

Olmsted Falls Board of Education,)	CASE NOS.	95-R-734
)		95-R-735
)		95-R-736
Appellant and)		95-R-737
Cross-Appellee,)		95-R-1028
)		
Eliza Jennings, Inc.,)	(EXEMPTION)	
Olmsted Health & Services Corporation, and Olmsted Residence Corporation,)		
)		
Appellees and)		
Cross-Appellants,)		
)		
vs.)	ORDER	
)		
Roger W. Tracy, Tax Commissioner of Ohio,)	(Denying Motion to Exclude Hearing of Further Evidence)	
)		
Appellee.)		

APPEARANCES:

For the Olmsted Falls Board of Education	-	Daniel J. Kolick, Esq. Thomas A. Kondzer, Esq. Dorothy Bretnall, Esq. Kolick & Kondzer Suite 175 24500 Center Ridge Road Westlake, Ohio 44145-5698
For the Tax Commissioner	-	Betty D. Montgomery, Esq. Attorney General of Ohio By: Janyce Katz, Esq. Assistant Attorney General 16th Floor - State Office Tower 30 East Broad Street Columbus, Ohio 43215
For Eliza Jennings, Inc., Olmsted Health & Services Corporation, and Olmsted Residence Corporation	-	Philip J. Carino, Esq. Calfee, Halter & Griswold 800 Superior Avenue N.E. Cleveland, Ohio 44114 and John P. Susany, Esq. Stark & Knoll 1512 Ohio Edison Building 76 South Main Street Akron, Ohio 44308

Entered March 21, 1997

This matter is now before the Board of Tax Appeals upon a "Motion to Exclude the Hearing of any Further Evidence on the Residential Portions and the Remaining Portions of the Project for the 1988 Tax Year" filed by counsel for the Olmsted Falls Board of Education (the "BOE"). The BOE's motion seeks an order from this Board excluding the taking of further evidence as to both the residential portions of the project and the remaining portions. The property owners, Eliza Jennings, Inc., Olmsted Health & Services Corporation, and Olmsted Residence Corporation (hereinafter referred to as "Eliza Jennings"), filed a memorandum in opposition to the BOE's motion. Thereafter, the BOE filed a response to Eliza Jennings' memorandum.

The BOE's motion provides as follows:

"Now comes the Appellant/Appellee, the Olmsted Falls Board of Education, and moves this Board of Tax Appeals for an Order excluding the taking of any further evidence as to:

1. The residential portions of the project; and
2. The remaining portions of the project;

regarding the 1988 tax year on the grounds that the doctrine of the law of the case precludes the taking of any such further evidence. * * *."

Before discussing the motion at issue here, it is important to review the procedural history of these appeals presently before the Board. The property that is the subject of these appeals has been previously considered by this Board in 1994.

At that time, in reviewing the Tax Commissioner's final order, the Board considered whether the subject property was entitled to an exemption for tax year 1988. The Board affirmed the Tax Commissioner's determination that the entire property was exempt from taxation. Upon appeal, the Ohio Supreme Court then reviewed this Board's decision. Upon consideration of our decision, the Court remanded the matter to the Board to delete a portion of one parcel from the exemption and further ordered the Board to remand the matter to the Commissioner to determine what parts of the property should be exempt. Olmsted Falls Bd. of Edn. v. Limbach (1994), 69 Ohio St. 3d 686.

This matter then came before the Board again upon notices of appeals filed by both the BOE and Eliza Jennings from the Tax Commissioner's orders concerning several tax years, including tax year 1988.

In his brief in support of the above motion, counsel for the BOE argues that under the doctrine of the law of the case, no further evidence can be heard regarding the 1988 tax year. The BOE reads the Supreme Court's opinion as remanding the matter to the Tax Commissioner to only decide what portions of the property are hospital facilities and, therefore, exempt. The BOE argues that the Court mandated that the portions of the property used as residences are taxable, and that this mandate precludes this Board from hearing any further evidence as to tax year 1988. We disagree. For the reasons that follow, we deny the BOE's motion to exclude the hearing of further evidence as to tax year 1988.

The doctrine of the law of the case, as explained by the Ohio Supreme Court in Nolan v. Nolan (1984), 11 Ohio St. 3d 1, provides that the decision of a reviewing court remains the law of that case on the legal questions involved for all subsequent proceedings in the case. Thus, at a rehearing following a remand, if the trial court is confronted with substantially the same facts and issues as in the prior appeal, the court must adhere to the reviewing court's determination of the applicable law.

In the present matter, the doctrine of the law of the case does not preclude this Board from hearing additional evidence concerning tax year 1988. As discussed by the Ohio Supreme Court in Nolan, the doctrine functions to compel the following of the mandates of reviewing courts. The BOE argues that the Court's mandate precludes this Board from hearing any additional evidence concerning tax year 1988. The BOE would have us read the Court's opinion as holding that those "portions of the property used for residential purposes are not tax exempt hospital facilities," and thus, the matter was remanded to the Board to determine whether or not any of the remaining portions of the property are tax exempt as hospital facilities. (BOE's Brief, p. 4) The BOE's interpretation of the Supreme Court's mandate is too limited. Instead, the Court ordered us to "remand the matter to the commissioner to determine what parts, if any, of the subject property are hospital facilities and exempt, and to split-list the exempt and non-exempt property." Olmsted Falls Bd. of Edn. at 689.

Following the Court's mandate, the Board remanded the matter to the Tax Commissioner who determined what parts of the

subject property were exempt and split-listed the exempt and non-exempt property. The Commissioner's final determination in this regard is now before this Board in the present appeals. Accordingly, it is our duty to review the Tax Commissioner's determination to determine if the Tax Commissioner erred following remand.

In order to fulfill that duty, the nature of this matter may require the Board to have before it evidence in addition to the evidence introduced in the prior appeals. When the subject property was first before the Board, the Tax Commissioner had determined that the entire property was exempt; thus, it was not necessary for the Commissioner to split-list the property. In affirming the Tax Commissioner's determination, this Board did not decide whether split-listing was appropriate; instead, the Board looked only at whether the entire property was exempt. On remand, the Tax Commissioner examined the subject property and following the Court's decision, he determined that the subject property should be split-listed. In order for this Board to review that decision, it is necessary for the Board to have evidence before it concerning the nature of the property as of tax year 1988 to decide which parts are exempt and which parts are not exempt. This determination is the reason the Supreme Court remanded the matter. In order for the Board to follow the mandate of the Court and make such a determination, it will be necessary to hear evidence in addition to the evidence already presented in the previous appeal.

Based on the foregoing, it is the order of the Board of Tax Appeals that the BOE's Motion to Exclude the Hearing of any Further Evidence for the 1988 Tax Year is denied.

It is further ordered that a copy of this order be sent to each of the parties hereto by and through their respective counsel ohiosearchkeybta