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### Ohio Legislature Proposes Changes to the Taxpayer Bill of Rights

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The General Assembly has recently proposed legislation to update Ohio's Taxpayer Bill of Rights. House Bill 613 (H.B. 613) has been introduced but not yet assigned to a committee for review. The Bill offers several sweeping changes in the tax reassessment and appeal process.

#### 1. Problem resolution officers

The bill would require at least one full-time officer to handle unresolved taxpayer complaints. The bill mandates online forms and a public directory to reach the appropriate officers. Currently, the Ohio Tax Commissioner appoints an officer to address complaints at the Commissioner's discretion.

#### 2. Enhanced reporting transparency

The bill mandates additional yearly public reporting of audit and appeal statistics, including 1) the length of time for resolving audits and appeals and 2) the number of audits and appeals that remain unresolved as of the last day of the reporting year.

#### 3. Hearing deadlines and extensions

The bill establishes a clear timeline for hearings requested by taxpayers seeking review. These provisions are designed to ensure timely resolution of tax disputes while allowing flexibility when needed.

Specifically, the Tax Commissioner must hold a hearing within 180 days after the taxpayer requests it. The taxpayer may request a 90-day extension, which must be granted, and the deadline may also be extended by up to 180 additional days if both parties agree.

In addition, interest on any unresolved petition for reassessment stops accruing one year after the filing of the petition.

#### 4. Settlement conferences

The Commissioner may request a settlement conference within 60 days of a reassessment petition or refund request to explore resolution opportunities. If accepted, the hearing deadline is extended by the number of days between the request and the conference. These measures aim to promote fair and efficient dispute resolution and encourage settlements.

#### 5. Commissioner hearings and determinations

The legislation introduces procedures aimed at greater transparency and taxpayer participation on petitions for reassessment and refund claims. Taxpayers may request to see any proposed final determination before it is issued, and the Commissioner must provide the taxpayer with at least 30 days to respond prior to issuing a final determination. During this period, taxpayers can respond or provide additional documentation. If the taxpayer responds, the Commissioner has 30 days to issue a final determination, with the possibility of a further 30-day extension upon written consent.

If a taxpayer does not respond to a proposed final determination within 30 days, that proposed decision automatically becomes the official final decision at the end of the 30-day period. The taxpayer can then appeal this final decision. The Commissioner will issue a formal final determination with the same content as the proposed one. However, for **appeal purposes**, the final determination is considered to have been issued on the last day of the 30-day response period.

For example, suppose a taxpayer receives a proposed final determination on October 1 but does not respond within 30 days, by October 31. The appeal period starts automatically on October 31, even though the Commissioner has not yet issued a formal final determination. If the Commissioner later issues the formal final determination on November 14, it does not affect the appeal period—the clock began running on October 31 and is not reset by the later formal determination.

Of all the provisions in H.B. 613, this one raises the most concern. Although the intent behind allowing taxpayers to respond to a proposed order with argument or additional documentation is to encourage early resolution of tax matters, the resulting appeal period may become unnecessarily complicated and inconsistent, depending on whether a response is filed. Additionally, those unfamiliar with the procedure may inadvertently miss the opportunity to appeal, simply because they do not realize that a proposed final determination that is not responded to automatically becomes final and appealable after 30 days. The subsequent issuance of a formal final determination may further confuse taxpayers about the actual appeal deadline, as it could suggest a deadline later than the one that applies.

From a practitioner's perspective, it would be preferable if the bill established an appeal deadline that runs from the issuance of a formal final determination, regardless of whether a response to the proposed determination is made. Clear and consistent provisions would be more efficient for the state to administer and would better serve taxpayer interests.

## 6. Section 5717.021 – Appeals for delayed determinations

The bill proposes a new section to the Ohio Revised Code, R.C. 5717.021, which would provide taxpayers with a remedy if the Tax Commissioner fails to issue a final or proposed determination within one year after a hearing or, if no hearing is requested, within one year after a reassessment petition is filed. In such cases, the taxpayer may appeal directly to the Board of Tax Appeals (BTA). The appeal process is streamlined as the assessment or refund denial is treated as the Commissioner's determination, and the transcript must include all relevant records. Any objections or documentation previously submitted are considered denied and may be appealed. For refund denials, new bases for appeal may be raised.

The Commissioner must file within 60 days of the notice of appeal a statement of reasons for sustaining the assessment or denial, limited to issues previously communicated to the taxpayer. Confusingly, the legislation proposes that the Commissioner's statement must be "communicated in writing to the appellant before the filing of the appeal[.]" Yet, the reason for the appeal procedure under proposed R.C. 5717.021 is to provide a remedy to the taxpayer when the Commissioner has failed to provide a determination within one year of hearing. Hopefully, this is something that can be addressed by the General Assembly in committee.

For an appeal filed under this section, the BTA may only deny the appeal on those issues raised at the department level or, in the case of a refund denial only, raised in the notice of appeal. If the taxpayer makes a prima facie case, the burden shifts to the Commissioner to prove by clear and convincing evidence that the assessment or denial should be sustained. This is a change in the legal standard that applies to BTA proceedings, which is based on meeting a burden of persuasion.

This section is designed to prevent undue delays and ensure taxpayers have a path to resolution when administrative action stalls. Still the section needs clarification and may be an overly complicated way of ensuring timely consideration of petitions and refund claims.

## 7. Decisions – Board of Tax Appeals

The bill also establishes a clear timeline for the Board of Tax Appeals to complete its consideration of an appeal. If the Board of Tax Appeals holds a hearing on an appeal, it must issue its decision within 12 months of the hearing date. If no hearing is held, the Board must issue its decision within 12 months after the last brief is filed in the case. In either situation, the deadline for issuing a decision can be extended if all parties involved in the appeal agree to the extension.

The bill, however, does not address what happens if the BTA fails to act within the deadline.

## Initial Observations

The provisions of H.B. 613 are intended to enhance taxpayer rights, clarify procedural timelines, promote transparency in tax dispute resolution, and provide remedies for administrative delay - all with the goal of improving fairness and efficiency in Ohio's tax administration. As practitioners, we agree that Ohio's tax review system can be made more efficient and can offer better service and fairness to taxpayers. We are pleased to see the General Assembly addressing these important issues.

However, H.B. 613 introduces certain inconsistencies and creates sometimes complex remedies when simpler, more straightforward solutions (such as clear timelines for completing responsibilities) might be more effective. Additionally, the bill does not address how these enhanced procedures will be funded, even though additional hearing officers, BTA Examiners, administrative personnel, and related resources will likely be needed to meet the requirements of the legislation.

At first blush, H.B. 613 invites dialogue, which always is good. The new responsibilities can appear to be heavy handed and seem like remedies in search of problems. We are not yet convinced taxpayer experienced problems support such ambitious changes to settled process and established procedures. Indeed, some of the proposed “fixes” could fall flat and undermine current taxpayer rights.

We will continue to monitor developments in the General Assembly and keep you informed.