

As Introduced

**130th General Assembly
Regular Session
2013-2014**

H. B. No. 138

Representatives McClain, Letson

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A BILL

To amend sections 5703.02, 5717.01, 5717.011, 1
5717.02, and 5717.04 and to enact sections 2
5703.021 and 5717.031 of the Revised Code to make 3
changes to the law governing the Board of Tax 4
Appeals, including authorizing a small claims 5
division within the Board, requiring the Board to 6
institute measures to manage certain appeals, 7
requiring the Board to receive notices of appeal 8
and statutory transcripts electronically, 9
providing pleading standards for appeals to the 10
Board, granting the Board authority to grant 11
summary judgments and consider motions, vesting 12
hearing examiners with the authority to determine 13
credibility of witnesses and issue statements of 14
fact and conclusions of law separately, and 15
authorizing the Board to require parties to engage 16
in mediation, and to authorize the Tax 17
Commissioner to expedite and issue a final 18
determination for residential property value 19
appeals with written consent of the parties. 20

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 5703.02, 5717.01, 5717.011, 5717.02, 21
and 5717.04 be amended and sections 5703.021 and 5717.031 of the 22

Revised Code be enacted to read as follows: 23

Sec. 5703.02. There is hereby created the board of tax 24
appeals, which shall exercise the following powers and perform the 25
following duties: 26

(A) Exercise the authority provided by law to hear and 27
determine all appeals of questions of law and fact arising under 28
the tax laws of this state in appeals from decisions, orders, 29
determinations, or actions of any tax administrative agency 30
established by the law of this state, including but not limited to 31
appeals from: 32

(1) Actions of county budget commissions; 33

(2) Decisions of county boards of revision; 34

(3) Actions of any assessing officer or other public official 35
under the tax laws of this state; 36

(4) Final determinations by the tax commissioner of any 37
preliminary, amended, or final tax assessments, reassessments, 38
valuations, determinations, findings, computations, or orders made 39
by ~~him~~ the tax commissioner; 40

(5) Adoption and promulgation of rules of the tax 41
commissioner. 42

(B) Appoint a secretary of the board of tax appeals, who 43
shall serve in the unclassified civil service at the pleasure of 44
the board, and any other employees as are necessary in the 45
exercise of the powers and the performance of the duties and 46
functions that the board is by law authorized and required to 47
exercise, and prescribe the duties of all employees, and to fix 48
their compensation as provided by law; 49

(C) Maintain a journal, which shall be open to public 50
inspection and in which the secretary shall keep a record of all 51

of the proceedings and the vote of each of its members upon every 52
action taken by it; 53

(D) Adopt and promulgate, in the manner provided by section 54
5703.14 of the Revised Code, and enforce all rules relating to the 55
procedure of the board in hearing appeals it has the authority or 56
duty to hear, and to the procedure of officers or employees whom 57
the board may appoint; provided that section 5703.13 of the 58
Revised Code shall apply to and govern the procedure of the board. 59
Such rules shall include, but need not be limited to, the 60
following: 61

(1) Rules governing the creation and implementation of a 62
mediation program, including procedures for requesting, requiring 63
participation in, objecting to, and conducting a mediation; 64

(2) A requirement that the tax commissioner, county boards of 65
revision, and municipal boards of appeal created under section 66
718.11 of the Revised Code electronically file any transcript 67
required to be filed with the board of tax appeals, and 68
instructions and procedures for the electronic filing of such 69
transcripts. 70

Sec. 5703.021. (A) There is hereby established a small claims 71
division of the board of tax appeals. 72

(B) The small claims division shall have jurisdiction over 73
the following: 74

(1) Appeals commenced under section 5717.01 of the Revised 75
Code in which the property at issue qualifies for the partial tax 76
exemption described in section 319.302 of the Revised Code; or 77

(2) Appeals commenced under section 5717.011 or 5717.02 of 78
the Revised Code when the amount in controversy claimed by the 79
taxpayer does not exceed ten thousand dollars exclusive of 80
interest and penalty. The board by rule may modify the 81

jurisdictional dollar threshold for cases qualifying for the small 82
claims division. 83

(C) Notwithstanding division (B) of this section, the board 84
shall reassign an appeal initially assigned to the small claims 85
division to the regular docket upon request of a party or when the 86
appeal presents an issue of public or great general interest or 87
presents a constitutional issue, or when the board determines that 88
the appeal does not meet the requirements of division (B) of this 89
section. 90

(D) The board may reassign to the small claims docket any 91
appeal originally assigned to the regular docket with the written 92
consent of all the parties. 93

(E) The board shall adopt rules to implement procedures to 94
provide informal review of the taxpayers' appeals in the small 95
claims division, which may include telephonic hearings. 96

(F) A decision or order of the small claims division shall be 97
conclusive as to all parties and may not be appealed, and shall be 98
recorded in the journal required by division (C) of section 99
5703.02 of the Revised Code, but such a decision or order shall 100
not be considered as precedent in any other case, hearing, or 101
proceeding. 102

(G) The appearance of an attorney at law licensed to practice 103
law in this state on behalf of any party to an appeal assigned to 104
the small claims docket is permitted but not required. A person 105
other than a natural person, which is a real party in interest as 106
taxpayer or claimant, or an entity that may participate by 107
statute, may commence such an appeal or appear through an attorney 108
at law licensed to practice law in this state. Such an 109
organization may, through any bona fide officer, partner, member, 110
trustee, or salaried employee, file and present its claim or 111
defense in any appeal in the small claims division, provided the 112

organization does not, in the absence of representation by an 113
attorney at law licensed to practice law in this state, engage in 114
cross-examination, argument, or other acts of advocacy. The board 115
may provide by rule for additional guidelines applicable to 116
practice before the board. 117

Sec. 5717.01. An appeal from a decision of a county board of 118
revision may be taken to the board of tax appeals within thirty 119
days after notice of the decision of the county board of revision 120
is mailed as provided in division (A) of section 5715.20 of the 121
Revised Code. Such an appeal may be taken by the county auditor, 122
the tax commissioner, or any board, legislative authority, public 123
official, or taxpayer authorized by section 5715.19 of the Revised 124
Code to file complaints against valuations or assessments with the 125
auditor. Such appeal shall be taken by the filing of a notice of 126
appeal, in person or by certified mail, express mail, facsimile 127
transmission, electronic transmission using electronic mail, or by 128
authorized delivery service, with the board of tax appeals and 129
with the county board of revision. If notice of appeal is filed by 130
certified mail, express mail, or authorized delivery service as 131
provided in section 5703.056 of the Revised Code, the date of the 132
United States postmark placed on the sender's receipt by the 133
postal service or the date of receipt recorded by the authorized 134
delivery service shall be treated as the date of filing. If notice 135
of appeal is filed by facsimile transmission or electronic 136
transmission using electronic mail, the date and time of 137
transmission shall be treated as the date of filing. Upon receipt 138
of such notice of appeal such county board of revision shall by 139
certified mail notify all persons thereof who were parties to the 140
proceeding before such county board of revision, and shall file 141
proof of such notice with the board of tax appeals. The county 142
board of revision shall thereupon certify to the board of tax 143
appeals a transcript of the record of the proceedings of the 144

county board of revision pertaining to the original complaint, and 145
all evidence offered in connection therewith. Such appeal may be 146
heard by the board of tax appeals at its offices in Columbus or in 147
the county where the property is listed for taxation, or the board 148
of tax appeals may cause its examiners to conduct such hearing and 149
to report to it their findings for affirmation or rejection. An 150
appeal may proceed pursuant to section 5703.021 of the Revised 151
Code in the small claims division if the appeal qualifies under 152
that section. 153

The board of tax appeals may order the appeal to be heard on 154
the record and the evidence certified to it by the county board of 155
revision, or it may order the hearing of additional evidence, and 156
it may make such investigation concerning the appeal as it deems 157
proper. 158

Sec. 5717.011. (A) As used in this chapter, "tax 159
administrator" has the same meaning as in section 718.01 of the 160
Revised Code and "Ohio business gateway" has the same meaning as 161
in section 718.051 of the Revised Code. 162

(B) Appeals from a municipal board of appeal created under 163
section 718.11 of the Revised Code may be taken by the taxpayer or 164
the tax administrator to the board of tax appeals or may be taken 165
by the taxpayer or the tax administrator to a court of common 166
pleas as otherwise provided by law. If the taxpayer or the tax 167
administrator elects to make an appeal to the board of tax appeals 168
or court of common pleas, and subject to section 5703.021 of the 169
Revised Code with respect to small claims proceedings, the appeal 170
shall be taken by the filing of a notice of appeal with the board 171
of tax appeals or court of common pleas, the municipal board of 172
appeal, and the opposing party. The notice of appeal shall be 173
filed within sixty days after the day the appellant receives 174
notice of the decision issued under section 718.11 of the Revised 175

Code. The notice of appeal may be filed in person or by certified 176
mail, express mail, ~~or facsimile transmission, electronic~~ 177
~~transmission using electronic mail, by~~ authorized delivery service 178
as provided in section 5703.056 of the Revised Code or, in the 179
case of an appeal filed with the board of tax appeals, 180
electronically through the Ohio business gateway. If the notice of 181
appeal is filed by certified mail, express mail, or authorized 182
delivery service as provided in section 5703.056 of the Revised 183
Code, the date of the United States postmark placed on the 184
sender's receipt by the postal service or the date of receipt 185
recorded by the authorized delivery service shall be treated as 186
the date of filing. If notice of appeal is filed by facsimile 187
transmission, electronic transmission using electronic mail, or 188
electronically through the Ohio business gateway, the date and 189
time of the transmission shall be treated as the date of filing. 190
The notice of appeal shall have attached thereto and incorporated 191
therein by reference a true copy of the decision issued under 192
section 718.11 of the Revised Code ~~and shall specify the errors~~ 193
~~therein complained of,~~ but failure to attach a copy of such notice 194
and incorporate it by reference in the notice of appeal does not 195
invalidate the appeal. 196

(C) A notice of appeal for an appeal filed with the board of 197
tax appeals shall contain a short and plain statement of the 198
claimed error showing that the appellant is entitled to relief and 199
a demand for the relief to which the appellant claims to be 200
entitled. An appellant may amend the notice of appeal once as a 201
matter of course within sixty days after the appellant receives 202
notice of the certification of the transcript. Otherwise, an 203
appellant may amend the notice of appeal only after receiving 204
leave of the board or the written consent of each adverse party. 205
Leave of the board shall be freely given when justice so requires. 206

(D) Upon the filing of a notice of appeal with the board of 207

tax appeals, the municipal board of appeal shall certify to the 208
board of tax appeals a transcript of the record of the proceedings 209
before it, together with all evidence considered by it in 210
connection therewith. The secretary of the board of tax appeals, 211
by certified mail or electronic mail, shall notify all parties of 212
record of the filing of the transcript. Such appeals may be heard 213
by the board at its office in Columbus or in the county where the 214
appellant resides, or it may cause its examiners to conduct such 215
hearings and to report to it their findings for affirmation or 216
rejection. The board may order the appeal to be heard upon the 217
record and the evidence certified to it by the administrator, but 218
upon the application of any interested party the board shall order 219
the hearing of additional evidence, and the board may make such 220
investigation concerning the appeal as it considers proper. An 221
appeal may proceed pursuant to section 5703.021 of the Revised 222
Code in the small claims division if the appeals qualifies under 223
that section. 224

~~(D)~~(E) If an issue being appealed under this section is 225
addressed in a municipal corporation's ordinance or regulation, 226
the tax administrator, upon the request of the board of tax 227
appeals, shall provide a copy of the ordinance or regulation to 228
the board of tax appeals. 229

Sec. 5717.02. (A) Except as otherwise provided by law, 230
appeals from final determinations by the tax commissioner of any 231
preliminary, amended, or final tax assessments, reassessments, 232
valuations, determinations, findings, computations, or orders made 233
by the commissioner may be taken to the board of tax appeals by 234
the taxpayer, by the person to whom notice of the tax assessment, 235
reassessment, valuation, determination, finding, computation, or 236
order by the commissioner is required by law to be given, by the 237
director of budget and management if the revenues affected by that 238
decision would accrue primarily to the state treasury, or by the 239

county auditors of the counties to the undivided general tax funds 240
of which the revenues affected by that decision would primarily 241
accrue. Appeals from the redetermination by the director of 242
development services under division (B) of section 5709.64 or 243
division (A) of section 5709.66 of the Revised Code may be taken 244
to the board of tax appeals by the enterprise to which notice of 245
the redetermination is required by law to be given. Appeals from a 246
decision of the tax commissioner or county auditor concerning an 247
application for a property tax exemption may be taken to the board 248
of tax appeals by the applicant or by a school district that filed 249
a statement concerning that application under division (C) of 250
section 5715.27 of the Revised Code. Appeals from a 251
redetermination by the director of job and family services under 252
section 5733.42 of the Revised Code may be taken by the person to 253
which the notice of the redetermination is required by law to be 254
given under that section. 255

(B) The appeals shall be taken by the filing of a notice of 256
appeal with the board, ~~and with the tax commissioner if the tax~~ 257
~~commissioner's action is the subject of the appeal, with the~~ 258
~~county auditor if the county auditor's action is the subject of~~ 259
~~the appeal, with the director of development if that director's~~ 260
~~action is the subject of the appeal, or with the director of job~~ 261
~~and family services if that director's action is the subject of~~ 262
~~the appeal.~~ The notice of appeal shall be filed within sixty days 263
after service of the notice of the tax assessment, reassessment, 264
valuation, determination, finding, computation, or order by the 265
commissioner, property tax exemption determination by the 266
commissioner or the county auditor, or redetermination by the 267
director has been given as provided in section 5703.37, 5709.64, 268
5709.66, or 5733.42 of the Revised Code. The notice of appeal may 269
be filed in person or by certified mail, express mail, ~~or~~ 270
facsimile transmission, electronic transmission using electronic 271

mail, by authorized delivery service, or electronically through 272
the Ohio business gateway. If the notice of appeal is filed by 273
certified mail, express mail, or authorized delivery service as 274
provided in section 5703.056 of the Revised Code, the date of the 275
United States postmark placed on the sender's receipt by the 276
postal service or the date of receipt recorded by the authorized 277
delivery service shall be treated as the date of filing. If notice 278
of appeal is filed by facsimile transmission, electronic 279
transmission using electronic mail, or electronically through the 280
Ohio business gateway, the date and time of the transmission shall 281
be treated as the date of filing. The notice of appeal shall have 282
attached to it and incorporated in it by reference a true copy of 283
the notice sent by the commissioner, county auditor, or director 284
to the taxpayer, enterprise, or other person of the final 285
determination or redetermination complained of, ~~and shall also~~ 286
~~specify the errors therein complained of,~~ but failure to attach a 287
copy of that notice and to incorporate it by reference in the 288
notice of appeal does not invalidate the appeal. 289

(C) A notice of appeal shall contain a short and plain 290
statement of the claimed error showing that the appellant is 291
entitled to relief and a demand for the relief to which the 292
appellant claims to be entitled. An appellant may amend the notice 293
of appeal once as a matter of course within sixty days after the 294
appellant receives notice of the certification of the transcript. 295
Otherwise, an appellant may amend the notice of appeal only after 296
receiving leave of the board or the written consent of each 297
adverse party. Leave of the board shall be freely given when 298
justice so requires. 299

(D) Upon the filing of a notice of appeal, the secretary of 300
the board of tax appeals, by certified mail or electronic mail, 301
shall provide notice of the filing of the appeal to the tax 302
commissioner, the director of development services, or the 303

director of job and family services if the commissioner's or 304
director's action is the subject of the appeal. The tax 305
commissioner, county auditor, or the director, as appropriate, 306
shall certify to the board a transcript of the record of the 307
proceedings before the commissioner, auditor, or director, 308
together with all evidence considered by the commissioner, 309
auditor, or director in connection with the proceedings. The 310
secretary of the board of tax appeals, by certified mail or 311
electronic mail, shall notify all parties of record of the filing 312
of the transcript. Those appeals or applications may be heard by 313
the board at its office in Columbus or in the county where the 314
appellant resides, or it may cause its examiners to conduct the 315
hearings and to report to it their findings for affirmation or 316
rejection. The board shall institute procedures to control and 317
manage appeals governed by this section. The procedures shall 318
include the conduct of discovery such that, upon the filing of the 319
statutory transcript in an appeal, the board, through its attorney 320
examiners, shall establish a case management schedule, subject to 321
section 5703.021 of the Revised Code. 322

~~(D)~~(E) The board may order the appeal to be heard upon the 323
record and the evidence certified to it by the commissioner, 324
county auditor, or director, but upon the application of any 325
interested party the board shall order the hearing of additional 326
evidence, and it may make an investigation concerning the appeal 327
that it considers proper. An appeal may proceed pursuant to 328
section 5703.021 of the Revised Code in the small claims division 329
if the appeal qualifies under that section. 330

(F) As used in this section, "Ohio business gateway" has the 331
same meaning as in section 718.051 of the Revised Code. 332

Sec. 5717.031. (A) Upon the motion of any party to an appeal 333
commenced under section 5717.01, 5717.011, or 5717.02 of the 334

Revised Code, or upon motion by the board of tax appeals, the 335
board may grant summary judgment if the moving party shows or the 336
board finds that there exists no genuine issue of material fact 337
and the moving party or the party designated by the board is 338
entitled to judgment as a matter of law. The board may adopt rules 339
governing the use of motions for summary judgment. 340

(B)(1) The board of tax appeals may consider and decide 341
motions, including motions in limine, before the board makes a 342
decision on any matter. 343

(2) At the close of a hearing or within ten days thereafter, 344
a party may make a motion to require the board, if the board 345
conducted the hearing, or the examiner who conducted the hearing 346
to make findings of fact and conclusions of law before the board 347
decides an appeal or before the appeal is submitted to the board 348
of tax appeals for decision, respectively. The board or examiner 349
shall send a copy of the board's or examiner's findings of fact 350
and conclusions of law to the parties. 351

(3) The board, if the board conducts the hearing, or the 352
examiner who conducts a hearing shall determine the credibility of 353
each witness. If an examiner determines the credibility of a 354
witness, the board shall not change the examiner's determination 355
absent clear and convincing evidence that the examiner's 356
determination of the credibility of the witness is incorrect. 357

Sec. 5717.04. The This section does not apply to any decision 358
and order of the board made pursuant to section 5703.021 of the 359
Revised Code. Any such decision and order shall be conclusive upon 360
all parties and may not be appealed. 361

The proceeding to obtain a reversal, vacation, or 362
modification of a decision of the board of tax appeals shall be by 363
appeal to the supreme court or the court of appeals for the county 364

in which the property taxed is situate or in which the taxpayer 365
resides. If the taxpayer is a corporation, then the proceeding to 366
obtain such reversal, vacation, or modification shall be by appeal 367
to the supreme court or to the court of appeals for the county in 368
which the property taxed is situate, or the county of residence of 369
the agent for service of process, tax notices, or demands, or the 370
county in which the corporation has its principal place of 371
business. In all other instances, the proceeding to obtain such 372
reversal, vacation, or modification shall be by appeal to the 373
court of appeals for Franklin county. 374

Appeals from decisions of the board determining appeals from 375
decisions of county boards of revision may be instituted by any of 376
the persons who were parties to the appeal before the board of tax 377
appeals, by the person in whose name the property involved in the 378
appeal is listed or sought to be listed, if such person was not a 379
party to the appeal before the board of tax appeals, or by the 380
county auditor of the county in which the property involved in the 381
appeal is located. 382

Appeals from decisions of the board of tax appeals 383
determining appeals from final determinations by the tax 384
commissioner of any preliminary, amended, or final tax 385
assessments, reassessments, valuations, determinations, findings, 386
computations, or orders made by the commissioner may be instituted 387
by any of the persons who were parties to the appeal or 388
application before the board, by the person in whose name the 389
property is listed or sought to be listed, if the decision 390
appealed from determines the valuation or liability of property 391
for taxation and if any such person was not a party to the appeal 392
or application before the board, by the taxpayer or any other 393
person to whom the decision of the board appealed from was by law 394
required to be sent, by the director of budget and management if 395
the revenue affected by the decision of the board appealed from 396

would accrue primarily to the state treasury, by the county 397
auditor of the county to the undivided general tax funds of which 398
the revenues affected by the decision of the board appealed from 399
would primarily accrue, or by the tax commissioner. 400

Appeals from decisions of the board upon all other appeals or 401
applications filed with and determined by the board may be 402
instituted by any of the persons who were parties to such appeal 403
or application before the board, by any persons to whom the 404
decision of the board appealed from was by law required to be 405
sent, or by any other person to whom the board sent the decision 406
appealed from, as authorized by section 5717.03 of the Revised 407
Code. 408

Such appeals shall be taken within thirty days after the date 409
of the entry of the decision of the board on the journal of its 410
proceedings, as provided by such section, by the filing by 411
appellant of a notice of appeal with the court to which the appeal 412
is taken and the board. If a timely notice of appeal is filed by a 413
party, any other party may file a notice of appeal within ten days 414
of the date on which the first notice of appeal was filed or 415
within the time otherwise prescribed in this section, whichever is 416
later. A notice of appeal shall set forth the decision of the 417
board appealed from and the errors therein complained of. Proof of 418
the filing of such notice with the board shall be filed with the 419
court to which the appeal is being taken. The court in which 420
notice of appeal is first filed shall have exclusive jurisdiction 421
of the appeal. 422

In all such appeals the ~~tax~~ commissioner or all persons to 423
whom the decision of the board appealed from is required by such 424
section to be sent, other than the appellant, shall be made 425
appellees. Unless waived, notice of the appeal shall be served 426
upon all appellees by certified mail. The prosecuting attorney 427
shall represent the county auditor in any such appeal in which the 428

auditor is a party. 429

The board, upon written demand filed by an appellant, shall 430
within thirty days after the filing of such demand file with the 431
court to which the appeal is being taken a certified transcript of 432
the record of the proceedings of the board pertaining to the 433
decision complained of and the evidence considered by the board in 434
making such decision. 435

If upon hearing and consideration of such record and evidence 436
the court decides that the decision of the board appealed from is 437
reasonable and lawful it shall affirm the same, but if the court 438
decides that such decision of the board is unreasonable or 439
unlawful, the court shall reverse and vacate the decision or 440
modify it and enter final judgment in accordance with such 441
modification. 442

The clerk of the court shall certify the judgment of the 443
court to the board, which shall certify such judgment to such 444
public officials or take such other action in connection therewith 445
as is required to give effect to the decision. The "taxpayer" 446
includes any person required to return any property for taxation. 447

Any party to the appeal shall have the right to appeal from 448
the judgment of the court of appeals on questions of law, as in 449
other cases. 450

Section 2. That existing sections 5703.02, 5717.01, 5717.011, 451
5717.02, and 5717.04 of the Revised Code are hereby repealed. 452

Section 3. This section applies to any residential property 453
case that has been appealed from a board of revision and is 454
docketed before the Board of Tax Appeals. Upon the written consent 455
of the parties to have the case transferred to the Department of 456
Taxation, the Tax Commissioner may process such appeals and issue 457
a determination that is final for all parties. The Commissioner 458

shall establish a practice and procedure for processing such 459
cases. Any request by a party for transfer of a case to the 460
Department of Taxation under this section shall be made within two 461
years from the effective date of this section. This authority is 462
granted in conjunction with section 5703.021 of the Revised Code. 463

Section 4. The amendment by this act of division (D)(2) of 464
section 5703.02 of the Revised Code takes effect January 1, 2015. 465