

OHIO BOARD OF TAX APPEALS

The May Department Stores, Co.,)	
)	CASE NO. 96-B-1758
Appellant,)	
)	
vs.)	(REAL PROPERTY TAX)
)	
Cuyahoga County Board)	
of Revision, the Auditor)	ORDER
of Cuyahoga County and)	
the North Olmsted Board)	
of Education,)	(Vacating Decision and Order)
)	
Appellees.)	

APPEARANCES:

For the Appellant -	Karen H. Bauernschmidt Arter & Hadden 925 Euclid Avenue 1100 Huntington Building Cleveland, Ohio 44115-1475
For the County Appellees -	William D. Mason Cuyahoga County Prosecuting Attorney By: Timothy J. Kollin Courts Tower, 8 th Floor 1200 Ontario Street Cleveland, Ohio 44113
For the Board of Education -	Robert A. Brindza Kelley, McCann & Livingstone, LLP 3500 BP Tower 200 Public Square Cleveland, Ohio 44114-2302

ENTERED: July 16, 1999

Mr. Johnson and Mr. Manoranjan concur. Ms. Jackson not participating.

On June 18, 1999, this Board issued a Decision and Order in this matter, remanding this matter to the Cuyahoga County Board of Revision with orders to dismiss the decrease complaint filed by The May Department Stores, Co., ("May") on the subject property for tax year 1994. The decrease was filed on behalf of May by Richard W. Hermes, who was identified on the complaint as May's Manager of Property Tax. (S.T. Exhibit A.) May had described Mr. Hermes as an employee of May Department Stores, Co. In conformity with the Court's ruling in *Worthington City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 85 Ohio St.3d 156, we concluded that the complaint was insufficient to invoke the jurisdiction of the Board of Revision and therefore ordered dismissal of the complaint.

On July 13, 1999, May filed with this Board a "Motion to Reconsider and Vacate the Board's Order." May's motion is premised upon our decision in *34501 Heritage Ltd. V. Cuyahoga Cty. Bd. of Revision* (June 18, 1999), BTA No. 97-M-1059, unreported, and upon the General Assembly's recent enactment of Sub. H.B. 283, Section 149, which became effective on July 1, 1999. In *Heritage Ltd.*, we concluded that the taxpayer's complaint was sufficient to invoke the jurisdiction of the Board of Revision under R.C. 5715.13 and 5715.19, as amended and made applicable to timely filed complaints for tax years 1996 and 1997 by Sub. H.B. 694, effective March 30, 1999. The Act enumerates those persons who may file a complaint with a board of revision and reads, in pertinent part:

“5715.19(A) *** Any person owning taxable real property in the county or in a taxing district with territory in the county; such a person’s spouse; an individual who is retained by such a person and who holds a designation from a professional assessment organization, *** a public accountant who holds a permit under section 4701.10 of the Revised Code, a general or residential real estate appraiser licensed or certified under Chapter 4763. of the Revised Code, or a real estate broker licensed under Chapter 4735. of the Revised Code, who is retained by such a person; if the person is a firm, company, association, partnership, limited liability company, or a corporation, an officer, salaried employee, a partner, or a member of that person; if the person is a trust, a trustee of the trust ***.”

In *Heritage*, we determined that the foregoing should be retroactively applied to those matters pending before this Board based upon Sub. H.B. 694, uncodified section 3, which provides that the amendment of R.C. 5715.13 and 5715.19 by the Act “is remedial legislation and applies to any complaint that was timely filed under either of those sections respecting valuations for tax year 1996 or 1997 ***.”

Our June 18, 1999, Decision and Order did not extend either the amended provisions of R.C. 5715.13 and 5715.19 or the uncodified section 3 of Sub. H.B. 694 to May’s complaint because the complaint had been filed on the 1994 tax year, a year not covered by the Act. Subsequent to our Decision and Order, however, the General Assembly passed Sub. H.B. 283. Section 149 of that legislation amended uncodified section 3 of Sub. H.B. 694 as follows:

“Sec. 3. The amendment by Sub. H.B. 694 of the 122nd General Assembly of Sections 5715.13 and 5715.19 of the Revised Code is remedial legislation and applies to any complaint that was timely filed under either of those Sections respecting valuation for tax year 1994, 1995, 1996, or 1997,

and to complaints filed for tax years 1998 and thereafter. Notwithstanding division (A)(2) of Section 5715.19 of the Revised Code, any person authorized by this act to file a complaint under Section 5715.13 or 5715.19 of the Revised Code that timely filed a complaint for tax year 1994, 1995, 1996, or 1997 may file a complaint under those Sections, as amended by this act, on or before March 31, 2000, respecting valuations for tax year 1994, 1995, 1996, 1997, or 1998, and the board of revision shall proceed to hear the complaints as otherwise provided under Chapter 5715. of the Revised Code.”¹

Given that the foregoing has extended Sub. H.B. 694 to the 1994 and 1995 tax years, May now urges us to likewise apply our decision in *Heritage, supra*, to those 1994 and 1995 complaints that are pending before us. On this basis, May argues that we should vacate our original decision and find its complaint jurisdictionally sufficient

Under the circumstances before us, we find that it is within our discretion to vacate our Decision and Order of June 18, 1999. *National Tube Co. v. Ayers* (1949), 152 Ohio St. 255, 262 (holding that it is a “long established precedent in this state that boards such as the Board of Tax Appeals have control over their decision until the actual institution of an appeal or the expiration of the time for appeal.”)

In the instant matter, the Board of Revision had taken jurisdiction over the complaint and determined value. While section 149 of Sub. H.B. 283 and R.C. 5715.19(A)(3), as added by Sub. H.B. 694, provide that a taxpayer may refile a 1994 complaint dismissed under *Worthington, supra*, we find that this matter has already been subject to Board of Revision review. Refiling in this matter would not necessarily

¹ Section 150 of Sub. H.B. 283 repeals the previous version of Section 3 of Sub. H.B. 694.

provide the parties any substantive review in addition to that already offered by the Board of Revision. We therefore extend our decision in *Heritage, supra*, to this matter and conclude that May's complaint is sufficient to invoke the jurisdiction of the Board of Revision under R.C. 5715.13 and 5715.19, as amended and made applicable to timely filed complaints for tax year 1994 by Sub. H.B. 283, effective July 1, 1999.

Based upon the foregoing, it is the decision and order of the Board of Tax Appeals that its June 18, 1999, journal entry in this matter be, and the same hereby is, vacated. It is further ordered that this matter proceed to consideration before this Board in conformity with its Rules of Practice and Procedure.