

# Publications

## Time to File Real Property Tax Complaints in Ohio for Tax Year 2018

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The State of Ohio requires counties to reappraise real property tax values every six years. In the interim, the counties are required to update values in the middle of that cycle. This cycle is not evenly distributed amongst Ohio's 88 counties. For tax year 2018, 19 of Ohio's counties were required to conduct a full reappraisal and another five counties performed an update of values. The tax year 2018 values have an assessment date of January 1, 2018 and serve as the basis for property tax bills paid in 2019. Many counties in the Cleveland and Toledo areas, in addition to other counties scattered throughout the state, conducted full reappraisals or updates of real property tax values for tax year 2018.

It can be difficult for the counties to fully understand specific challenges facing a particular property or property type. While the counties may generally understand market trends, often times the mass appraisal process overlooks key factors in valuing a market segment or a single property. It is essential that property owners be proactive and review any change in value and determine how the potential changes affect property tax expenses.

Property taxes are frequently the largest non-productive expense incurred by property owners, and proactive management of this expense may result in increased profitability. Now is the time to review your tax assessments to make sure that each property is valued appropriately and that you are paying your fair share, and only your fair share, of the property tax burden. All complaints must be filed on or before April 1, 2019 to contest the tax valuations of property for tax year 2018.

While real property tax values can be challenged in any county for tax year 2018, the following counties are those required to reappraise or update the tax values as of January 1, 2018:

**Reappraisal Counties**   **Update Counties**   Belmont  
 Brown  
 Crawford  
 Cuyahoga

Erie  
Fayette  
Highland  
Huron  
Jefferson  
Lake Lorain  
Lucas  
Morgan  
Muskingum  
Ottawa  
Portage  
Stark  
Warren  
Williams Allen  
Coshocton  
Guernsey  
Sandusky  
Vinton

Vorys has significant experience in analyzing real property tax assessments and securing real property tax savings for property owners across Ohio and the nation. To discuss an analysis of the opinions of value assigned by your county auditor, please contact us for a complimentary review.

## Ohio Supreme Court and Board of Tax Appeals Decisions & Developments

### Ohio Board of Tax Appeals Reduces Tax Valuation For Retail Pharmacy

***Revco Discount Drug Centers/WEC 99D-17 LLC v. Cuyahoga Cty. Bd. of Rev., et al.* (Oct. 12, 2018), Ohio BTA Nos. 2017-1636, 2017-1735.**

In a recent tax appeal concerning an operating CVS pharmacy, the Ohio Board of Tax Appeals (BTA) accepted the taxpayer's appraiser's income approach as the most reliable indication of value. The taxpayer sought to reduce the value of the subject property noting several negative conditions at the property including high crime. The taxpayer's appraiser presented an appraisal report at the Board of Revision (BOR) which included both a sales approach and an income approach to value. The Board of Education filed a counter complaint seeking to maintain the fiscal officer's value of the subject property and presented a list of unadjusted sales at the hearing at the BOR. The BOR maintained the fiscal officer's value and found that the appraisal was not probative evidence of value.

The parties appealed the case to the BTA, but did not present any additional evidence. The BTA rejected the taxpayer's appraiser's sales comparison approach because his adjustments of leased fee sales failed to consider the effect of the leases on the comparable sales based on the market in which the comparable sales were located. Ultimately, however, the BTA accepted the appraiser's income approach finding that the appraiser adequately supported his adjustments and valuation opinion.

## Ohio Supreme Court Affirms Filing of Tax Valuation Complaint By Property Manager As Unauthorized Practice Of Law

*Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision, Slip Op. No. 2018-Ohio-4244.*

This case involves whether a property manager is among the nonlawyers authorized under O.R.C 5715.19(A) to file a valuation complaint on behalf of a property owner. In this matter, a property manager filed a valuation complaint seeking to reduce the value of a high-end residential property for the owner. After the Board of Education filed a motion to dismiss, and prior to hearing before the Board of Revision (BOR), a lawyer was retained. At the hearing before the BOR, the parties presented legal argument regarding the jurisdictional issue, and the property owner submitted an appraisal report. The BOR, while noting that the filing of the complaint was the unauthorized practice of law, retained the original value. The case was then appealed to the Ohio Board of Tax Appeals, which determined that statute did not authorize the property manager to file a complaint and remanded the case with instructions to dismiss the complaint.

On appeal, the Ohio Supreme Court determined that a complaint filed by a nonlawyer property manager did not vest jurisdiction with the BOR. Although O.R.C 5715.19(A) permits some nonlawyers to institute appeals, including officers, salaried employees, a partner, or member of a corporation, a property manager is not explicitly authorized. In this case because the complaint was filed by a nonlawyer that was not enumerated in statute, the Court found that the property manager's filing of the complaint constituted the unauthorized practice of law and therefore the complaint failed to invoke the jurisdiction of the BOR.

## Ohio Board of Tax Appeals Finds That Filing of Valuation Complaint By Non-Attorney Agent Constitutes Unauthorized Practice Of Law

*Margo Michele Reis and Donald W. Reis, Wife and Husband For Their Joint Lives, Remainder To The Survivor Of Them, et al. v. Montgomery Cty. Bd. of Revision, et al. Ohio BTA 2018-1442*

Relying on the Ohio Supreme Court's decision in *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, Slip Op. No. 2018-Ohio-4244, the Ohio Board of Tax Appeals (BTA) found that a valuation complaint filed by a non-attorney agent failed to invoke the jurisdiction of the County Board of Revision. The complaint properly identified the property owners but listed the complainant as "Doris McCall-Hammonds" as the Agent. The BTA noted that R.C. 5715.19(A) identifies those non attorney agents who may file on behalf of an owner, which includes: (1) spouses; (2) appraisers; (3) real estate brokers; (4) accountants; and (5) corporate officers. The Property Owners did not respond to the Board of Education's motion to dismiss and made no argument that Ms. McCall-Hammonds qualified as an authorized agent. Based on the record, the BTA found that Ms. McCall-Hammonds was not an authorized agent under the statute and was engaged in the unauthorized practice of law.

## Ohio Supreme Court Holds That Counter Complainant Has Standing to Pursue Complaint Even When Original Complainant Withdraws Complaint

*Licking Hts. Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision, Slip Opinion No. 2018-Ohio-3255*

The Ohio Supreme Court held that both the Franklin County Board of Revision (BOR) and the Ohio Board of Tax Appeals (BTA) had jurisdiction to consider the Board of Education's counter-complaint that was pursued following the withdrawal of the property owner's original complaint.

The property owner filed an original complaint with the Franklin County BOR that challenged the Auditor's assessment for the land but not the building. After being notified of the property owner's complaint, the Board of Education filed a counter complaint with the BOR that sought a value increase for the land and building for the property. Although the property owner withdrew its original complaint, the Board of Education pursued its counter complaint at the BOR. The BOR agreed that there was jurisdiction to hear the case under the counter-complaint alone but only decided the land value against the parties competing appraisals. The Ohio BTA, contrary to the BOR below, held that both the land and improvement value was at issue through the Board of Education's counter-complaint. The property owner, challenging the BTA's jurisdiction to make a ruling, appealed the decision to the Ohio Supreme Court.

The Supreme Court found that (1) the voluntary dismissal of the property owner's original complaint long after the filing of the Board of Education's counter-complaint had been filed did not deprive the BOR or BTA with jurisdiction to consider the counter-complaint and the Board of Education's claim for a value increase; and (2) the determination of value under the counter-complaint was not limited to just the value of the land.

## **Ohio Supreme Court Finds That Lease-Coverage Ratio Analysis Impermissibly Comingles Business Value and Real Estate Value For Assisted Living Facility**

*HCP EMOH, L.L.C. v. Washington County Board of Revision, Slip Op. 2018-Ohio-4750.*

The Ohio Supreme Court reversed the Ohio Board of Tax Appeals (BTA) decision adopting the county's appraisal of property, finding that the county's appraiser used data that improperly comingled the value of the business with the value of the realty. The property is an 89-unit assisted living facility, located in rural Marietta, Ohio. The units range from 286 square feet to 363 square feet and the property contains various common areas, including lounges, multipurpose rooms, dining rooms, a beauty/barber shop, and a commercial kitchen. The owner's appraiser primarily relied upon a sales comparison approach using apartment units as the unit of comparison to arrive at a valuation of \$3.55 million. The county's appraiser used an income approach to value the property at \$9.1 million based upon a lease-coverage ratio analysis. The BTA adopted the county appraiser's valuation, stating that an appraiser was not required to utilize apartment data in valuing an assisted-living facility. The BTA also found that the county's appraiser, properly removed the value of the business to arrive at a real estate only valuation.

On appeal, the Supreme Court found that the county appraiser's use of net leases, which reflected business value and not realty value, was flawed from the beginning because the inputs the appraiser were based upon a percentage of the net operating income from the operating business. Although the Court found that the BTA erred in adopting the county's appraiser valuation, the Court held that the BTA did not err in rejecting the valuation submitted by the taxpayer's appraiser's finding that the sales and rental comparables used were significantly different from the subject property and adjustments were insufficient to account for those differences. The Court remanded the case to the BTA for further proceedings.