

IN THE SUPREME COURT OF OHIO

William E. MacDonald, III, et al,)	Case No. 14-0574
)	
Appellees,)	On Appeal from the
)	Franklin County Court of Appeals
)	Tenth Appellate District
)	
City of Shaker Heights Income Tax Board)	Court of Appeals
of Review, et al,)	Case No. 13 AP-71, 2014-Ohio-708
)	
Appellants.)	
)	

**JOINT REPLY BRIEF OF THE APPELLANTS CITY OF SHAKER HEIGHTS,
MATTHEW RUBINO, AND THE REGIONAL INCOME TAX AGENCY**

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I. Introduction

Appellants and Appellees agree that the issue in this appeal is the appropriate standard of review to be applied by the Ohio Board of Tax Appeals (“BTA”) in appeals from local Municipal Boards of Income Tax Appeals (“MBOAs”). The Amici Curiae, however, have submitted a brief based on their proposition that the proper standard of review in MBOA appeals to the BTA is not relevant to this case (Amici Curiae Brief, at 4), and then they proceed to present a lobbying position paper as to why Ohio law concerning local income taxes, and the current appeal process, should be changed by the General Assembly. Obviously, such arguments are not relevant to this appeal and should be ignored by the Court, except to the extent that they tend to prove the Appellants’ point; that current law gives local governments a substantial amount of discretion in the levying of local income taxes, and the General Assembly has not heretofore made ‘uniformity’ in the levying of such taxes, or the appeals process involving such taxes, the focus or goal of Ohio law.

Unfortunately, the briefs of both Appellees and Amici attempt to support their arguments with a number of facts not in the record, and by raising ‘straw men,’ which are misstatements or manufactured characterizations of Appellants’ positions, that their own arguments ceremoniously ‘knock down.’ Examples of the alleged ‘facts’ that are not in the record include: that the local tax administrator “normally staffs the MBOAs” (Appellees’ Brief, at 32), which is not supported by the record and is, in any case, irrelevant; that hearings under Section 718.11 are “confidential” (Appellees’ Brief, at 19), which is simply not what the law says; that the “panel of the MBOA for this appeal consisted of an Assistant City Attorney” and the “President of City Council,” and the “City Attorney, now an advocate on appeal...” (Appellees’ Brief, at 18);¹ and most of the brief of

¹ These latter “facts” are not only absent from the record, they are patently false. The City’s Assistant Director of Law has never been involved with the MBOA in any manner. The City’s

the Amici Curiae, including the assertion, without citation, that the Appellee Taxpayers' appeal to the City's MBOA was its first appeal since its creation in 1966 (Amici Curiae Brief, at 12-13).

Examples of the misstatements or manufactured characterizations of Appellants' positions are: the assertion, without citation or truth, that Appellants have argued for a standard of review of "total deference" that would "require the BTA to act as a rubber stamp of the MBOA's decision" (Appellees' Brief, at 2); the false assertion that "Appellants repeatedly insist that the BTA applied no standard of review in this appeal" (Appellees' Brief, at 4, 5); and the mischaracterization of Appellants' argument, which was taken out of context, that the decisions of an MBOA should be accorded more deference than the Tax Commissioner because the MBOA is a board, not a single administrator (Appellees' Brief, at 21), which the Appellants actually noted by differentiating MBOAs from the Tax Commissioner, arguing that "Under R.C. 718.11, an MBOA is a quasi-judicial body that must follow specifically mandated procedures and its powers to decide appeals is circumscribed by the statute" (Appellants' Brief, at 16).

As to the substantive arguments of Appellees and Amici Curiae, they present multiple, often inconsistent and contradictory, interpretations of the state of Ohio law regarding appeals from MBOAs to the BTA, and what the BTA and Court of Appeals actually decided. They argue that in appeals from an MBOA to the BTA, the BTA decides all issues de novo, or maybe only de novo on issues of law, or possibly also de novo on mixed issues of law and fact. Yet they argue that the BTA in this case did consider the record of the MBOA in making its decision, even applying the "presumption of validity" standard of review. So it appears they are arguing that, perhaps, the BTA in this case did, indeed, apply the wrong standard of review, but in their view it

Chief Counsel, who is currently Director of Law and counsel to the City in this appeal, was counsel to the MBOA at the time of the Appellants' hearing. He was never a member of the MBOA. Also, the City has no such position as "President of City Council."

is because the BTA should never defer to an MBOA in any manner. To bolster that argument they claim that MBOAs, in general, and the City's MBOA in particular, do not provide a fair and impartial appeal. The bottom line for Appellees and Amici Curiae is that the MBOAs are just a "second set of eyes" to the decisions of local tax administrators and nothing more. Except that Ohio law --- both statutory and case law -- does not support their conclusions about MBOAs and appeals from such bodies to courts of common pleas or the BTA.

Appellees assert early in their brief that the BTA did afford a "presumption of validity" to the MBOA's decision (Appellees' Brief, at 5), and then spend several pages arguing why the MBOA's decision should not have been given any presumption of validity. (Appellees' Brief, at 7-9). In those several pages, Appellees analyse the testimony before the MBOA, presumably to show why the BTA's decision ended up being correct even though the BTA failed completely to consider, let alone analyse, the testimony before the MBOA. Thus, Appellees are asking this Court to now judge whether the testimony and evidence presented to the MBOA, as summarized and characterized by Appellees in their brief, was worthy of deference (i.e. a presumption of validity). Yet it is the MBOA's decision that should have been presumed valid, unless the BTA found, after it analysed the evidence and testimony presented to the MBOA and to the BTA, that the preponderance of the evidence presented in both hearings together did not support the decision of the MBOA. This the BTA failed to do.

Overall, Appellees and Amici Curiae make critical errors in their briefs that cause their arguments to fail. First, they equate "standard of review" with "burden of proof" (or "standard of proof" as the burden is also known.) This then leads to the error of equating "burden of proof" with the longstanding administrative appeal standard of "presumption of validity." While the BTA may have correctly placed the burden of proof on the appellant Taxpayers, it clearly did not give

the decision of the City's MBOA the "presumption of validity." Appellees and Amici attempt to overcome these weak arguments by claiming that it does not matter what the BTA actually did, because the BTA is either required or allowed by Ohio law to decide MBOA appeals de novo, giving no deference or consideration to what occurred before the MBOA.

All of these arguments bolster the Appellants' point, that Ohio law does not expressly establish a standard of review for the BTA in appeals from MBOAs, and there is no common law directly on point to rely upon in determining what standard should be applied (due to the relatively recent nature of the current appeals structure established by the General Assembly.) The Court of Appeals on this issue refused to look for a standard of review. But there is common law and language in Ohio statutory law to guide this Court to find the most logical and reasonable standard of review, and good cause for this Court to avoid the irrationality of the Court of Appeals in leaving the issue undetermined.

Courts have found that Ohio law does not create a standard of review for appeals from local Boards of Revision to the BTA either. But these courts have concluded that it is reasonable to apply the standard of review applied by courts of common pleas to such appeals, since Ohio law allows appeals from Boards of Revision to either courts or the BTA, and there are clear standards of review for such appeals to common pleas courts. This analysis fits this situation as well.

Furthermore, the substance of what MBOAs are established to do – that is, to make findings of fact and conclusions of law in appeals by taxpayers from decisions of local tax administrators – is less analogous to the decisions of the Ohio Tax Commissioner or local Boards of Revision, and more analogous to the decision making carried on by local zoning boards, planning commissions, building code boards of appeals, and other local administrative, quasi-judicial bodies. This makes the law as to the proper standard of review in administrative appeals to

common pleas courts from such bodies the most reasonably applicable to appeals from MBOAs to the BTA.

II. Argument

A. MBOAs are not simply an informal second look at the decision of the local tax administrator; they are quasi-judicial tribunals, the decisions of which are entitled to a presumption of validity.

The Appellees and Amici Curiae characterize MBOAs as nothing more than statutorily created focus groups, before which parties may test their presentation of facts, theories and arguments before the “real hearing” at the BTA. This cannot be what the General Assembly intended when it adopted R.C. 718.11, requiring municipalities to maintain an MBOA. If the General Assembly had intended only to require that MBOAs be a second look at the decisions of local tax administrators, it would not have required that MBOAs conduct themselves as quasi-judicial tribunals. R.C. 718.11 requires that MBOAs adopt rules governing their procedures, keep records of their proceedings, conduct hearings and, at the conclusion of those hearings, issue rulings that affirm, reverse or modify tax administrators’ decisions or any parts of those decisions.

Telling in this regard is that when it adopted R.C. 718.11 in 2000, requiring the maintenance of MBOAs, the General Assembly used language substantially similar to that already contained in most municipal income tax ordinances. By way of example, the City’s MBOA (referred to in the ordinance as the “Board of Review”) was established by ordinance enacted on December 27, 1966. (C.O. 111.2501, C.O. 111.2502 and C.O. 111.2503). As adopted in 1966, the City’s ordinance required the MBOA to adopt procedural rules and keep records of its transactions (C.O. 111.2501) and to hear and pass on appeals from any ruling or decision of the Administrator (C.O. 111.2502), it provided the right of taxpayers to appeal to the MBOA and the timeframe in

which such appeals are to be filed (C.O. 111.2503) and, on hearing, required the MBOA to affirm, reverse or modify any ruling of the Administrator or any part thereof (C.O. 111.2503).

When it enacted R.C. 718.11, the General Assembly did nothing more than codify at the state level the existence and role of MBOAs already provided in municipal ordinances, to require that all municipalities imposing a tax maintained these quasi-judicial bodies to hear appeals. Neither at the time it enacted R.C. 718.11 in 2000, nor at the time that it provided the second appellate path in 2003, did the General Assembly do anything to disrupt or diminish the authority of MBOAs, to relegate the proceedings before MBOAs to being something less than quasi-judicial proceedings, or to strip MBOAs of the presumption of validity in their determinations developed over decades of case law. Moreover, the General Assembly, in R.C. 5717.011, requires that in appeals from MBOAs to the BTA, the decision of the MBOA must be attached to the appeal notice, and the MBOA must send to the BTA the complete transcript and all evidence produced at the hearing of the appeal before the MBOA. These requirements would serve no purpose if the MBOA decision and the evidence presented before the MBOA could be ignored by the BTA.

In challenging the role of MBOAs, Amici Curiae go further than Appellees and say that MBOAs are biased and therefore incapable of providing a full and fair hearing. They argue that this is the case because the composition of MBOAs may include municipal officials. The composition of an MBOA is irrelevant. What is relevant is the proceeding. The proceeding before the City's MBOA was a full and fair hearing with notice and an opportunity to introduce evidence, and resembled a court proceeding in that an exercise of discretion was employed in adjudicating the rights of the parties. *State ex rel. McArthur v. DeSouza*, 65 Ohio St. 3d 25, 599 N.E.2d 268 (1992) citing *M.J. Kelley Co. v. Cleveland*, 32 Ohio St.2d 150, 290 N.E.2d 562 (1972), *Union Title*

Co. v. State Bd. of Edn., 51 Ohio St.3d 189, 555 N.E.2d 931 (1990). As such, the decision of the MBOA is entitled to a presumption of validity.

To suggest that MBOAs are biased and cannot be given deference (a presumption of validity) is to attack the credibility and integrity of every board of zoning appeals, planning commission, architectural board of review, landmark commission, board of building standards, etc., in all local governments throughout the state. Yet, for half a century or more such local bodies have been given a presumption of validity by common pleas courts reviewing their various decisions, as cited throughout the briefs of the parties.

B. MBOAs are the primary trier of fact in municipal income tax appeals.

The Appellees too broadly characterize this Court as “consistently [recognizing] the BTA as the primary trier of facts in tax cases.” (Appellees’ Brief, at 6.) This Court has not recognized the BTA as the primary trier of fact in municipal income tax cases appealed to it from MBOAs. Even in this Court’s recent statement of its standard of review in cases appealed to it from the BTA, set forth in the matter of *Gesler v. Worthington Income Tax Bd. of Appeals*, 138 Ohio St. 3d 76, 2013-Ohio-4986, all cited cases related to the BTA being the primary trier of fact are state tax cases, not municipal tax cases. The fact is, this Court has not yet considered the proper role of the BTA in reviewing decision of MBOAs.

As the BTA is the primary trier of fact in appeals from the Ohio Tax Commissioner, so it must follow that the MBOA is the primary trier of fact in appeals to it from the municipal tax administrator. This is evidenced by the quasi-judicial nature of MBOAs and the long history of common pleas courts giving due deference to the administrative resolution of evidentiary conflicts by these bodies, absent a finding that a preponderance of reliable, probative and substantial

evidence does not exist to support the board's decision. *Kisil v. City of Sandusky*, 12 Ohio St. 3d 30, 34 (1984).

The position and role of the Ohio Tax Commissioner in considering petitions and complaints by taxpayers is very different than the administrative appeal role served by MBOAs. The Ohio Tax Commissioner oversees the administration of the Ohio Department of Taxation and enforces Ohio's state tax laws. Chapter 5703 R.C. The only time hearings are involved in the Department's operations is with respect to petitions for reassessments or for refunds by taxpayers. Sections 5703.60 and 5703.70 R.C. After such petition hearings are held, the Tax Commissioner still makes the ultimate decision, and it is the decision of the Tax Commissioner that is appealable to the BTA. There is no quasi-judicial administrative hearing panel and procedure involved. The Tax Commissioner acts in a "prosecutorial" role throughout, and the Commissioner's decisions are enforceable criminally. Section 5703.99.

In the situation of local taxation, the tax administrator (e.g. a Finance Director and/or Regional Income Tax Agency (RITA)) has the role akin to the Ohio Tax Commissioner. Locally, however, there is a first administrative appeal level above the tax administrator, the MBOA. This is unlike the decisions of the Tax Commissioner which are appealable directly to the BTA. In other words, the MBOA is to the municipal tax administrator what the BTA is to the Tax Commissioner – the first level of appeal.

As recognized by the Dissent in the Court of Appeals decision, the determination that the National City SERP was not a pension was a finding of fact by the MBOA. The MBOA, as the primary trier of fact, considered the evidence before it and determined that the National City SERP was not a pension. The MBOA then applied the law of the City's ordinance to this determination. As it determined that the National City SERP was not a pension, it found that the amounts

attributable to the National City SERP were not exempt from tax under the City's exemption of pensions.

The BTA made no analysis of the decision of the City's MBOA or of the evidence presented to the MBOA, such that it could find that the determination of the MBOA, that the National City SERP was not a pension, was arbitrary, capricious, or against the manifest weight of the evidence. Instead the BTA considered only the evidence presented before the BTA, and made its own de novo determination of the fact issues. Considering dictionary definitions, witness testimony and the words and phrases used in the National City SERP itself, the BTA acted as a second trier of fact to determine if the National City SERP was a pension. As recognized by the Dissent, the BTA substituted its determination for that of the MBOA, as if it were writing on a clean slate. This does not comport with the presumption of validity standard of review that the BTA should apply to decisions of MBOAs, and that the courts of common pleas do apply.

C. Appellees confuse burden of proof and standard of review.

Appellees use interchangeably, and appear to confuse, "standard of review" and "burden of proof." In fact, the Appellees go so far as to suggest that "[t]he proper standard of review to be applied by the BTA in reviewing MBOA decisions properly can be viewed as the assignment of the burden of proof."(Appellees' Brief, at 24). The standard of review and burden of proof are two entirely different legal concepts. A 'standard of review' is the amount of deference given by an appellate body when reviewing a decision of a lower body or agency while a burden of proof is the necessity or duty of affirmatively proving a fact or facts in a dispute on an issue raised between the parties. Assigning the burden of proof to the taxpayer in appeals from MBOAs is not equivalent to setting a standard of review.

The BTA actually quotes the decision in *Tetlak v. Bratenahl*, 92 Ohio St.3d 46, 748 N.E.2d 51, 2001-Ohio-128, which assigned the burden of proof to the taxpayer, but also applied the “presumption of validity” standard of review. Yet the BTA followed *Tetlak* on the burden of proof, but then applied a de novo standard of review. As pointed out by the Dissent in the Court of Appeals, the BTA makes no reference whatsoever to the findings of the MBOA, but simply retried the facts and substituted its judgment for that of the MBOA. -This is wholly inconsistent with a resumption of validity.

D. Appeals from County Boards of Revision to the BTA are not comparable to appeals from MBOAs to the BTA.

Appellees and Amici Curiae point to Boards of Revision and appeals from those Boards to the BTA, as comparable bodies and procedures, to support their claim that MBOA appeals to the BTA should involve the same standard of review. But Boards of Revision are purely creatures of State law. They exist to hear complaints and revise assessments and valuations of real property under the supervision of the Ohio Tax Commissioner, through the County Auditors. Section 5715.01 (A) and (B). The Boards are comprised of by the County Auditor (i.e. the Chief Assessing Officer for each County under the supervision of the Ohio Tax Commissioner), the County Treasurer and a County Commissioner. Section 5715.02. Their role is simply to decide the value of property for taxation purposes. Their membership and narrow purpose make them a part of the tax administration of counties and the State.

In all of the Chapter of the Revised Code regarding Boards of Revision (5715 R.C.), the term “appeal” is used to refer only to any challenge to the decision of a Board of Revision to a court or the BTA. Cases that are before Boards of Revision are considered “complaints” or “petitions,” not “appeals.” Moreover, like the Tax Commissioner statute, the Chapter establishing

Boards of Revision serves a “prosecutorial” function, and includes a criminal enforcement section (Section 5715.99 R.C.)

Unlike Boards of Revision, MBOAs are required by State law, but are creatures of local law and rules. There is State law that establishes the formal procedure of the MBOAs, but State law does not dictate the membership on MBOAs or the rules for their hearing procedures. They are denominated as “appeals” boards, and cases brought to them from local tax administrators are “appeals” rather than complaints or petitions. The first sentence of Section 718.11 R.C., which requires local MBOAs, states: “The legislative authority of each municipal corporation that imposes a tax on income shall maintain a board to *hear appeals* as provided in this section.” Section 718.11 R.C. Finally, MBOAs do not serve a “prosecutorial” function, as do the local tax administrators; rather they serve a purely administrative appeal function. Thus, appeals from MBOAs to the BTA should involve the standard of review applied by courts of common pleas to appeals from MBOAs and other local administrative, quasi-judicial bodies, rather than the standard of review applied in Board of Revision appeals to the BTA.

E. In an administrative appeal to common pleas court, the court does not consider the appeal de novo; rather the court defers to the decision of the local board, with a presumption of validity, unless the decision is not supported by a preponderance of reliable, probative and substantial evidence.

There is no difference in the positions of the Appellants and Appellees as to the fact that there is a difference between the standard of review applied by courts of appeal, in appeals from a common pleas court, and the standard of review applied by common pleas courts in appeals from local administrative boards. Appellants agree with Appellees that in an administrative appeal to the common pleas court, the court considers the whole record and determines whether the administrative order is "unconstitutional, illegal, arbitrary, capricious, unreasonable, or

unsupported by the preponderance of substantial, reliable, and probative evidence." RC. 2506.04. *City of Independence v. Office of the Cuyahoga Cty. Executive*, 2014-Ohio-4650, Ohio.

The cases cited by Appellees also assert that a court of common pleas, in an appeal from a local administrative board, is not permitted to "substitute its judgment for that of the local administrative board...unless the court finds that there is not a preponderance of reliable, probative and substantial evidence to support the board's decision." *Kisil v. City of Sandusky*, 12 Ohio St. 3d 30, 34 (1984); *v. Housing Authority*, 58 Ohio St.2d 202, 207 (1979); *Henley v. Youngstown Bd. Of Zoning Appeals*, 90 Ohio St.3d 142, 147 (2000). Furthermore, in "undertaking this hybrid form of review, the Court of Common Pleas must give due deference to the administrative resolution of evidentiary conflicts. * * * However, the findings of the agency are by no means conclusive. *Kisil v. City of Sandusky*, *supra*, at 35, citing *Andrews v. Board of Liquor Control*, 164 Ohio St. 275 (1955).

Thus, the court of common pleas does not hear administrative appeals de novo; rather they give deference to the decisions of the local board, if not as much deference as do courts of appeals in hearing appeals from common pleas courts. The Ohio Supreme Court has found that:

[a]lthough a hearing before the Court of Common Pleas pursuant to R.C. 2506.01 is not *de novo*, it often in fact resembles a *de novo* proceeding. R.C. 2506.03 specifically provides that an appeal pursuant to R.C. 2506.01, 'shall proceed as in the trial of a civil action,' and makes liberal provision for the introduction of new or additional evidence.

Kisil v. City of Sandusky, 12 Ohio St. 3d 30, 34, 465 N.E.2d 848, 852 (1984), citing *Cincinnati Bell v. Glendale* (1975), 42 Ohio St.2d 368, 370. This finding by this Court also shows that, contrary to assertions made by Appellees and Amici Curiae (see e.g Appellees' Brief, at 9), appeals to common pleas court are similar to appeals from MBOAs to the BTA, in that both common pleas courts and the BTA may take additional evidence, but that does not make the proceedings de novo.

The Amici Curiae rely heavily on *Ohio Historical Soc. v. State Emp. Relations Bd.*, 1993-Ohio-182, 66 Ohio St. 3d 466, 471, 613 N.E.2d 591, 595-96. But that case deals with a Chapter 119 state agency appeal, not a Section 2506 local administrative board appeal. That is why that decision refers to the court reviewing constitutional and state statute legal interpretations de novo, not local ordinances.

In administrative appeals, Ohio courts have concluded that the “sole issue for the lower court is to determine whether there is reliable, probative, and substantial evidence...” and the court “...is bound by the nature of administrative proceedings to presume that the decision of the administrative agency is reasonable and valid.” *Essroc Materials, Inc. v. Poland Twp. Bd. of Zoning Appeals*, 117 Ohio App. 3d 456, 462, 690 N.E.2d 964, 968 (7th Dist. Mahoning, 1997), citing *Community Concerned Citizens, Inc. v. Union Twp. Bd. of Zoning Appeals* (1993), 66 Ohio St.3d 452, 613 N.E.2d 580.

F. The BTA is not required to hear all evidence that a party desires to present in appeals under R.C. 5717.011, and the hearing of “additional evidence” under the statute does not make the BTA hearing of an appeal from an MBOA de novo.

Appeals from an MBOA to the BTA allow for the hearing of additional evidence by the BTA upon the request of a party to the appeal. R.C. 5717.011. However, despite Appellees’ and Amici Curiae’s claims that this is confirmation that such an appeal must be de novo, the statute itself belies this conclusion. R.C. 5717.011 states: “The board may order the appeal to be heard upon the record and the evidence certified to it by the administrator, but upon the application of any interested party the board shall order the hearing of additional evidence, and the board may make such investigation concerning the appeal as it considers proper.” (Emphasis added.) The term “additional,” to have any meaning at all, must mean “more” or “extra,”² not the exclusive or

² Webster’s New World College Dictionary, Third Edition, 1997.

the only evidence to be considered. This must also mean that the BTA is required to consider the evidence already presented to the MBOA below. Moreover, the BTA is required to hold a hearing and take additional evidence, but there is no restriction on the BTA determining the extent of additional evidence it will accept; for example, the statute does not mandate that the party requesting a hearing of additional evidence gets to dictate what the BTA will hear and consider.

G. Appellees improperly argue the merits of the underlying tax issue.

While the Appellees acknowledge that the sole issue in this case is the appropriate standard of review to be used by the BTA in reviewing decisions of MBOAs (Appellees' Brief, at 1), they continue to argue the merits of the underlying issue in the case. (Appellees' Brief, at 23-24). Appellees mischaracterize the underlying substantive issue. The issue was not the meaning of the word "pension" in the ordinance but the factual determination of whether or not the Appellee's National City SERP was a pension.

Appellees wish to forget about municipal powers of local self-government and go well beyond the scope of the BTA and the Court of Appeals when they opine that "allow[ing] each municipality to separately define the word "pension," however, would severely undercut the authority of the General Assembly to hold municipal income taxes to a uniform standard by transferring the establishment of state tax policy from the Ohio General Assembly to the individual municipalities". (Appellees' Brief, at 23-24). The fact of the matter is that, as this Court has recently held, "[t]he power to impose a municipal income tax is a power of local self-government, and when considering an exercise of municipal taxing power, the analysis turns on whether the General Assembly exercises its power to limit or restrict the municipal taxing authority." *Gesler v. Worthington Income Tax Bd. of Appeals*, 138 Ohio St.3d 76, at ¶19, 2013-Ohio-4986. As such, unless restricted or limited by the General Assembly, municipalities have every right under the

exercise of municipal taxing power to define terms contained in their own income tax ordinances. However, the authority of the General Assembly “to hold municipal income tax to a uniform standard is not at issue in this case. The sole issue in this case is the appropriate standard or review to be applied by the BTA to decision of MBOAs.

III. Conclusion

Wherefore, the Appellants ask this Court to find that the Court of Appeals erred in failing to find that the Ohio Board of Tax Appeals (BTA) must consider the decisions of MBOAs presumptively valid and that a decision of a MBOA should not be overturned unless the BTA finds, considering all of the evidence, that the decision is unlawful, arbitrary, capricious, unreasonable or unsupported by the preponderance of substantial, reliable and probative evidence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Joint Reply Brief submitted by the Appellants City of Shaker Heights, Matthew J. Rubino and the Regional Income Tax Agency, was filed with the Ohio Supreme Court and served on the following parties/amicus curiae and/or counsel of record, this 24th day of November 2014.

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§ 718.11. Board of tax appeals.

Ohio Statutes

Title 7. MUNICIPAL CORPORATIONS

Chapter 718. MUNICIPAL INCOME TAXES

Current through the 130th General Assembly

§ 718.11. Board of tax appeals

The legislative authority of each municipal corporation that imposes a tax on income shall maintain a board to hear appeals as provided in this section. The legislative authority of any municipal corporation that does not impose a tax on income on the effective date of this amendment, but that imposes such a tax after that date, shall establish such a board by ordinance not later than one hundred eighty days after the tax takes effect.

Whenever a tax administrator issues a decision regarding a municipal income tax obligation that is subject to appeal as provided in this section or in an ordinance or regulation of the municipal corporation, the tax administrator shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the decision and of the manner in which the taxpayer may appeal the decision.

Any person who is aggrieved by a decision by the tax administrator and who has filed with the municipal corporation the required returns or other documents pertaining to the municipal income tax obligation at issue in the decision may appeal the decision to the board created pursuant to this section by filing a request with the board. The request shall be in writing, shall state why the decision should be deemed incorrect or unlawful, and shall be filed within thirty days after the tax administrator issues the decision complained of.

The board shall schedule a hearing within forty-five days after receiving the request, unless the taxpayer waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the board and may be represented by an attorney at law, certified public accountant, or other representative.

The board may affirm, reverse, or modify the tax administrator's decision or any part of that decision. The board shall issue a final decision on the appeal within ninety days after the board's final hearing on the appeal, and send a copy of its final decision by ordinary mail to all of the parties to the appeal within fifteen days after issuing the decision. The taxpayer or the tax administrator may appeal the board's decision as provided in section 5717.011 of the Revised Code.

Each board of appeal created pursuant to this section shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under section 149.43 of the Revised Code. Hearings requested by a taxpayer before a board of appeal created pursuant to this section are not meetings of a public body subject to section 121.22 of the Revised Code.

Cite as R.C. § 718.11

History. Effective Date: 09-26-2003

§ 5703.60. Petition for reassessment.

Ohio Statutes

Title 57. TAXATION

Chapter 5703. DEPARTMENT OF TAXATION

Current through the 130th General Assembly

§ 5703.60. Petition for reassessment

(A) If a petition for reassessment has been properly filed under a law that specifies that this section applies, the tax commissioner shall proceed as follows:

- (1) Except as provided in division (D) of this section, the commissioner may correct the assessment by issuing a corrected assessment. The corrected assessment may reduce or increase the previous assessment, as the commissioner finds proper. The commissioner shall send the corrected assessment by ordinary mail to the address to which the original assessment was sent, unless the petitioner notifies the commissioner of a different address. The commissioner's mailing of the corrected assessment is an assessment timely made and issued to the extent that the original assessment was timely made and issued, notwithstanding any time limitation otherwise imposed by law.

Within sixty days after the mailing of the corrected assessment, the petitioner may file a new petition for reassessment. The petition shall be filed in the same manner as provided by law for filing the original petition. If a new petition is properly filed within the sixty-day period, the commissioner shall proceed under division (A)(2) or (3) of this section. If a new petition is not properly filed within the sixty-day period, the corrected assessment becomes final, and the amount of the corrected assessment is due and payable from the person assessed.

The issuance of a corrected assessment under this division nullifies the petition for reassessment filed before such issuance, and that petition shall not be subject to further administrative review or appeal. The commissioner may issue to the person assessed only one corrected assessment under this division.

- (2) The commissioner may cancel the assessment by issuing either a corrected assessment or a final determination. The commissioner may mail the cancellation in the same manner as a corrected assessment under division (A)(1) of this section. Cancellation of an assessment pursuant to this division is not subject to further administrative review or appeal.
- (3) If no corrected assessment or final determination is issued under division (A)(1) or

(2) of this section, or if a new petition for reassessment is properly filed under division (A)(1) of this section, the commissioner shall review the assessment or corrected assessment petition that is still pending. If the petitioner requests a hearing, the commissioner shall assign a time and place for the hearing and notify the petitioner of such time and place, but the commissioner may continue the hearing from time to time as necessary. Upon completion of the review and hearing, if requested by the person assessed, the commissioner shall either cancel the assessment or corrected assessment by issuing a corrected assessment or final determination under division (A)(2) of this section, or issue a final determination that reduces, affirms, or increases the assessment or corrected assessment, as the commissioner finds proper. If a final determination is issued under this division, a copy of it shall be served on the petitioner in the manner provided by section 5703.37 of the Revised Code, and it is subject to appeal under section 5717.02 of the Revised Code. Only objections decided on the merits by the board of tax appeals or a court shall be given the effect of collateral estoppel or res judicata in considering an application for refund of amounts paid pursuant to the assessment or corrected assessment.

- (B) Except as provided in division (D) of this section, in addition to the authority provided in division (A) of this section and division (H) of section 5703.05 of the Revised Code, the tax commissioner, on the commissioner's own motion, may issue a corrected assessment with regard to the assessment of any tax for which a properly filed petition for reassessment would be subject to division (A) of this section. A corrected assessment may be issued under this division only if the original assessment has not been certified to the attorney general for collection under section 131.02 of the Revised Code, or is not an appeal pursuant to section 5717.02 of the Revised Code. The corrected assessment shall not increase the amount of tax, penalty, or additional charge if the statute of limitations to issue a new assessment for such increase has expired. The corrected assessment shall be issued and reviewed in the same manner as a corrected assessment under division (A)(1) of this section.
- (C) If the tax commissioner issues a corrected assessment or final determination under this section that reduces an assessment below the amount paid thereon, and the reduction is made at the written request of the party assessed, either through the filing of a proper petition for reassessment or otherwise, the commissioner shall certify any overpayment as a refund due only to the extent a refund could have been timely claimed when the request was made. If the reduction is made on the commissioner's own motion, the commissioner shall certify any overpayment as a refund due only to the extent a refund could have been timely claimed at the time the reduction was made.
- (D) The tax commissioner shall not issue a corrected assessment under division (A)(1) or (B) of this section after the party assessed has requested in writing that the commissioner not use that procedure.

(E) This section does not require the tax commissioner to issue a corrected assessment.

Cite as R.C. § 5703.60

History. Effective Date: 09-06-2002

§ 5703.70. Refund application procedures.

Ohio Statutes

Title 57. TAXATION

Chapter 5703. DEPARTMENT OF TAXATION

Current through the 130th General Assembly

§ 5703.70. Refund application procedures

- (A) On the filing of an application for refund under section 3734.905, 4307.05, 4307.07, 5726.30, 5727.28, 5727.91, 5728.061, 5733.12, 5735.122, 5735.13, 5735.14, 5735.141, 5735.142, 5735.18, 5736.08, 5739.07, 5739.071, 5739.104, 5741.10, 5743.05, 5743.53, 5749.08, 5751.08, or 5753.06 of the Revised Code, or an application for compensation under section 5739.061 of the Revised Code, if the tax commissioner determines that the amount of the refund or compensation to which the applicant is entitled is less than the amount claimed in the application, the commissioner shall give the applicant written notice by ordinary mail of the amount. The notice shall be sent to the address shown on the application unless the applicant notifies the commissioner of a different address. The applicant shall have sixty days from the date the commissioner mails the notice to provide additional information to the commissioner or request a hearing, or both.
- (B) If the applicant neither requests a hearing nor provides additional information to the tax commissioner within the time prescribed by division (A) of this section, the commissioner shall take no further action, and the refund or compensation amount denied becomes final.
- (C) (1) If the applicant requests a hearing within the time prescribed by division (A) of this section, the tax commissioner shall assign a time and place for the hearing and notify the applicant of such time and place, but the commissioner may continue the hearing from time to time as necessary. After the hearing, the commissioner may make such adjustments to the refund or compensation as the commissioner finds proper, and shall issue a final determination thereon.
- (2) If the applicant does not request a hearing, but provides additional information, within the time prescribed by division (A) of this section, the commissioner shall review the information, make such adjustments to the refund or compensation as the commissioner finds proper, and issue a final determination thereon.
- (3) The commissioner shall serve a copy of the final determination made under division (C)(1) or (2) of this section on the applicant in the manner provided in section 5703.37 of the Revised Code, and the decision is final, subject to appeal under section 5717.02 of the Revised Code.

- (D) The tax commissioner shall certify to the director of budget and management and treasurer of state for payment from the tax refund fund created by section 5703.052 of the Revised Code, the amount of the refund to be refunded under division (B) or (C) of this section. The commissioner also shall certify to the director and treasurer of state for payment from the general revenue fund the amount of compensation to be paid under division (B) or (C) of this section.

Cite as R.C. § 5703.70

History. Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General Assembly File No. 186, HB 510, §1, eff. 3/27/2013.

Amended by 128th General Assembly File No. 38, HB 519, §1, eff. 9/10/2010.

Effective Date: 09-06-2002; 04-29-2005; 06-30-2005; 2008 HB429 01-01-2010

§ 5703.99. Penalty.

Ohio Statutes

Title 57. TAXATION

Chapter 5703. DEPARTMENT OF TAXATION

Current through the 130th General Assembly

§ 5703.99. Penalty

- (A) Whoever violates section 5703.21 of the Revised Code shall be fined not less than fifty nor more than one hundred dollars.
- (B) Whoever violates section 5703.26 of the Revised Code is guilty of a felony of the fifth degree, and the court may impose upon the offender an additional fine of not more than seven thousand five hundred dollars.
- (C) Whoever violates section 5703.43 of the Revised Code shall be fined not more than one thousand dollars.
- (D) Whoever violates any law that the department of taxation is required to administer, or fails to perform any duty required by such law, for which a penalty has not otherwise been provided, or fails to obey any lawful requirement or order made by the department of taxation, shall be fined not less than twenty-five nor more than one thousand dollars.

Cite as R.C. § 5703.99

History. Effective Date: 07-01-1996

§ 5715.01. Tax commissioner to supervise assessments by county auditors - rules and procedure - county board of revision.

Ohio Statutes

Title 57. TAXATION

Chapter 5715. BOARDS OF REVISION; EQUALIZATION OF ASSESSMENTS

Current through the 130th General Assembly

§ 5715.01. Tax commissioner to supervise assessments by county auditors - rules and procedure - county board of revision

- (A) The tax commissioner shall direct and supervise the assessment for taxation of all real property. The commissioner shall adopt, prescribe, and promulgate rules for the determination of true value and taxable value of real property by uniform rule for such values and for the determination of the current agricultural use value of land devoted exclusively to agricultural use. The uniform rules shall prescribe methods of determining the true value and taxable value of real property and shall also prescribe the method for determining the current agricultural use value of land devoted exclusively to agricultural use, which method shall reflect standard and modern appraisal techniques that take into consideration: the productivity of the soil under normal management practices; the average price patterns of the crops and products produced to determine the income potential to be capitalized; the market value of the land for agricultural use; and other pertinent factors. The rules shall provide that in determining the true value of lands or improvements thereon for tax purposes, all facts and circumstances relating to the value of the property, its availability for the purposes for which it is constructed or being used, its obsolete character, if any, the income capacity of the property, if any, and any other factor that tends to prove its true value shall be used. In determining the true value of minerals or rights to minerals for the purpose of real property taxation, the tax commissioner shall not include in the value of the minerals or rights to minerals the value of any tangible personal property used in the recovery of those minerals.
- (B) The taxable value shall be that per cent of true value in money, or current agricultural use value in the case of land valued in accordance with section 5713.31 of the Revised Code, the commissioner by rule establishes, but it shall not exceed thirty-five per cent. The uniform rules shall also prescribe methods of making the appraisals set forth in section 5713.03 of the Revised Code. The taxable value of each tract, lot, or parcel of real property and improvements thereon, determined in accordance with the uniform rules and methods prescribed thereby, shall be the taxable value of the tract, lot, or parcel for all purposes of sections 5713.01 to 5713.26 , 5715.01 to 5715.51 , and 5717.01 to 5717.06 of the Revised Code. County auditors shall, under the direction and supervision of the

commissioner, be the chief assessing officers of their respective counties, and shall list and value the real property within their respective counties for taxation in accordance with this section and sections 5713.03 and 5713.31 of the Revised Code and with such rules of the commissioner. There shall also be a board in each county, known as the county board of revision, which shall hear complaints and revise assessments of real property for taxation.

- (C) The commissioner shall neither adopt nor enforce any rule that requires true value for any tax year to be any value other than the true value in money on the tax lien date of such tax year or that requires taxable value to be obtained in any way other than by reducing the true value, or in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value, by a specified, uniform percentage.

Cite as R.C. § 5715.01

History. Effective Date: 09-27-1983; 06-30-2005

§ 5715.99. Penalty.

Ohio Statutes

Title 57. TAXATION

Chapter 5715. BOARDS OF REVISION; EQUALIZATION OF ASSESSMENTS

Current through the 130th General Assembly

§ 5715.99. Penalty

- (A) Whoever violates section 5715.45 of the Revised Code shall be fined not more than five dollars for each day that elapses between the date specified by law for performance and the date when the duty is actually performed.
- (B) Whoever violates section 5715.46 of the Revised Code shall be fined not less than one hundred nor more than one thousand dollars.
- (C) Whoever violates section 5715.48 of the Revised Code shall be fined not less than two hundred nor more than one thousand dollars.
- (D) Whoever violates section 5715.49 or 5715.50 of the Revised Code shall be fined not less than fifty nor more than one thousand dollars.
- (E) Whoever violates section 5715.51 of the Revised Code shall be fined not more than one hundred dollars.

Cite as R.C. § 5715.99

History. Effective Date: 07-01-1996

§ 5717.011. Filing of notice of appeal.

Ohio Statutes

Title 57. TAXATION

Chapter 5717. APPEALS

Current through the 130th General Assembly

§ 5717.011. Filing of notice of appeal

- (A) As used in this chapter, "tax administrator" has the same meaning as in section 718.01 of the Revised Code.
- (B) Appeals from a municipal board of appeal created under section 718.11 of the Revised Code may be taken by the taxpayer or the tax administrator to the board of tax appeals or may be taken by the taxpayer or the tax administrator to a court of common pleas as otherwise provided by law. If the taxpayer or the tax administrator elects to make an appeal to the board of tax appeals or court of common pleas, and subject to section 5703.021 of the Revised Code with respect to appeals assigned to the small claims docket, the appeal shall be taken by the filing of a notice of appeal with the board of tax appeals or court of common pleas, the municipal board of appeal, and the opposing party. The notice of appeal shall be filed within sixty days after the day the appellant receives notice of the decision issued under section 718.11 of the Revised Code. An appeal filed with a court of common pleas is governed by the Rules of Civil Procedure and other rules of practice and procedure applicable to civil actions. For an appeal filed with the board of tax appeals, the notice of appeal may be filed in person or by certified mail, express mail, facsimile transmission, electronic transmission, or by authorized delivery service as provided in section 5703.056 of the Revised Code. If the notice of appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing with the board. If notice of appeal is filed by facsimile transmission or electronic transmission, the date and time the notice is received by the board shall be the date and time reflected on a timestamp provided by the board's electronic system, and the appeal shall be considered filed with the board on the date reflected on that timestamp. Any timestamp provided by another computer system or electronic submission device shall not affect the time and date the notice is received by the board. The notice of appeal shall have attached thereto and incorporated therein by reference a true copy of the decision issued under section 718.11 of the Revised Code , but failure to attach a copy of such notice and incorporate it by reference in the notice of appeal does not invalidate the appeal.

- (C) A notice of appeal for an appeal filed with the board of tax appeals shall contain a short and plain statement of the claimed errors in the decision of the municipal board of appeal showing that the appellant is entitled to relief and a demand for the relief to which the appellant claims to be entitled. An appellant may amend the notice of appeal once as a matter of course within sixty days after the certification of the transcript. Otherwise, an appellant may amend the notice of appeal only after receiving leave of the board or the written consent of each adverse party. Leave of the board shall be freely given when justice so requires.
- (D) Upon the filing of a notice of appeal with the board of tax appeals, the municipal board of appeal shall certify to the board of tax appeals a transcript of the record of the proceedings before it, together with all evidence considered by it in connection therewith. Such appeals may be heard by the board at its office in Columbus or in the county where the appellant resides, or it may cause its examiners to conduct such hearings and to report to it their findings for affirmation or rejection. The board may order the appeal to be heard upon the record and the evidence certified to it by the administrator, but upon the application of any interested party the board shall order the hearing of additional evidence, and the board may make such investigation concerning the appeal as it considers proper. An appeal may proceed pursuant to section 5703.021 of the Revised Code on the small claims docket if the appeals qualifies under that section.
- (E) If an issue being appealed under this section is addressed in a municipal corporation's ordinance or regulation, the tax administrator, upon the request of the board of tax appeals, shall provide a copy of the ordinance or regulation to the board of tax appeals.

Cite as R.C. § 5717.011

History. Amended by 130th General Assembly File No. 37, HB 138, §1, eff. 10/11/2013.

Effective Date: 09-26-2003

BOARD OF REVIEW**111.2501 BOARD OF REVIEW ESTABLISHED.**

A Board of Review, consisting of the Mayor or a person designated by him, the Director of Law or an Assistant Director of Law designated by him, and a member of Council to be elected by that body, is hereby created. The Board shall select, each year for a one-year term, one of its members to serve as Chairman and one to serve as Secretary. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of Section 111.2309 with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on appeal.

(Ord. 66-135. Enacted 12-27-66.)

111.2502 DUTY TO APPROVE REGULATIONS AND TO HEAR APPEALS.

All rules and regulations and amendments or changes thereto, which are adopted by the Administrator under the authority conferred by this chapter, shall be approved by the Board of Review before the same become effective. The Board shall hear and pass on appeals from any ruling or decision of the Administrator and, at the request of the taxpayer or Administrator, is empowered to substitute alternate methods of allocation.

(Ord. 66-135. Enacted 12-27-66.)

111.2503 RIGHT OF APPEAL.

Any person dissatisfied with any ruling or decision of the Administrator which is made under the authority conferred by this chapter may appeal therefrom to the Board of Review within thirty (30) days from the announcement of such ruling or decision by the Administrator, and the Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling, decision or any part thereof.

(Ord. 66-135. Enacted 12-27-66.)

OTHER PROVISIONS**111.2701 DECLARATION OF LEGISLATIVE INTENT.**

If any sentence, clause, section or part of this chapter, or any tax against any individual, or any of the several groups specified herein is found to be unconstitutional, illegal or invalid such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of Council of the City of Shaker Heights that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

(Ord. 66-135. Enacted 12-27-66.)