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Testimony of an owner who is also an appraiser and real estate broker is not sufficient evidence to establish reduction to real estate.

The property owner presented the testimony of an owner who was an appraiser and real estate broker. At the Franklin County Board of Revision (BOR) the property owner presented income and expense information along with information reflected the high vacancy at the property. The BOR did not grant a change in value, and the property owner appealed to the BTA. At the BTA the property owner presented the same information and the BTA found that despite the property owner's qualifications, the property specific information presented was not sufficient to support a reduction in value.

Albany Wood Limited and Yearling Investment Limited. v. Franklin Cty. Bd. of Revision (July 3, 2012), BTA Nos. 2009-K-2987 & 2988, unreported.

Sale of property by seller who acquired the property through foreclosure considered valid sale for valuation purposes.

A bank had acquired the subject property through foreclosure. The bank then listed the property for sale on the open market. The property sold to the appellant for $130,000. Although the county argued before the BTA that the sale was not valid, the BTA determined that the fact that the seller had acquired the property by foreclosure in a *prior* transaction did not invalidate a *subsequent* arm's-length sale.

Massie v. Clinton Cty. Bd. of Revision (July 11, 2012), BTA No. 2009-W-1455, unreported.

Second filing in same triennial not barred where the auditor changes value within the period.

The Cuyahoga County Board of Revision (BOR) dismissed Tadpole's 2010 real property valuation complaint on the grounds that Tadpole had previously filed a 2009 real property valuation complaint. The BOR ruled that the 2010 complaint was barred by R.C. 5715.19(A)(2)'s prohibition against filing more than one complaint in the same triennial period absent a claim that one of the exceptions applied. On appeal, the BTA reversed the BOR's dismissal and remanded the matter to the BOR for a hearing on the merits. The BTA found that the county auditor had changed the value of the subject for tax year 2010. As a result, the BTA reaffirmed previous decisions that held that when an auditor changes value within a triennial period, a complainant is not required to identify any reason for filing a second complaint within the same interim period.

Tadpole Creek, LLC v. Cuyahoga Cty. Bd. of Revision (July 11, 2012), BTA No. 2012-A-900, unreported.

A complainant must list the correct owner name on line one of the complaint to invoke the jurisdiction of the Board of Revision and the Ohio Board of Tax Appeals.

A complaint was filed by the property with the Cuyahoga County Board of Revision (BOR) and on line one of the complaint the property owner/complainant listed the owner as "University Hospital," consistent with county records. However, the full legal name of the property is "University Hospitals Health System, Inc." The property owner argued that the omission of the full owner name was a clerical error and should not invalidate the complaint. However, the BTA found that the omission was more than minor and that "University Hospital" was not the owner of the complaint at the time of the filing and that the use of an incorrect name results in a different legal entity. The BTA found that the use of a "fictional name" failed to invoke the jurisdiction of the BOR.

University Hospitals Health System Inc. v. Cuyahoga Cty. Bd. of Revision (July 11, 2012), BTA No. 2012-A-116, unreported.

A complaint was filed by the property owner with the Champaign County Board of Revision (BOR). On the complaint, the complainant identified the owner as "Ronald E. Rittenhouse." However, the titled owner was "Rittenhouse Properties LLC." Despite Mr. Rittenhouse being the sole member of the LLC, the BOR found that jurisdiction was not proper because the owner name listed on the complaint contemplated an individual rather than the LLC, which was the legal owner of the subject property.

Rittenhouse v. Champaign Cty. Bd. of Revision (July 11, 2012), BTA No. 2011-Y-1929, unreported. *See also, Hesker Investment & Trading Inc. v. Franklin Cty. Bd. of Revision* (July 24, 2012), BTA Nos. 2011-Y-1540 & 1543, unreported (holding that dismissal was proper where owner name was incorrect and where complaints were filed by an entity that was not yet the title holder of the property).

Applicant who did not state her position as trustee of the trust did not have standing to file a real property tax exemption; neither did vendee under a land contract.

Two individuals filed a real property tax exemption application. The first applicant signed the application in her individual capacity, while the second applicant signed as vendee under a land contract. The BTA, citing to the Ohio Supreme Court decision in *Bd. of Edn. of the Columbus City School Dist. v. Wilkins* (2005), 106 Ohio St.3d 200, found that the first applicant was not the owner of the property for purposes of filing a real property tax exemption application under R.C. 5715.27 because she signed the application in her individual

capacity instead of as trustee of a family trust, which was the legal owner of the property. Thus, as a non-owner of the property, the first applicant did not have standing to file the application. The BTA further found that the second applicant, the vendee under the land contract, was not the owner of the property for purposes R.C. 5715.27 because the vendee held only an equitable interest in the property. As a result, the second applicant also did not have standing to file the application.

The BTA did not discuss the law change that was effective in June 2008, less than one year after the subject application was filed. As a result of the law change, a vendee under a land contract may file a real property tax exemption pursuant to R.C. 5715.27.

Stewart, et al., v. Testa (July 17, 2012), BTA No. 2011-A-2463.

Property owner's appeal results in reinstatement of auditor's original value because of what the BTA deemed was insufficient evidence to support the BOR value.

Property owner purchased land in 2006 and subsequently subdivided it to establish a residential development, (including adding roads, utilities, etc.). Property owner filed tax year 2007 and tax year 2009 real property tax valuation complaints requesting a reduction in true value consistent with an appraisal. The Cuyahoga County Board of Revision (BOR) granted a slight reduction for tax year 2007 (a value higher than the appraised value) but affirmed the auditor's value for tax year 2009. Property owner appealed to the BTA. The BTA found that the 2006 sale was too remote and probative of value given the significant changes of the property. The BTA was also troubled by the appraiser's decision to ignore sales in the subject development and instead choosing less similar comparables, although questions were also raised about the reliability of those sales. Ultimately the BTA found that the sales within the subject development supported the auditor's original values, thereby reinstating those values for tax year 2007, even though the auditor had voted in favor of the reduction, and affirming the BOR's decision for tax year 2009. The property owner has filed an appeal with the Ohio Supreme Court.

HD Development Co., et al., v. Cuyahoga Cty. Bd. of Revision, et al., (July 17, 2012), BTA Nos. 2009-K-57 through 2009-K-99 and 2011-K-1042 through 2011-K-1084. Ohio Supreme Court Docket No. 2012-1404.

BTA relies upon sale-leaseback to value property even with competing arm's-length sale on the same day.

The BTA was confronted with two sales that occurred on the exact same day. A sale at $275,000 in an arm's-length transaction and a sale-leaseback for $675,000 after the property was encumbered by the sale-leaseback lease. The BTA continued to rely upon its interpretation of *AEI Net Lease* (119 Ohio St. 3d 563) to find that both sales were arm's-length. The Board then applied *HIN* (124 Ohio St. 3d 481) to hold that the sale-leaseback transaction was closest to the subsequent tax lien date. The BTA failed to address the prior Ohio Supreme Court decisions rejecting sale-leaseback transactions for valuing property. The HB 487 changes are also not addressed.

Board of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision (July 17, 2012), BTA Case No. 2009-Q-932, unreported. See also, *Board of Edn. for the Mentor Exempted Village School District v. Lake Cty. Bd. of Revision* (July 24, 2012), BTA Case No. 2009-A-3115, unreported, accepting a sale-leaseback and rejecting appraisal evidence to support a lower, fee simple value.

Without expert testimony BTA refused to apply *Woda Ivy Glen* to property subject to restrictive covenants imposed by OHFA.

Properties were constructed with money invested by the Ohio Housing Finance Agency (OHFA). Restrictions were placed upon the ability to rent the properties. Additionally, owners, for a 30-year period, had to meet stringent income requirements. The property owner argued that these restrictions meant that the *Woda Ivy Glen* (121 Ohio St. 3d 175) decision should be extended to these properties. Two real estate brokers testified about the market for these properties, but no appraisal testimony was provided. The Clark County Board of Revision refused to extend the holding finding that *Woda* had provided expert opinion testimony that was lacking in this case.

North Hill Apartments, Inc. v. Clark Cty. Bd. of Revision (July 24, 2012), BTA Case Nos. 2009-A-2912 through 2915, unreported.

A short sale where the property is exposed to the market, the sale price is negotiated and the sale is arm's-length is the best evidence of true value.

Property owner filed a tax year 2010 real property tax valuation complaint seeking a reduction in true value consistent with the purchase price of a July 2010 short sale. The BTA found, consistent with its other decisions involving short sales that the best evidence of true value was the amount the property transferred for as a result of a short sale. The property was listed on the open market, the price was negotiated and the sale was arm's-length.

Simecek v. Summit Cty. Bd. of Revision, et al., (July 24, 2012), BTA No. 2011-Q-2379.

Non-lawyer filers of complaints rely upon Ohio Revised Code to their own peril.

Although the capacity to file a real property tax complaint has been expanded in recent years to cover non-lawyers with a fiduciary relationship with the non-individual property owner (i.e., corporate officers, partners, trustees, etc.), it is still not as broad as the parties listed in R.C. 5715.19(A), which includes employees, CPAs and appraisers, for example. This provision has been held unconstitutional by the Ohio courts but has never been removed from the Code. This decision is but one in a long line of similar decisions dismissing cases where the complainant relied upon the Code provision without understanding and researching its history.

Please note that the expansion of the right to file to those with a fiduciary relationship only applies to the filing of the complaint. The presentation of evidence and the cross-examination of witnesses remains the practice of law in Ohio.

Memorial L.P. v. Union Cty. Bd. of Revision (July 31, 2012), BTA Case Nos. 2011-K-3965 and 3966, unreported.

Testimony by highly qualified owner not sufficient to meet burden of proof.

A property owner presented testimony of an employee of a holding company whose job duties include real estate acquisition, development and investment on behalf of company. In addition to extensive experience as a real estate market participant, the witness received his MBA with a concentration in real estate from

Cornell University and received formal training in property valuation. The Franklin County Board of Revision rejected the testimony because the witness was not an appraiser and was deemed to not be independent. The case has been appealed to the Ohio Supreme Court.

Board of Edn. of the Worthington City Schools v. Franklin Cty. Bd. of Revision (August 7, 2012), BTA Case No. 2008-V-670, unreported. Ohio Supreme Court Docket No. 2012-1517. See also, *Sanctuary Properties, Ltd. v. Summit Cty. Bd. of Revision* (July 11, 2012), BTA Case No. 2009-K-3054, unreported, rejection testimony of owner who was also a real estate broker.

Third District Court of Appeals refused to extend the exception the Ohio Supreme Court carved-out in *Dayton Supply & Tool* to salaried employees.

The complainant, who could have been liable for reduced tax revenue under a TIF for under-valued property, filed a real property tax valuation complaint to increase the property's true value. The property owner filed a counter-complaint. The Union County Board of Revision (BOR) increased the value of the property and the property owner appealed to the BTA. The BTA granted a motion to dismiss based on the fact that a salaried employee prepared and signed the complaint. The BTA found that this constituted the unauthorized practice of law. The complainant appealed to the Third District Court of Appeals. The Court of Appeals addressed the constitutionality of R.C. 5715.19(A) and sided with the Eighth District Court of Appeals and the Tenth District Court of Appeals, and affirmed the BTA's decision. According to the Court of Appeals, the exception the Ohio Supreme Court carved-out in *Dayton Supply & Tool Co., Inc. v. Montgomery Cty. Bd. of Revision* (2006), 111 Ohio St.3d 367, with regard the unauthorized practice of law should not be extended to salaried employees because, unlike a corporate officer as in the case in *Dayton Supply*,salaried employees do not have a fiduciary responsibility to the corporation.

McDonald's Corp. v. Union Cty. Bd. of Revision, et al., Ohio Ct. App. Case No. 14-12-14 (Aug. 20, 2012)

Property's subsequent inclusion in LIHTC program cited as reason to reject sale price.

The subject property transferred in 2006 and it appears that the Ashtabula County Board of Revision (BOR) granted a value increase for 2006 based upon the sale. Ashtabula County reappraised for 2008 and the BOE again sought an increase to the 2006 sale price. The owner testified that the earlier transfer was a related party transaction as part of the steps to qualify for low-income housing tax credits (LIHTCs) to rehab the property. The rehab "was completed in 2008." Owner presented appraisal testimony which was accepted. The BOR rejected the sale because it was non-arm's-length and the fact that the property underwent a "material change—its participation in the LIHTC program."

Jefferson Elderly Housing L.P. v. Ashtabula Cty. Bd. of Revision (Aug. 21, 2012), BTA Case No. 2009-K-2367, unreported.

Eleventh District Court of Appeals finds that a wetland mitigation bank satisfies the definition of "land devoted exclusively to agricultural use."

After qualifying for Current Agricultural Use Value (CAUV) for a number of years for property included in the Federal wetland mitigation bank program, the Ashtabula County auditor denied the property owner's CAUV application for tax year 2008. As a result, the property owner filed a real property tax valuation complaint with the Ashtabula County Board of Revision (BOR) challenging the CAUV denial. The BOR denied the property owner's request for CAUV based, presumably at least in part, on a 2009 Ohio Attorney General Opinion, Ohio Attorney General, No. 2009-020. Thereafter, the property owner appealed to the Ashtabula County Common Pleas Court, which reversed the BOR decision. As a result, the auditor appealed to the Eleventh District Court of Appeals.

The Court of Appeals found that property included in the federal wetland mitigation bank program meets the definition of "land devoted exclusively to agricultural use" pursuant to R.C. 5713.30(A)(1). Based on the plain meaning of R.C. 5713.30(A), the Court of Appeals further found, consistent with the Third District Court of Appeals' decision in *Wetland Resource Center, LLC v. Marion County Auditor*, 157 Ohio App.3d 203, 2004-Ohio-2470 (3d Dist.), that R.C. 5713.30(A) is constitutional with regard to its reference to lands that "were devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agency of the federal government." According to the Court of Appeals, the auditor "abandoned his former reliance on [the 2009 Ohio Attorney General Opinion] in this appeal [to the Court of Appeals] without citing any other pertinent authority in support."

This decision appears to contradict the tax commissioner's current CAUV policy, which is consistent with the 2009 Ohio Attorney General Opinion. This policy has been applied by various county auditors resulting in the removal of property from CAUV.

Wetland Preservation Ltd. v. Cortlett, et al., Ohio Ct. App., Case No. 2011-A-0034 (Aug. 27, 2012).

Taxpayer could not rely upon sale price of land where, subsequent to the purchase but before tax lien date, the taxpayer added substantial improvements to the land.

The appellant Board of Education requested that the tax year 2008 value of the subject property be increased from $1,091,520 to $1,586,630. The Board of Education based its request on a November 28, 2006 sale of subject, which sold for $1,100,000 as a "land only" parcel. improvements were added to the subject after the sale. The Board of Education asked that the auditor's improvement value be retained but that the land portion of the value be increased to the sale price. The BTA declined to accept the sale price for purposes of valuing the land. The BTA noted that R.C. 5713.03 prohibits the use of a sale price as true value where an improvement has been added to the property after the sale. Thus, the land only purchase could not be used to value the subject in 2008 – after improvements had been built.

Marysville Exempted Village School District Bd. of Edn. v. Union Cty. Bd. of Revision (Sept. 11, 2012), BTA No. 2009-K-2307, unreported.

BTA rejects property owner's assertion that its high public profile resulted in higher than market purchase price of real property.

CarMax Auto Superstores, Inc., purchased two parcels of vacant land on January 7, 2009 for a total purchase price of $5,850,000. The county auditor had previously valued the property for $578,100. The Board of Education filed a complaint seeking an increase in the value to the purchase price. CarMax objected to the use of the sale for valuation purposes, stating that the visibility of its name with public disclosures regarding future growth placed sellers at an advantage. CarMax argued that its public profile allowed sellers to demand higher purchase prices than other purchasers in the market would pay. BTA likened the argument to economic compulsion or duress. However, the BTA found that CarMax's purchase was not a case of economic compulsion in that CarMax was never placed into a position where it had no choice but to purchase the subject property. The BTA stated that it found "the evidence insufficient to support our acceptance of CartMax's claim that, simply be virtue of its national reputation, it was held hostage, or otherwise compelled, to acquire the subject at the price paid." Id. at 13.

West Carrollton City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision (Sept. 11, 2012), BTA No. 2009-K-3910, unreported.

The sale of a fraction interest in real property is not reflective of the value of the entire fee simple interest.

The appellant before the BTA had purchased 50% of the leasehold interest in the subject three parcels for $17,000 each, based upon a value for each parcel of $34,000. The purchaser requested that the value for each parcel be reduced to $34,000 based upon his purchase price. Essentially, the purchaser asked that his 50% interest, valued at $17,000 for each parcel, be doubled to account for the full value of the property. The BTA rejected the argument. The BTA agreed that a sale price of a fractional interest in real property may be reflective of the value of the fee simple interest in the property when coupled with other, corroborating evidence. The taxpayer in this matter, however, failed to meet his burden to show that his purchase of a 50% interest in the subject property should be doubled to derive a value for the property as a whole. There was no evidence to corroborate the application of the purchase price.

Bahaa Agha v. Lucas Cty. Bd. of Revision (Sept. 11, 2012), BTA No. 2011-W-3217, unreported.

Sales by Veteran's Affairs not arm's-length.

In two different cases, the Franklin County Board of Revision reject the use of recent sales to value properties finding that the transactions were not arm's-length. The decisions hold that "a sale from the Veterans Administration (VA) is akin to a purchase from H.U.D. and does not constitute an arm's-length sale." This is based upon the reasoning that the VA, as guarantor of the loan, received the property under duress upon foreclosure and sought only to recover the amount of the loan."

Howard v. Franklin Cty. Bd. of Revision (Sept. 19, 2012), BTA Case No. 2011-Q-748, unreported, and *Frangias v. Cuyahoga Cty. Bd. of Revision* (Sept. 19, 2012), BTA Case Nos. 2011-Y-332 through 336, unreported.