

OHIO BOARD OF TAX APPEALS

William S. and Sandra M. Dehner,)	
)	
Appellants,)	
)	CASE NO. 2003-P-1451
vs.)	
)	(REAL PROPERTY TAX)
Hamilton County Board of Revision,)	
Hamilton County Auditor and the)	DECISION AND ORDER
Northwest Local School District)	
Board of Education,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant Property Owners	- William S. Dehner, pro se Sandra M. Dehner, pro se 7000 Daleview Road Cincinnati, Ohio 45247
For the County Appellees	- Joseph T. Deters Hamilton County Prosecuting Attorney Thomas J. Scheve Assistant Prosecuting Attorney 230 East Ninth Street, Suite 4000 Cincinnati, Ohio 45202
For the Board of Education	- Ennis, Roberts and Fischer C. Bronston McCord III 121 West Ninth Street Cincinnati, Ohio 45202-5718

Entered August 12, 2005

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

Mr. and Mrs. Dehner seek review of a value determination rendered by the Hamilton County Board of Revision with regard to their residence for tax year 2002. The record before us consists of the notice of appeal, the statutory transcript, and the sworn testimony and other evidence submitted at our merit hearing. Upon careful review of this record, we find that the value determination rendered by the board of revision must be vacated, and we remand for further proceedings.

The record before us demonstrates a significant departure from statutory requirements. Mr. Dehner offered this account of events at our merit hearing:

“On 8-11, my wife took off work *** to attend the [board of revision] hearing with our documentation, including property pictures along with spread sheets showing comparable properties.

“She was directed to talk to a man she was not introduced to. He did not introduce – Maybe she doesn’t remember his name, but she was basically talking to him in the lobby, and no kind of hearing room or whatever, and was told that the hearing was already over and that the value was established, it was a done deal, that the taxes would be assessed based on the purchase price of the property.

“She was basically excused at that point and it was kind of implied there was nothing else she could do. There was no hearing per se that she got to voice her opinion or present documentation that was brought down, and that was after arriving at the meeting in advance of the scheduled time for the hearing.

“She also witnessed at the same time in the area another gentleman who was basically addressed the same way, that there was [sic.] for a hearing and was told identically that his hearing was already done and a decision had been made. So although she took off work to go to this hearing, there was no hearing. We were just told, hey, the decision was made.” H.R. at 16, 17.

Mr. Dehner’s testimony has not been refuted.¹ Moreover, the statutory transcript supports his assertion. The board of revision’s hearing notice indicates that

¹ We note that the auditor elected to waive our merit hearing, and no separate appearance has been entered on behalf of the board of revision.

the hearing was scheduled to begin at 9:40A.M.² But the opening remarks by the auditor's representative acknowledge: "The Hamilton County Board of Revision is once again in session. Today's date is August 11, 2003, and the time is **9:00a.m.**"³ (Emphasis added.) It thus appears that the board of revision commenced its merit hearing a full forty minutes before the time provided in the hearing notice.

R.C. 5715.19(C) contemplates that a property owner be afforded notice and an opportunity to be heard.⁴ We find that the Dehners were not afforded this right. Indeed, we question whether any of the testimony and evidence adduced at the board of revision level is properly includable in the record in this matter. The auditor's appraiser offered testimony before the board of revision, but was not presented at our merit hearing. As a result, the Dehners had no opportunity to cross-examine this witness. They were also deprived of the opportunity to object to the admission of other evidence that was offered at the board of revision hearing. R.C. 5717.03(F) provides:

"The orders of the board [of tax appeals] may affirm, reverse, vacate, modify, or remand the tax assessments, valuations, determinations, findings, computations, or orders complained of ***."

Upon careful review of the record before us, we find the proper course is to vacate the

² Hearing Notice, St. - Exhibit II.

³ See Board of Revision Hearing Record, Statutory Transcript, page one.

⁴ R.C. 5715.19(C) provides: "Each board of revision shall notify *** the property owner *** when a complaint is filed by one other than the property owner *** of the time and place the same will be heard."

board of revision's determination, and remand this matter for a new hearing.

We would offer further comment, however, concerning one particular issue that the Dehners have raised. It is their belief that the taxing authorities should have divided the 2002 real property tax bill between themselves and the person(s) who sold them the subject property. In their view, the system of taxation would be more equitable if government officials prorated the tax based upon the time that each owned the subject property. But we are aware of no authority, and none has been presented, to support the proposition that real property taxes are to be "prorated" to the date that a buyer acquires title. It has long been held that real property taxes are in rem, not in personam. By way of example, the Supreme Court remarked in *Clark v. Lindsey* (1890), 47 Ohio St. 437: "The lien of the state for taxes *** and all proceedings under the statute for the sale of the land for non-payment of taxes, are in rem. They operate, if at all, upon the land ***." *Id.* at 444. And in *Hunter v. Grier* (1962), 173 Ohio St. 158, the Supreme Court held in the syllabus: "A proceeding to foreclose a tax lien on land instituted under the provisions of what is now Section 5721.18, Revised Code, is essentially one in rem ***." Moreover, R.C. 5721.18(B) states:

"Foreclosure proceedings *constituting an action in rem* may be commenced by the filing of a complaint after the end of the second year from the date on which the delinquency was first certified by the auditor."
(Emphasis added.)

and

“*** [T]he action *in rem* shall be instituted by filing in the office of the clerk of a court with jurisdiction a complaint bearing a caption substantially in the form set forth in division (A) of section 5721.181 of the Revised Code.” (Emphasis added.)

Black’s Law Dictionary (7th Ed. 1999), defines “in rem” as: “[Latin ‘against a thing’] Involving or determining the status of a thing, and therefore the rights of persons generally with respect to that thing,” while “in personam” is defined as: “[Latin ‘against a person’] Involving or determining the personal rights and interests of the parties.” The payment of real property tax is secured by a lien that attaches to the real property. R.C. 323.11 provides:

"The lien of the state for taxes levied for all purposes on the real [property] tax list and duplicate for each year shall attach to all real property subject to such taxes on the first day of January, annually * * * and continue until such taxes, including penalties, interest, or other charges accruing thereon, are paid."

We conclude that this statutory scheme does not require governmental officials to perform an adjustment in accordance with the “personal rights and interests” of the parties to a real estate transaction. County officials are merely performing their statutory duty when they value, assess, levy, and bill real property taxes for the entire tax year. Objections to this duly enacted statutory process are more properly addressed to the General Assembly.

Upon careful review of the record before us, we find that the board of revision departed from statutory requirements when it commenced and completed its

merit hearing before the time stated in its hearing notice. As a consequence, the board of revision's value determination must be, and the same hereby is, vacated, and the matter is remanded for further proceedings. Upon remand, the Hamilton County Board of Revision is directed to provide the Dehners with due notice and a hearing in accordance with the provisions of applicable law.

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