

# **Board of Tax Appeals**

**House Transportation and Justice Subcommittee**

*Phil Cummins, Economist  
Legislative Service Commission*

*April 5, 2007*

*Additional copies are available on our web site at [www.lsc.state.oh.us](http://www.lsc.state.oh.us)  
Click on 'Budget Documents' then 'Redbooks'*

**LSC Redbook**  
**for the**  
**Board of Tax Appeals**

**House Transportation and Justice Subcommittee**

*Phil Cummins, Economist*  
*Legislative Service Commission*

**TABLE OF CONTENTS**

<b>OVERVIEW.....</b>	<b>1</b>
Summary of FYs 2008-2009 Budget Issues.....	1
Staffing Levels .....	2
<b>ANALYSIS OF EXECUTIVE PROPOSAL.....</b>	<b>3</b>
<b>Tax Dispute Resolution.....</b>	<b>3</b>
<b>REQUESTS NOT FUNDED .....</b>	<b>5</b>
<b>ATTACHMENTS:</b>	
Catalog of Budget Line Items	
LSC Budget Spreadsheet By Line Item	

*April 5, 2007*

# Board of Tax Appeals

---

- Caseload is growing and further rise appears likely
- Delays in terminating cases may result, as staffing was cut by nearly one-third a few years ago

## OVERVIEW

The Board of Tax Appeals (BTA) provides an expert forum outside the court system to resolve controversies between taxpayers and taxing authorities in a timely and cost-effective way while still satisfying due process requirements. With a budget of about \$2.2 million and 23 employees including the three board members, BTA renders decisions on the 1,600 to 1,900 appeals filed with it in most years. BTA aims to terminate cases within 12 months of filing, though some take longer than this. The agency is an independent, quasi-judicial, single-purpose body, established in 1939 within the Department of Taxation. The Board has operated as a separate agency since 1976. It is comprised of three members appointed by the Governor for six-year terms, and authorized to determine all appeals regarding questions arising under Ohio tax laws, other than estate taxes. Staff includes attorney examiners who manage cases and preside at evidentiary hearings to determine the facts of these cases as the basis for decisions taken by vote of the Board members. The attorney examiners also conduct mediation sessions.

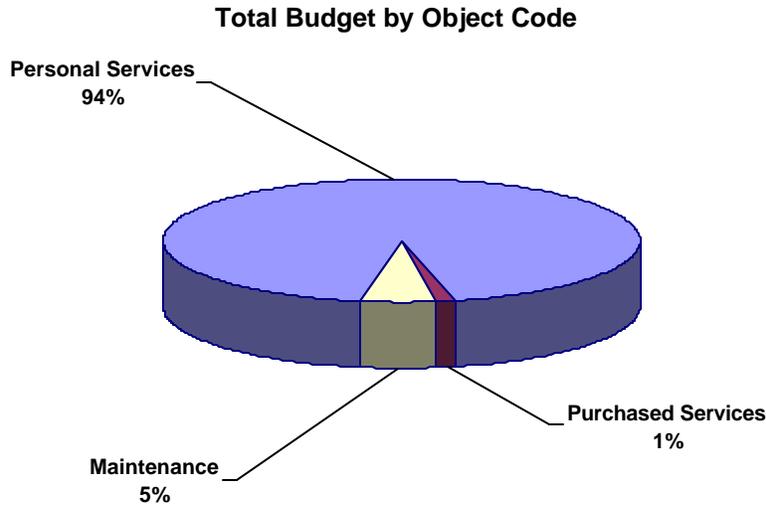
Most appeals to BTA arise from real estate valuations by county boards of revision. Cases also arise from appeals of determinations or of rules adopted by the Tax Commissioner, including the Division of Tax Equalization. Another source of cases is appeals of allocations by county budget commissioners of tax receipts to political subdivisions. Decisions by the Director of the Department of Development that enterprises are not qualified for tax incentive qualification certificates may be appealed to BTA. Beginning with tax year 2004, appeals of decisions of municipal boards of appeal regarding municipal income tax obligations were added to BTA's responsibilities. Decisions of the Board of Tax Appeals may themselves be appealed to either the appropriate Ohio Court of Appeals or directly to the Ohio Supreme Court.

BTA is funded entirely from the GRF. More than 90% of the agency's budget is for payroll costs. Tight budgets in the first half of this decade led to sizable reductions in the Board's staff. In February 2001 the Board employed 31 full-time equivalent (FTE) employees, including the 3 Board members, 25 other full-time employees, and 6 part-time employees. Currently, the Board has 20 full-time and one part-time employee, with two open positions, or 22.5 FTEs once the open positions are filled.

## Summary of FYs 2008-2009 Budget Issues

BTA's ongoing challenge is to provide high quality decisions in a timely manner on appeals filed with the agency. Although staffing at BTA was cut sharply in the first half of this decade, the agency was able to realize efficiencies in its operations and continue to terminate cases in a timely manner. However, continued timely termination of cases may be increasingly problematic.

For this fiscal year to date through February, appeals filed with BTA are running 200 ahead of last year, and for the full fiscal year may be highest ever at the agency except for FY 2003 when an Ohio Supreme Court procedural decision resulted in 1,100 cases being dismissed and then refiled. A number of developments make likely further increases in BTA's caseload. The agency's responsibility for municipal



income tax cases is resulting in appeals both by city tax directors and by individuals and businesses. The new commercial activity tax is likely to result in appeals to BTA, though that is not yet occurring. The absence of a well-established body of case law implies more gray areas and a longer decision process. The phaseout of taxation of most tangible personal property in the state may result in additional efforts to have business property classified as personal rather than real. Property tax exemptions may continue to be contested. The agency can be expected to continue to receive filings of public utility and personal income tax cases. Property tax reappraisals in some larger counties in tax years 2005 and 2006 will likely tend to result in an upturn in caseload in 2007 and 2008.

Agency staffing at current levels may be insufficient to terminate cases in as timely a manner as in the past if the caseload continues to rise. In some cases appellants faced with a more protracted BTA decision process would have the option of seeking adjudication of their cases in the court system, but delays are often longer in the courts, so this generally would not be an attractive alternative.

### Staffing Levels

The numbers of BTA employees shown below are as of June 30 for 2004 and 2005, counting part-time employees as 0.5 FTE. The three Board members are full-time employees of the agency and are included in these numbers. Employee numbers for 2006-2009 are the staffing levels indicated by BTA's budget request of September 2006. As noted below, the funding level recommended by the executive for BTA provides only slightly less for personal services than BTA sought in its budget request. This appears to allow the agency to keep staffing at the level proposed in its budget recommendation.

Board of Tax Appeals Staffing Levels						
Program Series/Division	2004	2005	2006	2007	Estimated	
					2008	2009
Tax Dispute Resolution	23.5	22.5	22.5	22.5	22	22
<b>Totals</b>	<b>23.5</b>	<b>22.5</b>	<b>22.5</b>	<b>22.5</b>	<b>22</b>	<b>22</b>

## ANALYSIS OF EXECUTIVE PROPOSAL

### Single Program Series

### Tax Dispute Resolution

**Purpose:** To hear and determine all appeals regarding questions of law and fact arising under the tax laws of the state of Ohio

The following table shows the line item that is used to fund the tax dispute resolution program, as well as the Governor's recommended funding levels.

Fund	ALI	Title	FY 2008	FY 2009
General Revenue Fund				
GRF	116-321	Operating Expenses	\$2,247,476	\$2,369,363
<b>General Revenue Fund Subtotal</b>			<b>\$2,247,476</b>	<b>\$2,369,363</b>
<b>Total Funding: Tax Dispute Resolution</b>			<b>\$2,247,476</b>	<b>\$2,369,363</b>

**Program Description:** The Board of Tax Appeals conducts evidentiary hearings on appeals of tax cases from county boards of revision, determinations by the Tax Commissioner, and other sources. These hearings serve as the basis for decisions by Board members. BTA also conducts voluntary mediation sessions, which often save money for appellants and make more efficient use of BTA resources.

**Funding Source:** GRF

**Line Items:** The agency has a single line item in its budget, 116-321

**Implication of Executive Recommendation:** The executive recommendation provides for a 1.6% increase in BTA funding for FY 2008 from estimated FY 2007, and a 5.4% increase for FY 2009. The budget for personal services increases 3.5% and 5.4%, respectively, in these two years. This appears likely to be sufficient to allow the agency to continue operating as it has in the recent past. However, if the caseload increases substantially, because of the agency's responsibility for municipal income tax cases beginning with tax year 2004 or for other reasons, the timeliness of BTA's termination of cases may deteriorate.

Purchased services are reduced 25% in FY 2008 from estimated FY 2007, and held flat in FY 2009. This category is used primarily to purchase court-reporting services for the more complex cases. BTA has been able to achieve economies by tape recording simpler sessions. Use of court reporters greatly facilitates subsequent review of the record, since with tape recording identifying who said what is sometimes difficult. This funding may be insufficient if the agency needs to handle many complex cases.

Maintenance is 10.6% lower in the executive recommendation for FY 2008 than estimated outlays in FY 2007, then rises 7.0% in FY 2009. In addition to such items as office supplies and equipment maintenance contracts, the maintenance account at a legal office such as BTA includes online access to electronic research service LexisNexis. The maintenance budget for FY 2008 is the lowest since FY 2004 and 29% below FY 2006, and may be insufficient.

The executive budget provides no funding for equipment purchases in the upcoming biennium. BTA upgraded its computer system and case tracking system in the last two fiscal years.

### **Temporary and Permanent Law Provisions**

The executive budget bill changes section 5705.37 of the Revised Code by eliminating the authority of the Board of Tax Appeals to consider actions of a county budget commission with reference to allocation of the library and local government support fund, and instead substitutes the local libraries fund. In section 5715.36, reference to hearing by the Board of Tax Appeals of an appeal related to the local government fund is changed to the local government or local communities fund, and reference to the library and local government support fund is augmented with a reference to the local libraries fund. Similarly, in section 5747.55, reference to appeal to the Board of Tax Appeals of an action of a county budget commission regarding allocation of the local government fund or of the local government revenue assistance fund is modified by adding the local communities fund. These changes in authority of the Board of Tax Appeals reflect changes to the local government funds proposed by the executive.

## REQUESTS NOT FUNDED

This analysis compares amounts in BTA's budget request of September 28, 2006, with the amounts recommended by the executive.

Fund Line Item	FY 2008 Requested	FY 2008 Recommended	Difference	FY 2009 Requested	FY 2009 Recommended	Difference
Personal Services	\$2,109,504	\$2,103,876	-\$5,628	\$2,217,763	\$2,217,763	\$0
Purchased Services	\$50,000	\$30,000	-\$20,000	\$51,000	\$30,000	-\$21,000
Maintenance	\$141,937	\$113,600	-\$28,337	\$146,055	\$121,600	-\$24,455
Equipment	\$20,700	\$0	-\$20,700	\$2,000	\$0	-\$2,000
<b>TOTALS</b>	<b>\$2,322,141</b>	<b>\$2,247,476</b>	<b>-\$74,665</b>	<b>\$2,416,818</b>	<b>\$2,369,363</b>	<b>-\$47,455</b>

BTA's requested funding for FY 2008 was reduced \$74,665, and funding for FY 2009 was reduced \$47,455. To cope with this lower level of funding, BTA may need to restrict buying of supplies or defer training of new staff. Internal and external training of entry-level attorneys is important to maintaining the quality of the agency's performance. Although only a small part of the reduction was in the personal services budget, and only in FY 2008, another way of coping with a tight budget would be to defer filling the open position for an attorney examiner.

The personal services budget request for FY 2008 was reduced \$5,628 (0.3%) in the Governor's budget. Requested funding for FY 2009 equals the amount in the budget for this item. This reduction in funding for FY 2008 is relatively small and might be accommodated by briefly delaying the start date of a new hire.

BTA's request for purchased services, mainly used for services of court reporters, was reduced more than 40% in the Governor's budget. Court reporters are particularly needed by BTA for complex cases. The budget amounts may prove insufficient, depending on the nature of cases heard in the next biennium.

BTA's maintenance request was also reduced, by 20.0% in FY 2008 and by 16.7% in FY 2009. Maintenance expenditures, including the cost of online legal research, printing, postage, travel, telephone service, records retention, and other items, can in some cases be delayed or reduced, though clearly the ability of the agency to perform effectively may be compromised by reductions of this budget item.

The budget request submitted by BTA in September 2006 included funding for a new \$15,000 computer server in FY 2008, described as needed to give adequate protection for the case tracking system, and for \$5,700 of software and hardware upgrades in FY 2008 and \$2,000 in FY 2009. However, following retirement of an attorney examiner in the current fiscal year, the agency was able to shift personal service funding to its equipment account and meet some of its IT needs.

## General Revenue Fund

### GRF 116-321 Operating Expenses

2004	2005	2006	2007 Estimate	2008 Executive Proposal	2009 Executive Proposal
\$1,993,512	\$2,035,288	\$1,976,715	\$2,211,035	<b>\$2,247,476</b>	<b>\$2,369,363</b>
	2.1%	-2.9%	11.9%	<b>1.6%</b>	<b>5.4%</b>

**Source:** GRF

**Legal Basis:** ORC 5703; replaces line items 116-100, 116-200, and 116-300

**Purpose:** This line item provides all funding for the agency, including personal services, maintenance, and equipment.

## LSC Budget Spreadsheet by Line Item, FY 2008 - FY 2009

<i>Fund</i>	<i>ALI</i>	<i>ALI Title</i>	<i>2006</i>	<i>Estimated 2007</i>	<i>Executive 2008</i>	<i>% Change 2007 to 2008</i>	<i>Executive 2009</i>	<i>% Change 2008 to 2009</i>
<b><i>BTA Tax Appeals, Board of</i></b>								
GRF	116-321	Operating Expenses	\$ 1,976,715	\$2,211,035	\$ 2,247,476	1.6%	\$ 2,369,363	5.4%
<b>General Revenue Fund Total</b>			<b>\$ 1,976,715</b>	<b>\$ 2,211,035</b>	<b>\$ 2,247,476</b>	<b>1.6%</b>	<b>\$ 2,369,363</b>	<b>5.4%</b>
<b>Total All Budget Fund Groups</b>			<b>\$ 1,976,715</b>	<b>\$ 2,211,035</b>	<b>\$ 2,247,476</b>	<b>1.6%</b>	<b>\$ 2,369,363</b>	<b>5.4%</b>