

Dean Fouras, Executor of the)	
Estate of Alexios Fouras,)	
)	CASE NO. 96-S-1159
Appellant,)	
)	(REAL PROPERTY TAX)
vs.)	
)	DECISION & ORDER
Licking County Board of)	
Revision and the Licking)	
County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	-	C. William Dawson, Esq. 89 East Nationwide Blvd. Suite 300 Columbus, Ohio 43215
For the County Appellees	-	Robert L. Becker Licking County Prosecuting Attorney By: Pauline O'Neill Assistant Prosecuting Attorney Licking County Administration Building 20 South Second Street Newark, Ohio 43055

Entered: March 14, 1997

Mr. Johnson, Ms. Jackson and Mr. Manoranjan concur.

This appeal is considered by the Board of Tax Appeals pursuant to a notice of appeal filed herein by the above named appellant on September 9, 1996. The appeal is taken from a final order of the Licking County Board of Revision ("BOR"), wherein said BOR reinstated current agricultural use valuation (CAUV) status to the subject property for tax year 1995 and denied the classification of the subject property as CAUV property for tax year 1994. It is this denial of CAUV classification for tax year

1994 which appellant appeals herein. ¹

On January 30 , 1997, counsel for the appellees filed a motion to dismiss appellant's notice of appeal, alleging that this Board is without jurisdiction to hear and rule on appellant's request for relief for tax year 1994. However, the sole issue currently before this Board is whether the BOR (and the Board of Tax Appeals) have jurisdiction to consider appellant's complaint as it relates to tax year 1994. If we affirm the BOR's determination that it lacked jurisdiction to consider appellant's complaint as it relates to tax year 1994, this Board similarly lacks jurisdiction. Therefore, we find that appellees are essentially requesting this Board to affirm the determination of the BOR, not to dismiss the notice of appeal filed herein.

This matter is submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this Board, the motion to dismiss and the "Memorandum of Appellant Contra Motion to Dismiss Appellant's Appeal for Lack of Jurisdiction."

It appears from the record that prior to 1993, the subject property had received CAUV status. In 1993, it appears that no renewal application was filed for the subject property. Attached to appellant's motion to dismiss is a copy of the "Notice

¹ As noted, appellant's complaint filed with the Licking County Board of Revision related to tax years 1993, 1994 and 1995. However, the decision of the BOR and the notice of appeal filed with this Board relate only to tax year 1994. Accordingly, only tax year 1994 is at issue herein.

to refile Application for the Valuation of Land in Accordance with its Current Agricultural Use." (Appellant's Exhibit 3) That document, dated March 14, 1994, states the following:

"In accordance with Section 5713.31, R.C., you are hereby notified that land described above, previously valued as agricultural land, will be valued at its true value in money and recoupment charges will be levied, unless the enclosed application for the valuation of land in accordance with its current agricultural use is filed with this office on or before the first Monday in April."

The certified mail receipt for this letter was signed by the appellant herein.

On April 22, 1994, appellant, acting as executor of the estate of Alexios Fouras, sent the renewal application to the Auditor's office, along with a letter explaining that the application was late because the notification to refile had been misdirected to the late Dr. Fouras' former address. It appears that this renewal application was returned to appellant on May 20, 1994. Included with the returned application was a letter from Millie Carson, Licking County Deputy Auditor, explaining that the application could not be accepted because the deadline for filing CAUV renewal applications was the first Monday in April. Ms. Carson also advised appellant that he would have to file a complaint with the Licking County Board of Revision next year (i.e., by March 31, 1995) to contest the recoupment charges for tax year 1994.

On February 28, 1996, appellant filed a complaint with the Licking County Board of Revision, seeking to return the property to CAUV status for tax years 1993, 1994 and 1995.

In order for property to be classified as CAUV property under R.C. 5713.30 et seq., the property owner must make application in accordance with R.C. 5713.31. That section provides, in pertinent part:

"At any time after the first Monday in January and prior to the first Monday in March of any year, an owner of agricultural land may file an application with the county auditor of the county in which such land is located, requesting the auditor to value the land for real property tax purposes at the current value such land had for agricultural use, in accordance with rules adopted by the commissioner for the valuation of such land. An owner's first application with respect to his land shall be in the form of an initial application. Each application filed in ensuing consecutive years after the initial application by that owner shall be in the form of a renewal application."

R.C. 5713.351 provides a remedy in the event a taxpayer fails, for good cause, to file an initial or renewal application. That section provides:

If the county auditor has determined under section 5713.35 of the revised code that conversion of land has occurred with respect to any tract, lot, or parcel on the agricultural land tax list because of a failure to file an initial or renewal application, and if the auditor, upon application of the owner and payment by the owner of a twenty-five dollar fee, finds that the land would be land devoted exclusively to agricultural use for the current year if the board of revision finds the failure arose for

good cause, the owner may file a complaint against that determination with the board as provided in section 5715.19 of the Revised Code on the grounds that the tract, lot, or parcel is land devoted exclusively to agricultural use because there was good cause for the owner's failure to file an initial or renewal application. ***."

Herein, it appears that appellant simply failed to follow the prescribed statutory procedures. In the memorandum filed herein on his behalf, appellant argues the following:

"Section 5713.35.1 O.R.C. is the section which appears to provide for review by the Board of Revision. However, it also appears to provide for a review of the 'current year' usage.

"There appears to be no provision in the statutes governing the procedures of the board of equalization or the board of tax appeals which provides authority to review the three year recoupment. In other words, there is a constitutional due process procedural defect in the statutory authority, if the interpretation advocated by the Appellee is allowed.

"Thus, it would appear that when the board of equalization found too (sic) cause existed for removal of the recoupment for 1995, but refused to review whether good cause existed for 1994 and 1993 on the grounds there was no authority for the board to review those years, the legislature has created in (sic) unconstitutional situation. It has allowed no mechanism for review of whether 'good cause' existed for appellant's failure to file for exemption in 1993 and 1994."

However, we find appellant's contentions to be without merit. Pursuant to the statutory framework set forth above, appellant was provided ample opportunity to return the subject

property to CAUV classification. Appellant, acting on behalf of the property owner, could have filed a renewal application prior to the first Monday in March of 1994, pursuant to R.C. 5713.31. Further, if good cause existed for failure to file the renewal application for tax year 1994, appellant could have filed a complaint with the Licking County Board of Revision pursuant to R.C. 5715.19, i.e., by March 31, 1995. Appellant was apprised of this fact in the May 20, 1994 letter from the Licking County Deputy Auditor.

However, the record reveals that appellant missed the statutory filing deadlines and did not file a complaint with the Licking County Board of Revision until February 28, 1996. Therefore, the Licking County Board of Revision and this Board are without jurisdiction to consider appellant's complaint, as it relates to tax year 1994.

In The Ohio Masonic Home v. Limbach (Dec. 31, 1992), B.T.A. Case No. 90-R-519, unreported, this Board stated:

"It is important to note that R.C. 5713.31, 5713.351, and 5713.38 all place the onus of beginning the process of reclassification on the owner of the property. Additionally, this reclassification is voluntary, as evidenced by the language in R.C. 5713.31 which states that the owner 'may' file an application. Nowhere in the statutory scheme is there an affirmative duty placed upon the county auditor to reclassify the property for agricultural use absent application first by the owner.

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"Further, the designation 'agricultural land' was created by the Ohio General Assembly

and is therefore a creature of statute. As such, it is imperative that the statutory procedures, if provided, be observed. Neither the auditor nor this Board can substitute its judgement for that of the General Assembly."

Based upon the foregoing, this Board finds and determines that the determination of the Licking County Board of Revision must be, and hereby is, affirmed

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