

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

5717-1-01. Organization.

(A) The board of tax appeals shall hereinafter be referred to as the “board.” The office of the board shall be at Columbus, Ohio and shall be open every day for the transaction of business from eight a.m. to five p.m., Saturday, Sunday and legal holidays excepted.

(B) The board shall be in continuous session and open for the transaction of business during the hours herein provided. The sessions of the board shall be open to the public. Sessions shall stand and be adjourned without further notice thereof on its records.

(C) All of the proceedings of the board shall be entered on its journal which shall be a public record and each member’s vote shall be recorded on the journal as cast. The deliberative process engaged in by the board in resolving appeals was found to be protected by the judicial mental process privilege in “TBC Westlake, Inc. v. Hamilton Cty. Bd. of Revision (1998), 81 Ohio St.3d 58,” and, except upon proper written motion, the board will not discuss its rulings.

(D) The board shall, from time to time, elect a chairperson and a vice-chairperson from its membership and shall enter such election in its journal.

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

5717-1-02. Appearance and practice before the board.

(A) Notices of appeal to the board shall be filed in accordance with the applicable statute.

(B) In any proceeding before the board, a person who is a party to an appeal may appear on his or her own behalf. Other than appeals which proceed through the board's small claims docket, which are subject to section 5703.021 of the Revised Code, a person may appear and act on behalf of a partnership, limited liability company, or association of which he or she is a member or on behalf of any corporation for which he or she is an officer if such partnership, limited liability company, association, or corporation is a party to the appeal. Any non-attorney acting on behalf of a party may not make legal argument, examine witnesses, or undertake any other tasks that can be performed only by an attorney. All parties not acting on their own behalf shall be represented by an attorney at law authorized to practice before the courts of the state of Ohio.

(C) Persons authorized to practice law in other jurisdictions may, by motion and upon compliance with Rule XII of the Rules for the Government of the Bar of Ohio, be authorized to practice before the board in a particular proceeding. The motion shall be accompanied by a copy of the certificate of pro hac vice registration and the information required by Rule XII, section 2(A)(6) of the Rules for the Government of the Bar of Ohio.

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

5717-1-03. Filings.

- (A) The board's preferred method of filing is through its electronic filing system.
- (B) All submissions to the board shall include the name, address, telephone number, and email address of the person filing the document, along with the case caption, case number, and document title. Any request for the board to take action shall be separately submitted.
- (C) To protect legitimate personal privacy interests, social security numbers and other personal identifying information, e.g., financial account numbers, shall be redacted from documents before the documents are submitted to the board. The responsibility for redacting personal identifying information rests solely with the individuals, officials, or tribunals who file the documents. If personal identifying information has been redacted from a document but is necessary for the board's determination of the appeal, the board may order, upon motion or sua sponte, that an un-redacted copy of the document be provided.
- (D) Definitions
- (1) "Electronic filing system" means the system made available by the board to receive, process, and store data associated with appeals.
 - (2) "Submit" means to send to the board through the electronic filing system for filing.
 - (3) "File" means to be accepted by the board, following submission and board review, for filing.
 - (4) "Board review" means a preliminary review by the board or its staff of submissions to ensure their accuracy and compliance with these rules. If submissions are found to be in compliance, the board will accept them for filing. If submissions are found not to be in compliance or to contain errors, the submission will not be accepted for filing and the board shall notify the filer of the deficiency or problem with the submission.
 - (5) "Registered user" means a person holding a user name and password granted through the board's electronic filing system.
 - (6) "Technical failure" means the electronic filing system is unable to accept submissions continuously or intermittently over the course of any period of time greater than one hour after 10:00 A.M. that day.
- (E) Electronic Filing
- (1) All attorneys seeking to file documents with the board shall register as users of the electronic filing system. All attorneys shall submit filings through the electronic filing system. Notices of appeal to the board may be filed in accordance with the applicable statute.
 - (2) Documents may be submitted through the board's electronic filing system twenty-four hours a day, seven days a week. Documents may be deemed filed twenty-four hours a day on business days, excluding Saturdays, Sundays, and legal holidays, as specified below.

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

- (a) If the submission is accepted for filing after board review, it is deemed to be filed at the time and date of submission, as specified on the timestamp provided by the board's electronic filing system, unless the document was submitted after 11:59 P.M. on a Friday or after 11:59 P.M. on a business day before a legal holiday. In that case, the submission will be deemed filed on the following business day at 12:01 A.M.
 - (b) If the submission is rejected for filing after board review, the document shall not be accepted for filing at that time and the filer may re-submit the document to correct the deficiency or problem.
- (3) In the rare event that there is a technical failure that originates with the electronic filing system, i.e., not a technical issue on the filer's end such as phone line problems, problems with the filer's internet service provider, or hardware or software problems, whether the failure is anticipated or unexpected, the following provisions shall apply whenever the electronic filing system is unavailable for longer than one hour after 10:00 A.M. on a given day:
- (a) If the system outage is known and/or anticipated ahead of time, the board shall post a message to its website and the electronic filing website, alerting filers of a possible system outage. Said message shall constitute an official acknowledgement of a system outage that may prevent some filers from submitting their filings within a certain time frame.
 - (b) If the system outage is unexpected, the board shall post a message on its website upon discovery of the system outage and once the outage has been resolved. Said message shall constitute an official acknowledgement of a system outage that may have prevented some filers from submitting their filings within a certain time frame, as identified in the message. All reasonable efforts shall be made to post such a message within twenty-four hours of a resolved system outage or no later than 12:00 P.M. on the next business day after an unexpected system outage.
 - (c) Filers who are unable to electronically submit their filings due to a system outage, and who then submit their filings no later than the next business day after an officially acknowledged system outage, shall be deemed to have timely submitted their filings.
- (F) Non-electronic filing
- (1) Documents submitted in person: If a filer presents a document in person at the board's offices for filing in hard copy/paper format, and that person is not a registered user of the electronic filing system, the filer shall be directed to a computer at the board's office for registration purposes. Once the filer is a registered user of the electronic filing system, his/her document(s) will be submitted through the electronic filing system. The filing date of any document submitted in person shall be the date received in the board's offices during its business hours.
 - (2) Documents received by mail: If the board receives via mail, e-mail, facsimile, delivery service, or courier, documents to be filed, the board's staff will first register the

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

filer as a user in the electronic filing system, noting that the party will not receive electronic notification. However, in the event the filer has provided an e-mail address for himself/herself, the filer will receive electronic notification. The board's staff will then scan in and upload the submitted document(s) on the filer's behalf.

- (a) Notices of appeal submitted by certified mail or authorized delivery service shall be deemed filed on the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service.
 - (b) Documents submitted by means other than in person, by certified mail, by authorized delivery service or through the board's electronic filing system, shall be deemed filed on the date the document is received in the board's offices during its business hours.
- (3) If an attorney submits the document for filing, other than through the electronic filing system, the document(s) will be returned to the filer with instructions on how to register as a user of the electronic filing system and how to submit documents electronically. However, the board will accept and process notices of appeal to the board.
- (G) Only documents filed with the board constitute public records.
 - (H) Documents shall be filed under seal only with prior board order.

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

5717-1-04. Entry of appearance, change of address, and withdrawal of counsel.

- (A) Entries of appearance of counsel in any appeal shall be filed with the board. Such appearance may be effected by the signing of the notice of appeal.
- (B) Any party entitled to participate in an appeal as an appellee shall enter an appearance with the board within twenty-one days of receiving notice that such appeal has been filed. As appeals may be scheduled for hearing or subject to other proceedings prior to an entry of appearance being filed, it is the responsibility of an appellee or its counsel to ascertain the status of such appeal and take such action as appropriate.
- (C) Where two or more attorneys represent a party, one attorney shall be designated on each document filed as counsel of record to receive notices and service on behalf of that party.
- (D) Any change of address of a party or counsel of record must be promptly submitted through the electronic filing system, or otherwise filed with the board.
- (E) In appeals involving real property, the parties shall notify the board of any change in ownership and include the current owner's name and address.
- (F) A notice of withdrawal of counsel in any appeal shall be submitted to the board and shall be effective upon filing. The notice shall:
- (1) State the reason(s) for the withdrawal;
 - (2) Include certification of service upon opposing parties or their counsel;
 - (3) Disclose the time and date of hearing or the date on which written argument must be submitted if established;
 - (4) Identify the person and address to which future notices shall be sent;
 - (5) Include counsel's professional statement that a copy of such pleading has been sent to the last known address of the client; and
 - (6) Include a statement that the client has been made aware of any hearing scheduled.

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

5717-1-05. Notice of appeal.

(A) An appeal shall be commenced with the filing of a notice of appeal within the time and manner prescribed by law. The board's preferred method of filing is through its electronic filing system.

(B) The notice of appeal should set forth the name, address, telephone number, fax number, and email address, if available, of all parties together with the name, address, telephone number, fax number, email address, and attorney registration number, if applicable, of appellant's authorized agent or attorney at law who executed such notice. Notices of appeal must be filed in the manner prescribed by law. An appellant may amend a notice of appeal only within the time and in the manner prescribed by law.

(C) A notice of appeal from a determination of the tax commissioner, county auditor, or director of development services, as appropriate, shall set forth the full name of the appellant and incorporate or attach a copy of the final order from which the appeal is taken. The notice of appeal filed with the Board of Tax Appeals must also be filed with the tax commissioner, county auditor, or director of development services, as appropriate, within the time prescribed by law. The notice of appeal shall contain a short and plain statement of the claimed errors showing that the appellant is entitled to relief and a demand for the relief to which the appellant claims to be entitled. An appellant may amend the notice of appeal once as a matter of course within sixty days after the certification of the transcript, or otherwise by leave of the board or the written consent of each adverse party.

(D) A notice of appeal from a decision of a county board of revision should be filed electronically in the manner established by the board or upon the form prescribed by the tax commissioner. The notice of appeal shall include the parcel number(s) at issue. It is the responsibility of the appellant to ensure that notice of the appeal is filed with the county board of revision within the time prescribed by law.

(E) A notice of appeal from a decision of a municipal board of appeal shall set forth the full name of the appellant and incorporate or attach a copy of the decision from which the appeal is taken. A copy of the notice of appeal filed with the Board of Tax Appeals must also be filed with both the municipal board of appeal and the opposing party within the time prescribed by law. The notice of appeal shall contain a short and plain statement of the claimed errors showing that the appellant is entitled to relief and a demand for the relief to which the appellant claims to be entitled. An appellant may amend the notice of appeal once as a matter of course within sixty days after the certification of the transcript, or otherwise by leave of the board or the written consent of each adverse party.

(F) Notices of appeal filed by certified or express mail, properly addressed and with sufficient postage prepaid, shall be deemed filed on the date of the United States postmark placed upon the sender's receipt by the postal employee. Notices of appeal filed by an authorized delivery service designated by the tax commissioner shall be deemed filed on the date placed on the sender's receipt by an employee of the authorized delivery service. Notices of appeal filed by facsimile or electronic transmission shall be deemed filed on the date reflected on a timestamp provided by the board's electronic system. Notices of appeal filed in person, by regular mail, or other delivery method shall be deemed filed on the date of receipt in the board's office.

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

5717-1-06. Service.

- (A) A copy of all motions or pleadings, briefs, papers and other documents filed with the board subsequent to the notice of appeal shall be served upon the counsel of record or the parties, if not represented by counsel, at the time of filing.
- (B) All motions or pleadings, briefs, papers and other documents shall contain a certificate of service indicating that the required service has been made, the manner in which service was made, and the names and addresses of the parties or counsel of record upon whom service was made.
- (C) Service upon the counsel of record or a party shall be made, if possible, in the same or more expeditious manner than that used to file such pleading with the board by delivering a copy to counsel's or the party's last known address appearing upon the board's records.
- (D) To protect legitimate personal privacy interests, social security and other personal identifying numbers, e.g., financial account numbers, shall be redacted from documents before the documents are submitted to the board. The responsibility for redacting personal identifying numbers rests solely with the individuals, officials, or tribunals who file the documents. If personal identifying information has been redacted from a document but is necessary for the board's determination of the appeal, the board may order, upon motion or sua sponte, that an un-redacted copy of the document be provided.

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

5717-1-07. Case management schedules and special case management procedures.

(A) The board presumes that no hearing is required in any appeal unless scheduled pursuant to rule 5717-1-16(A) of the Administrative Code. Parties will be noticed by the board upon the filing of the appeal of the date on which written legal argument may be presented or the date on which the appeal will be heard. Other than appeals diverted to the board's small claims docket, appeals will proceed on the board's regular docket as set forth below. In appeals proceeding under case management schedules established by this rule, the board will only consider evidence contained within the transcript certified to it, submitted by joint agreement of all parties, or received at hearing. If no hearing before the board is scheduled and an appeal is submitted upon the existing record, disclosure deadlines are inapplicable and rendered moot. Failure to adhere to established deadlines may result in the denial of requests to adjust or amend a case management schedule, the exclusion of written legal argument, the prohibition against introducing documents and testimony into evidence, or such other action as deemed appropriate.

- (1) Appeals identified by the board as appropriate for accelerated calendaring due to the routine nature of the issues presented, e.g., jurisdictional issues, or involving appeals which appear to qualify for the small claims docket but were not selected, shall adhere to the following schedule:
 - (a) The transcript from the lower tribunal shall be certified within forty-five days of the filing of a notice of appeal;
 - (b) Only if a hearing is scheduled, appellant shall disclose to all other parties the witnesses and evidence upon which the appeal is based sixty days after the filing of an appeal;
 - (c) Dispositive motions shall be filed sixty days after the filing of an appeal;
 - (d) Only if a hearing is scheduled, appellee(s) shall disclose to all other parties the witnesses and evidence upon which it relies and discovery shall be completed not more than seventy-five days after the filing of a notice of appeal, said deadline also serving as the last date for a party to seek the board's involvement in contested discovery matters;
 - (e) The last date for parties to file written legal argument, or the date of hearing if scheduled, shall be ninety days after the filing of an appeal.

<u>Event</u>	<u>Latest Date of Occurrence After Appeal Filed</u> (in days)
Transcript certified	45
Appellant disclosure of witnesses and evidence/Dispositive motions filed with the board	60
Appellee disclosure of witnesses and evidence/Discovery completed/Last date for seeking the board's involvement in contested discovery	75

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

Last date to file written legal argument	90
--	----

- (2) Appeals from decisions of county boards of revision not proceeding on the small claims docket or under section (A)(1) of this rule shall adhere to the following schedule:
- (a) The transcript from the lower tribunal shall be certified within forty-five days of the filing of a notice of appeal;
 - (b) Dispositive motions shall be filed ninety days after the filing of an appeal;
 - (c) Only if a hearing is scheduled, discovery shall be completed not more than one hundred twenty days after the filing of a notice of appeal, said deadline also serving as the last date for a party to seek the board's involvement in contested discovery matters;
 - (d) Only if a hearing is scheduled, appellant shall disclose to all other parties the witnesses and evidence upon which the appeal is based not more than one hundred fifty days after the filing of a notice of appeal;
 - (e) Only if a hearing is scheduled, appellee(s) shall disclose to all other parties the witnesses and evidence upon which it relies not more than one hundred eighty days after the filing of a notice of appeal;
 - (f) The last date for parties to file written legal argument, or the date of hearing if scheduled, shall be two hundred ten days after the filing of an appeal.

<u>Event</u>	<u>Latest Date of Occurrence After Appeal Filed</u> (in days)
Transcript certified	45
Dispositive motions filed with the board	90
Discovery completed/Last date for seeking board's involvement in contested discovery	120
Appellant disclosure of witnesses and evidence	150
Appellee disclosure of witnesses and evidence	180
Last date to file written legal argument	210

- (3) Appeals that are not from decisions of county boards of revision and are not proceeding on the small claims docket or under paragraph (A)(1) of this rule, shall adhere to the following schedule:
- (a) The transcript from the lower tribunal shall be certified within forty-five days of the filing of a notice of appeal;

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

- (b) Last date to amend appeal shall be sixty days after the transcript has been certified;
- (c) Dispositive motions shall be filed one hundred twenty days after the filing of an appeal;
- (d) Only if a hearing is scheduled, discovery shall be completed not more than one hundred fifty days after the filing of a notice of appeal, said deadline also serving as the last date for a party to seek the board's involvement in contested discovery matters;
- (e) Only if a hearing is scheduled, appellant shall disclose to all other parties the witnesses and evidence upon which the appeal is based;
- (f) Only if a hearing is scheduled, appellee(s) shall disclose to all other parties the witnesses and evidence upon which it relies not more than two hundred ten days after the filing of the appeal;
- (g) The last date for parties to file written legal argument, or the date of hearing if scheduled, shall be two hundred forty days after the filing of an appeal.

<u>Event</u>	<u>Latest Date of Occurrence After Appeal Filed</u> (in days)
Transcript certified	45
Last date to amend appeal is sixty days after transcript has been certified	
Dispositive motions filed with the board	120
Discovery completed/Last date for seeking the board's involvement in contested discovery	150
Appellant disclosure of witnesses and evidence	180
Appellee disclosure of witnesses and evidence	210
Last date to file written legal argument	240

- (4) Upon motion and for good cause shown, the parties may request, and the board may approve, an alternate case management schedule, extending or reducing any event or the schedule in its entirety. In appeals proceeding without hearing, the assigned date for submitting written legal argument may be extended upon request and shall be generally limited to no more than two extensions of not more than thirty days each. The parties may, by mutual agreement and without the board's approval or involvement, alter dates other than those that require board action. Prior to seeking modification of a case management schedule, the movant shall seek to obtain approval from all parties, demonstrating within its motion its

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

efforts to secure such approval, and shall submit a proposed amended case schedule for board consideration. Whenever possible, a request for an alternate case management schedule shall be jointly submitted by all parties.

(B) Where an appeal presents unusual or complex issues or warrants increased board supervision, a party may, within ninety days after the filing of a notice of appeal, move the board to establish special case management procedures. Such motion shall be accompanied by a brief statement describing the circumstances which justify such treatment and a proposed case management schedule. The movant shall seek to secure agreement from all parties regarding the proposed case management schedule prior to its submission. Upon motion and good cause shown, the board may adjust or amend a case management schedule and take such action as deemed appropriate for the expeditious resolution of the appeal, including waiver of an applicable board rule, when deemed necessary.

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

5717-1-08. Small claims docket.

(A) The board’s small claims docket allows parties to resolve minor disputes quickly, inexpensively, and fairly, without requiring a formal hearing or the services of an attorney. Appeals assigned to the small claims docket are informal and wide latitude is granted to the board in resolving such disputes. Any small claims hearing shall be telephonic.

(B) Appeals qualifying for resolution in small claims are those that:

- (1) Originate from decisions of a board of revision for real estate that qualifies for the “nonbusiness credit” provided for in section 319.302 of the Revised Code; or
- (2) Do not originate from decisions of a board of revision and the amount in dispute does not exceed \$10,000 exclusive of interest and penalty; and
- (3) The taxpayer elects for small claims resolution.

(C) Small claims decisions have no precedential value, are final as to all parties, and cannot be appealed.

(D) Such appeal shall adhere to the following schedule:

- (1) The transcript from the lower tribunal shall be certified by within forty-five days of the filing of a notice of appeal;
- (2) Dispositive motions shall be filed within sixty days of the filing of a notice of appeal;
- (3) Each party shall submit a written statement setting forth its respective position and, if hearing ordered, parties shall jointly exchange evidence seventy-five days after the filing of an appeal.

<u>Event</u>	<u>Latest Date of Occurrence After Appeal Filed</u> (in days)
Transcript certified	45
Dispositive motions filed with the board	60
Parties shall submit written statement/if hearing ordered, parties shall exchange evidence	75

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

5717-1-09. Consolidations.

When appeals involving common questions of law or fact are pending, the board, upon the timely motion of any party showing good cause therefor, or upon its own motion, may consolidate the appeals for hearing and other appropriate purposes, and may take such action governing the proceedings as may be required. To the extent consolidated appeals have distinct appellants, for purposes of the case management schedules in rules 5717-1-07 and 5717-1-08 of the Administrative Code, the designated appellant and appellee(s) shall be those of the lowest-numbered appeal in the consolidated cases.

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

5717-1-10. Statutory transcripts.

- (A) Within forty-five days of the filing of a notice of appeal, the board of revision, tax commissioner, county auditor, municipal board of appeal, or director of development services, as appropriate, shall certify to the board a transcript of the record of the proceedings before it, together with all evidence considered in connection therewith.
- (B) If the issue appealed is addressed in a municipal corporation's ordinance or regulation, the municipal board of appeal shall include a copy of the ordinance or regulation in its certified transcript.
- (C) Upon written request, the board may grant additional time to certify the transcript, generally limited to an additional fifteen days.
- (D) An abbreviated transcript may be certified if it appears a preliminary issue affecting the board's jurisdiction exists, e.g., an untimely appeal, or if any party files a motion raising a jurisdictional issue. The abbreviated transcript shall be submitted on an expedited basis and shall include sufficient information to allow the board to address the jurisdictional issue/motion and must be clearly designated as an "abbreviated transcript." If the board finds that jurisdiction has been properly vested, a supplemental statutory transcript shall be certified within fourteen days of the date of issuance of the order finding jurisdiction.
- (E) Transcripts shall be transmitted to the board electronically in the manner prescribed by the board.

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

5717-1-11. Interim procedural orders.

(A) The board may delegate to its attorney examiners the authority to issue interim procedural orders. Said orders have the same force and effect as any order issued by the board. A party may, by written motion, seek the reconsideration by the board of the interim order. A motion for reconsideration shall not be the basis for continuance of a matter scheduled for hearing.

(B) On motion of the parties or at the board's request, the parties to a hearing may be required to appear at a prehearing conference and provide prehearing statements for purposes of issue identification, scheduling of discovery, or other prehearing matters to be identified prior to such conference.

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

5717-1-12. Discovery.

(A) Where parties agree early in the proceedings that a hearing is not necessary, discovery deadlines and disclosures in the applicable case management schedule may be rendered moot. Discovery may be permitted by deposition upon oral examination or written questions; written interrogatories; production of documents or tangible things or permission to enter upon land or other property; and requests for admissions. The “Ohio Rules of Civil Procedure” shall be followed for discovery purposes to the extent they are not inconsistent with other board rules. Discovery shall be subject to the following limitations:

- (1) Discovery should be commenced by all parties promptly after the filing of a notice of appeal and should be completed within the applicable case management schedule established in rules 5717-1-07 and 5717-1-08 of the Administrative Code, such deadlines also serving as the last day for a party to seek involvement of the board in discovery matters. Upon motion and for good cause, the board may establish other specific times for completion of discovery, generally limited to one extension of thirty days.
- (2) The board expects all counsel to provide for orderly, mutual discovery, freely exchanging discoverable information and documents. Counsel shall make all reasonable efforts to resolve discovery disputes by extra-judicial means, without intervention by the board. To the extent counsel may not resolve such disputes, then they may seek intervention of the board to supervise discovery.
- (3) Answers, objections or other responses to discovery requests shall be served within twenty-eight days after service of such requests unless the board orders or the parties agree to a different period of time. Depositions, interrogatories, and admissions shall not be submitted to the board, unless the party intends to offer such discovery documents as evidence in a hearing. Responses to discovery requests shall be timely supplemented.
- (4) Any motion concerning discovery shall include only those specific portions of the discovery documents necessary for resolution of the motion. Before filing a motion concerning discovery, the filer shall make a reasonable effort to resolve the matter through discussion with the attorney, unrepresented party, or person from whom discovery is sought. The motion shall be accompanied by a statement reciting the extra-judicial efforts made to resolve the matter in accordance with this section.
- (5) An expert may not be permitted to testify if he or she has not been timely identified prior to hearing consistent with the applicable case management schedule established in rules 5717-1-07 and 5717-1-08 of the Administrative Code. The parties may mutually agree to the exchange of any written reports of expert witnesses to be relied upon by them. Additionally, an expert’s report or portions thereof may be excluded from evidence if the report was not made available in a timely fashion to complete a mutually agreed exchange of reports. In all events, the identity of the expert and the written valuation reports shall be disclosed to all parties as soon as known, but no later than the applicable

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

deadlines established in rules 5717-1-07 and 5717-1-08 of the Administrative Code, except as otherwise ordered.

- (B) No hearing will be continued for purposes of discovery unless good cause is shown.
- (C) Cost of discovery shall be paid by the party requesting such discovery.
- (D) Upon the motion of a party and for good cause shown, the board may issue a protective order restricting discovery of a trade secret or other confidential research, development or commercial information.

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

5717-1-13. Motions.

(A) Unless made at a hearing or otherwise ordered, any request to the board shall be by individual written motion stating with particularity the grounds for the motion. Except for good cause shown, motions shall be submitted within a reasonable period of time following filing of the notice of appeal so as to permit the board to consider and respond thereto in the orderly course of the board's business.

(B) Any party may file a brief contra within fourteen days after filing of the motion, or such other period as the board requires. The movant may submit a reply brief within seven days of filing of a brief contra or such other period as the board requires. If circumstances warrant, the board may proceed without delay to rule upon the motion.

(C) Motions for reconsideration of any decision of the board may be submitted to the board only by a party or counsel of record in the proceedings before the board as soon as possible, but no later than twenty-nine days after the date on which the decision was journalized, to allow the board to review and rule on the motion. The filing of a motion for reconsideration shall not enlarge the period of time upon which an appeal may be taken from this board nor shall the filing of such motion suspend or toll the statutory appeal period. No motion for reconsideration will be determined by this board after an appeal to any court has been perfected.

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

5717-1-14. Subpoenas.

(A) Upon written request of any party or by action of the board through a member, the secretary or its attorney examiners, subpoenas may be issued to compel the attendance of witnesses and the production of books, accounts, papers, records, documents, and testimony. If any party desires the issuance of subpoenas in order to compel the attendance of witnesses or the production of documents at a scheduled merit or motion hearing or deposition, the request shall be submitted to the board. Parties should not seek the issuance of subpoenas to non-parties to the appeal who are located outside the state of Ohio. If issued, such subpoenas will be subject to quash upon request.

(B) Upon request, the board shall make available blank subpoena forms to the requesting party so that the party may complete the form. The requesting party shall send one completed form to the board, along with a self-addressed stamped envelope. If the board issues the subpoena, the subpoena shall be delivered to the requesting party, who shall effect its service.

(C) Subpoenas shall be served by the party or other individual over the age of eighteen years, personally or by certified mail, return receipt requested.

(D) The party or other person serving the subpoena shall submit proof of service of the subpoena, at or prior to the time of the hearing for which the subpoena was issued.

(E) Witnesses shall receive their subpoenas at least twenty-one days prior to the hearing or deposition at which they are to appear.

(F) All subpoenas issued by this board are deemed continuing, should the hearing or deposition for which they have been issued proceed for multiple days or be continued to a later date. The party issuing a subpoena shall notify any subpoenaed witness(es) of any continuance of the board proceedings at which they were scheduled to appear.

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

5717-1-15. Sanctions.

(A) Failure to comply with the rules contained in agency designation 5717 of the Ohio Administrative Code, including the deadlines set by the appeal's case management schedule pursuant to rule 5717-1-07 or rule 5717-1-08, or an order of the board may result in any of the following sanctions:

- (1) The dismissal of the appeal;
- (2) The prohibition against introducing matters into evidence in support of certain specifications of error or other parts of the notice of appeal;
- (3) The prohibition against introducing designated matters into evidence;
- (4) The prohibition against introducing expert opinion and testimony into evidence;
- (5) The denial or suspension of appearing and qualifying as an expert witness in designated matters before the board;
- (6) The denial or suspension of the right of any person to appear or practice before the board;
- (7) The payment of reasonable expenses caused by the failure to obey an order including attorney fees, and costs incurred by the board from the disobedient party or the attorney advising such party;
- (8) The judicial relief provided by sections 5703.03 and 5703.031 of the Revised Code.

(B) The board may impose sanctions to enforce compliance with this chapter and orders as the board deems just and appropriate after the opportunity for hearing. The repetitious nature of the disobedient party or advising attorney will be considered in determining the appropriate sanctions to be imposed.

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

5717-1-16. Hearings.

(A) The purpose of hearings before the board is to allow for the presentation of new evidence. Appeals will be decided upon the record developed before the lower tribunal unless a party requests a hearing and presents new evidence. The board, as required by statute or at its discretion, may schedule an appeal for hearing and issue notice thereof to the parties or their counsel of record.

(B) For good cause shown, hearings may be continued by the board. The granting of a continuance is within the sound discretion of the board. If, in the exercise of sound discretion, the board deems a hearing unnecessary, the hearing may be canceled.

(C) Requests for continuances shall be submitted, in writing, at least twenty-one days prior to the scheduled hearing date, unless otherwise permitted by the board. If a continuance is requested for the reason that counsel or a witness is scheduled to appear for hearing on the same date before the board or another tribunal, a copy of the tribunal's scheduling notice should be attached to the request.

(D) Before seeking a continuance of a scheduled hearing from the board, a party shall provide notice to all other parties, and attempt to obtain their consent. The party requesting a continuance shall advise this board in its request whether any party objects to its request. Any objection to a continuance must be submitted promptly, in writing. Absent good cause shown, no more than two continuances of hearing will be granted in any appeal, each generally limited to not more than thirty days.

(E) As a condition to any continuance that may be granted, the board may require the parties to supply a definite date for hearing, as agreed upon by the parties and subject to the board's approval.

(F) A party may waive its right to appear at a hearing. Where all parties have waived their right to a hearing, the board may proceed to decide the appeal upon the record. A party shall file such waiver as soon as possible, but not later than three days in advance of a scheduled hearing.

(G) All hearings, except those on the small claims docket, shall proceed in similar manner to a civil action, with witnesses to be sworn and subject to cross-examination. The nature, scope, and length of examination of witnesses is within the discretion of the presiding attorney examiner or board member(s). Except in those cases on the small claims docket, non-attorneys may not make legal argument, examine witnesses, or undertake any other tasks at hearing that can be performed only by an attorney.

(H) All hearings before the board shall be open to the public. Hearings may be recorded, and such recordings shall be made available for examination at the board's office.

(I) Each party shall identify its witnesses to all parties and the board consistent with the period set forth in the applicable case management schedule established in rules 5717-1-07 and 5717-1-08 of the Administrative Code, unless otherwise ordered. Each party shall provide copies of the documentary exhibits it plans to offer into evidence (reduced in size, if necessary) to all parties consistent with the period set forth in the applicable case management schedule, unless otherwise ordered.

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

5717-1-17. Briefs.

(A) Parties are encouraged to file written legal argument in support of their respective positions in compliance with the case management schedules set forth in rules 5717-1-07 or 5717-1-08 of the Administrative Code as applicable. Parties may submit pre-hearing statements seven days in advance of hearing. If a hearing is conducted, the board may request post-hearing briefs from the parties and parties may submit briefs without being so requested. If the appeal is to be determined based on the existing record, parties may request an extension of the deadline to submit written legal argument established by the applicable case management schedule. Absent good cause shown, generally no more than two extensions of the written argument deadline will be granted in any appeal, each limited to not more than thirty days. If any party fails to submit a brief within the established time limit, the board may proceed to determine the appeal and exclude the brief from its consideration. After the deadline for submission of briefs has passed, a party may submit, as additional authority, relevant cases subsequently decided, but without further argument.

(B) Briefs amicus curiae may be submitted with leave of the board and shall be submitted according to the briefing deadlines established by the board.

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

5717-1-18. Voluntary dismissals, joint remands, and stipulations.

(A) The board may dismiss an appeal upon the filing of an appellant's voluntary dismissal at any time prior to the commencement of the hearing. After commencement of the hearing, a dismissal may be granted with the consent of all of the parties and the approval of the board. The dismissal of an appeal is with prejudice.

(B) All voluntary dismissals, joint remands, and stipulations of value must be filed within thirty days of the date on which this board was notified of their existence. Failure to file within thirty days may result in the return of the subject appeal to the hearing schedule on an expedited basis, the board's consideration of the appeal upon the existing record, or the dismissal of the appeal as moot.

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

5717-1-19. Failure to prosecute an appeal.

The board may journalize an order determining an appeal upon the record or dismissing an appeal when the appellant fails to appear at a merit hearing scheduled at the appellant's request and fails to notify the board in advance of the waiver of its right to appear at a hearing.

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

5717-1-20. Clerical amendments to a final order.

Amendments to a final order, arising out of an oversight, error or omission, may be made by the board or on the motion of any party.

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

5717-1-22. Mediation.

(A) The board strongly encourages all parties to voluntarily engage in settlement discussions and attempt to reach voluntary agreement of pending appeals. Such settlement discussions among parties may occur without board involvement throughout the time that an appeal pends before the board. To the extent settlement discussions successfully resolve pending appeals, voluntary dismissals, joint stipulations of value, and joint remands must be submitted to the board in accordance with rule 5717-1-18 of the Administrative Code.

(B) Parties may seek, and the board may order, formal mediation consistent with Ohio's Uniform Mediation Act ("UMA"), Chapter 2710 of the Revised Code. Additional information about the UMA may be found on the Supreme Court of Ohio's website. In the event joint mediation is sought by the parties, or is ordered by the board, the parties to the appeal shall be directed to secure, at their shared expense, a mediator who will facilitate communication and negotiation between the parties in order to assist them in reaching a voluntary agreement regarding the pending appeal. Parties are expected to jointly select a mediator, taking into consideration a variety of factors, including training, experience, cost, location, and subject matter or process expertise. Additional information regarding the engagement of a private mediator may be secured from state and local bar associations and private organizations.

(C) Settlement discussions or formal mediation shall proceed simultaneously with established case management schedules and will not alter the deadlines therein.

Ohio Board of Tax Appeals Rules
Effective January 19, 2016

5717-1-23. Non-adjudicatory meetings of the board of tax appeals.

- (A) The board shall hold regular meetings to conduct its official business of a non-adjudicatory nature at the designated time and place at the call of the chairperson of the board. The board shall provide at least twenty-four hours advance notice, excluding weekends and state holidays, of all regular meetings. All meetings of the board are open to the public at all times, unless the subject matter of the meeting is specifically excepted by law.
- (B) Special meetings of the board may be called by the chairperson of the board on the chairperson's own initiative, or be called by the chairperson of the board upon written request of two members of the board.
- (C) Regular and special meetings of the board shall be held at the time and location specified on the notice of the meetings.
- (D) At all meetings of the board, the executive director of the board, or, in the absence of the executive director, a person appointed by the chairperson, shall keep minutes of the meeting and shall identify the name of each member of the board present.
- (E) The time and place for all regularly scheduled meetings, and the time, place, and purpose of all special meetings, including emergency meetings, may be found on the board's website or by contacting the board at (614) 466-6700, or Board of Tax Appeals, 30 East Broad Street, 24th Floor, Columbus, Ohio 43215.
- (F) The chairperson of the board, or in the chairperson's absence, the vice-chairperson, shall preside at all meetings of the board.
- (G) The board shall conduct its official business of a non-adjudicatory nature in the presence of a quorum, and two members of the board shall be present at any meeting in order to constitute a quorum for the transaction of public business.
- (H) Minutes of the meeting of the board, upon approval of the board, are to constitute the record of its proceedings. Minutes of all regular and special meetings of the board shall be promptly prepared, filed and maintained, and open to public inspection. The portion of the minutes that concern executive sessions of the board are to only reflect the general subject matter of discussions in executive sessions.
- (I) Consent to film, photograph, or record meetings of the board shall be obtained from the chairperson of the board, or with written consent of two members of the board, prior to the start of the meeting. The board may terminate such consent upon its determination that such filming, photographing, or recording is distracting or otherwise disruptive to the meeting process.
- (J) As defined in this rule, a meeting is a pre-arranged discussion of the public business of a non-adjudicatory nature of the board by a majority of its members.