

A quarterly publication of Wiles, Boyle, Burkholder & Bringardner, Attorneys at Law.



Located in the
Arena District

300 Spruce Street
Columbus, Ohio
43215

614-221-5216
wileslaw.com

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Real Estate Tax

Are you paying too much?

Most likely, you have just received – and paid – your real estate tax bill for the first half of 2007. However, do you know if your property is valued correctly to determine if the amount you pay in real estate tax is correct or not?

In Ohio, real estate taxes are based upon the “fair market” value of your property. On your tax bill, the “tax valuation” is 35 percent of your property’s fair market value. On your tax bill’s left-hand side, there is a notation for land, improvement and total. This is the taxable value of your property (to get the fair market value, divide it by 35 percent). If you believe your property’s fair market value is too high, you can file a complaint with the applicable county Board of Revision (BOR). There is no filing fee. You simply need to ask yourself what the property would sell for today. If the auditor’s value is higher than the property’s expected selling price, then you may have a basis for a complaint.

In Ohio, complaints against the value of property must be filed on or before March 31 of the year subsequent to the tax year you are challenging. Put another way, if you want to challenge your real estate tax valuation for 2007, **you must file your complaint before March 31, 2008.**

There are technical laws that you must follow to properly file a complaint, and therefore, provide jurisdiction to the applicable BOR to hear your case. Below are the main points that you should consider.

In Ohio, a property owner can only file a complaint against valuation once in a given interim period (with a few exceptions). In Franklin County, the current interim period is 2008-2010. Therefore, if you filed a complaint for tax years 2005 or 2006, you could not re-file again for 2007. And if you file a complaint challenging the 2008 taxes, you will be barred from filing a complaint challenging 2009 or 2010, unless you meet one of the exceptions. Those exceptions are:

- (1) the property was sold during the interim period;
- (2) the property lost value due to casualty;
- (3) the occupancy of the property changed by 15 percent or more; or
- (4) a substantial improvement was made to the property.

In Ohio, an arm’s length sale within 12 to 18 months of the tax lien date is presumed to be the best evidence of value. The tax lien date is January 1 of every year. The tax lien date is very important, because the property’s value is based on the value of the property as of January 1. If you have property that as of January 1, 2007 (tax lien date for this year’s complaints) was unimproved, and subsequently was improved, then the value for 2007 real estate tax purposes should be the unimproved value of the property as of January 1, 2007. Your taxes will increase and will be assessed at the developed value for



tax year 2008, assuming you have fully developed that parcel by January 1, 2008 (tax lien date for 2008).

If there has not been a recent arm’s length sale of property, you can still challenge the value of your property. You would need to retain an appraiser to appraise your property’s value and introduce that appraisal value at the BOR hearing. While the property’s appraised value is not presumed to be “best evidence of value” like a recent sale, it still may be in your best interest to have your property re-evaluated and determine if you can make a successful argument for a reduction in value.

Finally, the Ohio Supreme Court has determined that if property is owned by a limited liability company or corporation, then the limited liability company or corporation **must have an attorney sign the complaint in order to vest jurisdiction.** If you sign your complaint and you are not an attorney, then you risk having the complaint dismissed by the BOR.

For more information on BOR filings, please contact Bruce Burkholder or Kerry Boyle.

By Kerry Boyle

Wiles, Boyle, Burkholder & Bringardner, Attorneys at Law

DANIEL G. WILES
JAMES M. WILES
MARK J. SHERIFF
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Featured Attorneys



Dale D. Cook

Dale Cook has 25 years of expertise in insurance coverage and litigation. He specializes in insurance coverage, product liability and appellate work, handling more than 60 appeals.

A 1982 law school graduate, Dale holds his J.D. from Duke University. He is active in the Ohio State Bar Association and the insurance law committee. He currently resides in Reynoldsburg with his wife of 19 years, Char, and their two sons, ages 11 and 13.



C. William Klausman

A 14-year veteran of the firm, Bill Klausman is a partner with WBB&B. His practice includes counseling companies of all sizes in legal matters that meet clients' specific business goals.

His practice areas include business and corporate law and commercial real estate law. He holds a J.D. from Capital University and is a member of the Columbus, Ohio State and American Bar Associations.

Ohio Tort Reform Update

The April 2005 newsletter discussed the changes by the Ohio General Assembly to laws relating to personal injury claims that took effect on April 6, 2005. As noted in the April 2005 article, the General Assembly's tort reforms historically have proven challenging due to the Ohio Supreme Court's power to review, uphold or declare such efforts unconstitutional.

As expected, various provisions of the new law recently were challenged in Ohio courts. The limitations on noneconomic and punitive damages have been challenged as being unconstitutional for violating the right to trial by jury and due process rights. The statute allowing for certain collateral benefits to be subtracted from a jury verdict is being challenged on similar grounds. On December 27, 2007, the Ohio Supreme Court issued a 5-2 decision in Melisa Arbino v. Johnson & Johnson, Case No. 2006-1212, and upheld the constitutionality of

damage caps for noneconomic damages and caps on punitive damages. The Court declined to rule on the Collateral Benefits statute as Mrs. Arbino had admitted that she lacked standing to challenge the statute. The decision is significant as it may signal a shift in the Court's attitude toward tort reform measures.

In Douglas Groch v. General Motors Corporation, Case No. 2006-1914, the Plaintiff challenged the constitutionality of the product liability statute of repose, which bars claims against manufacturers or suppliers later than 10 years after the product was delivered to its first purchaser. On February 20, 2008, the Ohio Supreme court upheld the constitutionality of the 10-year Statute of Repose for product liability claims, which bars *most claims* against manufacturers for products manufactured and delivered to the first purchaser more than 10 years ago. However, the

Court did find that part of the Statute of Repose, which applied the *10-year most limitation* to accidents occurring before the Tort Reform Statute effective date of April 7, 2005, was unconstitutional. This part of the holding only applies to a small number of cases and significantly limits manufacturers' liability in Ohio. In the same opinion, the court also upheld the State's right to recover Worker's Compensation payments from the proceeds of a civil judgment or settlement subsequently obtained by the worker. This decision upheld the Bureau of Workers' Compensation right of subrogation that has been in place since 2003.

For more information on tort reform and constitutional challenges to this law, please contact Dale Cook or one of Wiles, Boyle, Burkholder & Bringardner's experienced litigation attorneys.

By Dale Cook

Trade Secrets Cannot Be Memorized And Used By Former Employees

It is every employer's worst nightmare. Your best and most tenured employee just announced she was resigning to start her own company. And by the way, her new startup company will provide the exact same services as your company.

Although she did not sign an employment contract or non-compete agreement, your star employee takes nothing with her on the way out, except everything she memorized during the last 10 years, including your confidential client list. Is this memorized information protected as a trade secret? Absolutely. More importantly, you may be entitled to fees not generated from your former clients who were solicited away by your ex-employee.

In January 2008, the Ohio Supreme Court was asked whether the use of a memorized client list can be the basis of a trade secret violation pursuant to Ohio's Uniform Trade Secrets Act (UTSA). In Al Minor & Associates, Inc. v. Martin, Slip Opinion No. 2008-Ohio-292, AMA was an actuarial firm that designed and administered retirement plans and employed several pension analysts. AMA developed and maintained a list of 500 clients.

After five years with AMA, Robert Martin left and started his own company with the purpose of providing the same type of services as AMA. Without taking any documents containing confidential client information, Martin successfully solicited 15 AMA clients with information from his memory. AMA cried foul, and the Ohio Supreme Court agreed. Relying on the definition of "trade secret" found in Ohio Revised Code Section 1333.69 and Ohio case law developed over the past century, the Ohio Supreme Court concluded AMA's client information did not lose its status as a trade secret or the protection of the UTSA simply because it had been memorized by a former employee rather than written down and taken in a paper file.

Two competing interests quickly emerged. On one side of the aisle, employers argued they had protected rights in their trade secrets. On the other side, employees reminded the Court of their right to exploit their talents and compete in the marketplace. While recognizing the protection of trade secrets involves a balancing of public policies, the Ohio Supreme Court held neither "R.C. 1333.61(D) nor any other

provision of the UTSA suggests that, for the purposes of trade secret protection, the General Assembly intended to distinguish between information that has been reduced to some tangible form and information that has been memorized." As made clear by the Court, it "is the information that is protected by the UTSA, regardless of the manner, mode, or form in which it is stored – whether on paper, in a computer, on one's memory, or in any other medium."

So, as an employer, if you can safely navigate R.C. 1333.61's requirements and the Ohio Supreme Court's six-factor test for determining whether information constitutes a trade secret, your information, including scientific or technical information; design, process, procedure, formula, pattern, compilation, program, device, method, technique or improvement; any business information or plans; financial information; and listing of names, addresses or telephone numbers, can be maintained in secrecy and will be protected by the UTSA – even if only stored in the memory of your former employee.

By Brian M. Zets

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