



Ohio Legislative Service Commission

Bill Analysis

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H.B. 138

130th General Assembly
(As Introduced)

Reps. McClain and Letson

BILL SUMMARY

- Creates a small claims division of the Ohio Board of Tax Appeals (BTA) with the authority to hear certain appeals involving nonbusiness real property or where the amount in controversy is less than \$10,000.
- Allows for parties to file notice of appeal to the BTA by fax or e-mail or, in some cases, through the Ohio Business Gateway.
- Requires the BTA, effective 2015, to adopt rules requiring the Tax Commissioner, county boards of revision, and municipal boards of appeal to file transcripts electronically.
- Requires the BTA to adopt rules creating and implementing a mediation program.
- Requires an appeal filed with the BTA, except for appeals from a board of revision, to contain a statement of the claimed error in the decision being appealed and a demand for relief.
- Prescribes methods and conditions for amending an appeal notice.
- Requires the BTA to establish a case management schedule for appeals.
- Authorizes the BTA to dispose of an appeal by summary judgment and consider motions before rendering a decision.
- Requires the BTA or a hearing examiner, upon the request of a party, to issue separate findings of fact and conclusions of law before the BTA renders a decision.

- Prohibits the BTA from overturning a hearing examiner's determination of witness credibility except upon clear and convincing evidence that the determination is incorrect.
- Authorizes the Tax Commissioner, upon the written consent of the parties, to review and issue a final determination for cases involving residential property tax values that have been appealed from a board of revision and are docketed with the Board of Tax Appeals.

CONTENT AND OPERATION

Small claims division

The Board of Tax Appeals (BTA), as established in existing law, is a separate, quasi-judicial, administrative agency that acts as the state's administrative tax court. The BTA consists of three members appointed by the Governor who provide taxpayers, corporate entities, and government entities with a forum in which to resolve tax disputes. The BTA resolves appeals from decisions and orders of the Tax Commissioner, the Director of Development Services (regarding enterprise zone incentives), the Director of Job and Family Services, county boards of revision, county budget commissions, and municipal boards of tax appeal.¹ Appeals may be heard by the BTA or by an attorney examiner who must submit the examiner's decision to the BTA for further consideration and final approval. Decisions of the BTA are recorded in a journal maintained by the secretary of the BTA and can be appealed to district courts of appeals or the Supreme Court of Ohio.

The bill creates a small claims division of the BTA. The small claims division would have the authority to hear appeals from county boards of revision involving nonbusiness real property, municipal income tax appeals from municipal boards of appeal where the amount in controversy is less than \$10,000, and appeals from final determinations of the Tax Commissioner, the Director of Development Services, and the Director of Job and Family Services if the amount in controversy is less than \$10,000. The BTA is given authority to modify, by rule, this jurisdictional dollar threshold.

Under the bill, appeals within the above jurisdictional limits must be filed in the small claims division. The BTA must reassign an appeal docketed in the small claims division to the regular docket in all of the following circumstances: (1) a party to the appeal requests reassignment, (2) the appeal presents a constitutional issue, (3) the

¹ References in current law to appeals from decisions by the Director of Job and Family Services are no longer operative. They refer to the Director's approval of job training tax credits that expired in 2008. See R.C. 5733.42.



appeal presents an issue of great public or general interest, or (4) the BTA determines that the appeal is outside the jurisdiction of the small claims division. The BTA also may reassign to the small claims docket any appeal originally assigned to the regular docket if all parties consent.

The operation and procedures of the small claims division are intended to be informal and will be prescribed by rules adopted by the BTA. Subject to these rules, it is permissible for appeals assigned to the small claims division to be heard over the telephone. The bill provides that parties are permitted, but not required, to have an attorney appear on their behalf. Entities that are not natural persons are permitted to participate in appeals before the small claims division as a taxpayer or claimant. These entities may appear through an attorney, a bona fide officer, partner, member, trustee, or salaried employee. Unless the entity is represented by an attorney, however, its representative may not engage in cross-examination, argument, or other acts of advocacy.

Decisions and orders of the small claims division are not appealable, and must be recorded in the journal maintained by the secretary of the BTA. The journal is held open for public inspection. Unlike the BTA decisions, however, decisions and orders of the small claims division do not have precedential value for any other case and are not subject to appeal.²

Facsimile, e-mail, and Ohio Business Gateway filing to the Board

Under current law, an appeal from a decision of a county board of revision must be filed by sending a notice of appeal to the county board of revision and the BTA within 30 days after notice of the decision is mailed to the party. An appeal from a decision of a municipal board of appeal must be filed by sending a notice of appeal to the municipal board of appeal, the opposing party, and either the BTA or the court of common pleas (depending on where the taxpayer or tax administrator elects to seek appellate review) within 60 days after the day the appellant receives notice of the decision. An appeal from a final determination or action of the Tax Commissioner, a county auditor, the Director of Development Services, or the Director of Job and Family Services must be filed by sending a notice of appeal to the BTA and the official whose final determination or action is the subject of the appeal within 60 days after service of the notice of the final determination or action is completed.

In all such appeals, the current law permits the appellant to file the notice of appeal in person, by certified mail, by express mail, or by authorized delivery service. If the notice is filed in person, the date of delivery is treated as the date of filing. If

² R.C. 5703.021, 5717.01, 5717.011, 5717.02, and 5717.04.



notice is filed by certified mail or express mail, the date of the United States postmark on the sender's receipt is treated as the date of filing. If notice is filed by authorized delivery service, the date of receipt recorded by the delivery service is treated as the date of filing.

The bill allows parties to file a notice of appeal to the Board of Tax Appeals by fax or e-mail in addition to the filing methods that already exist. When fax or e-mail is used, the date of transmission is treated as the date of filing.³

The bill authorizes a party appealing from a decision of a municipal board of appeal or a final determination of the Tax Commissioner, a county auditor, the Director of Development Services, or the Director of Job and Family Services to file a notice of appeal electronically using the Ohio Business Gateway. If this method is used, the date of transmission is treated as the date of filing. The Ohio Business Gateway is an online computer network system that allows businesses to electronically file business and tax forms with state agencies.⁴

Notice of appeal

Current law requires an appellant filing a notice of appeal with the BTA to also file the notice with the Tax Commissioner, a county auditor, the Director of Development Services, or the Director of Job and Family Services if the official's final determination is the subject of the appeal. The bill removes this requirement and instead requires the BTA's secretary to provide notice to the Tax Commissioner, the Director of Development Services, or the Director of Job and Family Services if the official's action is the subject of the appeal.⁵ The Secretary is not required to provide such a notice to a county auditor.

BTA rules

Continuing law authorizes the BTA to adopt rules governing its procedures. The bill requires the BTA to adopt rules requiring the electronic filing of transcripts by certain officials and local boards and creating a mediation program, as described below.

Electronic filing of transcripts

Under continuing law, after a notice of appeal is received by the BTA, the body or official from which the appeal is taken is required to file with the BTA a transcript of

³ R.C. 5717.01, 5707.011, and 5717.02.

⁴ R.C. 5717.011 and 5717.02.

⁵ R.C. 5717.02(B) and (D).



the record of the proceedings before that body or official. Effective 2015, the bill requires the BTA to adopt rules to require the Tax Commissioner, county boards of revision, and municipal boards of appeal to file any required transcript to the BTA electronically, as well as instructions and procedures for the electronic filing of such transcripts.⁶ The bill additionally requires the BTA's secretary to notify all parties when a transcript from a municipal board of appeal or the Tax Commissioner, a county auditor, the Director of Development Services, or the Director of Job and Family Services has been filed with the BTA.⁷ No such notice is required for transcripts filed with a county board of revision.

Mediation program

The bill requires the BTA to adopt rules creating and implementing a mediation program, including procedures for requesting, requiring participation in, objecting to, and conducting mediation.⁸

Appellant pleading standards

Under current law, a person filing an appeal with the BTA is required to specify the errors in the decision or determination of a municipal board of appeal, county board of revision, or the Tax Commissioner, a county auditor, the Director of Development Services, or the Director of Job and Family Services that the person wishes to appeal. The bill changes the standards for appeals from a municipal board of appeal or the Tax Commissioner, a county auditor, the Director of Development Services, or the Director of Job and Family Services. An appellant filing a notice of appeal with the BTA from a decision of a municipal board or one of those officials must include "a short and plain statement of the claimed error in the decision and a demand for relief." The bill maintains current law for an appeal from a decision of a county board of revision.

The appellant may amend the notice of appeal once within 60 days after the appellant is notified by the BTA's secretary that the transcript of proceedings is filed without receiving approval from the BTA. However, any other amendment requires permission from either the BTA or each adverse party. The BTA is required to give permission to amend in such instances when justice requires.⁹

⁶ R.C. 5703.02(D)(2); Section 4.

⁷ R.C. 5717.011(D) and 5717.02(D).

⁸ R.C. 5703.02(D)(1).

⁹ R.C. 5717.011(C) and 5717.02(C).



Case management schedule

The bill creates a new requirement that the BTA institute procedures to control and manage appeals of decisions of the Tax Commissioner, county auditors, the Director of Development Services, and the Director of Job and Family Services. These procedures must include the establishment of a case management schedule by the attorney examiners of the BTA in consultation with the parties and their counsel. Current law does not explicitly require the BTA to establish a case management schedule.¹⁰

BTA proceedings

Summary judgment

The bill authorizes the BTA to dispose of an appeal by summary judgment, upon the motion of a party to an appeal or on the BTA's own volition. The BTA may dispose of an appeal by summary judgment only if the BTA finds that there exists no genuine issue of material fact and a party is entitled to judgment as a matter of law. The BTA is authorized to adopt rules governing the use of motions for summary judgment.¹¹

Motions

Under current rules governing the BTA, a party may file a motion with the BTA within a reasonable period of time following the filing of the notice of appeal so that the BTA may timely consider the motion.¹² The bill explicitly authorizes the BTA to consider and decide any filed motion, including a motion in limine, before rendering a decision in an appeal.¹³ A motion in limine is a motion requesting that a tribunal rule that certain testimony regarding evidence or information be included or excluded from consideration under the applicable rules of evidence.

Findings of fact and conclusions of law

The bill authorizes a party to file a motion requesting the hearing examiner who conducted the appeal hearing or the BTA, if the BTA conducted the hearing, to make separate findings of fact and conclusions of law before the examiner submits an appeal to the BTA for a final decision or before the BTA renders its final decision, respectively. A party must file or make this motion within ten days after the hearing concludes. The

¹⁰ R.C. 5717.02(D).

¹¹ R.C. 5717.031(A).

¹² O.A.C. 5717-1-12.

¹³ R.C. 5717.031(B)(1).



examiner or BTA is required to send copies of the examiner's or BTA's findings of fact and conclusions of law to each party.¹⁴

Witness credibility determinations

The bill requires the examiner who conducts a hearing or the BTA, if the BTA conducts the hearing, to determine the credibility of each witness. A credibility determination by the examiner may be changed only if the BTA determines by clear and convincing evidence that the examiner's determination is incorrect.¹⁵

Tax Commissioner authority to expedite residential property value appeals

Existing law authorizes the appeal of decisions of any county board of revision to the Board of Tax Appeals (BTA). The bill authorizes the Tax Commissioner, upon the written consent of the parties, to review and issue a determination for such appeals involving residential property tax values. The Commissioner's determination is final. The Commissioner is charged with establishing a practice and procedure for processing the appeals. Requests by parties for transfer of a case to the Tax Commissioner must be made within two years of the effective date of the provision.¹⁶

HISTORY

ACTION	DATE
Introduced	04-23-13

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¹⁴ R.C. 5717.031(B)(2).

¹⁵ R.C. 5717.031(B)(3).

¹⁶ Section 3.

