

June 23, 2010

Sally F. Van Meter, Secretary/Executive Director
Board of Tax Appeals
30 East Broad Street
Columbus, Ohio 43215-3414

SYLLABUS:

2010-016

The Board of Tax Appeals is a “judicial agency” for purposes of R.C. 1347.15.



RICHARD CORDRAY
OHIO ATTORNEY GENERAL

June 23, 2010

OPINION NO. 2010-016

Sally F. Van Meter, Secretary/Executive Director
Board of Tax Appeals
30 East Broad Street
Columbus, Ohio 43215-3414

Dear Executive Director Van Meter:

You have requested an opinion whether the Board of Tax Appeals (BTA) is a “judicial agency” for purposes of R.C. 1347.15.

R.C. 1347.15 requires every state agency to adopt rules under R.C. Chapter 119 “regulating access to the confidential personal information the agency keeps, whether electronically or on paper.”¹ R.C. 1347.15(B). The term “state agency,” as used in R.C. 1347.15, means “the office of any elected state officer and any agency, board, commission, department, division, or educational institution of the state,” R.C. 1347.01(A), but “does not include the courts or *any judicial agency*, any state-assisted institution of higher education, or any local agency,” R.C. 1347.15(A)(2). (Emphasis added.) Thus, pursuant to R.C. 1347.01(A) and R.C. 1347.15(A)(2), BTA, as a board of the state, *see* R.C. 5703.02-.03, is a state agency for purposes of R.C. 1347.15 unless it is determined that BTA is a “judicial agency.”

The General Assembly has not defined the term “judicial agency” for purposes of R.C. 1347.15. When a term has not “acquired a technical or particular meaning, whether by legislative definition or otherwise,” the common, everyday meaning of the term applies. R.C. 1.42.

Merriam-Webster’s Collegiate Dictionary 677 (11th ed. 2005) defines the word “judicial” as “of or relating to a judgment, the function of judging, the administration of justice, or the judiciary ...: belonging or appropriate to a judge or the judiciary.” This same dictionary at

¹ For purposes of R.C. 1347.15, “confidential personal information” is “personal information that is not a public record for purposes of [R.C. 149.43].” R.C. 1347.15(A)(1).

24 defines “agency” to mean, *inter alia*, “a person or thing through which power is exerted or an end is achieved : INSTRUMENTALITY ...: an administrative division (as of a government).” Accordingly, construing the common, everyday meaning of the words “judicial” and “agency” together, the term “judicial agency,” as used in R.C. 1347.15, could mean either an administrative division of government that (1) is part of the judicial branch of government or (2) renders judgments in quasi-judicial proceedings.

However, R.C. 1347.15(A)(2) declares that the term “state agency” does not include “the courts *or* any judicial agency” within its ambit. (Emphasis added.) Given the use of the disjunctive in this construction, it is reasonable to conclude that the General Assembly intended the term “courts” to encompass the entire judicial branch of government and the term “judicial agency” to include administrative entities within the executive branch of state government that render judgments in quasi-judicial proceedings. *See State ex rel. Bittikofer v. Babst*, 97 Ohio St. 64, 66, 119 N.E. 136 (1917) (“[t]he judicial power is a separate and independent department of government”). *See generally Pizza v. Sunset Fireworks Co., Inc.*, 25 Ohio St. 3d 1, 4-5, 494 N.E.2d 1115 (1986) (the word “or” is used “as a function word indicating an alternative between different or unlike things”). Therefore, the term “judicial agency,” as used in R.C. 1347.15, means an administrative division of government that renders judgments in quasi-judicial proceedings.

Pursuant to R.C. 5703.02(A), the General Assembly has created BTA to exercise the following function of state government:

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

- (1) Actions of county budget commissions;
- (2) Decisions of county boards of revision;
- (3) Actions of any assessing officer or other public official under the tax laws of this state;
- (4) Final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by him;
- (5) Adoption and promulgation of rules of the tax commissioner.

See also R.C. 324.06; R.C. 5705.341; R.C. 5705.37; R.C. 5709.64(B); R.C. 5711.26; R.C. 5715.251; R.C. Chapter 5717; R.C. 5733.42(D); R.C. 5739.19; R.C. 5747.53(G); R.C. 5747.55; 16 Ohio Admin. Code 5717-1-04.

Thus, the essential purpose of BTA is to hear and decide tax appeals for the state. BTA, therefore, is an administrative division of state government that renders judgments to resolve justiciable disputes between parties in appeals from decisions, orders, determinations, and actions of tax administrative agencies.

In performing its function to hear and determine tax appeals, BTA conducts proceedings that resemble court proceedings. *See generally Superior's Brand Meats, Inc. v. Lindley*, 62 Ohio St. 2d 133, 135, 403 N.E.2d 996 (1980) (proceedings before BTA in cases concerning sales tax assessments “are judicial in nature and normally give parties ample opportunity to litigate the issues”). BTA is required to give parties to an appeal written notice of the public hearing on the appeal. 16 Ohio Admin. Code 5717-1-05; 16 Ohio Admin. Code 5717-1-15. The parties to an appeal may file briefs and motions, conduct discovery, and are given the opportunity to introduce evidence at the public hearing. 16 Ohio Admin. Code 5717-1-11; 16 Ohio Admin. Code 5717-1-12; 16 Ohio Admin. Code 5717-1-13; 16 Ohio Admin. Code 5717-1-16. BTA “has discretion in admitting evidence, weighing it, and granting credibility to testimony.” *Westhaven, Inc. v. Wood County Bd. of Revision*, 81 Ohio St. 3d 67, 69-70, 689 N.E.2d 38 (1998); *accord Higbee Co. v. Cuyahoga County Bd. of Revision*, 107 Ohio St. 3d 325, 2006-Ohio-2, 839 N.E.2d 385, at ¶19 (2006); *Bd. of Educ. for Orange City Sch. Dist. v. Cuyahoga County Bd. of Revision*, 74 Ohio St. 3d 415, 416, 659 N.E.2d 1223 (1996). A person who is a party to an appeal must be “represented by an attorney at law authorized to practice before the courts of the state of Ohio” unless the person acts on his own behalf in the appeal.² 16 Ohio Admin. Code 5717-1-02(B); *see also* 16 Ohio Admin. Code 5717-1-03. And, finally, an order of BTA may be enforced and the final decision of BTA in an appeal may be appealed to the courts. R.C. 2506.01; R.C. 5703.031; R.C. 5717.03(G); R.C. 5717.04; 16 Ohio Admin. Code 5717-1-14.

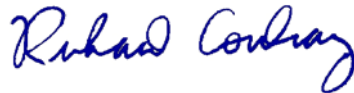
Upon review of the proceedings conducted by BTA in hearing and determining tax appeals, it is apparent that such proceedings resemble court proceedings and thus constitute quasi-judicial proceedings. *See generally Thomas v. City of Beavercreek*, 105 Ohio App. 3d 350, 354, 663 N.E.2d 1333 (1995) (“[t]o be considered a quasijudicial proceeding, the proceeding must resemble a court proceeding in that an exercise of discretion is employed in adjudicating the rights and duties of parties with conflicting interests”). As explained in 2000 Op. Att’y Gen. No. 2000-035 at 2-219, the characteristics of quasi-judicial proceedings “are the requirements of notice, hearing, and an opportunity to introduce evidence at the proceeding, the ability to appeal to a court the decision arising out of the proceeding, and that the purpose served by the proceeding is to resolve or decide a ‘justiciable dispute’ between the parties, a matter that necessarily involves the exercise of discretion.” Accordingly, insofar as the proceedings conducted by BTA in hearing and determining tax appeals possess the characteristics of a quasi-judicial proceeding, it follows that such proceedings are quasi-judicial in nature. *TBC Westlake, Inc. v. Hamilton County Bd. of Revision*, 81 Ohio St. 3d 58, 62, 689 N.E.2d 32 (1998); *Superior's Brand Meats, Inc. v. Lindley*, at 135-36; *Zangerle v. Evatt*, 139 Ohio St. 563, 571, 41 N.E.2d 369 (1942).

² Pursuant to 16 Ohio Admin. Code 5717-1-02(C), “[p]ersons authorized to practice law in other jurisdictions may, upon proper application to [BTA], be authorized to practice before [BTA] in a particular proceeding.”

This means that BTA is an administrative division of government that renders judgments in quasi-judicial proceedings. BTA, therefore, is a “judicial agency” for purposes of R.C. 1347.15.

In conclusion, it is my opinion, and you are hereby advised that the Board of Tax Appeals is a “judicial agency” for purposes of R.C. 1347.15.

Respectfully,



RICHARD CORDRAY
Ohio Attorney General