



Real Estate Tax Issues for School Districts: Defending Your Tax Base

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November 10, 2014



Property Taxes

- About 60% of School Funding
- Based on:
 - Rates/Millage
 - Property Values
- Focus today is on:
 - Disputes about value of property





Introduction

- Property subject to tax by uniform rule based on value
- Value of property determined as of Jan. 1 “tax lien date” of tax year
- Taxes paid 1 year in arrears



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Two Classes of Property

Class I – Property Not Used for a Business Activity

- Residential (up to 3 dwelling units) and Agricultural
- Entitled to 10% Tax Rollback
- Owner of residential homestead may apply for additional 2.5% reduction

Class II – All Other Property

- Commercial, industrial, mineral, over three dwelling units
- Does NOT enjoy 10% Rollback



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County Auditor Values Property

- County Auditor appraises every property once every six years
 - Auditor updates values every 3 years with assessment ratios
- Sale, construction of improvements, or destruction can also change Auditor's valuation outside of the sexennial and triennial updates



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Ohio County Reappraisals

2014 Reappraisal/2017 Update

13, including Butler, Madison, Montgomery, and Summit

2014 Update/2017 Reappraisal

27, including Franklin, Delaware, and Hamilton



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Continuous Agricultural Use Valuation (“CAUV”)

- Upon owner’s application, property used for agricultural purposes may be taxed at current agricultural value, rather than at true or market value
- Current agricultural use valuation (“CAUV”)
- CAUV ordinarily lower than fair market value
- CAUV values going up this year
- Recoupment: When CAUV ends, owner must pay tax savings from 3 prior years



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Procedure for Challenging Auditor’s Valuation

If owner or schools disagree with the Auditor’s valuation, how do they challenge the Auditor’s valuation?

- File “DTE – 1” form with County Auditor by March 31. This form is called a “Valuation Complaint”
- Can also complain about CAUV and other designations



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Procedure for Challenging Auditor's Valuation

Who May File a Complaint?

- Owner of the subject property
- Owner of other property in the same district – **For Now ...**
- School district in which the subject property is located – **For Now**
- Certain other officials – **For Now**



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Procedure for Challenging Auditor's Valuation

- BUT ... Senate Bill 52 ...
 - Would **entirely eliminate** school districts' present right to initiate Board of Revision cases
 - Proposed by Sen. Coley, of SW Ohio
 - Present version would require schools to ask County Recorders to initiate complaints



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Procedure for Challenging Auditor's Valuation

- S.B. 52 – Continued
 - BUT:
 - How would Recorders pay for tax appeals?
 - What if Recorder declines to follow school district's request?
 - Unlike schools, recorders derive little revenue from taxes – what incentive do they have to ensure accurate valuation?



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Procedure for Challenging Auditor's Valuation

H.B. 299 – Another Attempt to Limit Schools' Rights.

- Requires BOE to approve by resolution all original BOR Complaints.
- Resolution must identify counsel and compensation.
- Introduced by Rep. Grossman, pending in the House State and Local Government Committee.



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Procedure for Challenging Auditor's Valuation

- Why would a school district initiate a property tax appeal?
 - Most often: The property recently sold, but the Auditor has not adjusted the property's value.
 - E.g., Auditor valued property at \$1M, but it was sold last year for \$2M.
 - Because Value Should = Price, Schools Choose to Seek Increase



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Procedure for Challenging Auditor's Valuation

Strict Limits on Who May Sign and File Valuation Complaints

- Constitutes practice of law
- Courts and legislature in disagreement, Ohio Supreme Court loosening requirements
- County BORs are inconsistent
- ***If improper person files, entire complaint could be dismissed.***



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Procedure for Challenging Auditor's Valuation

- Always OK for:
 - Ohio attorney to file, and
 - Owner to file.
- Treas./Super. of school district may file
 - **BUT:**
 - Cannot present evidence, or
 - Cannot cross-examine witnesses.
- Officer of owner of property may file
 - **BUT:**
 - Cannot present evidence, or
 - Cannot cross-examine witnesses.



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Procedure for Challenging Auditor's Valuation

Limitation on Frequency of Filing

- Usually, can file only 1 BOR complaint in the 3 years between reappraisals and updates.
- Unless an exception is met, multiple filings will be dismissed.



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Procedure for Challenging Auditor's Valuation

Limitations – Continued

- Exceptions:
 - Allege and prove:
 - Sale,
 - Casualty,
 - Loss of Occupancy, or
 - Improvement.



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Procedure for Challenging Auditor's Valuation

Dismissal for Multiple Filings

- Example:
 - Owner files 2013 complaint, chooses to dismiss.
 - Owner files 2014 complaint, does not list exception – ***Dismissed***.



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Procedure for Challenging Auditor's Valuation

Board of Revision

Hears Valuation Complaints

- County Commissioner, Auditor, Treasurer (or their representative)
- Purpose: To hear complaints against valuation of real property



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Procedural Matters Before Board of Revision

- **March 31 filing deadline** – Stamped by Auditor, not just in the mail.
- Note: Valuation Complaint relates to previous tax year, payable in present calendar year.
- Complaints filed by March 31, 2015, will relate to Tax Year 2014.



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Procedural Matters Before Board of Revision

Opportunity for School District to Respond to Valuation Complaint

- Auditor must notify schools of complaints that seek a reduction of more than \$50K.
- Schools have 30 days from notification from Auditor to file “counter-complaint.”
- ***After 30 days, schools cannot participate in the BOR case or any appeal.***



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Procedural Matters Before Board of Revision

If school district initiated the case, the property owner has the right to counter-claim to oppose a requested increase in value – ***For now ... (recall S.B. 52 would eliminate schools’ rights).***

Note: Property owner may participate in case at any point, even if it does not file a counter-complaint.



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Procedural Matters Before Board of Revision

Pointer: ***Deadlines are critical***

- March 31 - File original complaint(s)
- 30 days from notice that complaint has been filed – Deadline to counter-complain
- 30 days from mailing of BOR decision – Deadline to Appeal.



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BOR Hearing

- County Board of Revision (“BOR”) must hold a hearing of the case
- BOR must provide notice of the hearing of the case by certified mail at least 10 days before the hearing
- Notice will be provided to any party that filed a Valuation Complaint or Counter-Complaint.



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BOR Hearing

Pointer to School Districts:

Even if you have hired an attorney, you may inadvertently receive Notice from the Auditor or BOR. ***Immediately share such a Notice with the attorney.***



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FAQs About BOR Procedure

- When and Where are the hearings held?
 - Usually in the County building in summer, but with large volume, more are heard throughout the year.
 - Ordinarily much less formal than a court proceeding.



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FAQs About BOR Procedure

- Who attends the BOR hearings?
 - The members of the BOR
 - Property owner and the owner's attorney (if one has been hired),
 - Witnesses – often an appraiser
 - Sometimes a representative of the school district, and
 - The school district's attorney (if one has been hired)
 - The hearings are public



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FAQs About BOR Procedure

- What can a non-attorney do at the hearings?
 - May appear and testify, but may not cross-examine witnesses or act in other ways as a lawyer on another's behalf



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Substantive Issues at Board of Revision

- The complaining party – whether it is the owner or the school district – bears the burden of proving its proposed new value
- **BOR may increase value, decrease value, or keep Auditor’s value of property**



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Substantive Issues at Board of Revision

- Recent “arm’s length sale” price presumed to reflect true value
 - Three indicia of arm’s length sale:
 - Voluntary,
 - In an open market, and
 - Parties to act in their own self-interest
 - Difficult to convince Board to depart from such a recent arm’s length sale price.
 - BUT Sherriff’s sale should not be used to determine value.



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Substantive Issues at Board of Revision

Sale Case Study 1:

- Auditor has listed property at \$500K.
- Owner acquired from HUD for \$250K.
- Test: Was the sale arm's length?
- If the HUD sale resulted from a foreclosure, case law holds that HUD sale is NOT arm's length.
- Value stays at \$500K.



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Substantive Issues at Board of Revision

Sale Case Study 2:

- Seller of property negotiates \$1,000,000 price with potential buyer.
- Buyer discovers that property has environmental damage.
- Buyer wants property, but not the down-side of contamination.
- Buyer goes to City and asks it to buy, remediate, and then transfer, property.



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Substantive Issues at Board of Revision

Sale Case Study 2, cont' d

- City wants revenue and jobs, steps in and buys property.
- City obtains and spends \$3MM grant money to remediate site.
- City sells to original buyer for "\$1."
- City/Buyer seek reduction to original purchase price of \$1,000,000
- Arm's Length.....?



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Substantive Issues at Board of Revision

Sale Case Study 3

- Owner bought property with an "above-market" lease in place.
- Argues that price reflects value of lease, not what property is worth.
- Result?



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Substantive Issues at Board of Revision

Sale Case Study 3 Result?

Arm's length sale, and the price is high because the property's value is high—it can be leased at advantageous rates, and the seller bought property that he can lease at favorable terms.

See Cleveland Oh Realty I BTA Case.

(the sale of a leased property does not negate the arm's length nature of the transaction)



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Substantive Issues at Board of Revision

What is Recent?

- Depends on market conditions.
- But, a sale more than 24 months from tax lien date is not recent. (2014 Ohio Sup. Ct. case)



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Substantive Issue at Board of Revision

- If owner opposes valuation based on sale price, they may:
 1. Attack recentness of sale, or
 2. Attack arm's length nature of sale.
- But leases, deed restrictions, or unique financing arrangements will not usually justify any change in valuation from the recent sale price



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Substantive Issue at Board of Revision

- If no recent sale, then complaining party will use an appraisal or opinion of value
 - Appraisal should be for tax, not financing (or other) purposes
 - Financing appraisals often ignored or inadmissible
 - Ensure that appraisal date is the relevant tax lien date, not some other time
 - Owner's opinions of value – not a formal appraisal, but owners are entitled to offer their own opinion of value



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Appraisals

Three Approaches to Market Value

1. Cost Approach
2. Income Approach
3. Sales Comparison Approach



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Appraisal – Cost Approach

Cost Approach

- Estimate of cost of replacing building
- Deduct depreciation for deterioration or obsolescence
- Add estimated land value

Useful for new buildings, or where there are inadequate comparable sales or income data



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Appraisals – Income Approach

Income Capitalization Approach

- Determine income based on market indicators
 - Deduct market-based expenses.
- Apply capitalization rate to net operating income (“NOI”).
- E.g., Property yields NOI of \$200,000.
- Market indicates cap rate of 10%.
- Value = $\$200\text{K}/10\% = \$2,000,000$



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Appraisals: LIHTC

Low Income Housing Tax Credit (“LIHTC”)

- Unlike ordinary rental properties, value LIHTC based on restricted rents, not market rents.
- **BUT** – These property developers receive valuable tax credits, which they sell off to finance construction of properties.
- Supreme Court: Cannot include value of tax credits in valuation of LIHTC properties.
- *Woda Ivy Glen* case.



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Appraisals

Sales Comparison Approach

- Compare and make adjustments to properties similar to Subject
- Appraiser must confirm information, explain adjustments, and support claimed comparability.

Useful for vacant land, owner-occupied commercial/industrial properties, or instances when income approach not useful.



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Substantive Issues At Board of Revision

“Big Box” Appraisal Case Study

- New Target built in 2012, less than two years old on 2014 tax lien date.
- Owner presents appraisal with eight comparable sales, average age of “comps” is 20 years.
- 2/3 of “comps” have “gone dark.”
- Result? Depends if school district participates and presents own appraisal.



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“Owners’ Opinions of Value”

“Owners’ Opinions of Value”

- Attorney prepares packet of information that resembles an appraisal, and the owner adopts with an affidavit.
- Board of Tax Appeals critical, particularly where it is clear that the owner was not involved with the preparation of the information contained in the “Opinion.”

See *Toledo Trust* (June 30, 2009),
BTA Case No. 2007-A-1071.



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BOR Decisions and Further Appeals

1. Following the hearing, the BOR will issue a written decision of value
2. Decision is to be issued by certified mail to the person “in whose name the property is listed.”
3. Dissatisfied with BOR’s decision?
 - Right to Appeal within 30 days of the **mailing** of the BOR’s decision.



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BOR Decisions and Further Appeals

Timing & Venue for Appeals

- Within 30 days of the BOR's **MAILING** of the Notice of the BOR's decision, owner (or school district) may appeal
- File Notices of Appeal with either:
 - The Board of Tax Appeals ("BTA") **and with the BOR**, or
 - The County Court of Common Pleas **and with the BOR** (less commonly used).



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BOR Decisions and Further Appeals

BTA Appeals Procedures

- BOR will file its records with BTA.
- Parties may present new evidence to BTA that they did not possess at time of BOR.
- BTA can accept none, some, or all evidence presented. E.g., appraisal.



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BOR Decisions and Further Appeals

BTA Appeal Procedures

- BTA charged with determining correct value of the property—not limited to the amount requested by any party.
- Like BOR, BTA may increase, decrease, or leave BOR's value unchanged.
- BOR's decision not presumed to be correct.



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BTA Hearings

- BTA Hearings – Conducted by attorney examiners hired by BTA.
- A bit more formal, and longer, than BOR hearings.
- Parties often present post-hearing arguments with written briefs.



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Settlements/Stipulations

- Many appeals are resolved with “Stipulations” – i.e., settlements.
- Owner and schools agree to a value of property that provides some reduction.
- Particularly if settlement can be achieved early, this can be a favorable strategy.



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Further Appeals

Appeals from BTA Decisions

- Parties may appeal a BTA decision to the Supreme Court of Ohio (or, less frequently, to the Court of Appeals in the subject property’s County).
- Standard: Was the BTA’s decision “unreasonable or unlawful.”
- Factual decision of BTA presumed correct.



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Carryover Effect of Appeals

- When a case lingers past the original year, the final determination of the case will affect the intervening years, **EXCEPT**:
 - If a second complaint is filed that “cuts off” the prior case, or
 - When the Auditor is required to reappraise property, that reappraisal “cuts off” the prior case.



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Questions?

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