

OHIO PROPERTY OWNERS FACE 'ADVERSARIAL CULTURE' OVER TAXES

Schools, board of revision routinely thwart efforts aimed at 'fair taxation.'

By Kieran Jennings, Esq.

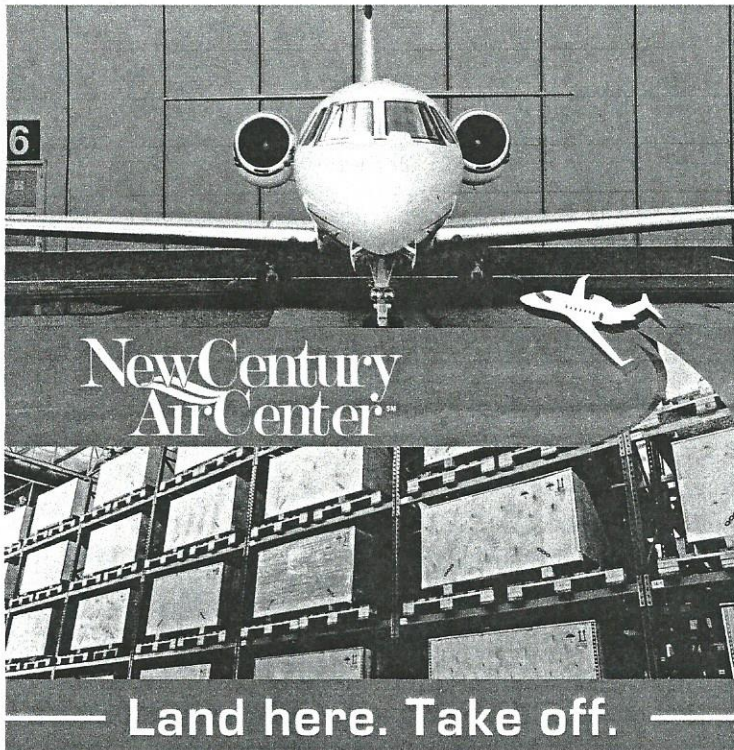
When is the best time to submit an appraisal and other evidence in a tax appeal? That depends largely on tax policy and government culture, which dictate how taxpayers manage tax appeals.

In a perfect world, taxing entities would embrace fairness and equality, remembering that their mission is ultimately to serve the taxpayers. The reality is that government tax policy — and more importantly, governmental practice — is subject to the culture that

permeates a department.

In Ohio, state lawmakers have been trying to make the state more taxpayer-friendly. For instance, legislators created a more equitable measure of tax by clarifying that property tax is based on the fee-simple, unencumbered market value of the real estate.

So from a policy standpoint, Ohio appears to be becoming more taxpayer-friendly. At the local government level, however, taxpayers can face a different and often adversarial culture.



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Schools, Counties Have Clout

Ohio taxpayers face two principal antagonists that seem equally determined to thwart the state legislature's pursuit of fair taxation. One opponent is the schools. In Cleveland as well as in other local tax districts, taxpayers encounter resistance and aggression from the schools. School districts routinely file complaints and tie up taxpayers in litigation lasting years.

The Ohio taxpayer's second foe is the county board of revision, which is effectively the judge and jury for tax cases at the local county level and becomes a party to subsequent appeals at the state level.

Recently, Cleveland's Cuyahoga County began posting on its website the evidence that taxpayers submitted in contesting tax assessments. That evidence often includes sensitive information about income and expenses, as well as rent rolls.

And although evidence submitted to a public body becomes a public document and is subject to Freedom of Information Act requests, there is a significant difference between burying evidence in a file and posting taxpayers' private information on the Internet.

The Catch-22 is that the taxpayer must provide sufficient evidence in order to prevail in a tax appeal, and typically that evidence is private income, expenses and rent rolls. Taxpayers understandably want that data to be closely protected, but under the new rules in Cuyahoga County, that personal information will be posted online.

Transparency Versus Privacy

A major hurdle taxpayers have to contend with is that Ohio law requires a complainant to provide the board of revision with all relevant information or evidence within the knowledge or possession of the complainant.

The law further states that if complainants don't provide the information in their initial appeal, they will be precluded from doing so later (unless good cause is shown). The challenge is, how can a taxpayer protect private

information and yet still receive due process?

The requirement of private information, combined with the inevitability of it being posted online, can have a dramatic chilling effect. And for certain taxpayers, that prospect of prominent public disclosure becomes an Achilles' heel that prompts them to withdraw their cases, or simply let their assessments go uncontested. The county will have thus won the war without ever having gone to battle.

Tactical Maneuver

Although the facts will dictate how an attorney protects the taxpayer, in certain instances a taxpayer can refrain from hiring an appraiser and submitting sensitive data until after the board of revision hearing. By delaying the production of the appraisal, the taxpayer can still get the data into evidence at the state level via the appraisal even though it did not produce the data earlier.

Thus, the taxpayer can protect the data from Internet exposure and still use it on appeal. The down side of this tactic is the taxpayer does not present its best evidence at the county level.

There is no easy answer to the county board of revision's Catch 22. Each case presents its own set of facts that determine how to protect the taxpayer's privacy and yet prevail. As with all litigation, knowing the opposition, addressing the taxpayer's own weaknesses and understanding the rules and culture surrounding the case goes a long way toward achieving success.



Kieran Jennings
Siegel Jennings
Co.

Kieran Jennings is a partner in the law firm of Siegel Jennings Co., LPA, the Ohio and Western Pennsylvania member of American Property Tax Counsel. He can be reached at kjennings@sigeltax.com.