The Ohio Supreme Court Permits Boards of Education to Proceed with Certain Appeals to the Ohio Board of Tax Appeals in Limited Circumstances

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By Steven Smiseck

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On September 4, 2024, the Ohio Supreme Court issued a decision permitting a board of education to challenge a board of revision decision at the Ohio Board of Tax Appeals (BTA) despite a 2022 change in law the limited the ability of governmental entities to appeal a tax valuation decision. This decision is of limited scope and applies **only** to those board of revision complaints pending at the time the 2022 law change became effective. *Marysville Exempted Village Bd. of Edn. v. Union Cty. Bd. of Revision*, 2024-Ohio-3323.

The case involved a tax year 2021 complaint that was filed with the county board of revision, seeking a change in the value of certain real property. The board of revision found in the property owner's favor. The local board of education then filed an appeal from the board of revision to the BTA.

While the board of revision complaint was pending, the Ohio legislature amended R.C. 5717.01 to limit board of education appeals to the BTA to only property owned or leased by that entity. Based on this change, the BTA dismissed the board of education's appeal.

The board of education appealed the BTA's decision dismissing the appeal, claiming that the restrictions on filing appeals did not apply to pending complaints, as those complaints were filed before the change in law. The board of education argued the the General Assembly's use of the phrase "a subdivision that files," in the prohibition included a present tense verb that must be construed as applying the prohibition **only** to complaints that were filed after the law change. The property owner countered that the change in law applied to any board of revision decision issued after the effective date of the filing prohibition, even if the board of revision complaint was filed before the change in the statute.

On review, the Court determined that, because of the General Assembly's wording, the appeal prohibition did not apply to cases for which a valuation complaint was pending when the law change became effective. The majority held that the amendment was written in the present tense and applies to a subdivision "that files" a complaint or counter-complaint with the board of revision. Because the wording is in the present tense instead of the past tense "filed" or "has filed," "the plain language of amended R.C. 5717.01 makes clear that the amended statute does not apply to cases in which a challenge to an auditor's property valuation was pending before a board of revision when the amendment took effect."

In a strong dissent, Justice Fischer stated that the majority's opinion "overcomplicates" the reading of R.C. 5717.01. He determined that the use of the term "files" only defined a class of persons to whom that change applied, i.e., "who" can participate in a BTA appeal. The wording did not affect "how" or "when" an appeal can be filed. Justice Fischer also found that the Court misapplied other Court decisions to incorrectly time the operative event that triggered the new filing prohibition. He said that basing the first application of the prohibition on when the board of revision complaint was filed was inconsistent with prior decisions. Rather, the ability to appeal to the board of revision decision only accrued when the board of revision issued its decision, which occurred after the amendment to R.C. 5717.01 became effective. The issuance of the decision was the "specific operative event" that gave the board of education to right to file an appeal. Thus, he concluded that the change in law prevented the board of education's appeal.