

Ohio Property Taxes: 2007 in Review
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I. CLASSIFICATION

In *Polaris Amphitheater Concerts, Inc. v. Delaware Cty. Bd. of Rev.* (Ohio BTA, January 26, 2007), BTA No. 2004-V-1294, the Board ruled that an outdoor amphitheatre, including the related support buildings, were real property for tax purposes. It rejected the taxpayer's argument that all the structures were business fixtures because they were constructed and used solely for the benefit of the specific business (i.e., outdoor concerts and entertainment) conducted on the property.

In *Inverness Club v. Wilkins* (Ohio BTA, May 11, 2007), No. 2004-R-338, the Board ruled that reconstructing a golf course was a construction contract, not a landscaping service, such that the owner was not liable for sales tax on the transaction. The importance of the decision is the Board's discussion of the difference between a fixture, which is real property, and a business fixture, which is personal property.

In Opinion No. 07-0001 (March 29, 2007), the Tax Commissioner discussed the classification of property as real or personal property for taxation purposes. Although phrased in the context of the components of a golf course, the analysis is instructive in all contexts. In the Opinion, the Tax Commissioner indicated items will be analyzed first to determine whether they meet the definition of real property; if it does not, it is personal property. If the item does meet the definition of real property, it will be real property unless it is "otherwise specified" as personal property, including its status as a business fixture. In making this analysis, the Tax Commissioner will follow the decision in *Funtime, Inc. v. Wilkins*, 105 Ohio St. 3d 74, 2004-Ohio-6890.

In PP 2007-01 and RP 2007-01 – *Classification of Certain Business Assets as Real or Personal Property* (September 2007), the tax commissioner discusses the classification, as real or personal property, of various classes of business assets. A comprehensive list of assets and their treatment is found in the release. The guidance offered by this Information Release applies for sales tax as well as property tax purposes.

See also Amended Bulletin No. 290, "Classification of Business Assets as Real Property or Personal Property" (December 18, 2007)

II. REAL PROPERTY TAX:

A. Valuation - Sale

In *Strongsville Bd. of Educ. v. Cuyahoga Cty. Bd. of Rev.*, 112 Ohio St. 3d 309, 2007-Ohio-6, the Supreme Court ruled that the price paid for an office building in a sale and lease-back transaction was not evidence of the value of the building. The taxpayer provided enough information to support a finding the transaction was the subject of duress and, so, was not an arm's-length transaction. Those factors included an impending balloon payment for which the owner had insufficient cash and a pressing time frame to prevent the interruption of the owner's business.

In *Polaris Mall LLC v. Delaware Cty. Bd. of Revision* (Ohio BTA, June 17, 2007), No. 2005-T-1434, the Board found that the transfer of title to real property in redemption of an ownership interest was not an arm's-length transaction, such that the transaction price did not reflect the fair market value of the property.

In *Cincinnati School District v. Hamilton Cty. Bd. of Revision* (Ohio BTA, June 7, 2007), No. 2005-M-1069, the Board held that the fact a transaction involved a build-to-suit arrangement with a lease, without any other evidence of the value of the property, did not automatically mean the price paid for the property was not indicative of the value of the property. The sale price was still presumed to be the value of the property.

In *Bd. of Educ. of Worthington City Schools v. Franklin Cty. Bd. of Rev.* (Ohio BTA, November 21, 2007), No. 2006-H-381, the Board held that the sales price for the property reflected the value of the property, notwithstanding the facts the property was exchanged in a Section 1031 like-kind exchange and the owners were not knowledgeable about the local real estate market. The Board observed there was not evidence demonstrating how these two factors rebutted the arm's-length nature of the transaction.

In *545 South Walnut, LLC v. Coshoccon Cty. Bd. of Rev.* (Ohio BTA, December 14, 2007), No. 2006-B-708, the Board found that the sales price reflected the value of the property, notwithstanding the apparent bargain-nature of the price paid. Speculation that the transaction was not arm's-length was not sufficient in the absence of evidence that the transaction was not reflective of the value of the property.

See also Berea City School Dist. Bd. of Educ. v. Cuyahoga Cty. Bd. of Rev. (Ohio BTA, November 21, 2007), No. 2006-A-1522); *Nowak v. Delaware Cty. Bd. of Rev.* (Ohio BTA, October 5, 2007), No. 2006-Z-673 and *Bd. of Educ. of South-Western City Schools v. Franklin Cty. Bd. of Rev.* (Ohio BTA, January 26, 2007), No. 2005-Z-637) (fact certain sale contingencies were fulfilled after the sale did not render the sales price invalid as evidence of value); *Cincinnati School District Bd. of Ed. v. Hamilton*

Cty. Bd. of Rev. (Ohio BTA, June 8, 2007), No. 2005-M-1069 (build-to-suit transaction does not render sale an invalid indicator of value absent evidence of value to the contrary).

In *AEI Net Lease Income and Growth Fund v. Erie Cty. Bd. of Rev.* (Ohio BTA, October 12, 2007), No. 2005-T-902, the Board concluded that the price paid in a sale-leaseback transaction nevertheless reflected the value of the property absent objective evidence to the contrary. In doing so, it rejected the owner's argument that a sale-leaseback transaction was inherently not arm's-length.

In *Kenwood Mall LLC v. Indian Hills Exempted Village School District* (Ohio BTA, February 2, 2007), Nos. 2003-B-1162 through 2003-B-1168 and 2003-B-1185 through 2003-B-1200, the Board rejected the claim that a leased-fee sale of a shopping mall was not indicative of the value of the mall. Citing numerous problems with the appraisals submitted on behalf of the property owner and the board of education, the Board retained the value determined by the Board of Revision.

B. Valuation: Retain BOR Value

In *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St. 3d 281, 2007-Ohio-1948, the Supreme Court ruled that where a property owner submits probative evidence that contradicts the value placed on real property by a county auditor and no evidence in support of the auditor's value is presented, the Board may not simply reject the evidence and revert to the Auditor's value. Instead, the Board must make an independent determination of value based upon the evidence in the record.

In *Woda Ivy Glen Ltd. v. Fayette Cty. Bd. of Rev.*, (Ohio BTA, September 21, 2007), No. 2005-A-749, the Board found the appraisal evidence submitted on behalf of the owner to be wholly lacking in credibility. Since no other evidence was submitted, the Board affirmed the value placed on the property by the Board of Revision.

In *Bd. of Educ. of Columbus City Schools v. Franklin Cty. Bd. of Rev.* (Ohio BTA, August 17, 2007), No. 2006-M-383, the Board ruled that when evidence is submitted to the Board of Revision and the BOR reduces the value of the property, an appellant to the BTA must present evidence that contradicts the evidence submitted to the BOR in order for the Board to reverse the lower decision. Where the BOR makes a reduction based on evidence presented and no additional evidence is presented to the Board, the Board is reluctant to disturb that decision.

C. Valuation – Procedure

In *Davis Estates Ltd. v. Franklin Cty. Bd. of Rev.* (Ohio BTA, December 28, 2007), No. 2006-V-388 & 389, the Board denied a motion to stay the appeal pending a decision by the Ohio Supreme Court in some related cases. The Board based its

decision on the fact that there was no guarantee the Court's decision would resolve the instant appeal, and because other parties to the case had not joined in the motion.

In *Parma City School Dist. Bd. of Educ. v. Cuyahoga Cty. Bd. of Rev.* (Ohio BTA, March 2, 2007), No. 2006-M-454, the Board declined to approve a stipulation of value because the owner, who had not participated in the proceedings, had failed to sign the stipulation.

D. Appraisals

In *Parkside Towers Apartments v. Cuyahoga Cty. Bd. of Rev.* (Ohio BTA, December 7, 2007), No. 2005-K-1000, the Board was presented with "dueling appraisals". The Board concluded that the appraisal with the greater detail and that contained more objective data to back the conclusions of the appraiser was to be given the greater weight.

In *AP Hotels of Illinois, Inc. v. Franklin Cty. Bd. of Rev.* (Ohio BTA, February 16, 2007), No. 2004-K-349, the Board held that an appraisal report with an effective date other than tax lien date was not competent evidence of the value of the property on the tax lien date, notwithstanding the testimony of the appraiser that his conclusion would have been the same on tax lien date.

In *Shaw v. Montgomery Cty. Bd. of Rev.* (Ohio BTA, April 20, 2007), No. 2005-K-1453, the Board held that an appraisal report that was submitted to the Board of Revision, but which was not accompanied by any testimony of the person who authored the report, was not competent evidence of value. It also ruled that while a property owner may present evidence of value, the fact that other near-by properties were valued for tax purposes differently from the subject did not prove the value was in appropriate.

In *285 E. 15th Avenue, LLC v. Franklin Cty. Bd. of Rev.* (Ohio BTA, March 23, 2007), No. 2005-B-505, the Board held that an owner's opinion of value was not credible evidence of value when the actual "author" of the property was not available to provide testimony about the report.

E. Exemptions - Jurisdiction

In *Black Run Church of God v. Wilkins* (Ohio BTA, January 12, 2007), No. 2005-A-1472, the Board limited its jurisdiction to consider only those issues that were addressed by the Tax Commissioner in that official's final determination, and could not consider new issues raise for the first time on appeal. On the merits, the BTA found that a parsonage and property used to for religious fellowship purposes did not qualify for exemption under R.C. 5709.07 because the property was not used exclusively (primarily) as a house of public worship.

In *Allshred Services v. Wilkins* (Ohio BTA, June 29, 2007), No. 2007-B-70, the Board ruled that where an applicant for a real property tax exemption was not the owner of the property on the date the application was filed, the Tax Commissioner lacked jurisdiction to consider the application. R.C. 5715.27(A) limits those persons who may file an application to owners.

In *St. Stephen the First Martyr Orthodox Church v. Levin* (Ohio BTA, August 10, 2007), No. 2007-M-113, the Board ruled that where taxes were unpaid that could not be remitted by the Tax Commissioner under R.C. 5713.08, the Tax Commissioner had no jurisdiction to consider an application for exemption. In this case, taxes were unpaid for the year in which the applicant acquired title to the property and the taxes could not be remitted because they became a lien prior to acquisition by the applicant; therefore, there was no jurisdiction to consider an application filed in the year following the year of acquisition.

See also, *Glass City Christian Fellowship v. Wilkins* (Ohio BTA, August 24, 2007), No. 2006-V-2349.

F. Exemptions - Charitable

In *Community Health Professionals, Inc. v. Levin*, 113 Ohio St. 3d 432, 2007-Ohio-2336, the Supreme Court ruled that a building used by a charitable institution as administrative offices and for other activities that advanced its charitable purposes was entitled to exemption under R.C. 5709.12 and R.C. 5709.121(A). The Court rejected the argument of the Tax Commissioner that an entity that accepted third party (i.e., insurance or governmental reimbursements) for services provided could not be charitable. That official also argued that unless a charitable entity provided services at its own expense, its use of the property was not charitable. That position, too, was rejected, the Court reiterating that no set level of “charity care” was required, but that charitable use would be determined based upon the total circumstances involved.

In *Private Duty Services v. Zaino* (Ohio BTA, August 31, 2007), No. 2004-B-688, the Board held that a building used owned by a charitable institution and used by it and two related charitable institutions was used in furtherance of the entities’ exempt purposes and therefore was exempt from taxation under R.C. 5709.12 and R.C. 5709.121(A). The Board rejected the Tax Commissioner’s argument that some prescribed level of “charity care” must take place on the premises before a charitable exemption may be granted.

In *88/96 LP and Community Housing Network, its General Partner v. Wilkins* (Ohio BTA, July 20, 2007), No. 2005-A-55, the Board held that property used for mental health and drug and alcohol addiction services was exempt from taxation. The owner was a for-profit limited partnership ship, and the general partner was a charitable entity that operated the facility. The property qualified as low-income

housing subject to rent subsidies and counseling and other services were provided to residents. Exemption was granted under R.C. 5709.12 because the property was used exclusively for charitable purposes, notwithstanding the for-profit nature of the owner.

In *Northeast Ohio Psychiatric Institute v. Wilkins* (Ohio BTA, December 14, 2007), No. 2005-M-1683, the Board held that a nonprofit entity that provided mental health services to the public at large without regard to the ability of the client to pay for the services had failed to demonstrate that it was a charitable entity. Because the owner also provided consulting services that generated income of almost \$1 million, provided employee staffing services, and rented real property as a commercial lessor. Therefore, it was not a charitable entity. Since it was not a charitable entity, the fact it leased portions of the building in question to others defeated its claim for exclusive charitable use of the property.

G. Dealers In Intangibles

In *UBS Financial Services, Inc. v Zaino* (May 25, 2007), BTA No. 2003-T-1139, the Board found that the calculation of a taxpayer's net worth included the portion of tenant improvements paid for by the landlord, since the improvements existed on the taxpayer's books regardless of who paid for them. It also ruled that a taxpayer who failed to file a refund claim or an amended return could have not raise an additional issue that would result in a refund; rather, the issue could off-set the assessed liability only.

III. PERSONAL PROPERTY TAX

A. Valuation

In *Rent-Way, Inc. v. Wilkins* (April 13, 2007), BTA No. 2004-A-331, the Board rejected the taxpayer's argument that a disposal study demonstrated the value of its personal property should be lower than that determined under the Tax Commissioner's 302 Computation. The primary defect in the study was the fact the expert who performed it did so on a contingent fee basis, thus compromising his impartiality. In addition, the study presented to the Board lacked objective data to back the conclusions contained in it.

In *MCI Metro Access Transmission Services, LLC v. Wilkins* (April 13, 2007), BTA No. 2004-K-749 & 750, the BTA ruled the taxpayer failed to demonstrate the existence of excessive obsolescence in determining the value of its taxable property. The claim was based upon the impairment recorded out of bankruptcy by the taxpayer's owner, MCI Worldcom. The Board rejected the claim because the impairment had not been "pushed down" to the taxpayer's books and there was no evidence to suggest that a *pro rata* reduction was appropriate.

In *Mead Corp. v. Wilkins* (June 15, 2007), BTA No. 2005-T-787, the Board found that relief from the 302 Computation was not warranted for the taxpayer's computer equipment. The taxpayer claimed that because the average age of its equipment as of tax lien date was less than 5 years, Class Life I was appropriate. The Board demurred, finding this only established that the taxpayer had a large amount of new equipment. The limited disposal information available also disclosed an average age that was much higher than that for Class Life I.

In *The Ohio Bell Telephone Co. v. Wilkins* (Ohio BTA, Aug. 31, 2007), No. 2005-K-202, the Board accepted the taxpayer's appraisal report and reduced the value of its assets on the basis of excess obsolescence. The Board rejected the Tax Commissioner's arguments that a taxpayer could not introduce new evidence to the Board that had not been submitted to the Tax Commissioner; it also rejected that official's claim that an abuse of discretion standard should be applied with respect to the Tax Commissioner's decision to determine value based on the costs reflected in the taxpayer's books and records. Finding that its duty was to determine the true value of the property in question, the Board found the study introduced by the taxpayer was probative of the value of the assets.

In *McLeodUSA Network Services, Inc. v. Zaino* (Ohio BTA, Nov. 9, 2007), No. 2003-T-2111, the Board affirmed the Tax Commissioner's assessment of the taxpayer's personal property. The taxpayer argued that due to "special and unusual circumstances" the statutory valuation method used by the Tax Commissioner should be abandoned for a method that accounts for functional and economic obsolescence through an accelerated rate of depreciation. In order to obtain relief, a taxpayer must demonstrate the existence of special and unusual circumstances, or that the results of the Tax Commissioner's prescribed valuation method were unjust or unreasonable. Here, the taxpayer's evidence was based on assumption and supposition, lacked historical data, and was insufficiently probative.

In *Treasure Chest Advertising Company v. Wilkins* (Ohio BTA, March 9, 2007), No. 2003-V-285, and *Vertis, Inc. v. Wilkins* (Ohio BTA, March 9, 2007), No. 2004-V-381, the Board denied relief from the tax commissioner's 302 Computation because the taxpayer failed to provide any objective data to support its claim of shorter than average useful lives and excessive maintenance costs. In addition, the Board refused to find the presence of special or unusual circumstances because the taxpayer failed to demonstrate that its operation of its equipment was special as compared to the rest of the advertisement print industry. In addition, the Board rejected the argument that a settlement of values for a prior year was binding in the Tax Commissioner for subsequent years.

B. Exempt Property

In *A. Schulman, Inc. v. Levin*, No. 2006-1944, 2007-Ohio-5585, the Supreme Court reversed the Board's decision that held "barrel and screw devices" (*i.e.*, extruders)

were exempt from property tax under R.C. 5701.03(A). The Board concluded that the extruders fell within the definition of “die” and were exempt from property tax. The Court cited cases where it “confined the definition of “die” to “those parts” of a machine that have “specially designed surfaces” for “imprinting or impressing special designs ... upon material placed in such a machine.” The Court concluded that “barrel and screw devices” are akin to the machine, “but they are not themselves “parts” of that machine that are entitled to the tax exemption that Ohio accords to “dies”.

C. Procedure

In *Safeway Tire Company, Inc. v. Wilkins*, BTA No. 2006-B-284 (Jan. 5, 2007), the Board ruled that an application for final assessment (refund) of personal property taxes that was mailed before the state the statute of limitations expired, but received after that date, was not timely. This decision reaffirms the general rule that documents and payments must actually be received by the appropriate authority within the prescribed period; mailing, except by certified mail, generally is not sufficient.

In *J.M. Smucker, LLC v. Levin*, 113 Ohio St. 3d 337, 2007-Ohio-2073, the Supreme Court upheld the Tax Commissioner’s refusal to cancel penalties imposed for filing personal property tax returns late; the authority to cancel penalties is discretionary and the taxpayer failed to establish the Tax Commissioner abused his discretion in refusing to cancel the penalties.

In *Newman v. Levin*, No. 2007-1054, 2007-Ohio-5507, the Supreme Court held that the Tax Commissioner did not have standing to appeal the decision of the BTA in so far as it upheld the final determination of the Tax Commissioner. The county auditor appealed the Tax Commissioner’s grant of thermal efficiency improvement certificates (resulting in a tax reduction) to taxpayers. During the appeal, the Tax Commissioner changed his mind about the certificates upon learning new information about the facilities and urged the certificates be denied. The BTA denied the grant, in part, and affirmed, in part. All parties appealed to the Supreme Court of Ohio. R.C. 5717.04 authorizes aggrieved persons to appeal a BTA decision to the Supreme Court. The Court held that the Tax Commissioner had no standing to appeal affirmation of the grants because insofar as the grants were affirmed, the decision did not aggrieve the Tax Commissioner.

In *HealthSouth Corporation v. Wilkins* (Ohio BTA, Nov. 9, 2007), No. 2005-A-1386, the Board reversed the Tax Commissioner’s denial of the taxpayer’s personal property tax refund request and granted the refund. The taxpayer’s 2002 return included assets that the taxpayer later realized it did not own during the 2002 tax year. The taxpayer requested a refund of the 2002 personal property tax related to the non-existent assets. The Tax Commissioner denied the refund request because it determined that insofar as the taxpayer did not prove that the non-existent assets

had “in fact been written off the books” there was a “sufficient lack of evidence to establish that (the non-existent assets) have fully been removed.” The Board held that the taxpayer’s “bag and tag inventory count” of its personal property sufficiently proved which assets were and/or were not owned during the 2002 tax year. The Tax Commissioner denied a refund solely because it did not receive the evidence in its *preferred form*. The Board determined that taxpayer provided sufficient evidence of all assets owned during the relevant period.

In *Carlisle Equipment Group, L.P., v. Wilkins*, Ohio BTA, (May 25, 2007), No. 2004-B-913, the Board determined that a new taxpayer had to file its initial return and list its taxable property as of the date it actually commenced activities to carry on the business enterprise for which it was organized. Merely filing organizing documents with the secretary of state and entering into a lease for equipment were not considered sufficient.