



Ohio Board of Tax Appeals

Testimony of Kathleen Crowley, Executive Director
Board of Tax Appeals
Joint Committee on Property Tax Review and Reform
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Co-Chairmen Roemer, Co-Chairman Blessing, and members of the Joint Committee on Property Tax Review and Reform, my name is Kathleen Crowley, and I am the Executive Director of the Ohio Board of Tax Appeals. Thank you for the opportunity to present information about the Board’s history and the role it plays in the property tax valuation process.

Introduction

The Board of Tax Appeals is Ohio’s sole administrative tax court. According to LSC, the Board “provides an expert forum outside the court system to resolve controversies between taxpayers and taxing authorities.”¹ The Board is an independent arbiter that provides an accessible, fair, and efficient process to decide tax disputes. Through these disputes, millions of dollars of tax revenue pass through our doors each year. Some taxes affect local revenue, such as real property taxes, and some affect state revenue, like sales tax. The Board has statewide jurisdiction, meaning our decisions set statewide precedent. Taxpayers are assured their appeals will be reviewed and considered by Board members and staff attorney examiners who have expertise in Ohio tax law. The Board relieves the overburdened state judicial system because most tax cases can be taken to us.

¹ LSC Greenbook FY 2016-2017.



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History of the Board

On June 5, 1939, the General Assembly created the Ohio Board of Tax Appeals, initially as part of the Ohio Department of Taxation.² From 1939 through 1975, the Board was located within the Department of Taxation but worked autonomously from the Department and the Tax Commissioner. In 1976, the legislature re-established and solidified the Board as an independent quasi-judicial tribunal.³

For over 85 years, the Board has existed to resolve disputes between parties in appeals from decisions, orders, determinations, and actions of the Tax Commissioner, tax administrative agencies, county budget commissions, and county boards of revision. R.C. 5703.02. The “essential purpose of the BTA is to hear and decide tax appeals for the state.”⁴ To perform this function, we conduct hearings that resemble court proceedings.⁵

Who We Are

The Board is composed of three members appointed by the Governor for six-year terms.⁶ By law, two members must be attorneys, and all members must have at least six years of tax law experience. At most, two members can belong to the same political party. As the Board’s executive director, I oversee the day-to-day operations. The Board’s attorney examiners have litigation/tax experience. The current attorney examiners are veterans of the Ohio Attorney General’s Office, a county prosecutor’s office, a city law director’s office, and a private law firm

² See Am.Sub.S.B. No. 159 (passed on May 3, 1939, approved by the Governor on May 15, 1939, and filed in the office of the Secretary of State on May 16, 1939, as an emergency act going into immediate effect); see also G.C. 1464-1 (predecessor section to R.C. 5703.02).

³ See Am.Sub.H.B. 920; see also *Belden v. Union Cent. Life Ins. Co.*, 143 Ohio St. 329, 343, 55 N.E.2d 629 (1944).

⁴ 2010 Op. Att’y Gen. No. 2010-016, at 2-103.

⁵ See generally *Superior’s Brand Meats, Inc. v. Lindley*, 62 Ohio St.2d 133, 135, 403 N.E.2d 996 (1980) (proceedings before the Board “are judicial in nature and normally give parties ample opportunity to litigate the issues.”).

⁶ R.C. 5703.03.



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(representing taxpayers). The Board monitors all significant legislative changes in state, local, and even federal tax laws. Because the Board hears many real property valuation cases, attorney examiners also regularly complete courses from the Appraisal Institute.

The Appeal Process

The Board hears appeals related to property taxes from decisions issued by the Tax Commissioner, budget commissions, and boards of revision. Roughly 80% of our docket is comprised of BOR appeals. These appeals can encompass several issues related to the assessment of real property, such as valuation, classification, or late payment penalty remission, among others. Because appeals regarding the valuation of real property are a significant portion of our docket, I will focus on the appeals process from that perspective. Most of our process applies to other types of appeals, as well.

A party can appeal a BOR decision up to thirty days after the BOR issues its decision.⁷ The appellant must file a copy of the notice of appeal with us and with the BOR.⁸ When an appellant files an appeal, they can request a hearing to present new evidence.⁹ Otherwise, parties will rely only on written argument and the evidence that was presented to the BOR.¹⁰ Once an appeal is filed, the Board provides written notice to the parties that includes the hearing or briefing date and the applicable case management schedule. The BOR (or other lower tribunal) file the transcript of the proceedings below, and parties can file any jurisdictional motions they believe are appropriate.¹¹

⁷ R.C. 5717.01. The appeal period can vary for other types of appeals. *See, e.g.*, R.C. 5717.02.

⁸ R.C. 5717.01.

⁹ Ohio Adm.Code 5717-1-16.

¹⁰ Ohio Adm.Code 5717-1-16.

¹¹ Ohio Adm.Code 5717-1-10.



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Leading up to the hearing, parties to an appeal may conduct discovery, file motions, subpoena witnesses, or file pre-hearing briefs.¹² Some cases include extensive pretrial motion practice and voluminous discovery, while others proceed to hearing with little Board involvement. All parties must be represented by an attorney authorized to practice law in Ohio unless a party elects to proceed pro se.¹³ A party proceeding without counsel is still expected to adhere to statutory requirements and the Board's rules, which have adopted portions of the Ohio Rules of Civil Procedure.¹⁴

Hearings take place at the Board's offices and are like traditional trials.¹⁵ Attorney examiners, who act on behalf of the Board, serve as administrative law judges and preside over the hearings. Witnesses testify under oath and are subject to direct examination and cross-examination. Parties must comply with the Ohio Rules of Evidence.¹⁶ After the hearing, parties may file post-hearing written briefs.¹⁷

After all hearings and briefing dates have ended, the Board issues a written decision. That decision may be appealed to the courts of appeals and, in certain circumstances, to the Ohio Supreme Court.¹⁸ Our decisions include a discussion of relevant law and apply that law to the discrete facts of the appeal. Our decisions affect all 88 counties and are part of an extensive body of legal precedent. The Board aims for all decisions to be neutral and predictable, with outcomes reflecting the facts of that particular case.

The Board has created a pro-se guide for those taxpayers who represent themselves or are unable to hire an attorney. The guide can also be used to introduce the Board's

¹² Ohio Adm.Code 5717-1-12; 5717-1-13; 5717-1-14; 5717-1-15; 5717-1-17.

¹³ Ohio Adm.Code 5717-1-02(B) and (C).

¹⁴ Ohio Adm.Code 5717-1-16(J).

¹⁵ Ohio Adm.Code 5717-1-16.

¹⁶ Ohio Adm.Code 5717-1-16(J).

¹⁷ Ohio Adm.Code 5717-1-17.

¹⁸ R.C. 5717.03; R.C. 5717.04.



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practices and procedures to attorneys without experience in the area of tax appeals. I have included this guide with my testimony.

Accessibility

The Board values accessibility to all taxpayers. Appeals are filed without a filing fee, and parties opting to participate in the Small Claims docket are able to have their hearings telephonically.¹⁹ Additionally, all of our decisions can be searched using the Board's "Journal Search" through our online case management system. Any member of the public is able to search the full text of our decisions free of charge and without having to register.

Real Property Tax and Valuation

BOR appeals often relate to the valuation of real property. According to long established case law, the best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction.²⁰ When evidence of a sale is unavailable, parties will often rely on appraisal evidence.²¹ Appraisal evidence may also be presented when a party attempts to show that a sale price does not reflect the property's value.²² The appraisal evidence that is presented to the Board is generally on a specific piece of property.

Appraisers typically view the subject property and provide photographs, market data, and other information necessary for the Board to review their analysis. Appraisers often appear to testify at the hearing to answer questions from the party offering their report as evidence, the opposing party (or parties), or the Board.

¹⁹ R.C. 5703.021; Adm.Code 5717-1-08.

²⁰ *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129, 363 N.E.2d 722 (1977), syllabus.

²¹ *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410, 195 N.E.2d 908 (1964).

²² *Bronx Park S. III Lancaster, L.L.C. v. Fairfield Cty. Bd. of Revision*, 153 Ohio St.3d 550, 2018-Ohio-1589, 108 N.E.3d 1079,



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Appraisers that appear before the Board typically utilize the three approaches to value: the cost approach, the sales comparison approach, and the income approach.

- The sales comparison approach uses the sales price of other properties to establish the value for the subject property. This approach is very common in residential appraisals.
- The income approach uses market data to determine the net operating income, which is converted into a value using a capitalization rate. This approach is common in appraisals of commercial properties.
- The cost approach, the appraiser adds the value of the land to the depreciated cost of the improvements. The cost approach is common in appraisals of both residential and commercial properties.

For a given property, an appraiser may employ one, two, or all three of these approaches. The appraiser has the opportunity to explain their methodology but is subject to cross-examination and must defend their conclusions. Based upon this testimony and the report itself, the Board must weigh the reliability and credibility of the appraisal evidence presented.

It is common for the Board to have a case with multiple appraisals. The Board considers all documentary evidence and testimony in the record, as well as any legal arguments made by the parties, and issues a written decision. As stated above the Board's decisions may be appealed to the courts of appeal and in certain circumstances to the Ohio Supreme Court.

Conclusion

Property tax and valuation appeals encompass a large portion of the Board's docket and the Board is proud of the role we play in this process. I appreciate the opportunity to present in front of this committee. I am happy to answer any questions.