

Estimated Taxes, Deadlines, Penalties/Interest and Assessments

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In This Presentation We Will:

- Discuss estimated taxes
- Discuss payment, filing and extension deadlines
- Discuss new penalty, interest and late filing rates
- Discuss the appealable "Assessment"
 - How you get one (sometimes the law requires you to ask for it)
 - How you appeal it
 - How it affects a municipality's time to collect or a taxpayer's right to refund.
- If we have time, discuss the paths an Assessment can take once appealed, from the municipality's Income Tax Board of Review, focusing on a new venue, the Ohio BTA's small claims division.

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Estimated Tax – Individuals and Businesses

- Quarterly payment of estimated tax is not required unless tax due will be \$200 or more (after withholding and credits).
 - Due April 15th, June 15th, September 15th and December 15th
- All of the same safe harbors are in place – 90% of the current year's tax, 100% of the prior year's liability.
- Taxpayers who declare an estimate, no matter the amount, will receive quarterly bills from RITA, as a courtesy.

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Uniform Filing Deadlines – Annual Return

- Individuals – Annual tax returns are due on the same date that applies for State of Ohio personal income tax purposes.
- Businesses – Annual tax returns are due on the 15th day of the fourth month following the end of the taxpayer's taxable year.

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Filing on Extension

- **Federal Extension** – If a taxpayer has a federal extension, the municipal return is automatically extended as well – to the 15th day of the tenth month after the end of the taxpayer’s taxable year.
 - No notice or request to the municipal tax administrator is required by the annual due date.
 - Submit a copy of the federal extension with the extended filing.

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Filing on Extension

- **No Federal Extension** – Taxpayers who do not have a federal extension shall receive a six-month extension at the municipal level if requested by the annual return due date.
- **Federal or Non-Federal Extension** – An extension to file is NOT an extension to pay.

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Postmarks

- All filings and payments are considered to be timely made if postmarked by the due date.
- For payments made electronically, payment is considered to be made on the date of the timestamp of the first electronic system receiving the payment.

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Penalty, Interest and Late Fees

For tax years beginning on or after January 1, 2016:

- Penalty:
 - Flat 15% of unpaid tax for individuals and net profit filers
 - Flat 50% of unpaid tax for employer withholding
- Late Filing:
 - \$25 per month late, up to \$150, regardless of tax due
- Interest:
 - Federal short-term rate plus 5%
 - Same interest to be paid on late-issued refunds

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Penalty, Interest and Late Fees

- Municipalities will continue to charge penalty, interest and late fees (if any) at pre-House Bill 5 rates for taxes that were due prior to January 1, 2016, even if paid after that date.
- Abatements of penalty and interest are permitted at the discretion of the tax administrator.

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Assessments

- Assessment means a written finding by the tax administrator that a person has underpaid municipal income tax, or owes penalty and interest, or any combination of tax, penalty, or interest, to the municipal corporation that commences the person's time limitation for making an appeal to the local board of review pursuant to section 718.11 of the Revised Code, and has "ASSESSMENT" written in all capital letters at the top of such finding. R.C. 718.01(PP)(1)
 - A written finding by the tax administrator
 - That starts the appeal clock for the taxpayer
 - And has "assessment" in all capital letters at the top

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Assessments

- Assessment does not include an informal notice denying a request for refund issued under division (B)(3) of section 718.19* of the Revised Code, a billing statement notifying a taxpayer of current or past-due balances owed to the municipal corporation, a tax administrator's request for additional information, a notification to the taxpayer of mathematical errors, or a tax administrator's other written correspondence to a person or taxpayer that does not meet the criteria prescribed by division (PP)(1) of this section. R.C. 718.01(PP)(2)

* Refund denied on an originally filed return

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Assessments

- Assessments are NOT:
 - Billing Statements;
 - Requests for additional information
 - Informal notices denying refund requests on originally filed returns;
 - Notification of math errors; or
 - Other general correspondence that is not a written finding that starts the appeal clock with the word "assessment" written in all capital letters at the top.

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Assessments

- Assessment is required to be issued:
 - On the tax administrator's full or partial denial of a refund requested on an amended return R.C. 718.19(B)(2);
 - At the taxpayer's request after being denied a refund requested on an original filing R.C. 718.19(B)(3)
 - On the tax administrator's denial of a taxpayer's request to use a method other than the statutorily prescribed method for allocating net profits to a municipality R.C. 718.02(B)(2)
 - On the tax administrator requiring a taxpayer to use a method other than the statutorily prescribed method for allocating net profits to a municipality R.C. 718.02(B)(3)

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Assessments

- When issuing an Assessment the tax administrator must notify the taxpayer:
 - Of the right to appeal the Assessment
 - The manner in which the taxpayer may appeal the Assessment
 - In writing
 - Specifying the reason(s) the Assessment should be deemed incorrect or unlawful
 - Filed within 60 days after the taxpayer receives the Assessment
 - The address to which the appeal should be directed.
- R.C. 718.11(B) and (C)

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Assessments

- The tax administrator must issue the Assessment by:
 - Personal service; or
 - Certified mail; or
 - Delivery service (UPS, FedEx, etc...); or
 - With the taxpayer's permission, by alternate means, including delivery by secure electronic mail.

R.C. 718.18

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****IMPORTANT REMINDER****

- No civil action to recover municipal income tax, or related penalties or interest, may be brought during the time which a taxpayer has a right to appeal an Assessment related to the tax, penalty and interest.
- The statute of limitations is NOT tolled/stayed during the time which a taxpayer has a right to appeal – the clock is still running.
- For tax administrators
 - Be aware of approaching statute of limitations
 - Issue Assessments more than 60 days before the statute expires



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Assessments and Refunds

- An appealable Assessment will be issued for denial of refunds requested on original returns only at the taxpayer's request.
- For refunds denied, in whole or in part, on a taxpayer's originally filed annual income tax return, the tax administrator shall notify the taxpayer in writing:
 - Of the amount of the refund that was denied;
 - The reasons for the denial; and
 - Instructions for requesting an Assessment that may be appealed

R.C. 718.19(B)(3)

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Assessments and Refunds

- An appealable Assessment will be issued for refund denials on amended returns.
- ...Except as provided in division (B)(3)* of this section, the administrator shall issue an Assessment to any taxpayer whose request for refund is fully or partially denied. The Assessment shall state:
 - The amount of the refund that was denied;
 - The reasons for the denial; and
 - Instructions for appealing the Assessment

R.C. 718.19(B)(2)

*Refunds denied on originally filed returns – discussed on previous slide.

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Assessments and Refunds - Examples

- Taxpayer declares and pays a TY 2017 estimate to Municipality A as a resident.
- Taxpayer files an original TY 2017 return with Municipality A and requests a refund of \$500, claiming domicile changed to Florida mid-year.
- Tax administrator denies the request for refund, determining domicile in Municipality A for TY 2017.
- Tax administrator must notify the taxpayer of instructions for requesting an appealable Assessment.

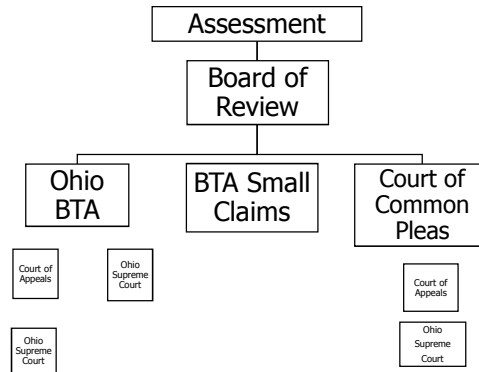
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Assessments and Refunds - Examples

- Taxpayer files an annual income tax return with Municipality A for TY 2017 indicating residency in Municipality A and paying the appropriate tax due on income.
- Taxpayer, one year later, files an amended return with Municipality A for TY 2017, claiming domicile in Florida for TY 2017 and requesting a refund of tax paid to Municipality A.
- Tax administrator denies the request for refund, determining domicile in Municipality A for TY 2017.
- Tax administrator must issue an appealable Assessment.

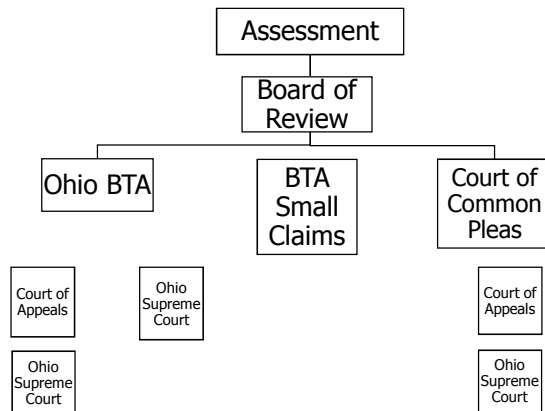
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An Appealed Assessment – Appellate Paths



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An Appealed Assessment – Appellate Paths



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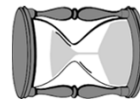
Appealing an Assessment

- An Assessment has been issued to the taxpayer. Now what?
 - The taxpayer has 60 days from the day that the Assessment was received to file an appeal with the municipality's Board of Review.
 - The appeal must be in writing,
 - The appeal must specify the reason(s) the Assessment should be deemed incorrect or unlawful

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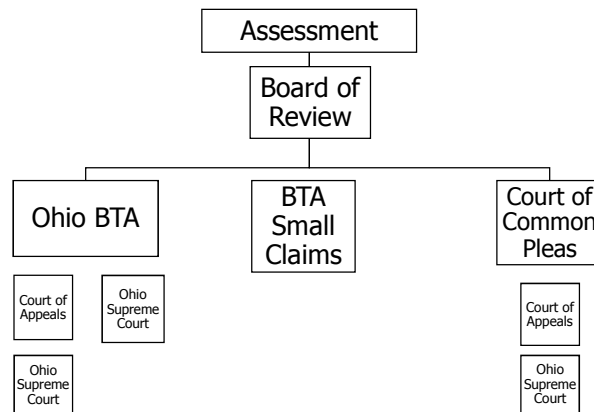
** ANOTHER IMPORTANT REMINDER**

- No civil action to recover municipal income tax, or related penalties or interest, may be brought during the time which an appeal related to the imposition of the tax, or interest or penalties, is pending.
- The statute of limitations IS tolled/stayed beginning on the date the taxpayer files an appeal of the Assessment with the Board of Review and continues for one year after the 60th day after all appeals are exhausted.
- The taxpayer may elect to pay the Assessment that is the subject of the appeal, while the appeal is pending and may obtain a refund if ultimately successful.



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An Appealed Assessment – Appellate Paths



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Local Boards of Tax Review

- Each municipality imposing a tax is required to maintain a local board of tax review to hear appeals.
- Local boards of tax review have a three-member makeup
 - Two members appointed by the legislative authority – cannot be employees, elected officials or contractors of the municipality at appointment or in the preceding five years.
 - One member appointed by the top administrative official – permitted to be a an employee but not the Finance Director, Tax Administrator or other employee involved in tax administration.
- Hearings by boards of tax review are not meetings of a public body subject to open meetings laws and the records of its transactions are not public records available for inspection under public records laws.

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The Board of Review Begins its Work

- The Board schedules a hearing to be held within 60 days after receiving the appeal unless the taxpayer requests additional time to prepare, or waives a hearing.
- A hearing may be continued if jointly agreed by the parties but the hearing must be completed within 120 days after the first day of the hearing unless the parties agree otherwise.
- Taxpayer can be represented by an attorney, CPA or other representative. Tax administrator may appear on his or her own or represented by Law Director/Solicitor.
- The Board must issue a final determination within 90 days after the date of the final hearing and send a copy of the determination by ordinary mail to all parties within 15 days after issuing the determination.

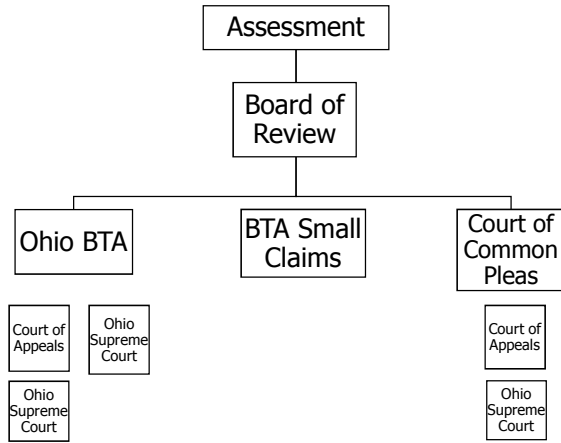
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The Board of Review Issues a Decision

- The Board may affirm, reverse or modify the Assessment.
- The taxpayer or tax administrator may appeal the Board's determination to either the Ohio Board of Tax Appeals (BTA) or the common pleas court.
- Appeal to either must be made within 60 days after the appellant receives notice of the final determination.
- Most will go to the BTA because the BTA can accept new facts and new arguments, without regard to what was said or done at the Board of Review level – review is “de novo” as to facts and law. *MacDonald v. Shaker Heights* case.

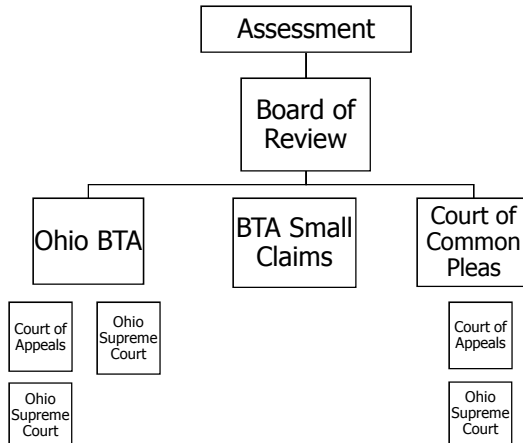
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An Appealed Assessment – Appellate Paths



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An Appealed Assessment – Appellate Paths



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Ohio Board of Tax Appeals – Small Claims

The BTA has a small claims procedure for moving certain cases more rapidly, and more informally, through the appeals process. Municipal appeals that qualify for resolution on the BTA small claims docket are those that:

- Have an amount in dispute of less than \$10,000 - exclusive of interest and penalties
- The appellant is one or more taxpayers that requests small claims, or
- The appellant is not a taxpayer, and the appellant files with the appeal a written statement from every taxpayer that is a party that each consents to the small claims docket.

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Ohio Board of Tax Appeals – Small Claims

- The BTA may reassign an appeal to the small claim docket or to the regular docket only with the written consent of all of the parties OR
- The BTA may reassign an appeal initially assigned to the small claims docket to the regular docket upon the request of a party that is a taxpayer, when the appeal presents an issue of public or great general interest or a constitutional issue, or when the BTA determines that the requirements for small claims have not been met.

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Ohio Board of Tax Appeals – Small Claims

- BTA hearings of appeals on the small claims docket are by telephone.
- Representation by an attorney is permitted but not required.
- Non-individuals may present or defend appeals on the small claims docket through a bona fide officer, partner, member, trustee or salaried employee but may not engage in the practice of law.
 - Tax administrators may present or defend appeals on the BTA small claims docket without legal counsel.

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Ohio Board of Tax Appeals – Small Claims

BTA decisions for an appeal assigned to the small claims docket:

- Are final as to all parties
- Cannot be appealed further
 - The right to appeal further is waived when small claims is selected.
- Have no precedential value in any other case, hearing or proceeding
 - Decisions are published and still have some value as they may provide guidance as to the BTA's leanings on a particular issue.

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An Appealed Assessment – Final Thoughts

- Keep an eye on the calendar!
 - Tax administrators - be aware of approaching statutes of limitations
 - Taxpayers - late filings can be fatal to an appeal
- Understand the various appellate paths

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Questions

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