

Publications

Ohio Supreme Court Decides Several Real Property Tax Cases

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During the past quarter, the Ohio Supreme Court issued several decisions regarding real property taxation. The more significant decisions are summarized below.

The party challenging the valuation has the burden of establishing that the valuation was incorrect. By failing to present sufficient evidence to rebut the county's cost-based valuation, the property owner was not able to shift the burden to the county to explain how it valued the property.

The property owner appeared before the Licking County Board of Revision (BOR) and argued that the auditor overvalued its property by utilizing a cost-based valuation based upon cost schedules for nursing homes and private hospitals rather than the cost schedule for apartments. The BOR and the BTA declined to accept this argument because there was no sufficient and probative evidence to support this argument. LTC cited to *Chippewa Place Dev. Co. v. Cuyahoga Cty. Bd. of Revision* (Sept. 24, 1993), BTA No. 91-P-245, unreported, as support for its argument, however the Court held that this case was not applicable when applying the cost approach to valuation. Furthermore, the Court stated that when utilizing the cost approach it is appropriate to utilize properties of the same type because of the similarities in property features. LTC did not present an appraisal or actual cost information that negated the value and as a result, the Court affirmed the BTA's decision.

Additionally, LTC alleged a procedural error in the BTA's denial of LTC's continuance request, however, the Supreme Court did not find that an error was made. In finding that the BTA did not abuse its discretion when it denied LTC's continuance, the Court articulated that it is an abuse of discretion standard and it will not reverse the determination without a showing that the board's "Attitude is unreasonable, arbitrary

or unconscionable.” See *J.M. Smucker LLC v. Levin*, 113 Ohio St.3d 337, 2007-Ohio-2073. The Supreme Court found the BTA’s denial to be justified because (1) LTC violated OhioAdm. Code 5717-1-11 by failing to respond to discovery and failing to disclose its witnesses and exhibits; (2) LTC violated Ohio Adm.Code 5717-1-15(I) by failing to make disclosure of witnesses and exhibits pursuant to rule; and (3) LTC violated Ohio Adm.Code 5717-1-15(C) when it failed to request a timely continuance.

LTC Properties, Inc. v. Licking Cty. Bd. of Revision, Slip Opinion No. 2012-Ohio-3930.

Continuing Complaint provisions of R.C. 5715.19(D) apply to the Board of Revision. Once the BTA issues a final, appealable order and the 30-day appeal period expires, the BTA has no jurisdiction to carry-forward a stipulated value to later years.

The property owner challenged the 2008 tax year value of its real property before the Cuyahoga County Board of Revision (BOR). The BOR issued its decision on September 30, 2009, and the owner filed an appeal to the BTA on October 9, 2009. Subsequently, the parties stipulated to a value for the 2008 year, and the BTA issued an order on February 1, 2011 in which it approved the stipulated value. Subsequently, on July 11, 2011 (160 days after the BTA order), the property owner filed a motion with the BTA, asking the BTA to carry-forward the 2008 stipulated value to tax years 2009, 2010 and 2011 based upon R.C. 5715.19(D)’s continuing-complaint provisions. The BTA denied the motion on the grounds that it no longer had jurisdiction over the matter because the motion was filed after the 30-day appeal period had passed. See R.C. 5717.04.

On appeal to the Supreme Court, the owner argued that the continuing complaint provisions of R.C. 5715.19 (D) required the BTA to take jurisdiction over the subsequent tax years and issue the order. The Supreme Court disagreed. The Court reasoned that the BTA loses jurisdiction to modify or vacate its decision if there is a timely appeal from that decision to a court pursuant to R.C. 5717.04 or if the appeal period expires without an appeal having been filed. Because the owner in this case did not file its motion until July 2011, the BTA had no jurisdiction to take further action. The Court also stressed that the continuing-complaint provisions of R.C. 5715.19(D) apply to a complaint, not to a BTA order. The Court acknowledged that the continuing complaint provision may extend the BTA’s jurisdiction to later years during the pendency of the BTA appeal; however, this jurisdiction expires once the BTA’s decision in the matter becomes final or is appealed. The Court further stated that, under certain circumstances, the taxpayer could invoke the continuing complaint provision before the BOR even after the BTA appeal has been terminated.

1495 Jaeger LLC v. Cuyahoga Cty. Bd. of Revision, 132 Ohio St.3d 222, 2012-Ohio-2680.

A recent, arm’s-length sale price is presumptive true value for taxation purposes. The proponent of using value other than sale price has burden of proving that sale price is not reflective of true value. Court finds that BTA failed to consider evidence and remands case. BTA re-affirms earlier decision.

The Board of Education sought through a complaint to increase the 2006 value for property owned by Alexander Road LLC from \$3,713,500 to a recent sale price of \$4,835,000. In support, the Board of Education relied upon a conveyance fee statement showing a March 2006 transfer price of \$4,835,000. At the

Cuyahoga County Board of Revision (BOR) hearing, Alexander Road challenged the BOR's ability to rely upon the sale price. Alexander argued (1) the sale price was an allocated price that did not reflect market value, (2) two principle tenants vacated the property shortly after the sale, and (3) the sale price should be reduced by \$136,300 to account for personal property. The amount of personal property involved in the sale was set forth on the conveyance fee statement. In support of its contentions, Alexander Road offered the testimony of its corporate vice-president who testified as to the allocated sale price between two properties and as to the personal property involved in the sale. Copies of the settlement statement and purchase contract were offered to show that allocation of the \$7,400,000 total purchase price for the two properties as well as to show that personalty was considered at the time of sale. Evidence was also offered to show the decline in rent income due to the tenant loss. The BTA found value at the full \$4,835,000 sale price and held that Alexander Road failed to meet its burden to rebut the sale.

On appeal, the Court affirmed that Alexander Road had the burden to rebut the sale price once the Board of Education raised the presumption by submitting the conveyance fee statement. The Court indicated that Alexander Road had to submit corroborating evidence in support. The Court determined, however, that the BTA had failed to consider Alexander Road's evidence that corroborated its assertion that the allocated sale price did not reflect market value. The Court stated that factors such as tax considerations could affect an allocation in ways that make it unreflective of market value (e.g., allocating a sale price between taxing districts to minimize tax liability). The Court found that the BTA's silence on the testimony and other evidence offered by Alexander Road on the allocation issue suggested that the BTA "blatantly" ignored the evidence and whether it was sufficient to overcome the validity of the sale price. The Court therefore remanded the matter to the BTA to review the evidence. (The Court did, however, affirm the BTA's refusal to deduct the personal property from the sale price, stating that no corroborating evidence was submitted).

Upon remand to the BTA, the BTA found that the testimony presented by the property owner did not negate the validity of utilizing the allocated sale price and this case is now on appeal again at the Ohio Supreme Court. *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Aug. 17, 2012), BTA Case No. 2007-M-1059, unreported (appealed to Supreme Court on September 11, 2012, Case No. 2012-1540).

Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision, 132 Ohio St.3d 371, 2012-Ohio-2844.

A property owner was unable to establish that notice from the Board of Revision of the hearing was improper, and, as a result, was precluded from providing evidence of value at the BTA hearing.

A taxpayer filed a complaint at the Medina County Board of Revision (BOR) seeking a decrease in value. The taxpayer failed to attend the BOR hearing and the BOR retained the original auditor's value. On appeal to the BTA the taxpayer wanted to present evidence of value, but was precluded from doing so because that information was not presented at the BOR. The taxpayer tried to establish an exception to the rule, by arguing that he did not receive proper notice of the hearing and therefore should be permitted to present his evidence at the BTA. The BTA and Supreme Court found that the taxpayer could not establish his claim of insufficient service when an individual who resided with the taxpayer signed the certified mail receipt. As a result the BTA did not abuse its discretion when it excluded the taxpayer's evidence.

Gaston v. Medina Cty. Bd. of Revision, Slip Opinion No. 2012-Ohio-3872