

Publications

Appeals of BTA Decisions Skyrocket

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During 2014, the numbers of appeals to the Ohio Supreme Court from decisions of the Ohio Board of Tax Appeals (BTA) are on pace to almost triple the number of appeals in 2013, which itself was the largest number of appeals in recent history. The following are the historic number of appeals filed to the Ohio Supreme Court from a BTA decision:

Year: # of Appeals:

2009 32

2010 42

2011 21

2012 42

2013 55

2014* 140

* 2014 appeals total through October 27, 2014

While the volume of cases decided by the BTA accounts for some of the increase in appeals, the difference in the number of decisions issued between 2013 and 2014 is not dramatic enough to account for such an increase in just one year. The following are some of the potential additional causes for the increase in appeals:

1. The BTA has been making significant process changes—both as mandated by HB 138 and to internal process flow. As part of these changes, the journal entries (i.e., decisions) issued by the BTA have become significantly shorter. This was achieved, in part, by limiting or removing some of the standard case citations regarding the BTA's standard or methods of review. This is not a cause of the increase, however. These limited decisions often fail to document

and explain the depth of analysis performed by the BTA of the evidence provided by the parties and the arguments raised by counsel, which is a concern. This is also coupled with efforts by the BTA to shorten hearings. The development of the evidentiary record, which may have taken hours for direct and cross-examination of a witness previously, is now done in under an hour. When a party believes that the evidence or arguments raised were not adequately addressed, the likelihood of an appeal increases.

2. Another potential cause is that the Ohio Supreme Court has become more willing to overturn decisions of the BTA. This is likely directly tied to the lack of analysis documented by the BTA's decisions, but, in the last several years, the Court has demonstrated that it is willing to fully analyze the decisions of the BTA with a more exacting standard and will not hesitate to reverse decisions that it does not believe are correct. As a result of (1) and (2), when a party believes that (1) its position has not been heard or addressed by the BTA and (2) there is a forum to achieving a meaningful review of those grievances, a party is more likely to appeal to the Court.
3. Mediation. Despite the mandate from HB 138 that the BTA reinstate its mediation program, the changes made by the BTA to its mediation "program" (i.e., essentially leaving it to the parties to select, schedule and pay for an outside mediator) are not meaningful. The Ohio Supreme Court does, however, provide a meaningful mediation program. Real property tax cases are almost always referred to the mediation program *sua sponte* by the Court or mediation can be requested. For those parties who believe that the evidence or arguments raised were not addressed in a meaningful way, the exchange of positions through the mediation process may provide for a more meaningful analysis of the positions resulting in a settlement of the matter.

As can be seen in the following article reviewing recent Ohio Supreme Court decisions, the Court, through its decisions, has attempted to better define the standard of review to be applied by the BTA and created a bright-line test for the recency of a sale before a reappraisal in order to provide more direction to the BTA and parties. While some of this started prior to 2014 in separate opinions drafted by Justice Pfeifer admonishing parties as to the development of evidence necessary to sustain a case, in 2014, we have seen the full Court be much more direct in addressing broader positions to help improve the system. We will continue to monitor how this impacts the approach taken by the BTA and the volume of appeals going forward.