



OHIO BOARD OF TAX APPEALS

Annual Report Fiscal Year 2019

R.C. 149.01 requires the Ohio Board of Tax Appeals to file an annual report with the governor, the secretary of state and the state library, on every August first summarizing the official acts of the board...“and any suggestions and recommendations that are proper.”

This report fulfills the annual reporting requirement for the fiscal year ending June 30, 2019.

Governor Mike DeWine
Secretary of State Frank LaRose
State Librarian Beverly Cain

Executive Summary:

In fiscal year 2019 the Board experienced the impact of Sub.H.B. 292, which reinstated the direct right of appeal to the Ohio Supreme Court for those appeals which involve the Ohio Tax Commissioner and Municipal Tax Boards. These cases generally involve multi-day trials and the testimony of several witnesses. As in previous years, the Board issued decisions on novel tax issues and created new standards for such appeals. Due to our case management system the Board continues to experience a high settlement rate among the parties and the small claims docket was largely made up of Board of Revision appeals filed by pro se litigants.

Through its decisions, the Board continues to create guidelines for all Ohioans on tax matters.

The Board continues to fulfill its commitment to provide ongoing internal and external education, as such, the Board partnered with the Columbus Bar Association and created a customized continuing education plan for Board's Hearing Officers. The Board and Hearing Officers also completed the Appraisal Institute's three day seminar on advanced appraisal techniques. The Board's staff continued its educational outreach and presented at the Columbus Bar Association's *Real Property Law Institute*.

Finally, joining Vice-chairman Jasmine Clements and Board Member Jeffrey Caswell in February 2019, Governor Mike DeWine reappointed David Harbarger, attorney, to the Board.

We are pleased to present this annual report and believe it represents the excellent work the Board and our staff completed in FY2019.



David Harbarger
Chairman



Jasmine Clements
Vice-Chairman



Jeffrey Caswell
Member

Ohio Board of Tax Appeals

Chairman David Harbarger

Mr. Harbarger brings over 40 years of law experience to the Board. Mr. Harbarger's areas of expertise include municipal law, property development and charitable organizations. Mr. Harbarger served as the Law Director for two local communities. Mr. Harbarger is a retired Lieutenant Colonel from the United States Army.

Vice-Chairman Jasmine Clements

Jasmine Clements was appointed by Gov. John Kasich to the Ohio Board of Tax Appeals in April, 2015. Ms. Clements brings more than a decade of legal experience in government and private sector representation. She holds a Bachelor of Arts (Accounting) and a Juris Doctorate from Capital University in Columbus, Ohio.

Board Member Jeffery Caswell

Jeff Caswell is an active CPA and is the Chief Financial Officer of a Central Ohio based manufacturing and services firm. Mr. Caswell started his career in public accounting where he worked on tax filings and audit assurance engagements. Post public accounting, his focus in finance and accounting has been with companies across a wide spectrum of industry and size from SEC registrant to small privately held businesses. Mr. Caswell earned his Accounting degree from Miami University and his Masters in Business Administration from The Ohio State University.

Mission

The mission of the Board of Tax Appeals, as Ohio's administrative tax court, is to provide taxpayers and taxing authorities with an accessible, fair and efficient appeals process and to resolve appeals in a timely and judicious manner by facilitating settlement or by issuing comprehensive written decisions, which are based upon Ohio statutes, case law, and board precedent.

Function

The BTA is Ohio's administrative tax court. It is a quasi-judicial body established by Ohio Revised Code 5703.02, and comprised of three (3) members appointed by the governor to overlapping six-year terms. The BTA adjudicates state tax disputes, relieving an overburdened state judicial system and providing taxpayers with a non-partisan forum in which to resolve tax disputes. In this forum, taxpayers are assured appeals will be addressed by individuals with considerable expertise focused exclusively on tax issues.

Process

Most appeals involve real property valuation disputes, for which the process is as follows:

1. A notice of appeal from a decision of a BOR is filed with the BTA.
 - a. On the appeal form, the appellant indicates whether they require an evidentiary hearing, or if a review of the existing BOR record will suffice
2. Depending on the appellant's decision, the board establishes either an evidentiary hearing date, or a date by which all written argument is due from the parties to the appeal.
3. The BOR files a transcript of the proceedings that occurred at the county level with the BTA within 45 days.
4. The discovery process is completed within 120 days.
5. All evidence is considered and a decision is rendered by the board thereafter.

Filers enter appeal information directly into the BTA's case management system from anywhere (with internet access) at any time (24/7/365). Once submitted, reviewed and accepted, all parties are notified electronically that an appeal has been filed, the case number assigned and the evidentiary hearing or written argument date.

After the evidentiary hearing or the written argument date, a Hearing Examiner reviews the entire record and drafts a decision for the board to consider. After consideration, the decision of the board is announced.

Interesting Decisions

Real property tax exemption denied to prospective use barred by zoning

In an appeal from a final determination of the Tax Commissioner involving a real property tax exemption sought by a private school, the Board held the prospective use doctrine does not apply where the proposed use is barred by existing zoning. The property owner has challenged the zoning restricting it from operating a school on the property in the federal court system. It argued such actions constitute sufficient efforts toward using the property for an exempt purpose and that, while it is engaged in such litigation, the property should be granted exemption from real property taxation. The Board rejected the argument and found the property was not entitled to exemption. The matter is pending on appeal to the Ohio Supreme Court.

City of Upper Arlington v. McClain (Nov. 26, 2018), BTA Nos. 2017-281, et al., unreported, appeal pending, S.Ct. No. 2018-1830.

Ethanol manufacturing process begins when corn enters production facility

In appeals from final determinations of the Tax Commissioner involving assessment of use tax for items used in an ethanol production facility, the Board reversed the finding of the Tax Commissioner about the beginning of the manufacturing process. Rather than allowing exemption of use tax under the manufacturing exemption for only part of the production facility (after corn enters the scalper), the Board found the ethanol production process begins when corn is deposited into the facility's integrated system and moves past a magnet that removes contaminants. The Board also found the agreement signed by the taxpayer precluded the taxpayer from appealing the agreement that a specified percentage of a product was used in cleaning, rather than the production process. The matter was not appealed.

Marion Ethanol, LLC v. McClain (May 16, 2019), BTA Nos. 2017-337, et al., unreported.

Specialized greenhouse improvements constitute personal property

In an appeal involving the real property value of a commercial greenhouse property, the Board found the greenhouse structural components to be personal property and not subject to real property taxation. The Board relied on testimony that the greenhouses are designed to be constructed, deconstructed, and reconstructed and that a second-hand market exists for such greenhouses. Such improvements are therefore business fixtures. The Board then reviewed appraisal evidence to determine the value of the remaining real property. The matter is pending on appeal at the 9th District Court of Appeals.

Viola Associates, LLC v. Lorain Cty. Bd. of Revision (July 11, 2018), BTA Nos. 2016-1273, et al., unreported, appeal pending, 9th Dist. Lorain Nos. 18CA011386 et al.

Non-producing oil and gas reserves taxed as real property

In appeals from the Belmont County Board of Revision involving numerous oil and gas rights, initially found to be mineral rights by the county auditor, the Board held that prior to production, oil and gas rights are to be taxed in the same manner as other real property. The owners of the oil and gas rights argued such rights are not subject to taxation until production begins and therefore should have a value of \$0 for real property tax purposes. Because the auditor valued the parcels as mineral rights with an arbitrary value of \$1,500 per acre, and in the absence of any other evidence of value in the record, the Board remanded the matters to the Belmont County Board of Revision for further proceedings to determine the fair market value of the oil and gas right parcels. The matter is pending on appeal to the 7th District Court of Appeals.

Hess Ohio Developments, LLC v. Belmont Cty. Bd. of Revision (June 6, 2019), BTA Nos. 2016-2673, et al., unreported, appeal pending, 7th Dist. Belmont Nos. 19 BE 0029 et al.

County fails to follow statutory procedure for denying homestead exemption

In an appeal from a decision of the Clark County Board of Revision denying a property owner the "homestead exemption" tax reduction, the Board found the county had failed to follow proper procedure to terminate the owner's continuing application, despite the owner having made allegedly false statements on the application about his principal place of residence. While noting that knowingly making a false statement on an application for reduction is a fourth degree misdemeanor, the Board noted that there is no statutory mechanism to recoup the tax savings resulting from an improper application for homestead exemption. The Board also found that a proper denial of an application requires use of the specific form provided by the Tax Commissioner. The matter was not appealed.

Johnson v. Clark Cty. Bd. of Revision (Oct. 4, 2018), BTA No. 2017-828, unreported.