

OHIO BOARD OF TAX APPEALS

Rite Aid of Ohio, Inc.,)	CASE NOS. 2008-B-1589,
)	2008-B-1590
Appellant,)	
)	(REAL PROPERTY TAX)
vs.)	
)	
Stark County Board of Revision, Stark County Auditor, and Perry Local Schools Board of Education,)	ORDER
)	
Appellees.)	(Construing Motion to Extend Discovery Deadline as a Motion to Compel)
)	
)	

APPEARANCES:

For the Appellant		- Karen H. Bauernschmidt Co., LPA Karen H. Bauernschmidt, Esq. 1370 West 6 th St., Suite 200 Cleveland, Ohio 44113
For the County Appellees		- John D. Ferrero, Jr. Stark County Prosecuting Attorney David M. Bridenstine Assistant Prosecuting Attorney 110 Central Plaza South, Suite 510 Canton, Ohio 44702
For the Bd. of Edn.		- Means, Bichimer, Burkholder & Baker Co. Robert M. Morrow 2006 Kenny Road Columbus, Ohio 43221

Entered February 3, 2009

This cause and matter came on to be considered by the Board of Tax Appeals upon a motion to extend the discovery deadline filed by the appellant. The matter was submitted to the Board of Tax Appeals upon the motion and brief in

support of said motion. No response from the county appellees or board of education was received.

Specifically, said motion requests that this board extend the discovery deadline to February 23, 2009 due to non-response of the county appellees and board of education to appellant's November 20, 2008 discovery requests.

The notices of appeal were filed on August 26, 2008. Based upon the date on which the latest of the subject appeals was filed, the deadline for seeking assistance from this board on discovery matters in this instance was December 24, 2008. The instant motion was filed on December 24, 2008.

Ohio Adm. Code 5717-1-11 (A)(1) provides that “[U]pon motion and for good cause, the board may establish other specific times for completion of discovery or consideration of discovery motions.” Herein, instead of requesting an order compelling discovery, the appellant seeks an extension of the discovery period for 60 days. In *Spalding Leasing Co. v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Jan. 14, 2000), BTA No. 1999-K- 1460, 1475, unreported, a case in which a similar motion to extend discovery was sought, the board concluded:

“Although Ohio Adm. Code 5717-1-11(A)(1) contemplates that there may exist *extraordinary* circumstances wherein the deadline for completing discovery and seeking this Board's intervention in discovery matters may be extended, it requires the movant under such circumstances to demonstrate good cause. In this instance, good cause is found lacking. Merely because a party upon whom discovery has been served has not responded, does (sic) not justify an extension of discovery until some uncertain period in the future. *** If this Board were to routinely grant such motions, the exception to the general deadlines set forth in Ohio Adm. Code 5717-1-11

would consume the rule. Accordingly, the BOE's motion to extend discovery is not well-taken and it is hereby denied." Id. at 3. (Emphasis in original)

This board has ordered extensions of discovery periods when the parties to the appeal communicate a willingness to comply with discovery requests; in the present appeal there has been no suggestion that opposing counsel has responded in any manner or sought additional time. Therefore, because this request is made at the end of the period during which intervention of the board may be sought, the board will construe the motion filed to be in the nature of a motion to compel discovery. The board hereby provides the county appellees and board of education a period of 21 days in which to respond to appellant's requests.

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