

## OHIO BOARD OF TAX APPEALS

Green Circle Growers, Inc.,	)	CASE NOS. 2005-H-1310
	)	2005-H-1316
Appellant/Appellee,	)	2005-H-1318
	)	2005-H-1324
and	)	
	)	(REAL PROPERTY TAX)
Firelands Local School District	)	
Board of Education,	)	ORDER
	)	
Appellee/Appellant,	)	(Denying Motion to Exclude
	)	Issue from Trial)
vs.	)	
	)	
Lorain County Board of Revision,	)	
and the Lorain County Auditor,	)	
	)	
Appellees.	)	

### APPEARANCES:

For the Property Owner	-	Siegel Siegel Johnson & Jennings Co., L.P.A. J. Kieran Jennings 25700 Science Park Drive, Suite 210 Cleveland, Ohio 44122
For the County Appellees	-	Dennis P. Will Lorain County Prosecuting Attorney John C. Morrison Assistant Prosecuting Attorney 225 Court Street, 3 <sup>rd</sup> Floor Elyria, Ohio 44035
For the Board of Education	-	Armstrong, Mitchell, Damiani & Zaccagnini, LPA Timothy J. Armstrong 1725 The Midland Building 101 Prospect Avenue, West Cleveland, Ohio 44115

Entered August 24, 2007

Ms. Margulies, Mr. Eberhart, and Mr. Dunlap concur.

These appeals are now considered by the Board of Tax Appeals in response to a motion to exclude an issue from trial filed by Firelands Local School

District Board of Education (“BOE”). Green Circle Growers, Inc. (property owner) filed a responsive pleading and the BOE filed a reply. The BOE moves this board to preclude from this appeal the possibility of reclassifying as personal property any portion of what the Lorain County Auditor (“auditor”) has assessed and classified as real property. Motion at 1. The board is unwilling to do so.

Review of the record indicates that the property owner filed complaints against the valuation of real property with the Lorain County Board of Revision (“BOR”) involving three parcels of farmland that contain greenhouses.<sup>1</sup> Statutory transcript (“S.T.”) at Exs. A, D. On each complaint, the property owner stated its opinion of value for the subject parcel and, as justification for the requested change in value, stated, inter alia, “growing facilities are business fixtures \*\*\*.” Likewise, the BOE filed counter-complaints stating its opinions of value. After a hearing, the BOR issued a determination that maintained the auditor’s values.

The BOE asserts in its motion that the BOR and this board lack statutory authority to review the auditor’s classification of the greenhouses as realty. Specifically, the BOE argues that a board of revision’s statutory authority enables it to review a county auditor’s “total valuation or assessment of any parcel that appears on the tax list,” but this review is limited to complaints involving taxation of real property. See R.C. 5715.01, 5715.10, 5715.11, and 5715.19. Therefore, according to the BOE, since its subject matter jurisdiction is statutorily limited to real property, a

---

<sup>1</sup> This board relies on the term “greenhouses,” which the property owner describes as “growing structures” or “growing facilities,” without signifying a property classification.

board of revision cannot reclassify as personalty what a county auditor has deemed realty. The BOE further asserts that, pursuant to R.C. 5717.01 and 5717.03, this board also lacks statutory authority to reclassify realty as personalty. For the reasons that follow, we deny the BOE's motion.

The record indicates that, in accordance with the provisions of R.C. 5715, the BOR conducted a hearing after the filing of complaints and counter-complaints challenging the valuation of real property. The property owner presented evidence in support of its case and the BOR determined value for these parcels. We find nothing in the record to indicate the BOR reclassified real property as personalty. Accordingly, we find the BOE's motion to be moot as to the BOR's actions in this case.

We also find the BOE's arguments unpersuasive regarding the scope of this board's subject matter jurisdiction in this appeal. Contrary to the BOE's contention, Ohio law explicitly authorizes this board to review auditor actions and board of revision decisions and requires this board to determine the taxable value of property in appeals from boards of revision. R.C. 5703.02, 5717.01, 5717.03(B). We find no support in the relevant statutory provisions that would suggest the legislature intended to limit this board's ability to distinguish between types of property, e.g., real or personal, when determining taxable value.

The powers and duties of the Board of Tax Appeals are set forth in R.C. 5703.02. That section provides:

“There is hereby created the board of tax appeals, which shall exercise the following powers and perform the following duties:

“(A) Exercise the authority provided by law to hear and determine all appeals of questions of law and fact arising under the tax laws of this state in appeals from decisions, orders, determinations or actions of any tax administrative agency established by the law of this state, including but not limited to appeals from:

“\*\*\*

“(2) *Decisions of county boards of revision;*

“(3) *Actions of any assessing officer or other public official under the tax laws of this state[.]*” (Emphasis added.)

R.C. 5717.01 provides the procedural requirements to invoke the jurisdiction of the board to review a decision of a county board of revision. R.C. 5717.03(B), which sets forth this board’s requirements in such appeals, reads, in pertinent part, as follows:

“In case of an appeal from a decision of a county board of revision, the board of tax appeals shall determine the taxable value of the *property* whose valuation or assessment by the county board of revision is complained of \*\*\*.” (Emphasis added.)

Reading these various statutory provisions in *pari materia*, it can be reasonably construed that this board has the power and duty to review the determinations made by boards of revision and assessments of county auditors regarding the taxable value of *property*, be it realty or personalty. In fact, this board frequently has been asked to make this very judgment. *Bd. of Edn. of the Kettering-Moraine City School Dist. v. Montgomery Cty. Bd. of Revision* (Feb. 18, 2000), BTA No. 1998-M-983, unreported,

remanded (Sept. 1, 2000), Montgomery App. No. 18223, unreported (case remanded to BTA for purpose of reducing sale price to reflect personalty included in sale); *Polaris Amphitheater Concerts, Inc. v. Delaware Cty. Bd. of Revision* (Jan. 26, 2007), BTA No. 2004-V-1294, unreported, appeal pending Sup. Ct. No. 07-347. See, also, *Gen. Elec. Employee Act Assoc. v. Hamilton Cty. Bd. of Revision* (Sept. 29, 2006), BTA No. 2005-T-1102, unreported; *Burns v. Champaign Cty. Bd. of Revision* (Oct. 20, 2006), BTA No. 2005-A-819, unreported; *CP Golf, Ltd. v. Montgomery Cty. Bd. of Revision* (Feb. 23, 2007), BTA No. 2005-M-1351, unreported; *Powderhorn Country Club LLC v. Lake Cty. Bd. of Revision* (Mar. 23, 2007), BTA No. 2005-A-1108, unreported, appeal pending Lake App. No. 2007-L-071.

We find this board is required to determine value regarding the property involved in this matter and, accordingly, we deny the BOE's motion to exclude an issue from trial.

ohiosearchkeybta