Ohio Board of Tax Appeals Decisions

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Taxpayer's appeal dismissed when taxpayer relies upon inaccurate information received from county employee about requirements to perfect appeal.

The pro se appellant filed an appeal with the BTA, but failed to file a copy of the appeal with the Lake County Board of Revision. The property owner claimed that during the 30-day appeal period he contacted the Lake County Auditor's Office and was told to file the appeal in Columbus. The property owner argued that he mailed a copy of his appeal to the Lake County prosecutor. However, the property owner was unable to establish that his appeal was properly filed with the Board of Revision. The BTA found that it lacked jurisdiction over the appeal because the property owner failed to comply with filing requirements (in this case filing of the appeal with the Board of Revision). The BTA stated that the filing of the appeal with the prosecuting attorney is insufficient as the prosecutor is not authorized to accept such appeals on behalf of the BOR. Additionally this case establishes that a property owner should not rely upon information given by a county employee because in the event that the information is not accurate and there is not full compliance with the statute, a case may be subject to dismissal.

*Kinat v. Lake Cty. Bd. of Revisio*n (Oct. 2, 2012), BTA No. 2010-Y-1213.

Second complaint filed in triennial dismissed, despite listing an enumerated exception on the complaint.

A property owner filed multiple complaints in same triennial period and asserted that he established one of the four exceptions. The taxpayer asserted that the basis for the second complaint in the same triennial was due to the fact that a "substantial improvement added to property." However, despite the improvement to the property, the taxpayer sought a decrease in value. The BTA found that he impermissibly filed multiple complaints within the same triennial and

that it was an impermissible second filing because a property owner cannot use the fact that an improvement was added then turn argue for a reduction in value.

Washington v. Cuyahoga Cty. Bd. of Revision (Oct. 2, 2012), BTA No. 2011-W-2551.

A second complaint in the same triennial is proper if the fiscal officer changes value.

The Summit County Board of Revision dismissed the complaints filed by the property as impermissible second filings within the same triennial. The property owner argued that the complaints were warranted because the auditor/fiscal officer changed value. The property owner argued that the values previously determined by the fiscal officer should carry-forward to the last year of the triennial. The BTA did not address the argument advanced by the property owner that the fiscal officer "illegally" changed value, but did indicate that the complaints must be remanded to the Board of Revision to address the valuation issue as jurisdiction was proper because of the change in value. Therefore, if an assessor changes a property's value following the filing of the complaint, the statutory prohibition of filing multiple complaints within the same triennial does not apply.

Brookledge II v. Summit Cty. Bd. of Revision (Oct. 2, 2012), BTA No. 2011-K-3493 through 2011-K-3675.

Sale of property between related entities is not an arm's-length sale where seller retains interest in purchasing entities.

The BTA considered a case involving the value of a property that was part of a multi-property bulk sale. The Board of Education (BOE) filed a complaint seeking an increase in the value of the property to the allocated purchase price. The BOR reviewed the sale and decided to retain the auditor's value, which was lower than the sale price. The BOE appealed to the BTA. On appeal, the owner argued that the sale was not arm's-length in nature because it had been between related entities. After reminding the appellant BOE that it had the burden of persuasion in this instance, the BOR not having adopted the sale price, the BTA agreed with the owner that the sale was not made at arm's length. The BTA found that the buyer and seller were made up of related members. Thus, it concluded that "the property owner has clearly demonstrated that regardless of the percentage of ownership that the various Sealy-related entities have in the buyer and seller and their principles, Mark and Scott Sealy, 'control all of them.'" The BTA also noted that the related entities had an ongoing relationship beyond the buying and selling of the property, as indicated by the fact hat the same person signed the purchase agreement for both the buyer and seller.

Hamilton Local Schools Board of Edn. v. Franklin Cty. Bd. of Revision (Oct. 9. 2012), BTA No. 2009-A-896.

Common property within condominium, separately parceled, to be valued at its unencumbered fee simple value.

The owner of a building and land used in common by the individual owners of condominium properties in a development sought to have the value of the common area reduced to zero. The owner argued that, under R.C. 5311.11, "common elements of the condominium property" are not to be separately taxed. The BOR agreed and reduced the parcel's value to zero. On appeal the BTA reinstated the auditor's value for

the parcel. The BTA, relying upon *Muirfield Assn., Inc. v. Franklin Cty. Bd. of Revision* (1995), 73 Ohio 3d 710, determined that the common area needed to be valued at the "fee simple estate, unencumbered by the voluntarily undertaken restrictions contained" in any deed.

Bd. of Edn. of the Lancaster City Schools v. Fairfield Cty. Bd. of Revision (Oct. 9, 2012), BTA No. 2010-Q-1332.

Where receiver had express authority to contest real estate tax, complaint signed by receiver should not have been dismissed by the Board of Revision.

Both cases present the same fact pattern. While both properties were in receivership, the receiver filed a complaint contesting the real property tax valuation with the Board of Revision. Previously, the BTA had dismissed complaints filed by receivers where it found that the receiver had acted outside the scope of authority expressly granted by a court. *See Bd. of Edn. for the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Apr. 13, 2010), BTA No. 2009-V-2868 and *Sanborn Place Mgmt. v. Franklin Cty. Bd. of Revision* (Aug. 21, 2012), BTA No. 2012-K-1465. In these cases, such authority was expressly granted. As a result, the dismissals by the Board of Revision were reversed and the cases were remanded.

Schirm Farms Realty LLC et al. v. Franklin Cty. Bd. of Revision (Oct. 16, 2012), BTA No. 2012-A-1470. *Beneson Columbus-OH Trust et al. v. Franklin Cty. Bd. of Revision* (Oct. 16, 2012), BTA No. 2012-A-1475.

Statutory exception allowing a complaint dismissed due to unauthorized practice of law to be re-filed only applied to the initial year not subsequent years in the triennial.

A previous complaint for 2009, filed by a non-attorney employee, controller of the property owner had been dismissed by the Board of Revision as the unauthorized practice of law (i.e., *Sharon Village*) and no appeal was taken from that dismissal. A complaint was then filed for the subsequent year in the same triennial by counsel indicating that the complaint was allowed pursuant to R.C. 5715.19(A)(3), which permits parties to "refile" a complaint for a prior year when the complaint had been dismissed for unauthorized practice reasons. Applying previous decisions, the BTA found that the statutory provision only allowed for the re-filing of *the* complaint; not a complaint for a subsequent year. As a result the second complaint was properly dismissed by the Board of Revision.

G.E.W. Mgmt. Co. v. Franklin Cty. Bd. of Revision (Oct. 17, 2012), BTA No. 2012-K-2040.

BTA reaffirms that a Low Income Tax Credit (LIHTC) property must be valued by taking into account the use restrictions placed upon the property.

A complaint was filed seeking a reduction in value for a property that consists of two apartment complexes operated under the LIHTC program. In support of its requested valuation, the property owner submitted an appraisal report which appraised the apartment complexes together utilizing the income capitalization approach and as additional support the sales comparison approach. In the income approach the appraiser used actual rental rates and actual vacancy, along with expenses derived from both actual and market data. The apartment complexes were appraised as a single economic unit. The Hamilton County Board of Revision declined to accept the appraisal. The auditor and Board of Education argued that the failure to

use market data and the use of a single appraisal to value separate apartment complexes made the opinion of value unreliable. However, the BTA found that actual expenses and actual vacancy rates are appropriate when valuing LIHTC properties and that a single appraisal was proper because of the restrictive covenant found in the deeds that prevented separate sales. The BTA then determined that the appraisal evidence submitted by the property owner was the best evidence of value. The auditor and Board of Education have filed an appeal with the Ohio Supreme Court.

Glen Meadows Apts. Limited Part. V. Hamilton Cty. Bd. of Revision (Nov. 6, 2012), BTA No. 2009-Q-3460. Ohio Supreme Court Docket No. 2012-1997.

Despite finding evidence of property owner insufficient to justify reduction in value, BTA finds evidence submitted by Board of Education supportive of decrease.

The appellant Board of Education appealed a decision granting a decrease in value to the BTA. The subject property is approximately 19 acres and operates as a golf driving range, including a golf shop, miniature golf course, Dairy Queen and a residential structure. At the Cuyahoga Board of Revision the property owner presented appraisals prepared for the property that were not prepared as of tax lien date and the appraiser did not appear to testify. The BTA found that the evidence submitted by the property owner was not probative of the reduction in value. However, the Board of Education presented an appraisal as of lien date in which the appraiser testified at the BTA. The Board of Education's appraiser valued the residential and commercial structures separately and in the commercial appraisal he determined that the current use was of an interim nature and concluded to a value above the fiscal officer. In addition to the Board of Education's appraiser also opined to value based upon the property's current use, which was below the value determined by the fiscal officer. In response to the appraiser's determination that the property was subject to interim use, the president appeared and testified that the property has been unchanged since its original development in 1965 and continues to be operated as originally developed. The BTA found that the disregard of the current and historical use was improper and found that a reduction in value was established by the appraiser's current use value.

Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision (Nov. 6, 2012), BTA No. 2008-K-2274, 2275, 2278 & 2279.

BTA finds sale not probative of value when improvements added to property between date of sale and tax lien date.

A property owner filed a complaint seeking to decrease the value of a property is acquired through a bulk in which the property owner acquired 24 properties. The property was purchased at $4,567,526. The sale occurred approximately 18 months prior to lien date. Between the acquisition date and the lien date the property was converted from a single tenant to a multi-tenant facility at a cost of approximately $200,000. At the Board of Revision the property owner presented appraisal evidence opining to value at $2,500,000. The Board of Revision granted a reduction to the appraisal value and the Board of Education appealed to the BTA. The BTA found that due to the change in condition of the property the sale was not the best evidence of value as of tax lien date and found that the appraisal accepted by the BOR was the best evidence of value.

Bd. of Edn of the South-Western City Schools v. Franklin County Bd. of Revision (Nov. 6, 2012), BTA No. 2009-K-2390.

Property owner failed to establish the value of personal property and goodwill it claimed was included in the purchase price.

Taxpayer purchased subject property two months prior to tax lien date for $380,000. The taxpayer argued that the sale price was not reflective of true value because the purchase included personal property and goodwill. The taxpayer argued for a value of $63,500 based upon its assertions. Stressing that the burden of proving the non-real property elements of the sale fell on the taxpayer, the BTA concluded that there was insufficient evidence in the record to demonstrate that the taxpayer had met its burden. The only witness before the BTA was not directly involved in the purchase. Moreover, the record showed that the estimated value of personalty was developed after the sale, not as a part of the sale itself.

Giant Dayton, LLC v. Clark Cty. Bd. of Revision (Nov. 13, 2012), BTA NO. 2009-K-2529.

BTA finds lack of probative and credible evidence in congregate care facility valuation, despite appraisal evidence presented by both the property owner and Board of Education.

After the property owner obtained a reduction in value based upon an appraisal submitted at the Board of Revision, the Board of Education appealed the decision to the BTA. At the BTA the Board of Education's appraiser asserted that the cost approach was the best approach to determine value due to the "special purpose" of the property. The property owner's appraiser prepared a cost approach, the sales comparison approach and the income approach to value. The property owner's appraiser relied upon *Chippewa Place Dev. Co. v. Cuyahoga Cty. Bd. of Revision* (Sept. 24, 1993), BTA No. 1991-P-245, unreported, and compared the congregate care facility conventional apartment buildings. The BTA found that a congregate care facility should not be valued as a "special purpose" property and *Chippewa* is still the proper way to value a congregate care facility although a cost approach to value could also establish value.

However, after reviewing both appraisers reports, the BTA declined to find either report probative of value. The BTA reviewed both appraisers' cost approaches and determined that neither was reliable due to the accuracy of the depreciation calculations. The BTA also rejected the sales comparison and income approaches to value finding that the comparable properties were not similar in age, amenities, unit size, and property size.

North Royalton City School District Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision (Dec. 4, 2012) BTA No. 2011-A-244, and *North Royalton City School District Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Dec. 4, 2012) BTA No. 2011-A-723.

Owner's opinion of value submitted by legal counsel rejected; unclear who prepared the opinion.

"Owner's opinion" of value was submitted by the owner's legal counsel at the BOR hearing. The owner did not appear and testify as to the opinion, although an affidavit regarding ownership was submitted along with the opinion. The BTA rejected the "owner's opinion" on the grounds that the record was unclear as to who prepared the opinion and there was nothing in the record to establish that the owner was qualified to render an opinion of value.

RNG Properties Ltd. v. Summit Cty. Bd. of Revision (Dec. 11, 2012), BTA 2009-Q-3565.

Court-ordered bankruptcy sale could not be used to value the property.

Sale of property conducted by a court-appointed receiver under the supervision of a court order is not an arm's-length transaction entitled to consideration as the value of the transferred property. The sale is considered to be a "forced" sale because the bankruptcy of the seller. The seller could not be considered as having entered into the transaction freely.

Davis v. Lorain Cty. Bd. of Revision (Dec. 11, 2012), BTA NO. 2011-Q-3370.

Failure to state any requested value or amount of requested reduction resulted in dismissal of complaint.

Line 8 of the complaint form used to file a valuation complaint with a county board of revision asks for the complainant's opinion of value. In this instance, the property owner left Line 8 of the form blank. The BTA concluded that the complaint was jurisdictionally defective and remanded the matter to the BOR for dismissal. The BTA found that R.C. 5715.19(D) required the complaint to "state the amount of overvaluation ***." In discussing the jurisdictional problem, the BTA noted that Line 8 was also required because the information contained on the line was necessary in order for the BOR to determine whether it must give notice to other affected parties. Under R.C. 5715.19, notice to other affected parties must be given when the change in value sought is $50,000 or more.

RKL Properties, LLC v. Stark Cty. Bd. of Revision (Dec. 11, 2012), B TA No. 2011-W-3710.

Power-of-attorney failed to give daughter standing to file complaint on behalf of father.

BTA found that the daughter of the property owner had no standing to file a property valuation complaint on her father's behalf, even when she also has a power-of-attorney designated her as her father's attorney-in-fact and referencing the father's inability to attend the BOR hearing.

Bd. of Edn. of the Springfield City Schools v. Clark Cty. Bd. of Revision (Dec. 11, 2012), BTA No. 2012-K-1928.

Franklin County Board of Revision returns property enrolled in the Federal Wetland Reserve Program to the Current Agricultural Use Value program.

In 2011, the tax commissioner changed its long-standing position with regard to property enrolled in the Federal Wetland Reserve Program (WRP) and directed all county auditors that such property no longer qualified for the Current Agricultural Use Value (CAUV) program. The Franklin County auditor (auditor), at the direction of the tax commissioner, removed property owned by John and Marilyn Saveson that was enrolled in WRP from the CAUV program in tax year 2011, resulting a three-year recoupment charge totaling approximately $56,119.

The property owners filed a real property tax valuation complaint with the Franklin County Board of Revision (BOR) challenging the removal of the property from the CAUV program. The BOR heard the case on August 8, 2012, where the property owner, representatives from the Franklin County Soil and Water Conservation District, and the CAUV administrator in the auditor's office testified. The BOR, with the auditor's representative abstaining, issued a decision on October 22, 2012 finding that the property met the definition of "land devoted exclusively to agricultural use" pursuant to R.C. 5713.30(A)(1) and as a result returned the property to the CAUV program and remitted the recoupment charge.

Saveson v. Franklin County Auditor (October 22, 2012), BOR Case 11-000111.