



BLUESTONE
LAW GROUP, LLC

Charles L. Bluestone, Esq.
Alexander J. Pierce, Esq.
Anissa E. Bélanger, Paralegal

141 East Town Street, Suite 100
Columbus, Ohio 43215

Telephone: 614.220.5900
Facsimile: 614.462.1930
www.bluestonelawgroup.com

November 4, 2013

Significant New Procedures Governing Cases to be Heard by the Ohio Board of Tax Appeals

After a county Board of Revision has considered the evidence proffered by the property owner and/or school district addressing whether the County Auditor's initial property valuation was correct, parties who are unsatisfied with the BOR's decision may appeal to the Ohio Board of Tax Appeals (the property owner also has the option to have the local Court of Common Pleas hear the appeal, provided that the property owner's appeal is perfected first in time). Nearly all such appeals are filed with the BTA for the following reasons: no filing fee is charged, the BTA hearing examiners are already familiar with the substantive law governing these types of cases, the right to submit additional evidence (subject to certain limitations), hearings will, generally speaking, be held in less than a year's time, and the absolute right to file a further appeal to the Ohio Supreme Court. Practitioners and *pro se* litigants need to be aware of the numerous BTA reforms enacted by Sub. H.B. 138, which largely became effective on October 11, 2013 (with a few exceptions, as noted below), and new rules promulgated by the BTA itself.

Here is a rundown:

1. **Updated Notice of Appeal Forms** – Appellants must use the new Notice of Appeal Form (DTE-4 Revised 10/13) which can be downloaded from the BTA's web site (www.bta.ohio.gov). A well-designed feature allows the parties to fill-in the pertinent case information and then print out the fully completed form. Simultaneously pressing the "Control" and "S" buttons saves the completed form to your computer.

The new form simply asks the party to state his/her opinion of the property's market value, eliminating the prior requirement that a party provide far more detailed valuation information. A party can elect to have the case placed on the "small case" docket as well as indicated whether an oral hearing is being requested.

We are disappointed that the BTA still does not require appellants to state the specific grounds upon which the appeal has been filed, which oftentimes results in litigants not

knowing what defects exist or are perceived to exist by the other side until the day of the BTA hearing.

A copy of the BOR's decision MUST be attached to the Notice of Appeal, which MUST be filed BOTH with the BTA and the BOR within thirty (30) days of the date when the BOR decision was mailed to the parties. Notices of Appeal may be hand-delivered or sent via regular mail, certified mail, express mail, facsimile, or authorized delivery service. The BTA's email address is BTA.Docket@bta.ohio.gov; its fax number is 614.485.1001. Notices of Appeal are considered "filed" when actually received by the BTA, except that when documents are sent via certified mail, then the postmark stamped on appellant's certified mail receipt otherwise controls. For a list of "authorized delivery services" see the Ohio Dept. of Taxation's web site.

2. **New Small Claims Docket** – In an effort to expedite the processing of cases involving fewer tax dollars, appeals from (i) county boards of revision involving non-commercial real property i.e., those entitled to the "non-business credit" provided by R.C. § 319.302, (ii) municipal boards of appeal involving income tax appeals with an amount in controversy of less than \$10,000 (exclusive of interest and penalty), and (iii) final determinations made by the Tax Commissioner, the Director of Development Services, and the Director of Jobs and Family Services, as long as the amount in controversy is also less than \$10,000, can now be assigned to the new small claims docket.

The BTA is enrobed with authority to increase these jurisdictional dollar amounts, which may be significant should property values rise significantly, such as during a period of high inflation as occurred during the late 1970s.

Assignment to the small claims docket may be requested by a party in the following circumstances: (i) If the appellant is a taxpayer, then the taxpayer must request the claim be assigned to the small claims docket; or (ii) if the appellant is a school district or a taxing authority, then the appellant must file written statements from each taxpayer consenting to the case being assigned to this expedited docket.

Cases may be moved back to the regular hearing calendar if all parties consent to that action, but must be moved back if (i) a taxpayer so requests, (ii) the appeal raises a constitutional law issue or an issue of great public interest, or (iii) the case presents issues outside the small claim docket's jurisdiction.

The BTA intends to provide an "informal review" of small claims docketed cases – which will be conducted via telephone conference calls. Parties will be notified by a letter of the time/date and call-in telephone number; re-scheduling will not be allowed. We are told that these telephone conferences will be "brief."

Like a typical small claims court, parties can appear *pro se*, allowing business entities to avoid the expense of hiring an attorney. Now, any bona fide officer, partner, member, trustee or salaried employee can appear on behalf of the business entity – however, such persons may not engage in cross-examination, argument or other acts of advocacy. This loosened rule essentially mirrors the Ohio Supreme Court’s thinking in *Dayton Supply & Tool Co., Inc.* (111 Ohio St.3d 367).

It is important to note that decisions made in cases assigned to the small claims docket are final and cannot be appealed; thus, at the outset, parties need to evaluate carefully the likelihood of success and their tolerance for spending additional resources to pursue additional appeals beyond the BTA.

3. Notice of Appeal Can Now be Filed by Facsimile – Without changing the time period within which appeals must be filed, the new law allows Notices of Appeal to the BTA to be filed via facsimile or email (as well as by hand-delivery, certified mail, express mail or authorized delivery service)

Additionally, if a party elects to file its appeal with the Court of Common Pleas, under ORC Section 5717.05, the new statutory language provides that such an appeal is governed by the Ohio Rules of Civil Procedure. It remains to be seen exactly how this supplementary language will practically affect proceedings, if at all.

4. Mediation Program to Be Implemented – We are waiting for the BTA to announce how this program will run.

5. Case Management Procedures – The BTA has established certain procedures, including a case management schedule depending on the nature of the appeal and/or the issues involved. Parties should pay close attention to the timetables stated in O.A.C. 5717-1:06 and 571-1.07 regarding deadlines for discovery, disclosure of evidence, motions, and hearings. One important deadline that has changed is that requests for continuance must now be made twenty-one (21) days in advance of the scheduled hearing, and that no more than two (2) continuances will be granted.

Additionally, rules are to be adopted requiring the Tax Commissioner, County BORs, and municipal Boards of Appeal to file statutory transcripts by electronic means, in contrast to traditional mail methods used today. Hopefully, this will be result in better compliance by the county/municipal boards in filing statutory transcripts.

Both of these requirements are effective January 1, 2015.

6. “Short and Plain” Assignment of Error Statement Required; Amendment of Notice of Appeal – A person appealing a decision made by a municipal Board of Appeal, the Tax Commissioner, a County Auditor/Fiscal Officer, the Director of Development

Services, or the Director of Job and Family Services must include a short and plain statement of the alleged error, along with a demand for relief. Additionally, a taxpayer has a 60-day window after the statutory transcript is certified to the BTA within which he may amend his appeal one time – outside of that window, the taxpayer must seek leave from the BTA to do so, such leave being granted when justice so requires. Significantly, none of these amendments apply to real property tax appeals stemming from a Board of Revision – thereby, continuing to keep property owners “in the dark” as to the grounds on which the local school district has appealed a BOR decision as well as withholding the ability to correct errors, now freely granted in other types of tax appeals.

7. **BTA Can Decide Motions Before Making Final Decision** – Finally, the BTA is authorized to resolve any motion, including motions *in limine* (a pretrial motion asking the court to either admit or exclude evidence at trial) filed with an appeal before handing down a decision on that appeal.

Bluestone Law Group will continue to monitor how the BTA implements these new statutory changes over the coming months and will provide updates on our website.

Please contact us if you have questions concerning real property tax laws.

© 2013 **Bluestone Law Group, LLC**

All rights reserved.