



COUNTY ADVISORY BULLETIN

CAB

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MODIFY BOARD OF REVISION PROCEDURES

APPLICABLE LEGISLATION: Amended Substitute House Bill 126 (134th General Assembly)

Modifies the procedures that schools and other political subdivisions must use to challenge tax valuations of properties they do not own; prohibits a political subdivision from appealing the decision of the board of revision regarding property it does not own.

O.R.C. SECTIONS AMENDED: 4503.06, 5715.19, and 5717.01

O.R.C. SECTIONS ENACTED: None.

LEAD SPONSOR: Representative Derek Merrin

HOUSE COSPONSORS: Reps. Wiggam, Carruthers, Click, Cutrona, Edwards, Fowler Arthur, Ghanbari, Gross, Hall, Holmes, Householder, John, Johnson, Jones, Kick, Lanese, McClain, Plummer, Riedel, Roemer, Seitz, Stephens, Stewart, Swearingen, Wilkin, Young, B., Young, T.

SENATE COSPONSORS: Brenner, Cirino, Huffman, S., Johnson, Lang, McColley, Roegner, Schaffer

EFFECTIVE DATE: July 21, 2022

INTRODUCTION

House Bill 126 was introduced in February 2021 and passed the House by a 62 - 31 vote. The House version of the bill required a school or other political subdivision to adopt a resolution stating that it intended to file a valuation complaint with the board of revision (BOR). A separate resolution was required for each parcel. Before adopting the resolution, the board had to notify the affected property owner in writing. The Senate version of the bill passed 24 - 7 and prohibited school boards and all other political subdivisions from filing property tax challenges for any property they do not own.

The Conference Committee report reflected a compromise that limits the authority of any political subdivision to file an "original challenge" to property it does not own. A valuation may be filed only if the property was sold in an arm's length transaction and the sale price exceeds the auditor's value by both 10 percent and the amount of the filing threshold prescribed by law.

The initial threshold difference is set at \$500,000. The legislation also incorporates the procedural notification concepts from the House version and makes other significant changes to the BOR process. The amendments apply to challenges filed for tax year 2022 and after. The legislation was signed by the governor April 21, 2021.

SUMMARY

The bill makes the following changes to the law governing valuation challenges:

- Procedurally, if the school board or political subdivision is filing an “original complaint” (i.e., not a counter-complaint) to a **property it does not own**, it must adopt a resolution authorizing the complaint for each property it wishes to challenge after providing notice by certified mail to the property owner. The notice must be sent at least 7 days before adopting the authorizing resolution. Alternatively, notice may be provided by regular mail if electronic notification is also sent.
- The BOR may accept an original complaint from a political subdivision only (1) if the property was sold in an arm’s length sale in the year before the tax lien date for the tax year for which the complaint is to be filed, and (2) the sale price is at least 10% higher than the auditor’s true value and exceeds the value by least \$500,000. The “filing threshold” of \$500,000 will be adjusted for inflation each year.
- The law prohibits the use of a settlement agreement between a school board and a property owner that requires the use of payments to the school board in return for the board ending its challenge at the BOR. This prohibition applies to agreements that might be entered into after the bill’s effective date of July 21, 2022.
- A political subdivision is prohibited from appealing a BOR decision to the state Board of Tax Appeals for property that it does not own.
- The BOR is not required to notify a board of education that a property owner has filed a complaint. Previous law required notification of complaints in which the alleged amount of overvaluation or undervaluation exceeds \$17,500 dollars.
- A board of education may file a counter-complaint only in cases involving overvaluation or incorrect valuation of at least \$17,500 in taxable value. The cases may be filed without first adopting a resolution.
- The BOR must dismiss an original complaint if it has not decided the case within one year after the complaint was filed.

DEFINITIONS AND TERMS

ORC Section 5715.19 establishes the procedures for filing complaints with the BOR. HB 126 makes numerous changes to this section, starting by adding new definitions to distinguish between an “original complaint” filed under division (A) of the section and a “counter-complaint” filed against an original complaint (division (B)). The amendments also add a new division (I) that prohibits private settlement agreements between a political subdivision and a property

owner, and a new division (J) that establishes monetary thresholds that must be met for the BOR to accept an original complaint filed by a political subdivision that does not own the property.

The new law adds a definition of a "third party complainant" which means a complainant other than the property owner, the owner's spouse, a tenant authorized to file an original complaint, or any person acting on behalf of a property owner. "Third party complainant" does not include a legislative authority or a mayor of a municipal corporation, but does include the prosecuting attorney or treasurer of a county.

The law also consolidates references in continuing law to various political subdivisions by adding a definition of a "legislative authority" which encompasses a board of county commissioners, a board of township trustees of any township with territory in the county, the board of education of any school district with territory in the county, or the legislative authority of a municipal corporation with territory in the county.

ORIGINAL COMPLAINT FILED ON THE BASIS OF TOTAL VALUATION

Continuing law allows complaints to be filed against six types of determinations made by the auditor (ORC 5715.19(A)(1)):

- Classifying property as agricultural/residential or non-residential for the purpose of calculating HB 920 tax reduction factors;
- A determination that a property is no longer in agricultural use and no longer qualifies for current agricultural use value (CAUV);
- A CAUV recoupment charge levied against land no longer used exclusively for agriculture;
- A determination of the total valuation or assessment of any parcel on the tax list except public utility property assessed by the state tax commissioner;
- A determination of the total valuation of any parcel on the agricultural land list, except parcels with public utility property assessed by the tax commissioner;
- A determination that a property is not primarily used in business and qualifies for the 10% property tax rollback.

ORC Section 5715.19(A)(6)(b) as amended by HB 126 establishes new conditions and notification requirements for the filing of an original complaint by a legislative authority, mayor, or third party complainant based on the auditor's determination of total valuation with respect to property that the complainant does not own or lease. These conditions do not apply to challenges to determinations of land use classifications.

A valid original complaint against a determination of total valuation must meet two criteria:

- The property was sold in an arm's length transaction, as described in ORC Section 5713.03, before the tax lien date for the tax year for which the complaint is to be filed. Under continuing law, the tax lien date is January 1.
- The sale price exceeds the true value of the property appearing on the tax list for that tax year by both ten per cent and the amount of the filing threshold determined under ORC Section 5715.19(J). The filing threshold for tax year 2022 is \$500,000. For tax year 2023 and each year thereafter, the tax commissioner must adjust the threshold for inflation based on the GDP inflator. This calculation must be performed in September and certified to each county auditor no later than October 1.

NOTIFICATION REQUIREMENTS FOR POLITICAL SUBDIVISIONS

When a legislative authority wishes to file an original complaint against property it does not own, the legislative authority must first adopt a resolution authorizing the filing at a public meeting of the legislative authority (ORC Section 5715.19(A)(6)(b)). These notification requirements apply to challenges to any of the auditor's determinations listed in ORC Section 5715.19(A)(1), not just determinations of total valuation. The resolution must include all of the following information:

- Identification of the parcel or parcels that are the subject of the original complaint by street address, if available from online records of the county auditor, and by permanent parcel number;
- The name of at least one of the record owners of the parcel or parcels;
- The basis for the complaint specifying the type of determination listed in ORC Section 5715.19(A)(1)(a) to (f) relative to each parcel identified in the resolution;
- The tax year for which the complaint will be filed, which must be a year for which a complaint may be timely filed at the time of the resolution's adoption.

Each resolution may only identify one parcel, except that a single resolution may identify more than one parcel if each parcel has the same record owner or the same record owners, as applicable. A legislative authority may adopt multiple resolutions under a single vote, provided that the vote is separate from the question of whether to adopt a resolution on a different subject matter.

Before adopting a resolution, the legislative authority must mail a written notice to at least one of the record owners of the parcel or parcels identified in the resolution stating: (1) the intent of the legislative authority in adopting the resolution; (2) the proposed date of adoption; and (3) the basis for the complaint under ORC Section 5715.19(A)(1)(a) to (f) relative to each parcel identified in the resolution.

The notice must be sent by certified mail to the last known tax mailing address of at least one of the record owners and, if different from that tax mailing address, to the street address of the parcel or parcels identified in the resolution. Alternatively, if the legislative authority has a record of an internet identifier of record associated with at least one of the record owners, the legislative authority may send the notice by ordinary mail and by that internet identifier of record.

The notice must be postmarked or, if sent by internet identifier of record, sent at least 7 calendar days before the legislative authority adopts the resolution.

A board of revision has jurisdiction to consider an original complaint filed pursuant to a resolution only if the legislative authority notifies the board of revision that the resolution has been adopted and notice provided using all of the procedures described above. This will be indicated on a complaint form prescribed by a board of revision or the tax commissioner with a box that must be checked to indicate compliance.

The failure to accurately identify the street address or the name of the record owners of the parcel in the resolution does not invalidate the resolution nor is it a cause for dismissal of the complaint.

PROHIBITION OF PRIVATE SETTLEMENT AGREEMENTS

House Bill 126 creates a new prohibition against a legislative authority entering into a private payment agreement with respect to any complaint filed or contemplated in ORC Section 5715.19 or an application for a decrease in valuation under ORC Section 5715.13, and declares that any such agreement is void and unenforceable (ORC Section 5715.19(I)).

The law defines "private payment agreement" as any type of agreement in which a property owner, a tenant authorized to file a complaint, or any person acting on behalf of a property owner or such a tenant agrees to make one or more payments to a political subdivision in exchange for the legislative authority of that subdivision doing any of the following:

- Refraining from filing a complaint or counter-complaint with the BOR;
- Dismissing a complaint or counter-complaint filed by the legislative authority under this section;
- Resolving a claim under this section by settlement agreement.

A "private payment agreement" does not include any agreement to resolve a claim pursuant to which an agreed-upon valuation for the property that is the subject of the claim is approved by the county auditor and reflected on the tax list, provided that agreement does not require any payments.

This prohibition applies to any private payment agreement entered into on or after the law's effective date of July 21, 2022 (Section 3 of the bill).

LIMITATION ON THE FILING OF A COUNTER-COMPLAINT

Prior law required the BOR to give notice to each property owner whose property is the subject of a complaint if the incorrect valuation was at least \$17,500 true value. New law changes this threshold to \$17,500 in taxable value (\$50,000 true value).

Prior law also required notice to be sent to each board of education whose school district may be affected by the complaint. New law removes the requirement to notify the board of education. The board of education may file a counter-complaint only if the original complaint states an amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or

incorrect determination of at least \$17,500 in taxable value. The board of education must file the counter-complaint within 30 days after the original complaint is filed.

Any other person must file the countercomplaint within 30 days after receiving notice from the BOR. (ORC 5715.19(B)).

TIME LIMIT FOR DECISION ON ORIGINAL COMPLAINT

Continuing law requires the BOR to make its decision within 180 days of filing and permits the BOR to carry over an unresolved complaint to the ensuing year. The new law specifies that the 180-day time limit for making a decision applies to both original complaints and counter-complaints. If, however, an original complaint is filed by the legislative authority of a subdivision, the mayor of a municipal corporation with territory in the county, or a third party complainant, and the BOR has not rendered its decision within one year after the date the complaint was filed, the board is without jurisdiction and must dismiss the complaint (ORC Section 5715.19(C) and (D)).

PROHIBITION AGAINST APPEAL OF BOR DECISION

Prior law permitted any board or legislative authority to file an appeal to the board of tax appeals within 30 days after notice of a BOR decision. HB 126 removes this right of appeal and prohibits any political subdivision that files an original complaint or counter-complaint from filing an appeal with respect to property it does not own or lease (ORC Section 5717.01).

APPLICATION TO MANUFACTURED OR MOBILE HOMES

The amendments made by the legislation also apply to complaints filed against the true value of a manufactured or mobile home (ORC 4503.06(L)(5)(b)).