

IN THE SUPREME COURT OF OHIO

Julia Realty LTD.,	:	Case No. 16-0541
Appellant,	:	On Appeal from the Board
v.	:	of Tax Appeals
Cuyahoga County Board	:	
of Revision, et al.,	:	Board of Tax Appeals
Appellees.	:	Case No. 2015-657, 2015-658

MERIT BRIEF OF APPELLANT JULIA REALTY, LTD.

Jesse R. Mann (0085730) (Counsel of Record)
240 E. William St.
Delaware, OH. 43015
(740) 362-0705

COUNSEL FOR APPELLANT, JULIA REALTY LTD.

Sandra Curtis-Patrick (0027907) (Counsel of Record)
Assistant Prosecuting Attorney
Cuyahoga County
1200 Ontario Street, 8th Floor
Cleveland, OH. 44113
(216) 443-7790

COUNSEL FOR APPELLEE, CUYAHOGA COUNTY BOARD OF REVISION

David H. Seed (0066033) (Counsel of Record)
Brindza McIntyre & Seed, LLP
1111 Superior Avenue, Suite 1025
Cleveland, OH. 44114
(216) 621-5900

COUNSEL FOR APPELLEE, CLEVELAND MUNICIPAL SCHOOL DISTRICT BOARD OF
EDUCATION

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
STATEMENT OF FACTS	1
ARGUMENT	2
 <u>Proposition of Law No. I:</u>	
Due process requires notice of the standard being applied to the case	2
 <u>Proposition of Law No. II:</u>	
Collateral estoppel is not applicable when a change in law has occurred after trial, but before disposition	5
 <u>Proposition of Law No. III:</u>	
The General Assembly has codified in R.C. 5715.19(A)(2) when collateral estoppel should and should not apply in property tax cases .	6
 <u>Proposition of Law No. IV:</u>	
Jurisdictional issues should be determined as of the time the complaint is filed; by process of statute or actual filing	7
CONCLUSION	10
PROOF OF SERVICE	12
APPENDIX	<u>Appx. Page</u>
Notice of Appeal to the Ohio Supreme Court (April 12, 2016)	1
Decision and Order of the Board of Tax Appeals (March 14, 2016)	8
Decision of the Cuyahoga County Board of Revision (May 18, 2015)	13

Decision and Order of the Board of Tax Appeals (Feb. 2, 2015)	15
Decision of the Cuyahoga County Board of Revision (Oct. 22, 2013)	19
 <u>CONSTITUTIONAL PROVISIONS; STATUTES:</u>	
United States Constitution, Fifth Amendment	21
United States Constitution, Fourteenth Amendment, Article I	22
R.C. 5715.19	24

TABLE OF AUTHORITIES

	<u>Page</u>
<u>CASES:</u>	
<i>1495 Jaeger L.L.C. v. Cuyahoga Cty. Bd. of Revision</i> 132 Ohio St.3d, 2012-Ohio-2680	8
<i>Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision</i> 117 Ohio St.3d 516, 2008-Ohio-1473	2-3
<i>New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision</i> 80 Ohio St.3d 36 (1997)	5
<i>Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision</i> , 141 Ohio St.3d 243, 2014-Ohio-4723	1, 3-6
<i>Soyko Kulchystsky, v. Cuyahoga Cty. Bd. of Revision</i> 141 Ohio St.3d 43, 2014-Ohio-4511	8-9
<i>Superior’s Brand Meats, Inc. v. Lindley</i> , 62 Ohio St.2d 133 (1980)	5-6
<i>Thompson v. Wing</i> , 70 Ohio St.3d 176 (1994)	5
 <u>CONSTITUTIONAL PROVISIONS, STATUTES:</u>	
United States Constitution, Fifth Amendment	5
United States Constitution, Fourteenth Amendment, Article 1	5
R.C. 5715.19(A)(1)	10
R.C. 5715.19(A)(2)	6, 7
R.C. 5715.19(A)(2)(a)	7
R.C. 5715.19(D)	1, 7-10

STATEMENT OF FACTS:

This case involves the sale of a property involving five parcels to Julia Realty, LTD., on February 1, 2013 for \$367,500. The owner, by and through counsel filed a complaint against the valuation of real property with the Cuyahoga County Board of Revision on April 1, 2013. A hearing was held on the merits, with the Appellant submitting the HUD-1 Settlement Statement, Conveyance Fee Statement, Warranty Deed, and a Draft version and Final version of the Purchase Contract into evidence in support of an arm's length sale. (See evidence.) A decision of no change was rendered by the Board of Revision on October 22, 2013. (Appx. 19.) The case was subsequently appealed to the Board of Tax Appeals on November 21, 2013.

The Board of Tax Appeals heard the case on June 19, 2014, with the final day to file written arguments being June 19, 2014. On October 28, 2014 the Supreme Court of Ohio decided *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723. On February 2, 2015, based on the decision in *Olentangy*, the Board of Tax Appeals issued a decision of no change for tax year 2012; however there was no ruling given for tax years 2013 or 2014. (Appx. 15.) On March 4, 2015, Appellant filed with the Cuyahoga County Board of Revision requesting hearings on the undecided tax years 2013 and 2014 in accordance with the continuing complaint provisions of R.C. 5715.19(D).

A hearing was held on May 13, 2015 by the Cuyahoga County Board of Revision wherein counsel for the school district argued lack of jurisdiction based on a convergence of a second filing within a triennium and res judicata. (See audio recording.) Appellant entered testimony from the owner of the property that the owner had learned of the upcoming sale online. During the bidding there were five different parties competing against one another to purchase the property. The reserve bid was well exceeded, and bidding continued until the

property sold to appellant for a high bid of \$350,000, plus a premium of \$17,500 for a total contract price of \$367,500. The contract was drawn up and executed by the parties. A closing took place wherein funds were exchanged on January 30, 2013, the transfer taxes were paid as demonstrated on the conveyance fee statement and a general warranty deed was filed on February 1, 2013. The owner also gave testimony that he felt the price reflected the market value of the property, and he also testified to a conversation the he had with the seller wherein the seller likewise had stated that the seller felt the price reflected the market value. Also introduced into evidence was a written conversation between the buyer and seller likewise documenting this conversation. (See audio recording, evidence). On May 18, 2015, the Cuyahoga County Board of Revision issued a ruling of no change, referencing res judicata as the reason. (Appx. 13.) On June 16, 2015 an appeal was filed with the Board of Tax Appeals. A hearing was held on January 12, 2016, wherein only representation of the Appellant appeared, entered arguments against the application of res judicata to this case and resubmitted evidence that had previously been submitted to the BOR. On March 14, 2016, the Board of Tax Appeals decided that collateral estoppel applied and therefore upheld the no change order. (Appx. 8.) On April 12, 2016, this appeal ensued. (Appx. 1.)

ARGUMENT

**Proposition of Law No. I:
Due Process requires notice of the standard being
applied to the case.**

At the first BOR hearing to address the initial complaint, the Appellant introduced two versions of the contract, a draft and a final, the conveyance fee statement, the settlement statement, and the general warranty deed. These documents were introduced at that time in order to meet, and/or exceed, the burden of proof on appellant. *See Cummins Property Servs., L.L.C. v.*

Franklin Cty. Bd. of Revision, 117 Ohio St.3d 516, 2008-Ohio-1473. In *Cummins*, the Court stated, “the initial burden on a party presenting evidence of a sale is not a heavy one, where the sale on its face appears to be recent and at arm’s length.” *Cummins*, 117 Ohio St.3d 516, 2008-Ohio-1473, 885 N.E.2d 222, at ¶ 41. This is because the purpose of former R.C. 5713.03 was “to promote the use of the recent sale to determine the value of the property and thereby minimize the need for other evidence when a recent sale price is available. *Id.* This standard for a recent, arm’s length sale, and the burden it places on the taxpayer has been cited and recited abundantly by both the Court and the BTA. This was the known standard at the time of the first BOR hearing, and during the pendency of the first BTA proceedings.

As discussed in the Statement of Facts, the BTA held their first hearing on this case on June 19, 2014. It was based on the prior record and evidence submitted at the previous BOR hearing. Likewise, the final day to submit written arguments to the BTA was June 19, 2014. After this occurred, on October 28, 2014, the Supreme Court of Ohio issued a ruling in the case of *Olentangy Local Schools Bd. of Edn. v. Delaware Cty Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723. The BTA then went on to reach their decision based entirely on this new *Olentangy* decision. In *Olentangy*, the Supreme Court of Ohio established a new standard for voluntary auctions which “reverses the typical presumption that a sale price is the best evidence of a property’s value when the underlying transaction was an auction... Accordingly, we likewise adjust the typical burdens of proof with regard to sale prices. Namely, the opponent of a sale price has a very light burden to establish that a transaction was on its face an auction or a forced sale. Once that threshold is crossed, then the proponent of the sale price bears the burden to prove that the sale was nevertheless an arm’s-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property’s value.” *Olentangy*

Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision, 141 Ohio St.3d 243, 2014-Ohio-4723 at ¶ 43. Prior to this, it was an unanswered question as to whether R.C. 5713.04 applied to both voluntary and involuntary auctions, with the BTA repeatedly recognizing that “the sale prices of parcels sold at auction are nevertheless the best evidence of value when all of the elements of an arm’s-length transaction are present.” *Id* at ¶ 28, 39. This new standard, therefore, changed the burden of proof required of appellant, and likewise changed the level of evidence and types of evidence that would need to be submitted in order to meet these new, increased requirements.

Here, the appellant is being deprived of their property, their money, through taxation, and therefore they are entitled to challenge the valuation of their property upon which the taxes are derived. In order to do this, the State of Ohio has established a process by which the taxpayer can make such challenges, first to the county board of revision, and then appeal those decisions in the event they disagree, to the Board of Tax Appeals or through the court system. One of the most important parts of that however, is that the taxpayer must be able to know what the standard is by which their case will be measured. This allows them to submit the required evidence or documentation necessary to substantiate their claim. If there is one standard in place at the time the taxpayer attempts to validate their claim, and they meet that standard, and then the standard is changed to something else, after their opportunity to submit evidence or make arguments has already passed, then there is no standard. Simply put, it is impossible for a taxpayer to meet a standard, or a burden of proof, if it changes after their opportunity to be heard has already passed. That is what has happened here.

At the time of the BOR hearing and during the subsequent appeal to the BTA, the appellant submitted more than sufficient evidence to meet their burden as it existed at that time.

It was only after the hearing on the previous record, and after the deadline to submit any additional documentation or arguments, that the *Olentangy* decision came down. Therefore, appellant had no knowledge of an increased standard and no knowledge of a heavier burden that would require additional types of evidence to be submitted. Now, the county and the school board is attempting to prevent appellant from being able to submit this additional evidence on the record, and to have it be heard and judged on its merits, by claiming that collateral estoppel should apply. To do this would be fundamentally unfair, it would be an upending of the process, and would effectively deny appellant his opportunity to fairly contest the valuation of his property for tax purposes.

**Proposition of Law II:
Collateral estoppel is not applicable when a change
in law has occurred after trial, but before disposition.**

The second point of error that appellant argues is that the BTA misapplied the application of collateral estoppel when considering the three-prong test of applicability. As noted by the Court in *Superior*, “there is a narrow range of applicability for the doctrine of collateral estoppel in tax proceedings.” See *Superior’s Brand Meats, Inc. v. Lindley* (1980), 62 Ohio St.2d 133, 135-136, ***. In *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36, the court stated: “In *Thompson v. Wing* (1994) 70 Ohio St.3d 176, 183, ***, we stated that collateral estoppel was applicable when the fact or issue ‘(1) was actually and directly litigated in the prior action, (2) was passed upon and determined by a court of competent jurisdiction, and (3) when the party against whom collateral estoppel is asserted was in privity with the party to the prior action.’” *Id.* At 41.

This test was applied by the BTA against tax years 2013 and 2014 in the second BTA decision. According to the BTA, the previous determination that tax year 2012 was not an arm’s

length sale, which was based entirely on the after-the-fact change of the standard and burden of proof in *Olentangy*, constituted the time that the arm's length sale issue was actually and directly litigated. The problem with that, is that it wasn't. The first BTA decision pertaining to tax year 2012 was based entirely on the sale being a voluntary auction, a new standard being applied, and the appellant not meeting that new standard. The crux of the case, the central issue of law upon which the case hinged and was decided upon had never once been uttered by either party. No evidence had been submitted as to that issue, no arguments made, no litigation of any kind. This was because nobody knew about it; not the attorneys, not the BOR. It did not exist at that point in time. What it means to litigate the issue of an arm's length sale now for a voluntary auction is substantially different from what it meant before *Olentangy*; the presumptions have been reversed, the burdens have been elevated for the taxpayer, the levels and types of evidence required to substantiate a claim has been increased. See *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723 at ¶ 43. Ultimately, litigating one versus the other are two very different things. This is especially true when there was no notice or opportunity to actually litigate the issue after these changes were made. Therefore, how can it be determined that an issue has been "actually and directly" litigated when key components of the issue did not exist at the time of the litigation? Thus, the first prong has not been met and the BTA erred in how it applied the test to this case.

**Proposition of Law III:
The General Assembly has codified in R.C. 5715.19(A)(2) when
collateral estoppel should and should not apply in property tax cases.**

We also challenge the larger question of whether the doctrine of collateral estoppel, separate and apart from the formal structure established by the General Assembly in R.C. 5715.19(A)(2), is applicable at all in property tax complaints. Both *Superior*, and the other

Supreme Court decisions cited by the BTA to support the use of collateral estoppel in tax proceedings are all from the 1980's and 1990's; prior to the codification of R.C. 5715.19(A)(2). (The original effective date of R.C. 5715.19(A)(2) is March 4, 2002.) This section of statute establishes a system by which it is answered when a taxpayer may re-litigate the issue of a property's valuation. A plain reading of R.C. 5715.19(A)(2) suggests that the General Assembly was establishing the boundaries by which claim preclusion and issue preclusion would be applied to a taxpayer in that the statute sets out the boundaries and establishes the scope of those events. A taxpayer may file and litigate once every three year cycle to challenge any issues surrounding the valuation of their property and; if they have already done so once in that cycle, they are precluded from doing so again, unless they meet a specific exception.

The specific issue at hand here, whether the property was sold in an arm's length transaction, is actually explicitly covered by R.C. 5715.19(A)(2)(a). Given that the legislature has already created a statute that specifically addresses the question that was presented to the BTA; when can a taxpayer litigate or possibly re-litigate the issue of whether a property was sold in an arm's length transaction; it was inappropriate of the BTA to ignore the statute and instead rely on case law that existed prior to the statute, and that we argue should be supplanted by the statute. Therefore, we would challenge the BTA's reliance on the 3-prong collateral estoppel test at all, as opposed to basing their decision on the framework provided by the General Assembly in R.C. 5715.19(A)(2), to deal with questions about re-litigation within a triennium. Had they done so, we believe that R.C. 5715.19(A)(2)(a) as well as the continuing complaint provisions of R.C. 5715.19(D) would have been instructive and determinative.

**Proposition of Law IV:
Jurisdictional issues should be determined as of the time
the complaint is filed; by process of statute or actual filing**

The third point of error that appellant argues is in essence an argument that relies on pure chronology, in that the BTA erred by looking at what the BOR did after the tax-year-2013 complaint would statutorily be considered filed. Both the appellees and the BTA are treating the 2013 and 2014 tax years as though they were distinct filings, separate from the tax year 2012 filing; in that, the tax year 2012 filing serves as the basis upon which collateral estoppel is being asserted against tax years 2013 and 2014. (If they are viewed as a collective unit, then collateral estoppel could not be asserted against a case which is itself still ongoing.) This is, we believe, the correct way to view it. R.C. 5715.19(D) states, “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.” This division expressly clarifies that the taxpayer does not need to submit a new filing each year while the complaint is working its way through the process; instead, the statute essentially automatically does this. This logic is further expressed in *1495 Jaeger L.L.C.* where the Court gave guidance that, in the event where the BTA gave a ruling on one year, but not the subsequent years, that the taxpayer may invoke the continuing-complaint provision at the board of revision itself. *1495 Jaeger L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 132 Ohio St.3d, 2012-Ohio-2680 at ¶ 21. Likewise, the taxpayer “would have the right to appeal an adverse ruling by the board of revision to the BTA – not as part of the former BTA case, but as a brand-new BTA appeal.” *Id.*

Even if each tax year is viewed as a distinct filing, the decision on tax year 2012 would not preclude a decision on the merits of tax years 2013 and 2014. In the case of *Soyko Kulchystsky, v. Cuyahoga Cty. Bd. of Revision*, the identical appellees argued that no jurisdiction existed to hear Soyko’s second protective filing, after the first had been decided by the BTA. (Instead of relying solely on continuing complaint provisions, Soyko submitted a second filing

while the first was still going through the appeals process out of “an abundance of caution.”) *Soyko Kulchystsky v. Cuyahoga Cty. Bd. of Revision*, 141 Ohio St.3d 43, 2014-Ohio-4511. The reason appellees gave in their brief was that, “when the sale at issue has been found, with respect to a prior complaint, not to have been at arm’s length, “the complainant may not file a second complaint within the interim period and urge that the sale price furnishes the criterion of value, because the sale price was already ‘taken into consideration’ for the earlier year.” *Id* at ¶ 35. Appellees lost the case because the Court reasoned that jurisdictional issues are determined at the time of filing, and at the time Soyko filed his second protective filing, the merits of the first filing had not yet been taken into consideration. *Id* at ¶ 28 – 36. The same appellees are back again with the same argument: there is a jurisdictional issue preventing the hearing of the second tax year, because the first tax year has already been decided upon. The appellees have changed the words slightly from second filing within a triennium to collateral estoppel, even though the concept; that the issue has already been heard and decided upon and therefore cannot be reheard, remains identical. Properly formulated, the crux of the matter is whether jurisdiction over the tax-year-2013 complaint should be determined as of the time the complaint was statutorily filed, or instead be determined in light of the entire course of proceedings on the earlier complaint – even events that occurred after R.C. 5715.19(D) became operational to effectively file the tax-year-2013 complaint. See *Id* at ¶ 29.

As with this Court in *Soyko*, we believe that all jurisdictional issues are determined at the time of filing. We also believe, and assert, that doing a protective filing like Soyko did is unnecessary; and that relying on the operation of the statute to do so is sufficient. R.C. 5715.19(D) explicitly states that the taxpayer does not need to do so in order to protect and preserve their rights as they relate to future tax years when the original case is still ongoing. In

other words, the taxpayer does not lose or gain any rights by not submitting a protective filing, or by submitting one “out of an abundance of caution,” like Soyko did. This, therefore, leads to one conclusion: The appellant constructively filed, by operation of statute, a complaint for tax year 2013 on March 31, 2014. (Likewise, similarly for tax year 2014). This is the last date that statute allows a filing to occur; therefore, if the currently ongoing case has not been determined by that date, R.C. 5715.19(D) becomes operational and the taxpayer would then have the right to address the next succeeding tax year valuation. See R.C. 5715.19(A)(1) and R.C. 5715.19(D).

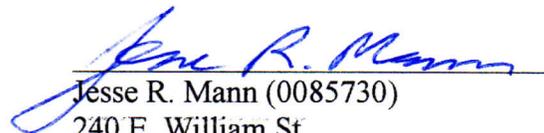
All matters of jurisdiction are determined at the time of filing. This includes collateral estoppel, which is jurisdiction over a particular issue (subject matter) and is based on whether the particular issue in question has been fully litigated and decided upon. At the point in time that R.C. 5715.19(D) became operational, on March 31, 2014 according to R.C. 5715.19(A)(1), the original filing was still ongoing and had not yet been decided. Therefore, collateral estoppel as a bar to going forward is not applicable or appropriate for tax-year-2013. The issue of whether an arm’s length sale took place had not been litigated at the point in time when the second year came into existence. Had the appellant physically submitted a second filing, like Soyko did, this would be clear. However, it cannot be said that the appellant would gain more rights or lose rights by physically submitting a protective second filing; as opposed to relying on R.C. 5715.19(D), especially when R.C. 5715.19(D) expressly and explicitly tells the taxpayer that they do not need to do so. Therefore, the BTA erred by applying collateral estoppel to this case.

CONCLUSION

Ultimately, the appellant has never once had the opportunity to challenge the county’s valuation of their property, where the standards, evidentiary levels, and the burdens being placed upon them have been known, so that they could then submit the evidence necessary to address

those standards. At this point, appellant has submitted an overwhelming amount of evidence to substantiate that an arm's length sale did take place. No contravening evidence of any kind has been submitted and no substantial arguments have been put forward to suggest that it was not. The only thing that has stopped this sale from being acknowledged as an arm's length sale and valued in accordance therewith; has been a changing, unknown standard; followed by procedural gamesmanship. Neither of those should be sufficient, as either a matter of law or of equity, to deny appellant the opportunity to have their property valued for taxation as the statutes intended.

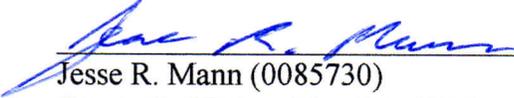
Respectfully submitted,



Jesse R. Mann (0085730)
240 E. William St.
Delaware, OH. 43015
(740) 362-0705
Counsel of Record for Appellant

Certificate of Service

I certify that a copy of this Merit Brief was sent by ordinary mail to counsel of record for appellees, Sandra Curtis-Patrick, Assistant Prosecuting Attorney, Cuyahoga County, 1200 Ontario Street, 8th floor, Cleveland, OH. 44113 and David H. Seed, Attorney for Appellee, Cleveland Municipal School District Board of Education, Brindza McIntyre & Seed, LLP, 1111 Superior Avenue, Suite 1025, Cleveland, OH. 44114, on July 22, 2016.


Jesse R. Mann (0085730)
Counsel of Record for Appellant

RECEIVED
BOARD OF TAX APPEALS

2016 APR 13 AM 11:46 IN THE SUPREME COURT OF OHIO

16-0541

Julia Realty LTD.,	:	
Appellant,	:	On Appeal from the Board
v.	:	of Tax Appeals
Cuyahoga County Board	:	
of Revision, et al.,	:	Board of Tax Appeals
Appellees.	:	Case No. 2015-657, 2015-658

NOTICE OF APPEAL OF APPELLANT JULIA REALTY LTD.

Jesse R. Mann (0085730) (Counsel of Record)
 240 E. William St.
 Delaware, OH. 43015
 (740) 362-0705

COUNSEL FOR APPELLANT, JULIA REALTY LTD.

Sandra Curtis-Patrick (0027907) (Counsel of Record)
 Assistant Prosecuting Attorney
 Cuyahoga County
 1200 Ontario Street, 8th Floor
 Cleveland, OH. 44113
 (216) 443-7790

FILED
 APR 12 2016
 CLERK OF COURT
 SUPREME COURT OF OHIO

COUNSEL FOR APPELLEE, CUYAHOGA COUNTY BOARD OF REVISION

David H. Seed (0066033) (Counsel of Record)
 Brindza McIntyre & Seed, LLP
 1111 Superior Avenue, Suite 1025
 Cleveland, OH. 44114
 (216) 621-5900

COUNSEL FOR APPELLEE, CLEVELAND MUNICIPAL SCHOOL DISTRICT BOARD OF
 EDUCATION

Notice of Appeal of Appellant Julia Realty LTD.

Appellant Julia Realty LTD., by and through counsel, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Board of Tax Appeals, entered in case No. 2015-657, 2015-658 on March 14, 2016.

For the following reasons the Board of Tax Appeals judgment was in error:

- I. The Board of Tax Appeals did not afford due process to Appellant's constitutional right to have property owned by them to be taxed in accordance with its value in light of the recent *Olentangy Local Schools Bd. Of Edn. v. Delaware Cty. Bd. Of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723 decision.
- II. The Board of Tax Appeals wrongly applied collateral estoppel to the complaints for tax years 2013 and 2014.
- III. The Board of Tax Appeals wrongly determined that the merits of the 2013 sale had already been taken into consideration for purposes of the 2013 and 2014 complaints in the context of the tax-year-2012 complaint.

Respectfully submitted,

Jesse R. Mann, Counsel of Record
Counsel for Appellant, Julia Realty LTD.

Certificate of Service

I certify that a copy of this Notice of Appeal was sent by certified mail to counsel for appellees, Sandra Curtis-Patrick, Assistant Prosecuting Attorney, Cuyahoga County, 1200 Ontario Street, 8th floor, Cleveland, OH. 44113 and David H. Seed, Attorney for Appellee, Cleveland Municipal School District Board of Education, Brindza McIntyre & Seed, LLP, 1111 Superior Avenue, Suite 1025, Cleveland, OH. 44114, on April 11, 2016.

Jesse R. Mann, Counsel of Record
Counsel for Appellant, Julia Realty LTD.

OHIO BOARD OF TAX APPEALS

JULIA REALTY LTD, (et. al.),

CASE NO(S). 2015-657, 2015-658

Appellant(s),

(REAL PROPERTY TAX)

vs.

DECISION AND ORDER

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

Appellee(s).

APPEARANCES:

For the Appellant(s)

- JULIA REALTY LTD
Represented by:
JESSE R. MANN
240 E. WILLIAM STREET
DELAWARE, OH 43015

For the Appellee(s)

- CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

CLEVELAND MUNICIPAL SCHOOL DISTRICT BOARD OF
EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Monday, March 14, 2016

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

Appellant appeals decisions of the board of revision ("BOR") which determined the value of the subject real properties, parcel numbers 014-18-003, 014-18-004, 014-18-045, 014-18-046 and 014-18-047, for tax year 2013. These matters are now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717, and the record of the hearing before this board.

The subject properties were initially assessed \$1,023,000 for parcel 014-18-003, \$268,500 for parcel 014-18-004, \$39,500 for parcel 014-18-045, \$39,000 for parcel 014-18-046, and \$38,700 for parcel 014-18-047. On March 4, 2015, the appellant property owner sent a letter to the BOR, which requested that the BOR exercise continuing complaint jurisdiction over the subject properties' values for tax years 2013 and 2014. The BOE filed a counter-complaint, which objected to any reductions to the subject properties' values.

At the hearing before the BOR, both parties were represented by counsel who appeared to submit argument and/or evidence in support of their respective positions. The appellant asserted that the BOR had continuing complaint jurisdiction based upon previously-filed complaints and counter-complaints for tax year 2012, which were not finally decided by this board until February 2, 2015. See, *Julia Realty Ltd. v. Cuyahoga Cty. Bd. of Revision* (Feb. 2, 2015), BTA No. 2013-6048 et seq., unreported. In said decision, we determined that the auction sale upon which the appellant relied was not an arm's-length transaction and, therefore, not the best indication of the subject properties' values for tax year 2012, the first year of the triennial period in Cuyahoga County. At the BOR hearing, the appellant asserted that it wanted to submit the witness testimony that this board said was lacking in the tax year 2012 appeals, based upon recent changes to case law, i.e., *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723, at ¶43 ("when the underlying transaction is an auction or forced sale, the proponent of the sale price bears a heavier burden. *** Accordingly, we likewise adjust the typical burdens of proof with regard to sale prices. Namely, the opponent of a sale price has a very light burden to establish that a transaction was on its face an auction or forced sale. Once that threshold has crossed, then the proponent of the sale price bears the burden to prove that the sale was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value."). As such, in an effort to satisfy the standard set forth in *Olentangy*, the appellant submitted the testimony of its member, Hahem Nouraldin, who detailed the facts and circumstances of the subject properties' collective transfer for \$367,500 from First States Investors DB I SP, LP in February 2013, and also submitted a copy of an email from the auction website, which provided additional details of the transaction.

The BOE argued that doctrine of claim preclusion (also known as collateral estoppel or res judicata) barred the appellant from relitigating the arm's-length character of the auction sale and continuing complaint jurisdiction did not overcome such bar. Apparent from the record, the BOR members agreed with the BOE's argument as the parties engaged in substantial discussion on this issue. The BOR subsequently issued a decision, which retained the initially assessed values, and these appeals ensued.

At this board's hearing, only the appellant appeared, through counsel, to submit additional argument into the record and to resubmit the email from the auction website because the document was not included in the statutory transcript certified by the fiscal officer.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129. However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, 412.

In these matters, none of the parties dispute the details of the transfer of the subject properties to the appellant in February 2013. The parties differ, however, on whether collateral estoppel bars the appellant from relitigating the arm's-length nature of the transfer. The Supreme Court has previously discussed the applicability of collateral estoppel in ad valorem tax cases. In *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009-Ohio-2461, the Supreme Court held:

"To be sure, we have acknowledged a narrow range of applicability for the doctrine of collateral estoppel in tax proceedings. See *Superior's Brand Meats, Inc. v. Lindley* (1980), 62 Ohio St.2d 133, 135-136, ***. For purposes of collateral estoppel, the ultimate issue of tax value in one tax year does not constitute the 'same issue' as the ultimate issue of tax value in a

different year. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Dec. 28, 1993), Franklin App. 92AP-1715, ***; accord *Hubbard Press v. Tracy* (1993), 67 Ohio St.3d 564, 565, ***. But the determination in an earlier year of a *discrete factual/legal issue that is common to successive tax years* may bar relitigation of that discrete issue in the later years. *Columbus Bd. of Edn.* *** (owner could not relitigate the issue of the arm's-length character of a particular sale of the property when the owner had litigated and lost that issue on a valuation complaint pertaining to a prior year)." (Emphasis added.) Id. at ¶ 17.

See, also *Residenz, LLC v. Montgomery Cty. Bd. of Revision* (May 2, 2008), BTA No. 2006-A-2246, unreported (this board concluded that collateral estoppel precluded this board from redetermining the arm's-length nature of a sale because we had determined that issue in a prior year's appeal). Furthermore, in *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36, the court stated: "In *Thompson v. Wing* (1994), 70 Ohio St.3d 176, 183, ***, we stated that collateral estoppel was applicable when the fact or issue '(1) was actually and directly litigated in the prior action, (2) was passed upon and determined by a court of competent jurisdiction, and (3) when the party against whom collateral estoppel is asserted was in privity with the party to the prior action.'" Id. at 41.

Based upon the foregoing, we likewise find that collateral estoppel bars the appellant from relitigating the arm's-length nature of the transfer in February 2013. Both the BOR and this board, tribunals of competent jurisdiction, have previously determined that the subject properties' transfer was not an arm's-length transaction in the appellant's tax year 2012 appeals. See, *Julia Realty*, supra. The appellant, as the party against whom collateral estoppel was asserted, is, therefore, precluded from making the same argument in these tax year 2013 appeals. As a result, in these matters, the only issue properly before the BOR and this board is whether the February 2013 transfer was "recent" to the tax lien date of January 1, 2013. Neither party disputed the recency of the February 2013 transfer. See, generally, *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶35 (recency "encompasses all factors that would, by changing with the passage of time, affect the value of the property"); *New Winchester Gardens*, supra, at 44 (recency factors include "changes that have occurred in the market").

Even if we had had the opportunity to consider the arm's-length nature of the transfer in February 2013, we would not have accorded any evidentiary weight to the email from the auction website as such email was unreliable hearsay. While this board is not strictly bound by the Ohio Rules of Evidence, documents of the nature submitted, which were offered to prove the value claimed by the appellant, are clearly unreliable hearsay. See, e.g., *Dellick v. Eaton Corp.*, Mahoning App. No. 03-MA-246, 2005-Ohio-566, ¶25 ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). Generally, hearsay is inadmissible. Evid.R. 802.").

We note that the appellant argued violations of the Ohio Constitution or the United States Constitution in advancing these appeals. While the Ohio Supreme Court has authorized this board to accept evidence on constitutional points, it has clearly stated that this board has no jurisdiction to decide constitutional claims. *Cleveland Gear Co. v. Limbach* (1988), 35 Ohio St.3d 229; *MCI Telecommunications Corp. v. Limbach* (1994), 68 Ohio St.3d 195. Therefore, we acknowledge appellant's constitutional claims on appeal, but make no findings in relation to said claim(s).

In reviewing this matter, we are mindful of our duty to independently determine the subject properties' values. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15 (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). As such, we find that collateral estoppel precluded the appellant from relitigating the arm's-length nature of the underlying sale in these matters. In so doing, we affirm the BOR's decision.

It is, therefore, the order of this board that the subject properties' true and taxable values as of January 1, 2013 are as follows:

PARCEL NUMBER

014-18-003

TRUE VALUE

\$1,023,000

TAXABLE VALUE

\$358,050

PARCEL NUMBER

014-18-004

TRUE VALUE

\$268,500

TAXABLE VALUE

\$93,970

PARCEL NUMBER

014-18-045

TRUE VALUE

\$39,500

TAXABLE VALUE

\$13,820

PARCEL NUMBER

014-18-046

TRUE VALUE

\$39,000

TAXABLE VALUE

\$13,650

PARCEL NUMBER

014-18-047

TRUE VALUE

\$38,700

TAXABLE VALUE

\$13,540

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

JULIA REALTY LTD, (et. al.),

CASE NO(S). 2015-657, 2015-658

Appellant(s),

(REAL PROPERTY TAX)

vs.

DECISION AND ORDER

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

Appellee(s).

APPEARANCES:

For the Appellant(s) - JULIA REALTY LTD
Represented by:
JESSE R. MANN
240 E. WILLIAM STREET
DELAWARE, OH 43015

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

CLEVELAND MUNICIPAL SCHOOL DISTRICT BOARD OF
EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Monday, March 14, 2016

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

Appellant appeals decisions of the board of revision ("BOR") which determined the value of the subject real properties, parcel numbers 014-18-003, 014-18-004, 014-18-045, 014-18-046 and 014-18-047, for tax year 2013. These matters are now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717, and the record of the hearing before this board.

The subject properties were initially assessed \$1,023,000 for parcel 014-18-003, \$268,500 for parcel 014-18-004, \$39,500 for parcel 014-18-045, \$39,000 for parcel 014-18-046, and \$38,700 for parcel 014-18-047. On March 4, 2015, the appellant property owner sent a letter to the BOR, which requested that the BOR exercise continuing complaint jurisdiction over the subject properties' values for tax years 2013 and 2014. The BOE filed a counter-complaint, which objected to any reductions to the subject properties' values.

At the hearing before the BOR, both parties were represented by counsel who appeared to submit argument and/or evidence in support of their respective positions. The appellant asserted that the BOR had continuing complaint jurisdiction based upon previously-filed complaints and counter-complaints for tax year 2012, which were not finally decided by this board until February 2, 2015. See, *Julia Realty Ltd. v. Cuyahoga Cty. Bd. of Revision* (Feb. 2, 2015), BTA No. 2013-6048 et seq., unreported. In said decision, we determined that the auction sale upon which the appellant relied was not an arm's-length transaction and, therefore, not the best indication of the subject properties' values for tax year 2012, the first year of the triennial period in Cuyahoga County. At the BOR hearing, the appellant asserted that it wanted to submit the witness testimony that this board said was lacking in the tax year 2012 appeals, based upon recent changes to case law, i.e., *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723, at ¶43 ("when the underlying transaction is an auction or forced sale, the proponent of the sale price bears a heavier burden. *** Accordingly, we likewise adjust the typical burdens of proof with regard to sale prices. Namely, the opponent of a sale price has a very light burden to establish that a transaction was on its face an auction or forced sale. Once that threshold has crossed, then the proponent of the sale price bears the burden to prove that the sale was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value."). As such, in an effort to satisfy the standard set forth in *Olentangy*, the appellant submitted the testimony of its member, Hahem Nouraldin, who detailed the facts and circumstances of the subject properties' collective transfer for \$367,500 from First States Investors DB I SP, LP in February 2013, and also submitted a copy of an email from the auction website, which provided additional details of the transaction.

The BOE argued that doctrine of claim preclusion (also known as collateral estoppel or res judicata) barred the appellant from relitigating the arm's-length character of the auction sale and continuing complaint jurisdiction did not overcome such bar. Apparent from the record, the BOR members agreed with the BOE's argument as the parties engaged in substantial discussion on this issue. The BOR subsequently issued a decision, which retained the initially assessed values, and these appeals ensued.

At this board's hearing, only the appellant appeared, through counsel, to submit additional argument into the record and to resubmit the email from the auction website because the document was not included in the statutory transcript certified by the fiscal officer.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129. However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, 412.

In these matters, none of the parties dispute the details of the transfer of the subject properties to the appellant in February 2013. The parties differ, however, on whether collateral estoppel bars the appellant from relitigating the arm's-length nature of the transfer. The Supreme Court has previously discussed the applicability of collateral estoppel in ad valorem tax cases. In *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009-Ohio-2461, the Supreme Court held:

"To be sure, we have acknowledged a narrow range of applicability for the doctrine of collateral estoppel in tax proceedings. See *Superior's Brand Meats, Inc. v. Lindley* (1980), 62 Ohio St.2d 133, 135-136, ***. For purposes of collateral estoppel, the ultimate issue of tax value in one tax year does not constitute the 'same issue' as the ultimate issue of tax value in a

different year. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Dec. 28, 1993), Franklin App. 92AP-1715, ***; accord *Hubbard Press v. Tracy* (1993), 67 Ohio St.3d 564, 565, ***. But the determination in an earlier year of a *discrete factual/legal issue that is common to successive tax years* may bar relitigation of that discrete issue in the later years. *Columbus Bd. of Edn.* *** (owner could not relitigate the issue of the arm's-length character of a particular sale of the property when the owner had litigated and lost that issue on a valuation complaint pertaining to a prior year)." (Emphasis added.) Id. at ¶ 17.

See, also *Residenz, LLC v. Montgomery Cty. Bd. of Revision* (May 2, 2008), BTA No. 2006-A-2246, unreported (this board concluded that collateral estoppel precluded this board from redetermining the arm's-length nature of a sale because we had determined that issue in a prior year's appeal). Furthermore, in *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36, the court stated: "In *Thompson v. Wing* (1994), 70 Ohio St.3d 176, 183, ***, we stated that collateral estoppel was applicable when the fact or issue '(1) was actually and directly litigated in the prior action, (2) was passed upon and determined by a court of competent jurisdiction, and (3) when the party against whom collateral estoppel is asserted was in privity with the party to the prior action.'" Id. at 41.

Based upon the foregoing, we likewise find that collateral estoppel bars the appellant from relitigating the arm's-length nature of the transfer in February 2013. Both the BOR and this board, tribunals of competent jurisdiction, have previously determined that the subject properties' transfer was not an arm's-length transaction in the appellant's tax year 2012 appeals. See, *Julia Realty*, supra. The appellant, as the party against whom collateral estoppel was asserted, is, therefore, precluded from making the same argument in these tax year 2013 appeals. As a result, in these matters, the only issue properly before the BOR and this board is whether the February 2013 transfer was "recent" to the tax lien date of January 1, 2013. Neither party disputed the recency of the February 2013 transfer. See, generally, *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶35 (recency "encompasses all factors that would, by changing with the passage of time, affect the value of the property"); *New Winchester Gardens*, supra, at 44 (recency factors include "changes that have occurred in the market").

Even if we had had the opportunity to consider the arm's-length nature of the transfer in February 2013, we would not have accorded any evidentiary weight to the email from the auction website as such email was unreliable hearsay. While this board is not strictly bound by the Ohio Rules of Evidence, documents of the nature submitted, which were offered to prove the value claimed by the appellant, are clearly unreliable hearsay. See, e.g., *Dellick v. Eaton Corp.*, Mahoning App. No. 03-MA-246, 2005-Ohio-566, ¶25 ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). Generally, hearsay is inadmissible. Evid.R. 802.").

We note that the appellant argued violations of the Ohio Constitution or the United States Constitution in advancing these appeals. While the Ohio Supreme Court has authorized this board to accept evidence on constitutional points, it has clearly stated that this board has no jurisdiction to decide constitutional claims. *Cleveland Gear Co. v. Limbach* (1988), 35 Ohio St.3d 229; *MCI Telecommunications Corp. v. Limbach* (1994), 68 Ohio St.3d 195. Therefore, we acknowledge appellant's constitutional claims on appeal, but make no findings in relation to said claim(s).

In reviewing this matter, we are mindful of our duty to independently determine the subject properties' values. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15 (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). As such, we find that collateral estoppel precluded the appellant from relitigating the arm's-length nature of the underlying sale in these matters. In so doing, we affirm the BOR's decision.

It is, therefore, the order of this board that the subject properties' true and taxable values as of January 1, 2013 are as follows:

PARCEL NUMBER

014-18-003

TRUE VALUE

\$1,023,000

TAXABLE VALUE

\$358,050

PARCEL NUMBER

014-18-004

TRUE VALUE

\$268,500

TAXABLE VALUE

\$93,970

PARCEL NUMBER

014-18-045

TRUE VALUE

\$39,500

TAXABLE VALUE

\$13,820

PARCEL NUMBER

014-18-046

TRUE VALUE

\$39,000

TAXABLE VALUE

\$13,650

PARCEL NUMBER

014-18-047

TRUE VALUE

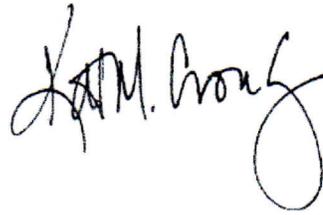
\$38,700

TAXABLE VALUE

\$13,540

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



Scan this QR code with your smartphone to see your complaints status online.



Cuyahoga County Administrative Headquarters
Board of Revision - 2nd Floor
2079 E 9th St
Cleveland, OH 44115

Jesse R. Mann
240 E William St
Delaware, OH 43015

RE: 014-18-003-2013
JULIA REALTY LTD

DECISION NOTICE

5/18/2015

Complaint #: 014-18-003-2013

The Board of Revision has rendered a decision for Tax Year 2013.

The following page describes the details for each parcel that was decided on for this complaint. Each parcel will have one of three possible decisions: No Change, Dismissed or Value Change.

	Total Current Values	Total New Values	Decision
Parcel Number: 014-18-003			
			No Change
Land	\$223,400	\$223,400	\$0
Building	\$799,600	\$799,600	\$0
Total	\$1,023,000	\$1,023,000	\$0

	Total Current Values	Total New Values	Decision
Parcel Number: 014-18-004			
			No Change
Land	\$45,800	\$45,800	\$0
Building	\$222,700	\$222,700	\$0
Total	\$268,500	\$268,500	\$0

	Total Current Values	Total New Values	Decision
Parcel Number: 014-18-045			
			No Change
Land	\$32,200	\$32,200	\$0
Building	\$7,300	\$7,300	\$0
Total	\$39,500	\$39,500	\$0

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, any value change(s) will be processed.

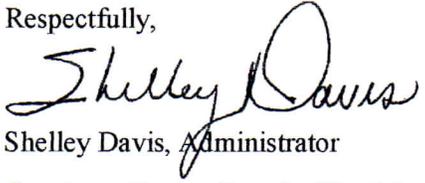
BOARD OF TAX APPEALS
Rhodes Tower
30 East Broad St, 24th Floor
Columbus, OH 43215

or

Cuyahoga County Court of Common Pleas
Justice Center, Clerk of Courts Office
1200 Ontario St
Cleveland, OH 44113

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

Respectfully,

A handwritten signature in cursive script that reads "Shelley Davis". The signature is written in black ink and is positioned above the printed name.

Shelley Davis, Administrator

Cuyahoga County Board of Revision

cc: School Board and/or Attorney if applicable

OHIO BOARD OF TAX APPEALS

JULIA REALTY LTD, (et. al.),

CASE NO(S). 2013-6048, 2013-6049

Appellant(s),

(REAL PROPERTY TAX)

vs.

DECISION AND ORDER

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

Appellee(s).

APPEARANCES:

For the Appellant(s)

- JULIA REALTY LTD
Represented by:
JESSE R. MANN
240 E. WILLIAM STREET
DELAWARE, OH 43015

For the Appellee(s)

- CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

CLEVELAND METROPOLITAN SCHOOL DISTRICT
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Monday, February 2, 2015

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

Appellant appeals decisions of the board of revision ("BOR") which determined the values of the subject real properties, parcel numbers 014-18-003, 014-18-004, 014-18-045, 014-18-046, and 014-18-047. These matters are now considered upon the notices of appeal and the transcripts certified by the BOR pursuant to R.C. 5717.01. The subjects' total true aggregate value was initially assessed at \$1,408,700. A decrease complaint was filed with the BOR seeking an aggregate reduction in value to \$367,500. A counter complaint was filed on behalf of the Board of Education for the Cleveland Municipal School District requesting the initially assessed valuations be maintained. The BOR issued decisions maintaining the initially assessed valuations of each of the subject properties, which led to the present appeals.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. It

has long been held by the Supreme Court that “the best evidence of ‘true value in money’ of real property is an actual, recent sale of the property in an arm’s-length transaction.” *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129. However, several factors may render a sale an unreliable indicator of value, e.g., changes have occurred to the property/market between the sale and tax lien dates rendering the sale remote for valuation purposes. In determining whether a sale is considered recent to or remote from a tax lien date, courts have declined to establish a “bright line” test for such determination, recognizing that a variety of factors, in addition to time, may have a bearing. See, generally, *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36, overruled in part on other grounds; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932. Additionally, in *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, the Supreme Court explained that a qualifying sale for tax purposes is conducted at arm’s length, between unrelated parties, and is “characterized by these elements: it is voluntary, i.e. without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest.” *Id.* at 25.

In the present matter, although the subject properties transferred (in bulk) between First States Investors DB I SP, L.P. and Julia Realty LTD on February 1, 2013 for \$367,500, we do not find such sale to be a reliable indication of the subjects' values because sale documentation contained in record reveals that such transfer was the result of an auction. While we acknowledge, typically, a sale price is the best evidence of a property's value, the court in *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, Slip Opinion No. 2014-Ohio-4723, recently held that "R.C. 5713.04 reverses the typical presumption that a sale price is the best evidence of a property's value when the underlying transaction was an auction or a forced sale." *Id.* at ¶43. Continuing, the court further explained "[o]nce that threshold is crossed, then the proponent of the sale price bears the burden to prove that the sale was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value." *Id.* at ¶43. Here, because the 2013 transfer was the result of an auction, appellant was required, but failed, to prove that such transfer was the result of an arm's length transaction. While we acknowledge that counsel appeared and presented legal argument on behalf of the appellant before the BOR, we also recognize that there was no sworn testimony of any witness before the BOR, or before this board, regarding the auction transfer. Statements of counsel are not evidence. *Corporate Exchange Bldgs. IV & V, L.P. v. Franklin Cty. Bd. of Revision* (1998), 82 Ohio St.3d 297, 299. See, also, *Hardy v. Delaware Cty. Bd. of Revision*, 106 Ohio St.3d 359, 2005-Ohio-5319, at ¶13, (discussing adverse consequences which may result from a party's failure to present witness testimony before the board and electing instead to rely upon documentary exhibits discussed by counsel).

In the absence of a qualifying sale, we are mindful of the Supreme Court’s longstanding pronouncement holding that while a qualifying sale typically provides “[t]he best method of determining value *** such information is not usually available, and thus an appraisal becomes necessary.” *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. See also Justice Pfeifer’s concurrence in *LTC Properties, Inc. v. Licking Cty. Bd. of Revision*, 133 Ohio St.3d 111, 2012-Ohio-3930. In the absence of a qualifying sale, appellant was required, but failed, to provide a competent appraisal of the subject property, attested to by a qualified expert, for the tax lien date in issue.

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47, 49 (“Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision’s valuation, without the board of revision’s presenting any evidence.”).

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2012, were as follows:

PARCEL NUMBER

014-18-003

TRUE VALUE

\$1,023,000

TAXABLE VALUE

\$358,050

PARCEL NUMBER

014-18-004

TRUE VALUE

\$268,500

TAXABLE VALUE

\$93,970

PARCEL NUMBER

014-18-045

TRUE VALUE

\$39,500

TAXABLE VALUE

\$13,820

PARCEL NUMBER

014-18-046

TRUE VALUE

\$39,000

TAXABLE VALUE

\$13,650

PARCEL NUMBER

014-18-047

TRUE VALUE

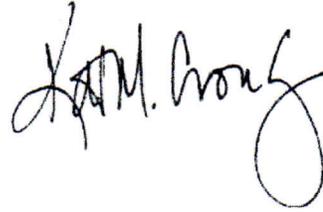
\$38,700

TAXABLE VALUE

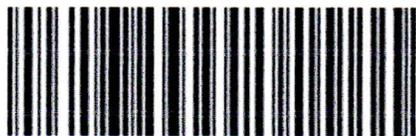
\$13,540

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Mr. Johrendt		
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



7118 9042 9551 1556 1716

Whitlatch Building
BOARD OF REVISION, 3rd Floor
1910 Carnegie Ave
Cleveland, OH 44115



JESSE R. MANN ESQ
240 E WILLIAM ST
DELAWARE, OH 43015

RE: 014-18-003-2012

DECISION NOTICE

10/22/2013

Parcel: 01418003 et al

The Board of Revision has rendered a decision for Tax Year 2012.

Parcel No: 01418003 NO CHANGE

This decision was based on either; insufficient evidence, evidence didn't support a value change, testimony didn't support opinion of value, taxpayer and or witnesses could not be cross examined.

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.**

BOARD OF TAX APPEALS
Rhodes Tower
30 East Broad St, 24th Floor
Columbus, OH 43215

or

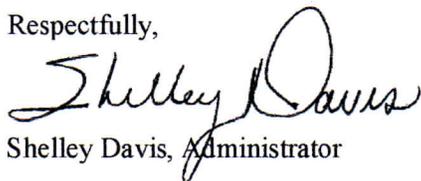
Cuyahoga County Court of Common Pleas
Justice Center, Clerk of Courts Office
1200 Ontario St
Cleveland, OH 44113

614-466-6700 or <http://bta.ohio.gov>
Form DTE 4

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

	Total Current Values	Total New Values	Decision
Parcel Number: 01418003			
Land	\$223,400.00	\$223,400.00	\$0.00
Building	\$799,600.00	\$799,600.00	\$0.00
Total	\$1,023,000.00	\$1,023,000.00	\$0.00
Parcel Number: 01418004			
Land	\$45,800.00	\$45,800.00	\$0.00
Building	\$222,700.00	\$222,700.00	\$0.00
Total	\$268,500.00	\$268,500.00	\$0.00
Parcel Number: 01418045			
Land	\$32,200.00	\$32,200.00	\$0.00
Building	\$7,300.00	\$7,300.00	\$0.00
Total	\$39,500.00	\$39,500.00	\$0.00



(<https://www.cornell.edu>)Cornell University Law School (<http://www.lawschool.cornell.edu/>)Search Cornell

(<https://www.cornell.edu/search/>)

U.S. Constitution (/constitution/overview)

Fifth Amendment

The Fifth Amendment creates a number of rights (http://www.law.cornell.edu/anncon/html/amdt5toc_user.html) relevant to both criminal and civil legal proceedings. In criminal cases (http://www.law.cornell.edu/wex/criminal_law), the Fifth Amendment guarantees the right to a grand jury (http://www.law.cornell.edu/wex/grand_jury), forbids “double jeopardy (http://www.law.cornell.edu/wex/double_jeopardy),” and protects against self-incrimination (<http://www.law.cornell.edu/wex/self-incrimination>). It also requires that “due process of law (http://www.law.cornell.edu/wex/due_process)” be part of any proceeding that denies a citizen “life, liberty or property” and requires the government to compensate citizens when it takes private property (<http://www.law.cornell.edu/wex/takings>) for public use.

Learn more... (http://www.law.cornell.edu/wex/fifth_amendment)

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Wex Resources

Fifth Amendment (http://www.law.cornell.edu/wex/fifth_amendment)

Criminal Law (http://www.law.cornell.edu/wex/criminal_law) / Criminal Procedure (http://www.law.cornell.edu/wex/criminal_procedure)

Due Process (http://www.law.cornell.edu/wex/due_process)

Substantive Due Process (http://www.law.cornell.edu/wex/substantive_due_process)

Miranda Warning (http://www.law.cornell.edu/wex/miranda_warning)

Indictment (<http://www.law.cornell.edu/wex/indictment>)

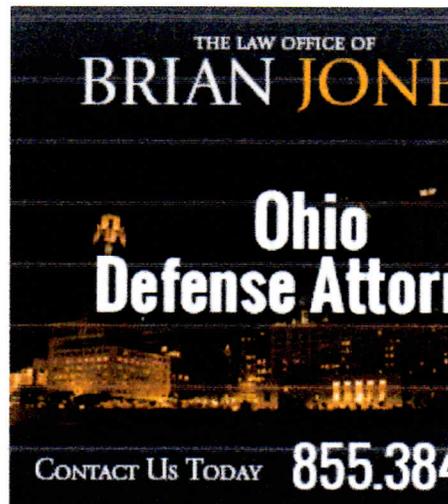
Constitution Toolbox

LII on your phone:



(<https://itunes.apple.com/us/app/lawlibe/id403807492>)

- Explanation of the Constitution (/anncon/) - from the Congressional Research Service





(<https://www.cornell.edu>) Cornell University Law School (<http://www.lawschool.cornell.edu/>) Search Cornell (<https://www.cornell.edu/search/>)

U.S. Constitution (/constitution/overview)

14th Amendment

The Fourteenth Amendment addresses many aspects of citizenship and the rights of citizens. The most commonly used -- and frequently litigated -- phrase in the amendment is "equal protection of the laws" (http://www.law.cornell.edu/wex/equal_protection/), which figures prominently in a wide variety of landmark cases, including *Brown v. Board of Education* (<http://www.law.cornell.edu/supremecourt/text/347/483>) (racial discrimination), *Roe v. Wade* (<http://www.law.cornell.edu/supremecourt/text/410/113>) (reproductive rights), *Bush v. Gore* (<http://www.law.cornell.edu/supct/html/00-949.ZPC.html>) (election recounts), *Reed v. Reed* (<http://www.law.cornell.edu/supremecourt/text/404/71>) (gender discrimination), and *University of California v. Bakke* (<http://www.law.cornell.edu/supremecourt/text/438/265>) (racial quotas in education). See more (https://www.law.cornell.edu/wex/fourteenth_amendment_0)...

Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male (/constitution/amendmentxix) inhabitants of such state, being twenty-one years of age (/constitution/amendmentxxvi), and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the

Constitution Toolbox

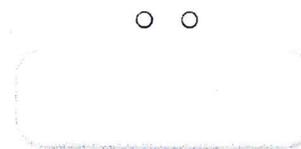
LII on your phone:



(<https://itunes.apple.com/us/app/lawlibe/id403807492>)

- Explanation of the Constitution (/anncon/) - from the Congressional Research Service

Injured at S
Time is of the Esse
Free Consultations
Call Now.



proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

wex resources

Section 1.

Privileges and Immunities Clause (http://www.law.cornell.edu/wex/privileges_and_immunities_clause)

Civil Rights (http://www.law.cornell.edu/wex/civil_rights)

Slaughterhouse Cases (http://www.law.cornell.edu/wex/slaughterhouse_cases)

Due Process (http://www.law.cornell.edu/wex/due_process)

Substantive Due Process (http://www.law.cornell.edu/wex/substantive_due_process)

Right of Privacy: Personal Autonomy (http://www.law.cornell.edu/wex/personal_autonomy)

Territorial Jurisdiction (http://www.law.cornell.edu/wex/territorial_jurisdiction)

Equal Protection (http://www.law.cornell.edu/wex/equal_protection)



Find a Lawyer

Lawyers

near Delaware, Ohio

Lawyers: get listed for free!
(<https://lawyers.justia.com/signup?ref=cornell>)



(<https://lawyers.law.cornell.edu/lawyer/matthew-s-zeiger-471298>)

Matthew S. Zeiger

(<https://lawyers.law.cornell.edu/lawyer/matthew-s-zeiger-471298>)

Business Law, Civil Rights,
Communications & Internet Law,
Entertainment & Sports, Gov &
Administrative Law, Legal
Malpractice
Columbus, OH
gold Badge



(<https://lawyers.law.cornell.edu/lawyer/gus-m-shihab-esq-473148>)

Gus M. Shihab Esq

(<https://lawyers.law.cornell.edu/lawyer/gus-m-shihab-esq-473148>)

Immigration Law
Columbus, OH
gold Badge



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,

25

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.

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

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