



Department of
Taxation

7/12/11

RE: Board of Tax Appeals (BTA)

Through the recently enacted budget bill¹, the legislature has directed the Tax Commissioner to conduct a review of the operations of the Board of Tax Appeals. I need your assistance to develop a comprehensive review of the BTA's appellate process that addresses a current backlog as well as ways to prevent this backlog from occurring in the future.

In recent years due to the volatility in the economy appeals to the BTA have increased significantly while the BTA's appropriations have been reduced. These factors in combination with others have resulted in a current backlog at the BTA totaling approximately 8,000 cases. The current budget for fiscal years 2012-2013 has increased the BTA's funding. Restoration of the funding will help with some of the backlog. However, a more comprehensive review is needed to prevent future backlogs from occurring.

As you know, the BTA receives appeals from decisions of the County Boards of Revision, the Tax Commissioner, Municipal Income Tax Boards, County Budget Commissions and others. Some who are intimately involved with those appeals previously have attempted this type of analysis. The result of their review has been a number of viable ideas for restructuring the BTA's processes. We have compiled and enclosed a summary of a variety of the ideas that have been discussed in the past for your review and comments. Please look over these items and include other ideas that you and your organization believe should be a part of the BTA's appellate process including those used in other jurisdictions. Feel free to think creatively. Your comments and recommendations should be returned to Stan Dixon, Deputy Tax Commissioner at Stanley_Dixon@tax.state.oh.us no later than August 31, 2011.

I hope that with your assistance together we can provide a report to the legislature that could result in the enactment of legislation. The citizens of Ohio deserve a much more expeditious yet comprehensive administrative appeals process. Thank you for your cooperation with this important matter.

Joe Testa
Tax Commissioner

¹Am.Sub. H.B. 153, Section 757.30. The Tax Commissioner shall conduct a review of the operations of the Board of Tax Appeals, and not later than November 15, 2011, shall submit a written report to the Governor, Speaker of the House of Representatives, and President of the Senate providing an assessment of the Board's operations and recommendations for improvement. The Tax Commissioner's review shall include Consultation with persons who have participated in or have had matters before the Board and are familiar with the Board's operations and procedures. The report shall include recommendations for improving the appeals process, internal operations, and other operational matters the Commissioner deems advisable. The Commissioner may designate an employee of the Department of Taxation to conduct the review

1. Filing Fees

Institute a fee schedule for appeals. The BTA may modify the fee amounts by rule. The appeal is subject to dismissal for nonpayment.

Small claims division cases	\$50
All other appeals	\$200

Ear mark the fee to a technology fund to purchase & maintain a case management system and upgraded interactive web-site.

2. Appeals from County Boards of Revision:

Options:

1. BTA full hearing

- a. Filing fee \$200
- b. Appealable to Court of Appeals, then to Supreme Court (no direct right of appeal)
- c. Mediation Available

2. Small Claims Informal Hearing with Tax Commissioner

- a. \$100,000 market value or less differential with County Auditor value
- b. \$50 filing fee
- c. No discovery
- d. Limited to evidence presented to BOR
- e. No precedential value
- f. No right of appeal
- g. Non moving party may opt out of the small claims process and file at BTA with \$200 fee

3. Appeals from Tax Commissioner's Final Determinations (not originated at BOR) to BTA full hearing with \$200 fee, direct right of appeal to Supreme Court retained.

4. Appeal Process

What changes would you like to see regarding the BTA appeal process?

Case Schedule
Transcripts
Discovery
Pre Hearing settlement/Mediation Conferences
Hearing Dates
Briefing Dates
Continuances

5. Other Specific Recommendations

- a. Specification of error in notice of appeal to BTA
 - Propose a change to R.C. 5717.02 that would permit a taxpayer to amend its notice of appeal to include specification of errors not in the original notice of appeal within some reasonable time after the conclusion of discovery.
- b. Specification of error in notice of appeal to BTA must have been raised before the Tax Commissioner -- remand procedure
 - Amend R.C. 5717.03(G) to permit the BTA to remand a case to the Tax Commissioner if an error specified in the notice of appeal was not properly raised before the Tax Commissioner. Allow the Tax Commissioner to waive remand.
- c. Discovery
 - Amend OAD 5717-1-11 to allow for more time for discovery or reopening discovery upon motion for good cause. Good cause should include receipt of transcript after forty-five day period.
 - Review of BTA procedures with the goal of using technology to expedite the discovery process (e-discovery).

6. Technical Changes

- Revise Forms for BTA and BOR
- Corrections to the Ohio Revised code:
 - 5715.19 (G) – Preclusion of Evidence on appeal
 - 5715.19 (D) – Carry Forward Limit to next Reappraisal or Triennial
 - 5715.19 (A)(1) – Authorization to File Notice of Appeal

7. BOR Rules

It has been suggested that a uniform set of rules to be promulgated by the Department of Tax Equalization for all 88 county boards of revision. Some suggested areas include, but are not limited to, the following:

- Basic information about the process as an educational tool
- Appearance and practice before the BOR
- Service of pleadings and notice requirements
- Continuances
- Suggested information to be provided at hearing for:
 - Commercial
 - Residential
 - CAUV
- Dismissals