknowledge that the statute does not establish an outer deadline for requesting that a complaint be deemed continuing; however, in *AERC*, supra, the court stated that the original complaint “continues as a valid complaint *through the year in which the final decision\*\*\* is rendered.*” *AERC*, supra, at ¶12. We concur with the county appellees’ conclusion that the BOR’s continuing complaint jurisdiction ended at the end of 2014 – the year in which the tax year 2011 complaint was finally decided. Accordingly, because MDM failed to request that its tax year 2011 complaint be deemed continuing prior to December 31, 2014, the BOR lacks jurisdiction to consider MDM’s request for tax year 2012.

Based upon the foregoing, MDM’s motion to remand is hereby denied and the decision of the BOR is hereby affirmed.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Ms. Clements		
Mr. Harbarger		

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.



Kathleen M. Crowley, Board Secretary



Cuyahoga County Administration Building  
 BOARD OF REVISION, Room 222  
 1219 Ontario St  
 Cleveland, OH 44113

MDM HOLDINGS LLC  
 C/O KAREN BAUERNSCHMIDT CO. LPA  
 1370 W 6TH ST STE 200  
 CLEVELAND, OH 44113

RE: 201204190356

**DECISION VALUE CHANGE NOTICE**

5/13/2013

Parcel: 02823009

The Board of Revision's decision reflects a Value Change in Market Value for Tax Year 2011.

Current Value:	Land: <u>\$138,800</u>	Building: <u>\$549,500</u>	Total: <u>\$688,300</u>
BOR Decision:	Land: <u>\$138,800</u>	Building: <u>\$466,200</u>	Total: <u>\$605,000</u>

Pursuant to Ohio Revised Code sections 5717.01 and 5717.05, this decision may be appealed directly to the Board of Tax Appeals or Court of Common Pleas **within 30 days of the date of mailing of this letter**. After the 30 days have expired, the value change will be processed.

BOARD OF TAX APPEALS  
 Rhodes Tower  
 30 East Broad St, 24th Floor  
 Columbus, OH 43215  
 614-466-6700 or <http://bta.ohio.gov>

or Cuyahoga County Court of Common Pleas  
 Justice Center, Clerk of Courts Office  
 1200 Ontario St  
 Cleveland, OH 44113  
 216-443-7974 \* Administrative Appeal Fee

If you have any questions, please contact the Board of Revision at 216-443-7195.

Respectfully,

  
 Shelley Davis, Administrator

Cuyahoga County Board of Revision  
 cc: School Board and/or Attorney if applicable

**EXHIBIT A**

## Carolyn A Weich

---

**From:** BORInfo <BORInfo@cuyahogacounty.us>  
**Sent:** Friday, January 16, 2015 2:14 PM  
**To:** Carolyn A Weich  
**Cc:** Shelley Davis; Dan Harbaugh  
**Subject:** RE: Request for Board of Revision Hearing - MDM Holdings LLC (PPN: 028-23-009) - Tax Year 2012

We have been advised by the Cuyahoga County Prosecutor that the Board of Revision should deny a request for a continuing complaint hearing received more than 30 days after the Board of Revision, Board of Tax Appeals or Common Pleas Court decision date, including a decision on appeal through the court system. A final Decision and Order was rendered by the Board of Tax Appeals on the above case on February 19, 2014, therefore, the request to continue this complaint is being denied.

---

**From:** Carolyn A Weich [mailto:carolyn@khbtaxlaw.com]  
**Sent:** Friday, January 16, 2015 11:09 AM  
**To:** BORInfo  
**Subject:** Request for Board of Revision Hearing - MDM Holdings LLC (PPN: 028-23-009) - Tax Year 2012  
**Importance:** High

Dear Board Members,

Please find the attached letter wherein the Property Owner is requesting the Board of Revision to conduct a hearing on the value of the subject property for the 2012 tax year.

Please contact me if you have any questions.

Thank you.

Carolyn A. Weich  
Legal Assistant  
Karen H. Bauernschmidt Co., LPA  
1370 West 6th Street, Suite 200  
Cleveland, Ohio 44113  
(216) 566-8500  
(216) 566-0942 FAX  
carolyn@khbtaxlaw.com





**Timothy J. McGinty**  
CUYAHOGA COUNTY PROSECUTOR

January 23, 2015

Karen H. Bauernschmidt, Esq.  
Karen H. Bauernschmidt Co.  
1370 West Sixth St, Suite 200  
Cleveland, OH 44113

Re: MDM Holdings LLC  
BOR Case Nos. 201404190356 and 201205290255

Dear Ms. Bauernschmidt:

This letter is in response to your letter to the Cuyahoga County Board of Revision dated Jan. 16, 2015 requesting a written decision regarding the denial of your request for a continuing complaint hearing for tax year 2012. It was referred to this office for a response from its legal counsel because you asked for a legal basis for the denial of your request.

It is undisputed that under R.C. 5715.19(D) a complaint filed for an earlier tax year continues "as a valid complaint for any ensuing year until such complaint is finally determined." Since an appeal must be filed no later than 30 days after a decision is rendered, a complaint/appeal is deemed to be finally determined when the time expires for filing an appeal.

Your request for a continuing complaint hearing regarding the subject property was made more than 30 days after the BTA issued a decision for the 2011 appeals. On February 19, 2014 the BTA issued an order granting the request for a voluntary dismissal of the tax year 2011

**OFFICE OF THE PROSECUTING ATTORNEY**  
The Justice Center • Courts Tower • 1200 Ontario Street • Cleveland, Ohio 44113  
(216) 443-7785 • Fax (216) 443-7602

MDM Appx. p. 15

appeal. *MDM Holdings LLC v Cuyahoga County Bd of Revision* Case No. 2013-1619. The matter was finally determined on Mar. 21, 2014 since neither the property owner nor the board of education appealed from that decision.

In *AERC Saw Mill Village v Franklin County Bd of Revision*, 2010-Ohio-4468 the Court states as follows:

This is known as the continuing complaint provision, and its operation is triggered when the BOR does not issue a decision within the time frame set forth in R.C. 5715.19(C). We have summarized the operation of these divisions of the statute by stating that "when a board of revision has not rendered its decision within the statutorily prescribed 90 days, '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.'" *Fogg-Akron Associates L.P. v Summit Cty. Bd. of Revision*, 124 OhioSt3d 1123, 2009-Ohio-6412, 919 N.E.2d 730, ¶8. Quoting R.C. 5715.19(D). Once the continuing-complaint provision has been triggered, the original complaint-in this case, the complaint filed for the 2002 tax year- continues as a valid complaint through the year in which the final decision, by the board of revision or on appeal, is rendered in the proceedings on that complaint. *Columbus Bd. of Education v Franklin County Bd. of Revision* (1991), 87 Ohio St3d 305,307,720 N.E.2d 517. (emphasis added)

*Id* at ¶12. Applying the Court's liberal interpretation of the continuing complaint jurisdiction to the present matter, at the very latest, the end of 2014 terminated the BOR's continuing complaint jurisdiction.

No statutory obligation requires the Board of Revision to exercise continuing complaint jurisdiction more than 30 days after the BTA order. Therefore, the request for a continuing complaint hearing for tax year 2012 was properly denied as untimely. Any future requests for the BOR to exercise continuing complaint jurisdiction must be made during the pendency of the appeal, and in any case, within 30 days subsequent to the final decision.

Very truly yours,  
  
Sandra Curtis-Patrick  
Assistant Prosecuting Attorney

Cc: Shelley Davis

**NOTICE OF APPEAL FROM A DECISION OF A COUNTY BOARD OF REVISION TO THE BOARD OF TAX APPEALS**

RETURN COPY

MDM Holdings LLC

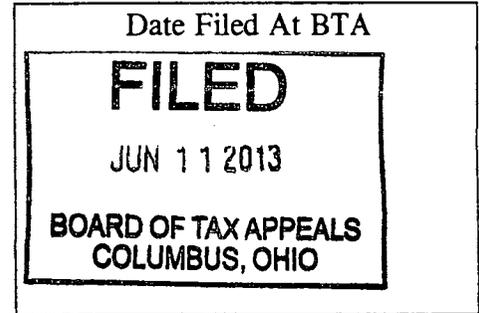
Name (Please Print)  
 c/o David Palisin, 24 Hidden Valley Road, Rocky River, OH,  
 44116

Address City State Zip

v. **Appellant.**  
**AUDITOR AND THE BOARD OF REVISION**  
 of Cuyahoga County Ohio  
 Cleveland Municipal School District Board of Education

(Names of other appellees, if any) **Appellee(s).**

BOR Case No. 201204190356



BTA Case No. \_\_\_\_\_

**READ IMPORTANT FILING INFORMATION ON BACK BEFORE COMPLETING THIS FORM**

The Appellant appeals the decision of the Board of Revision to the Board of Tax Appeal in the matter of the complaint against the value for tax year 2011 for the real property or manufactured or mobile home described below. The complaint was filed by:

MDM Holdings LLC, c/o David Palisin, 24 Hidden Valley Road, Rocky River, OH, 44116

Name Address City State Zip

The Board of Revision decision was mailed on (date) May 13, 2013 and a copy is attached as Exhibit A.

Owner's Name MDM Holdings LLC

Owner's Address c/o David Palisin, 24 Hidden Valley Road, Rocky River, OH, 44116

PARCEL OR REGISTRATION NUMBER	ADDRESS OF PROPERTY
028-23-009	4635 W 160th Street, Cleveland

The taxable values determined by the County Auditor and the Board of Revision and the taxable and market values claimed by the appellant for the tax year as follows (If more than one parcel or manufactured or mobile home, show total value of parcels or homes below and attach the values for the individual parcels as Exhibit D):

	COUNTY AUDITOR'S TAXABLE VALUE	BOARD OF REVISION'S TAXABLE VALUE	APPELLANT'S CLAIMED TAXABLE VALUE	APPELLANT'S CLAIMED MARKET VALUE
LAND	48,580	48,580	48,580	138,800
BUILDING	192,330	163,170	113,470	324,200
TOTAL	240,910	211,750	162,050	463,000

**FOR ALL FUTURE NOTICES:**

1370 West 6<sup>th</sup> Street, Suite 200

Mailing Address

Cleveland Ohio 44113-1230

City State Zip

( 216 ) 566-8500

Phone Number

( 216 ) 566-0942

Fax Number (if any)

  
 Appellant or Representative (signature)

Karen H. Bauernschmidt, Esq., #0006774

Print Name and Title if Representative

6/11/13

Date

Karen@khtaxlaw.com

Email Address (If any)



7118 9042 9551 1421 0158

Cuyahoga County Administration Building  
BOARD OF REVISION, Room 222  
1219 Ontario St  
Cleveland, OH 44113



MDM HOLDINGS LLC  
C/O KAREN BAUERNSCHMIDT CO. LPA  
1370 W 6TH ST STE 200  
CLEVELAND, OH 44113

RE: 201204190356

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5/13/2013

Parcel: 02823009

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BOARD OF TAX APPEALS

or

Cuyahoga County Court of Common Pleas

Rhodes Tower  
30 East Broad St, 24th Floor  
Columbus, OH 43215

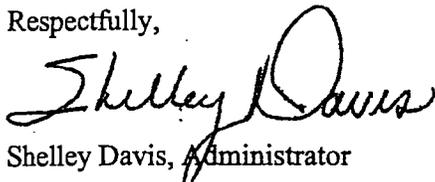
Justice Center, Clerk of Courts Office  
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216-443-7974 \* Administrative Appeal Fee

If you have any questions, please contact the Board of Revision at 216-443-7195.

Respectfully,

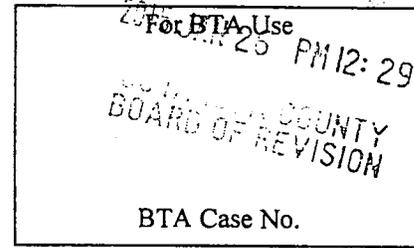
  
Shelley Davis, Administrator

Cuyahoga County Board of Revision  
cc: School Board and/or Attorney if applicable

**NOTICE OF APPEAL TO THE BOARD OF TAX APPEALS  
 FROM A DECISION OF A COUNTY BOARD OF REVISION**

BOR Case No. 201204190356

MDM Holdings LLC



Appellant,  
 v.  
 AUDITOR/FISCAL OFFICER AND THE BOARD OF REVISION OF  
 Cuyahoga, County Ohio, and  
 Cleveland Municipal School District Board of Education  
 Appellee(s). (All other parties to the appeal)

Appellant appeals a Board of Revision (BOR) decision e-mailed on January 16, 2015 for tax year 2012. (Attached).  
Prosecutor's Opinion dated January 23, 2015 (Attached).

Property Owner's name MDM Holdings LLC  
 Property Owner's Address c/o David Palisin, 24 Hidden Valley Road, Rocky River, OH, 44116

	1 <sup>st</sup> Parcel
Parcel No.	028-23-009
Parcel's Address	4635 W 160th Street, Cleveland
Parcel's School District	Cleveland
Appellant's Opinion of Parcels Market Value	\$605,000

Evidence supporting opinion of market value: One or more of the three traditional approaches to value  
(Arm's length sale of the subject, a qualifying appraisal, or some other evidence – describe)

Appeal of a BOR decision starts a formal adjudication process often involving lawyers, discovery, motions and expert witness (appraiser) testimony. The Small Claims Option avoids much of the formality and resolves simple disputes quickly and inexpensively. More information is in the form instructions.

**Small Claims Option (Check One):** YES  NO  Small claims involve simple disputes that can be resolved quickly and inexpensively. Most residential property qualifies for the small claims option but taxpayer consent is required because decisions have no precedential value, they are final for all parties and cannot be appealed. More information is provided in the instruction portion of this form. By electing to have your appeal resolved as a small claim, you understand and agree to these conditions.

**Request Hearing (Check One):** YES  NO  All evidence is required to be presented to the BOR, a record of which is transmitted to the BTA for consideration. BTA hearings are therefore unnecessary unless new evidence has become available since the BOR proceedings. If a BTA hearing is scheduled, it will be held in the BTA's offices in Columbus, OH and your appeal may be dismissed if you do not attend or if you fail to provide prior notice of your intent not to attend. Hearings for small claims, if requested, will be an informal, non-record hearing conducted by telephone only.

**Contact Information**

  
 Appellant or Representative (signature)

Karen@khtaxlaw.com  
 Email Address

Karen H. Bauernschmidt, Esq., #0006774  
 Print Name and Title if Representative

(216) 566-8500  
 Phone Number

1370 West 6<sup>th</sup> Street, Suite 200, Cleveland, Ohio 44113  
 Mailing Address

(216) 566-0942  
 Fax Number

1/23/15  
 Date

## Carolyn A Weich

---

**From:** BORInfo <BORInfo@cuyahogacounty.us>  
**Sent:** Friday, January 16, 2015 2:14 PM  
**To:** Carolyn A Weich  
**Cc:** Shelley Davis; Dan Harbaugh  
**Subject:** RE: Request for Board of Revision Hearing - MDM Holdings LLC (PPN: 028-23-009) - Tax Year 2012

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---

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**Sent:** Friday, January 16, 2015 11:09 AM  
**To:** BORInfo  
**Subject:** Request for Board of Revision Hearing - MDM Holdings LLC (PPN: 028-23-009) - Tax Year 2012  
**Importance:** High

Dear Board Members,

Please find the attached letter wherein the Property Owner is requesting the Board of Revision to conduct a hearing on the value of the subject property for the 2012 tax year.

Please contact me if you have any questions.

Thank you.

Carolyn A. Weich  
Legal Assistant  
Karen H. Bauernschmidt Co., LPA  
1370 West 6th Street, Suite 200  
Cleveland, Ohio 44113  
(216) 566-8500  
(216) 566-0942 FAX  
carolyn@khbtaxlaw.com





**Timothy J. McGinty**  
CUYAHOGA COUNTY PROSECUTOR

January 23, 2015

Karen H. Bauernschmidt, Esq.  
Karen H. Bauernschmidt Co.  
1370 West Sixth St, Suite 200  
Cleveland, OH 44113

Re: MDM Holdings LLC  
BOR Case Nos. 201404190356 and 201205290255

Dear Ms. Bauernschmidt:

This letter is in response to your letter to the Cuyahoga County Board of Revision dated Jan. 16, 2015 requesting a written decision regarding the denial of your request for a continuing complaint hearing for tax year 2012. It was referred to this office for a response from its legal counsel because you asked for a legal basis for the denial of your request.

It is undisputed that under R.C. 5715.19(D) a complaint filed for an earlier tax year continues "as a valid complaint for any ensuing year until such complaint is finally determined." Since an appeal must be filed no later than 30 days after a decision is rendered, a complaint/appeal is deemed to be finally determined when the time expires for filing an appeal.

Your request for a continuing complaint hearing regarding the subject property was made more than 30 days after the BTA issued a decision for the 2011 appeals. On February 19, 2014 the BTA issued an order granting the request for a voluntary dismissal of the tax year 2011

**OFFICE OF THE PROSECUTING ATTORNEY**  
The Justice Center • Courts Tower • 1200 Ontario Street • Cleveland, Ohio 44113  
(216) 443-7785 • Fax (216) 443-7602

appeal. *MDM Holdings LLC v Cuyahoga County Bd of Revision* Case No. 2013-1619. The matter was finally determined on Mar. 21, 2014 since neither the property owner nor the board of education appealed from that decision.

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*Id* at ¶12. Applying the Court's liberal interpretation of the continuing complaint jurisdiction to the present matter, at the very latest, the end of 2014 terminated the BOR's continuing complaint jurisdiction.

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Very truly yours,  
  
Saundra Curtis-Patrick  
Assistant Prosecuting Attorney

Cc: Shelley Davis

**Ohio Statutes**

**GENERAL PROVISIONS**

**Chapter 1. DEFINITIONS; RULES OF CONSTRUCTION**

*Current with legislation signed by the Governor as of 11/1/2015*

**§ 1.11. Remedial laws liberally construed**

Remedial laws and all proceedings under them shall be liberally construed in order to promote their object and assist the parties in obtaining justice. The rule of the common law that statutes in derogation of the common law must be strictly construed has no application to remedial laws; but this section does not require a liberal construction of laws affecting personal liberty, relating to amercement, or of a penal nature.

**Cite as R.C. § 1.11**

**History.** Effective Date: 10-01-1953

**Ohio Statutes**

**Title 3. COUNTIES**

**Chapter 323. COLLECTION OF TAXES**

*Current with legislation signed by the Governor as of 11/1/2015*

**§ 323.66. Expedited foreclosure by board of revision on unoccupied land**

(A)

In lieu of utilizing the judicial foreclosure proceedings and other procedures and remedies available under sections 323.25 to 323.28 or under Chapter 5721., 5722., or 5723. of the Revised Code, a county board of revision created under section 5715.01 of the Revised Code, upon the board's initiative, expressed by resolution, may foreclose the state's lien for real estate taxes upon abandoned land in the county and, upon the complaint of a certificate holder or county land reutilization corporation, foreclose the lien of the state or the certificate holder held under sections 5721.30 to 5721.43 of the Revised Code. The board shall order disposition of the abandoned land by public auction or by other conveyance in the manner prescribed by sections 323.65 to 323.79 of the Revised Code.

(B)

(1)

A county board of revision may adopt rules as are necessary to administer cases subject to its jurisdiction under Chapter 5715. or adjudicated under sections 323.65 to 323.79 of the Revised Code, as long as the rules are consistent with rules adopted by the tax commissioner under Chapter 5715. of the Revised Code. Rules adopted by a board shall be limited to rules relating to hearing procedure, the scheduling and location of proceedings, case management, and practice forms.

(2)

A county board of revision, upon any adjudication of foreclosure under sections 323.65 to 323.79 of the Revised Code, may prepare final orders of sale and deeds. For such purposes, the board may create its own order of sale and deed forms. The sheriff or clerk of court shall execute and deliver any forms prepared under this division in the manner prescribed in sections 323.65 to 323.79 of the Revised Code.

(C)

In addition to all other duties and functions provided by law, under sections 323.65 to 323.79 of the Revised Code the clerk of court, in the same manner as in civil actions, shall provide summons and notice of hearings, maintain an official case file, docket all proceedings, and tax as costs all necessary actions in connection therewith in furtherance of the foreclosure of abandoned land under those sections. The county board of revision shall file with the clerk of court all orders and adjudications of the board, and the clerk shall docket, as needed, and journalize all orders and adjudications so filed by the board. The clerk may utilize the court's existing journal or maintain a separate journal for purposes of sections 323.65 to 323.79 of the Revised Code. Other than notices of hearings, the orders and adjudications of the board shall not become effective until journalized by the clerk. Staff of the board of revision may schedule and execute, and file with the clerk of courts, notices of hearings.

(D)

For the purpose of efficiently and promptly implementing sections 323.65 to 323.79 of the Revised Code, the prosecuting attorney of the county, the county treasurer, the clerk of court of the county, the county auditor, and the sheriff of the county may promulgate rules, not inconsistent with sections 323.65 to 323.79 of the Revised Code, regarding practice forms, forms of notice for hearings and notice to parties, forms of orders and adjudications, fees, publication, and other procedures customarily within their official purview and respective duties.

**Cite as R.C. § 323.66**

**History.** Effective Date: 09-28-2006; 2008 SB353 04-07-2009

**Ohio Statutes**

**Title 57. TAXATION**

**Chapter 5703. DEPARTMENT OF TAXATION**

*Current with legislation signed by the Governor as of 11/1/2015*

**§ 5703.02. [Operative Until 1/1/2016] Board of tax appeals - powers and duties**

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

(A)

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

(1)

Actions of county budget commissions;

(2)

Decisions of county boards of revision;

(3)

Actions of any assessing officer or other public official under the tax laws of this state;

(4)

Final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the tax commissioner;

(5)

Adoption and promulgation of rules of the tax commissioner.

(B)

Appoint a secretary of the board of tax appeals, who shall serve in the unclassified civil service at the pleasure of the board, and any other employees as are necessary in the exercise of the powers and the performance of the duties

and functions that the board is by law authorized and required to exercise, and prescribe the duties of all employees, and to fix their compensation as provided by law;

(C)

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

(D)

Adopt and promulgate, in the manner provided by section 5703.14 of the Revised Code, and enforce all rules relating to the procedure of the board in hearing appeals it has the authority or duty to hear, and to the procedure of officers or employees whom the board may appoint; provided that section 5703.13 of the Revised Code shall apply to and govern the procedure of the board. Such rules shall include, but need not be limited to, the following:

(1)

Rules governing the creation and implementation of a mediation program, including procedures for requesting, requiring participation in, objecting to, and conducting a mediation;

(2)

Rules requiring the tax commissioner, county boards of revision, and municipal boards of appeal created under section 718.11 of the Revised Code to electronically file any transcript required to be filed with the board of tax appeals, and instructions and procedures for the electronic filing of such transcripts.

(3)

Rules establishing procedures to control and manage appeals filed with the board. The procedures shall include, but not be limited to, the establishment of a case management schedule that shall include expected dates related to discovery deadlines, disclosure of evidence, pre-hearing motions, and the hearing, and other case management issues considered appropriate.

**Cite as R.C. § 5703.02**

**History.** Amended by 130th General Assembly File No. 37, HB 138, §1, eff. 10/11/2013 and 1/1/2015.

Effective Date: 03-17-1989

**Note:** *This section is set out twice. See also § 5703.02 , as amended by 130th General Assembly File No. TBD, HB 5, §1, eff. 3/23/2015, op. 1/1/2016.*

**Ohio Statutes**

**Title 57. TAXATION**

**Chapter 5703. DEPARTMENT OF TAXATION**

*Current with legislation signed by the Governor as of 11/1/2015*

**§ 5703.14. Review of rules**

Applications for review of any rule adopted and promulgated by the tax commissioner may be filed with the board of tax appeals by any person who has been or may be injured by the operation of the rule. The appeal may be taken at any time after the rule is filed with the secretary of the state, the director of the legislative service commission, and, if applicable, the joint committee on agency rule review. Failure to file an appeal does not preclude any person from seeking any other remedy against the application of the rule to the person. The applications shall set forth, or have attached thereto and incorporated by reference, a true copy of the rule, and shall allege that the rule complained of is unreasonable and shall state the grounds upon which the allegation is based. Upon the filing of the application, the board shall notify the commissioner of the filing of the application, fix a time for hearing the application, notify the commissioner and the applicant of the time for the hearing, and afford both an opportunity to be heard. The appellant, the tax commissioner, and any other interested persons that the board permits, may introduce evidence. The burden of proof to show that the rule is unreasonable shall be upon the appellant. After the hearing, the board shall determine whether the rule complained of is reasonable or unreasonable. A determination that the rule complained of is unreasonable shall require a majority vote of the three members of the board, and the reasons for the determination shall be entered on the journal of the board.

Upon determining that the rule complained of is unreasonable, the board shall file copies of its determination as follows:

(A)

The determination shall be filed in electronic form with both the secretary of state and the director of the legislative service commission, who shall note the date of their receipt of the certified copies conspicuously in their files of the rules of the department;

(B)

The determination shall be filed in electronic form with the

joint committee on agency rule review. Division (C)(2) of this section does not apply to any rule to which division (C) of section 119.03 of the Revised Code does not apply.

On the tenth day after the determination has been received by the secretary of state, the director, and, if applicable, the joint committee, the rule referred to in the determination shall cease to be in effect. If all filings of the determination are not completed on the same day, the rule shall remain in effect until the tenth day after the day on which the latest filing is completed. This section does not apply to licenses issued under sections 5735.02, 5739.17, and 5743.15 of the Revised Code, which shall be governed by sections 119.01 to 119.13 of the Revised Code.

The board is not required to hear an application for the review of any rule where the grounds of the allegation that the rule is unreasonable have been previously contained in an application for review and have been previously heard and passed upon by the board.

**Cite as R.C. § 5703.14**

**History.** Amended by 130th General Assembly File No. TBD, SB 3, §1, eff. 9/17/2014.

Effective Date: 04-01-2002

Ohio Statutes

Title 57. TAXATION

Chapter 5715. BOARDS OF REVISION;  
EQUALIZATION OF ASSESSMENTS

*Current with legislation signed by the Governor as of 11/1/2015*

§ 5715.19. Complaint against valuation or assessment -  
determination of complaint - 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 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.

If such a complaint is filed by mail or certified mail, the date of the United States postmark placed on the envelope or sender's receipt by the postal service shall be treated as the date of filing. A private meter postmark on an envelope is not a valid postmark for purposes of establishing the filing date.

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.

(4)

Notwithstanding division (A)(2) of this section, a person, board, or officer may 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 if the person, board, or officer withdrew the complaint before the complaint was heard by the board.

(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 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.

Cite as R.C. § 5715.19

History. Amended by 129th General Assembly File No. 141, HB 509, §1, eff. 9/28/2012.

Effective Date: 03-04-2002; 09-28-2006

**Ohio Statutes**

**Title 57. TAXATION**

**Chapter 5715. BOARDS OF REVISION;  
EQUALIZATION OF ASSESSMENTS**

*Current with legislation signed by the Governor as of 11/1/2015*

**§ 5715.01. Tax commissioner to supervise assessments by county auditors - rules and procedure - county board of revision**

(A)

The tax commissioner shall direct and supervise the assessment for taxation of all real property. The commissioner shall adopt, prescribe, and promulgate rules for the determination of true value and taxable value of real property by uniform rule for such values and for the determination of the current agricultural use value of land devoted exclusively to agricultural use. The uniform rules shall prescribe methods of determining the true value and taxable value of real property and shall also prescribe the method for determining the current agricultural use value of land devoted exclusively to agricultural use, which method shall reflect standard and modern appraisal techniques that take into consideration: the productivity of the soil under normal management practices; the average price patterns of the crops and products produced to determine the income potential to be capitalized; the market value of the land for agricultural use; and other pertinent factors. The rules shall provide that in determining the true value of lands or improvements thereon for tax purposes, all facts and circumstances relating to the value of the property, its availability for the purposes for which it is constructed or being used, its obsolete character, if any, the income capacity of the property, if any, and any other factor that tends to prove its true value shall be used. In determining the true value of minerals or rights to minerals for the purpose of real property taxation, the tax commissioner shall not include in the value of the minerals or rights to minerals the value of any tangible personal property used in the recovery of those minerals.

(B)

The taxable value shall be that per cent of true value in money, or current agricultural use value in the case of land valued in accordance with section 5713.31 of the Revised Code, the commissioner by rule establishes, but it shall not exceed thirty-five per cent. The uniform rules shall also prescribe methods of making the appraisals set forth in

section 5713.03 of the Revised Code. The taxable value of each tract, lot, or parcel of real property and improvements thereon, determined in accordance with the uniform rules and methods prescribed thereby, shall be the taxable value of the tract, lot, or parcel for all purposes of sections 5713.01 to 5713.26, 5715.01 to 5715.51, and 5717.01 to 5717.06 of the Revised Code. County auditors shall, under the direction and supervision of the commissioner, be the chief assessing officers of their respective counties, and shall list and value the real property within their respective counties for taxation in accordance with this section and sections 5713.03 and 5713.31 of the Revised Code and with such rules of the commissioner. There shall also be a board in each county, known as the county board of revision, which shall hear complaints and revise assessments of real property for taxation.

(C)

The commissioner shall neither adopt nor enforce any rule that requires true value for any tax year to be any value other than the true value in money on the tax lien date of such tax year or that requires taxable value to be obtained in any way other than by reducing the true value, or in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value, by a specified, uniform percentage.

**Cite as R.C. § 5715.01**

**History.** Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 9/29/2015, (Vetoed).

Effective Date: 09-27-1983; 06-30-2005