Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 138

130th General Assembly
(As Reported by S. Ways and Means)

Reps. McClain and Letson, R. Adams, Anielski, Antonio, Ashford, Barborak, Beck, Blair, Blessing, Boose, Brenner, Brown, Buchy, Burkley, Butler, Carney, Celebrezze, Damschroder, Derickson, Dovilla, Duffey, Gonzales, Green, Grossman, Hackett, Hall, Huffman, Kunze, Landis, McGregor, Milkovich, O'Brien, Perales, Pillich, Rogers, Ruhl, Scherer, Schuring, Slesnick, Sprague, Stautberg, Stebelton, Szollosi, Terhar, Winburn, Young, Batchelder

Sen. Schaffer

BILL SUMMARY

- Creates a small claims docket within the Ohio Board of Tax Appeals (BTA) to which the BTA may, upon request, assign certain appeals involving nonbusiness real property or where the amount in controversy is less than $10,000.
- Allows parties to file a notice of appeal with the BTA by fax or electronically.
- 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 the BTA to adopt rules establishing case management procedures for appeals.
- 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.
- Specifically authorizes the BTA to consider motions before rendering a decision.

- Specifies that an appeal of a decision of a municipal board of appeal filed in a court of common pleas is governed by civil rules of court.

CONTENT AND OPERATION

Small claims docket

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 docket within the BTA. The bill authorizes the BTA to assign to the small claims docket 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, the BTA may only assign appeals within the above jurisdictional limits to the small claims docket if an appellant that is a taxpayer requests that it be assigned to the small claims docket or, if the appellant is not a taxpayer, the appellant files written statements from each party that is a taxpayer consenting to the case being assigned to the small claims docket. The BTA may reassign an appeal from the small claims docket to the regular docket and vice versa if all parties consent to the reassignment. The BTA must reassign an appeal in the small claims docket to the regular docket in all of the following circumstances: (1) a party to the appeal that is a

[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.

taxpayer requests reassignment, (2) the appeal presents a constitutional issue, (3) the 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 docket.

The operation and procedures for appeals assigned to the small claims docket 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 docket 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 assigned to the small claims docket 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 for an appeal assigned to the small claims docket 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 BTA decisions assigned to the regular docket, however, decisions and orders for an appeal assigned to the small claims docket do not have precedential value for any other case and are not subject to appeal.[2]

Facsimile and electronic filing of appeals with 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 electronically in addition to the filing methods that already exist. When fax or electronic filing is used, the date the notice is considered to have been filed is the date it is received by the BTA according to a timestamp provided by the BTA's electronic system, regardless of any date reflected on any other timestamp.[3]

Appeals to court of common pleas

Current law allows an appellant to file an appeal from the decision of a municipal board of appeal with a court of common pleas in person, through certified or express mail, or by a delivery service approved by the Tax Commissioner, in addition to prescribing the date the court is required to accept as the date a notice is considered filed with the court.

The bill discontinues prescribing the manner and method for filing an appeal with a court of common pleas, and instead specifies that an appeal filed with a court of common pleas is governed by the Rules of Civil Procedure and other court rules applicable to civil actions.[4] The Ohio Constitution authorizes the Ohio Supreme Court to prescribe rules governing practice and procedure in all Ohio courts and nullifies all laws that conflict with these rules.[5]

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, creating a mediation program, and establishing case management procedures, 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 the record of the proceedings before that body or official. Effective 2015, the bill requires

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

[4] R.C. 5717.011.

[5] Section 5(B) of Article IV, Ohio Constitution.

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]

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.[7]

Case management procedures

The bill requires the BTA to adopt rules establishing procedures to control and manage appeals filed with the BTA. These procedures must include the establishment of a case management schedule that includes expected deadline dates related to discovery, disclosure of evidence, motions, and the hearing, as well as other appropriate case management issues. The rules are to apply to appeals filed on or after January 1, 2015.[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 transcript of proceedings is certified to the BTA without receiving approval from the BTA. However, any other amendment requires permission from either the BTA or each

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[6] R.C. 5703.02(D)(2); Section 3.

[7] R.C. 5703.02(D)(1).

[8] R.C. 5703.02(D)(3); Section 4.

adverse party. The BTA is required to give permission to amend in such instances when justice requires.[9]

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.[10] 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.[11] 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.

HISTORY

ACTION	DATE
Introduced	04-23-13
Reported, H. Ways & Means	05-28-13
Passed House (95-0)	05-29-13
Reported, S. Ways & Means	06-25-13

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[9] R.C. 5717.011(C) and 5717.02(C).

[10] O.A.C. 5717-1-12.

[11] R.C. 5717.031.