Bethany Boyd *Legislative Service Commission*

S.B. 292

123rd General Assembly
(As Introduced)

Sen. Blessing

BILL SUMMARY

- Requires public utilities filing administrative tangible personal property tax appeals to state their objections separately on the basis of the assessed value of the property, the assessment percentage used, and how the value is apportioned among taxing districts.

- Permits public utilities to pay only the undisputed portion of tangible personal property taxes (except when the dispute involves the assessment percentage used); disputed taxes are not payable until the dispute is finally resolved.

- Interest, but no penalty, is charged on any unpaid amount if the final resolution of the dispute results in the public utility owing all or part of the disputed amount; a penalty is imposed only if the utility does not pay the undisputed portion of the tax (except for disputes involving the assessment percentage).

- Requires the Tax Commissioner to notify county auditors of the possible effect on taxable property values of administrative appeals requesting reductions in the assessment of public utility property.

- Provides for notification to taxing authorities, upon request, concerning how such administrative appeals might affect the taxable value of property apportioned to a taxing district.

- Limits the reduction in the value of a public utility's property assessment that may be made by the Board of Tax Appeals or a court to the amount of reduction sought by the public utility in its administrative appeal.

- Applies to 2001 and thereafter.

- Makes the penalties for filing late or incomplete public utility property tax reports discretionary, rather than mandatory.

CONTENT AND OPERATION

Current public utility property tax law

Reporting; assessment of property taxes

(secs. 5727.08 and 5727.23)

Public utilities are required to file annual reports showing the taxable value of all taxable tangible personal property used in Ohio to provide public utility services. The reported values are to be determined according to the Tax Commissioner's rules and instructions. The Tax Commissioner then assesses the property and apportions the value of the property among the various taxing districts where the property is located. The Commissioner's assessment is shown in a "preliminary assessment" certified to the utility and county auditors. After a preliminary assessment is issued, the Commissioner may change it by issuing an amended preliminary assessment. A preliminary assessment or amended preliminary assessment becomes final (i.e., unappealable) 90 days after it is certified to the public utility, unless the utility files an administrative appeal within that time.*

Payment of tax; refunds

(secs. 5727.47 and 5727.471)

Even if a public utility appeals the Tax Commissioner's assessment, the utility currently must pay the amount of tax indicated in the assessment. If it is later determined by the Board of Tax Appeals (BTA) or a court that the Commissioner's assessment was too high, the utility is entitled to a refund of the tax overpayment, plus interest computed from the time the tax was paid. The county auditor may refund the overpayment by paying it in a lump-sum, crediting it against future taxes for up to five years, or some combination of paying a sum and crediting it against future taxes. Interest continues to accrue on amounts that are credited it against future taxes until the amount is credited at the future tax due date.

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* *If a preliminary assessment is amended by the Tax Commissioner, the assessment does not become final until 30 days after the amended assessment is certified to the public utility, if that 30-day period ends after the 90-day period.*

Appealing assessments

(sec. 5727.47)

An administrative appeal against an assessment (a "petition for reassessment") must indicate the public utility's objections to it. A utility may file additional objections at any time before the Commissioner makes a final determination on the petition. Utilities might object to how property is valued (i.e., the method applied or facts that indicate value), the assessment percentage used (e.g., 25% or 88% of true value), or how the property's taxable value is apportioned among taxing districts.

A public utility that properly files a petition is entitled to an administrative hearing before the Tax Commissioner. On the basis of the petition and hearing, the Commissioner may change the assessment, or allow it to stand, by issuing a final determination. Public utilities may appeal the Commissioner's final determination to the BTA.

Changes proposed by the bill

Contents of petitions for reassessment

(sec. 5727.47(A))

The bill specifies how objections are to be raised in petitions for reassessment and in additional objections. Petitions and additional objections must conform with the following requirements:

- They must state the total amount of the reduction in taxable value being sought by the public utility.

- If a public utility objects to the taxable value assessed by the Tax Commissioner on the grounds that the Commissioner's assessment percentage is erroneous (e.g., contends that its property should be taxed at 25% rather than 88% of true value), the utility must state the total amount of the reduction in taxable value being sought both with and without taking into account the assessment percentage being sought by the utility. (Thus, for example, it must state the reduction in taxable value being sought if the property were to be assessed at 88% and at 25%.) If the utility fails to state the reduction in taxable value it is seeking, the Commissioner must notify the utility of the failure by certified mail. If the utility does not reply in writing stating the reduction it is seeking within 30 days after receiving the Commissioner's notice, the petition or additional objection must be dismissed.

- If a public utility objects to how its taxable value is apportioned by the Tax Commissioner, the utility must state in the petition that it objects to that apportionment, and must submit its proposed apportionment within 45 days after it filed the petition for reassessment. If the utility does not submit its proposed apportionment within that 45-day period, the objection regarding the apportionment must be dismissed, and the Commissioner's apportionment stands.

Paying only undisputed portion of assessment

(sec. 5727.47(B))

The bill permits public utilities, under many circumstances, to pay only the portion of an assessment that the utility does not dispute in its petition for reassessment (or in additional objections filed after the petition is filed). The disputed part of the tax becomes payable once the Tax Commissioner, the BTA, or a court determines that the utility owes the tax, as long as the public utility does not appeal that determination to a higher authority.

The amount of tax payable depends on the part of the assessment to which the utility objects, as follows:

- If the public utility objects to the taxable value assessed by the Tax Commissioner on grounds other than the assessment percentage, but does not object to how the Tax Commissioner apportioned the utility's taxable value, the utility must pay tax only on the part of the taxable value that the utility does not object to.

- If the public utility objects to how its taxable value is apportioned by the Tax Commissioner, the utility must pay tax only on the part of the apportioned taxable value to which it does not object. But, if a utility apportions its taxable value to a particular taxing district to which the Commissioner did not apportion the taxable value, the utility must pay tax on that part of its taxable value.

- If a public utility objects to the assessment percentage used by the Tax Commissioner to assess the property (e.g., contends that its property should be taxed at 25% rather than 88% of true value), the utility must pay tax on the basis of the assessment percentage used by the Commissioner.

- Regardless of the basis for a public utility's objections, some portion of the tax must be paid--payment cannot be less than the amount that is

reflected on the latest appeal notice issued by the Tax Commissioner (see "***Appeal notices***," below).

Interest is added to the amount of tax found to have been underpaid. A penalty is imposed only if the undisputed part of the tax paid by the utility is less than the amount indicated by the latest appeal notice issued by the Tax Commissioner.

Appeal notices

(sec. 5727.47(C))

The bill specifies the content of the Tax Commissioner's notice to county auditors of a public utility's objections to an assessment. The notices--to be known as "appeal notices"--are to provide information regarding the extent and nature of the utility's appeal; the notices are not appealable by any person. The Tax Commissioner must issue an appeal notice within 30 days after receiving a petition for reassessment or an additional objection that is properly raised. An appeal notice must be provided to the Treasurer of State or county auditor to which the assessment has been certified and the public utility that filed the petition.

If a public utility is seeking a reduction in taxable value as assessed by the Tax Commissioner, the appeal notice must show the reduction in taxable value being sought and how the reduction would affect the apportionment of taxable value among taxing districts. If a utility is seeking a change in how its taxable value is apportioned, the notice must show the effect the utility's change would have on the taxable value apportioned to each taxing district. Appeal notices will not show any reduction in taxable value sought solely on the basis of a reduction in the assessment percentage, since a utility must pay tax computed on the Tax Commissioner's assessment percentage rather than the reduced percentage being sought by the utility.

Appeal notices must indicate that the reductions in taxable value and the apportionment changes shown in the certificates are not final, and may be adjusted by the Tax Commissioner, the BTA, or a court. The Tax Commissioner is authorized to correct errors in an appeal notice after it has been issued.

Appeal information available to taxing authorities

(sec. 5727.47(C))

The bill grants county auditors the authority to disclose to local taxing authorities, upon their request, the extent to which reductions in taxable value sought by public utilities would affect the taxable value apportioned to the taxing

district. Currently, there is no authority for this information to be disclosed to taxing authorities. The bill specifies that receiving such information does not allow taxing authorities to become parties to an appeal before the BTA challenging the Tax Commissioner's final determination regarding a public utility's taxable value or apportionment. This is consistent with a provision of existing law under which county auditors may become parties to such appeals, but individual taxing authorities may not.

Reductions in taxable values limited to public utility's objections

(sec. 5727.47(F))

The bill limits any reduction in a public utility's taxable value that may be granted on appeal to the amount of reduction sought by the utility in its petition for reassessment or in additional objections it properly files before the Tax Commissioner issues a final determination. Thus, neither the BTA nor a court could order a reduction in taxable value that is greater than the reduction that was sought by a public utility in its administrative appeal.

Refunds

(sec. 5727.47(B)(2)(c))

The bill provides that until a county auditor receives notification of the Tax Commissioner's final determination and proceeds under existing law to issue any refund that is found to be due, the county auditor cannot issue a refund for any increase in the reduction in taxable value that is sought by a public utility later than 45 days after the public utility files the original petition for reassessment.

Penalty for filing late or incomplete public utility property tax reports

(sec. 5727.08)

Current law requires that the Tax Commissioner impose a penalty of up to 50% of the taxable value of property that was not timely or accurately reported in a public utility property tax report. The bill makes the penalty discretionary.

Effective date

(Section 3)

The changes proposed by the bill first apply in tax year 2001.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-27-00	p. 1627

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