



MEMORANDUM

To: Ohio Senate

From: County Auditors' Association of Ohio; County Commissioners' Association; County Treasurers' Association; Ohio Association of School Business Officials; Buckeye Association of School Administrators; Ohio School Boards Association; Ohio Coalition for Fair Taxation; Ohio Association of Career Technical Education; Ohio Association of Career Technical Superintendents.

Date: May 10, 2017

Re: Opposition to Property Tax Budget Provisions Recently Added to AM. Sub. HB 49

On behalf of the above referenced local government associations, we write to express our opposition to 1) legislative language recently added to AM. Sub. HB 49 that requires taxing authorities to pay property owners' attorney fees/costs upon losing an appeal of a property valuation case, as well as 2) a legislative proposal¹ that would prevent property value increases resulting from tax valuation complaints from going beyond the median assessed value of comparable parcels.

Attorney Fees/Court Costs: The tax commissioner sets tax rates based on the county auditor's certified valuations of real property, which both the property owner and taxing authority (school board and others) may challenge. This process generates a taxing district's annual tax revenue. The new budget language will discourage taxing authorities from filing property valuation appeals due to the risk of paying expensive attorney fees and court costs. These valuation appeals are critical for school funding revenues as they offset and correct the tax losses resulting from property owners' value reductions. If school board appeals decline, the original level of funding set for school districts will likely overstate the actual amount of local tax revenue received thereby lowering the amount of state funding ultimately provided to school districts.

In addition, County Auditors and County Boards of Revision may consider an appeal from a decision of the Board of Tax Appeals (BTA) to the Ohio Supreme Court. They do not take the decision to appeal a valuation lightly. These very rare appeals are usually of decisions on a legal matter of great significance and precedence and involve major commercial properties and considerable differences in value. Many decisions of the BTA are overturned and remanded for further legal analysis. Determining the correct valuation method and value of any given property is essential for the equitable treatment of all types of property. Mandating the payment of fees to the loser has a chilling effect on the decision of whether or not to appeal, which extends beyond this one property and case.

If the state insists on this cost recovery mechanism, at a minimum it should be fair to both sides. If the property owner loses an appeal, he or she should also be required to pay attorney fees and costs of the

¹ The proposal (attached) has been circulated for possible inclusion in the state budget bill (HB 49).

taxing authority. The one-sided penalty contemplated in AM. Sub. HB 49 is punitive and unfair. In addition, the proposed law uses the word “prevails” as to when the reimbursement provision is applicable. Because most non-sale case decisions result in a compromise value rather than a “winner take all” victory, the term “prevails” will be irrelevant as both parties will correctly claim a partial victory.

Note that concerns have been raised that school districts challenge property values more often than necessary. However, over a four year period (Tax Years 2008-2011), Franklin County incurred many more challenges by property owners seeking value reductions than school and local government seeking value increases. Specifically, over 38,000 property owner reduction cases were filed, while fewer than 1,700 requests were made for increases.

Finally, even if the General Assembly passes this language, it will be deemed unconstitutional by Ohio courts. Article VIII, Section 6 of the Ohio Constitution prohibits localities from making expenditures of public monies unless they are for a valid public purpose. See also *State ex rel. McClure v. Hagerman*, 155 Ohio St. 320 (1951). Payment of attorney fees to one individual property owner would not be deemed a “public purpose” based on Ohio case law, rendering this budget language unconstitutional.

We believe this major change in policy and decision making requires adequate time to consider potentially serious ramifications. Including this in the budget bill does not provide an opportunity for careful study and analysis. We hope you will consider removing this provision from AM. Sub. HB 49.

Property Value Increase Restriction: The proposal to restrict property value increases would apply only to complaints filed by a board of education. Not only do we feel this proposal is unfair and punitive, but it runs contrary to existing state law and public policy.

The proposal alleges that school districts “single-out” certain property owners by filing complaints on those specific properties. Nothing could be further from the truth. County Auditors conduct uniform appraisals of all properties in the county with a goal of fair assessments. It is only after the uniform values are set by the Auditors that complaints regarding the determination of total valuation on a specific parcel can be filed.

When a school board appeals a property valuation with the Board of Revision, Ohio law allows the BOR to consider all information or evidence presented by the school board that affects the value of the subject property. The proposal seeks to restrict BOR property value adjustments just because a board of education happens to be the party that files the complaint. If a school board submits evidence convincing the BOR to modify the County Auditor’s assessed property value, then the value should be modified accordingly. The identity of the party, the requested value change, and values of nearby properties should have no bearing on the modification. If successful, this proposal will undermine the authority of the County Auditor to determine the FMV of every parcel within the county.

In sum, the proposal treats similarly situated complainants differently based on identity. Most importantly, we consider this to be a very serious attack on the responsibility and function of the BOR and the County Auditor in setting values.

Conclusion: We are collectively opposed to both of the proposals above. Thank you for your time and consideration. We are available to respond to any of your questions or concerns at your convenience.