

Publications

BTA Reform Advocated by Ohio State Bar Association

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Following the efforts of the Ohio State Bar Association (OSBA) Taxation Committee, currently chaired by Nicholas Ray of Vorys, the OSBA Council of Delegates has endorsed a slate of proposed reforms for the Ohio Board of Tax Appeals (BTA). These reforms are focused on efforts to both improve the efficiency of the BTA while also addressing several areas of concern with the operation of the BTA.

The BTA is an administrative body and therefore quasi-judicial in nature. It is not bound by the Ohio Rules of Evidence or Procedure. The goals of these efforts have been to improve the BTA's process; improve and ensure due process for participants before the BTA, including the right to have an appeal heard rather than being dismissed on technical grounds; and improve the efficiency of the BTA thereby limiting the need for continuances or full merit decisions that could be addressed in a more efficient manner.

The following points were developed by the OSBA to summarize its position and provide the general rationale behind the requested reform. It is hoped that these items will be considered by the Ohio Legislature either as part of the upcoming budget deliberations or as a separate piece of legislation.

1) Authorize a small claims division within the Board of Tax Appeals.

Rationale: The Board of Tax Appeals has established a small claims procedure (proposed Ohio Adm. Code 5717-1-25), but currently, the Board is limiting the procedure to *pro se* residential real property cases. An expanded procedure is necessary to allow the Board to resolve its backlog of appeals. To make the procedure effective, the Board needs statutory authority to require participating parties to waive the right of appeal and to provide that the decisions of the small claims division will not be considered as precedent in any other case, hearing or proceeding.

2) Require the Board to institute measures to control and manage appeals brought under R.C. 5717.02, including a case management schedule.

Rationale: The Board's rules currently require parties to complete the discovery process within 120 days after filing the Notice of Appeal, but hearings may not be conducted for months or even years after the deadline. The same rule requires expert witnesses be disclosed as soon as known but no later than 14 days before the hearing. For the sake of all parties, the Board should set a case schedule to provide deadlines for motions and discovery and identification of witnesses in a way that contributes to efficient processing of the appeal.

3) Authorize the Board to require parties to engage in mediation, and require the Board to conduct mediation of appeals.

Rationale: The Board suspended the use of mediation in 2010 due to funding constraints. This suspension has actually cost both the government and private entities time and money because mediation allowed many cases to be resolved without conducting hearings or drafting explanatory decisions. The Board should be required to conduct mediation of cases and have the authority to require parties to participate in mediation.

4) Require the Board to receive notices of appeal through Ohio Business Gateway.

Rationale: Ohio Business Gateway is an appropriate tool for filing Notices of Appeals because it is accurate, timely, inexpensive and efficient for taxpayers and the state. Many tax returns are currently filed through the Ohio Business Gateway, and sales tax returns *must* be filed through this organization.

5) Require the Tax Commissioner and the Boards of Revision to electronically file transcripts with the Board of Tax Appeals.

Rationale: The electronic filing of transcripts can ease administrative burdens of transmitting, storing and using paper transcripts for both government and private entities. The Department of Taxation's audit staff currently creates an electronic audit file, but must reduce it to paper to file transcripts with the Board. The Board and several counties are currently testing procedures for filing Board of Revision transcripts electronically. Electronic transcripts ease government's administrative burden and are easier for practitioners and taxpayers to use. They can be stored on computers and critical information can be accessed (and pages printed) when needed. Finally, this process saves trees.

6) Make pleading standards for appeals to the Board of Tax Appeals consistent with the Ohio Rules of Civil Procedure for court filings (Ohio Civil Rules 8 and 15).

Rationale: Too many appeals are dismissed for failing to properly plead objections. R.C. 5717.011 and 5717.02 provide that notices of appeal to the Board of Tax Appeals from decisions of a Municipal Board of Appeal or from decisions of the tax commissioner require the notices of appeal to specify the errors contained in the decisions of the MBOA or final determination of the tax commissioner. The Supreme Court of Ohio's early review of this provision resulted in a decision that called for the taxpayer to specify the errors contained in the tax commissioner's determination. Although the Court cautioned in its review that the provision

should not be applied so as to create an unreasonable result, it has moved in recent years toward applying the pleading standard stringently without regard to the reasonableness of the result. *Ellswood Engineered Castings Co. v. Zaino* (2003) 99 Ohio St. 3d 1438 and *Ohio Bell Tel. Co. v. Levin* (2009) 124 Ohio St.3d 211.

7) Authorize summary judgment authority for the Board of Tax Appeals.

Rationale: The Board of Tax Appeals receives many appeals that are not supported by the facts presented or by any interpretation of law. Allowing summary judgment would expedite conclusion of these cases. The Supreme Court of Ohio, however, has held that the Board does not have summary judgment authority. *Brown et al., v. Levin* (2008), 119 Ohio St. 3d 335. The Board of Tax Appeals should have the same authority to summarily dismiss appeals as does a Court of Common Pleas under Civ. R. 56.

8) Authorize the board to consider motions in limine, the use of stipulations, requests for statement of facts and conclusions of law by the hearing examiner and allow the hearing examiner to determine witness credibility.

Rationale: Ohio's tax appellate process is one of the few adjudicative processes where a party can appeal all the way through the Supreme Court of Ohio and not have the decision-maker hear the testimony or evaluate the credibility of witnesses. The tax commissioner ostensibly makes final determinations, but delegates the jobs of hearing testimony and evaluating evidence to the Department's staff attorneys. Similarly, at the Board of Tax Appeals, the Board makes final decisions, but delegates to hearing examiners the jobs of hearing evidence and evaluating the credibility of witness testimony. This change would address this concern.

9) Require the tax commissioner to promulgate uniform rules to improve and strengthen the Board of Revision process.

Rationale: The current Boards of Revision serve a valuable role in administering real property tax valuation disputes, but each Board of Revision operates under its own set of rules. Practitioners representing property owners in multiple counties face a confounding set of different practices, including differences in time allowed for hearings, granting of continuances and cross-examination of witnesses. To address these concerns, this change would require the tax commissioner to issue uniform rules.