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S.B. 57
134th General Assembly

Final Analysis

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Version: As Passed by the General Assembly

Primary Sponsors: Sens. Hackett and Antonio

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SUMMARY

- Authorizes a property tax exemption for certain housing used by individuals diagnosed with mental illness or substance use disorder.
- Authorizes commercial or industrial tenants to file a property valuation complaint if their lease requires them to pay the property taxes charged against the property and the lease or their landlord authorizes them to file the complaint.
- Authorizes a county board of revision, pursuant to a valuation complaint filed for tax year 2020, to value a property for tax purposes as of October 1, 2020, instead of January 1, 2020, if its value is reduced due to COVID-19-related circumstances or state orders.
- Waives the rule barring multiple valuation complaints from being filed in the same triennial valuation period for these tax year 2020 COVID-19-related complaints and complaints filed for tax year 2021 or 2022 that only allege a value reduction due to COVID-19-related circumstances or orders.
- Specifies that tax increment financing (TIF) service payment obligation agreements between a property owner and a local government are enforceable against subsequent property owners.

DETAILED ANALYSIS

Property tax exemption for supportive housing

The act authorizes a property tax exemption for housing used by individuals diagnosed with mental illness or substance use disorder and their families. To qualify:

1. The owner of the property must be a tax-exempt 501(c)(3) organization, or a pass-through entity whose controlling member either is a 501(c)(3) organization or is owned

by one or more 501(c)(3) organizations, for which providing such housing is a primary purpose.

2. At least one of those 501(c)(3) organizations must receive some of its funding from the Department of Mental Health and Addiction Services; a county board of alcohol, drug addiction, and mental health services; or a local continuum of care—a regional or local planning body that coordinates housing and services funding for homeless families and qualifies for federal funding from the U.S. Department of Housing and Urban Development.

In addition, the property owner must either (a) use the property to provide such housing, (b) lease the property to individuals with mental illness or substance use disorder and make supportive service available to such individuals, or (c) lease the property to a charitable institution that uses the property for charitable purposes.¹

Under continuing law, property owned by a charitable organization and used exclusively for charitable purposes is exempt from taxation. Courts have generally not favored extending the charitable use exemption to residential properties. In fact, in May 2020, the Board of Tax Appeals (BTA) reversed an exemption for a property that would meet the act's requirements. The BTA found that, based on Supreme Court precedent, the use of the property primarily for private residential purposes could not be considered a charitable use.²

Based on this precedent, nonprofit residential properties must generally be specifically exempted in the Revised Code. Indeed, in 2018, the legislature authorized an exemption similar to that allowed in the act for nonprofit housing for individuals with developmental disabilities.³

The act's exemption for supportive housing applies to tax year 2021 and thereafter, as well as to exemption applications or appeals pending on August 3, 2021, the act's effective date.⁴

Property tax complaints

The act makes three modifications – one permanent and two temporary – to the manner by which an administrative complaint may be filed and resolved against a property's assessed tax valuation or classification with a county board of revision (BOR) – a quasi-judicial body comprised of the county treasurer, the county auditor, and a county commissioner and established to hear property tax complaints and revise tax assessments. First, the act makes certain commercial and industrial tenants eligible to file complaints. Second, it authorizes a county BOR, pursuant to a special complaint filed for tax year 2020, to value a property as of October 1, 2020, if its value is reduced due to COVID-19-related circumstances or state orders.

¹ R.C. 5709.121(F).

² *Columbus City Schools Dis. Bd. of Edn. v. McClain, et al.* (May 28, 2020), BTA No. 2018-649.

³ R.C. 5709.121(E).

⁴ Section 5.

Third, it waives the rule barring multiple complaints from being filed in the same triennial valuation period for such COVID-19-related complaints and complaints filed for tax year 2021 or 2022 that only allege a value reduction due to COVID-19-related circumstances or orders.

Tenant complaints

Property tax complaints may be initiated, under continuing law, by property owners, an owner's spouse, certain agents of the owner or spouse, a county treasurer or prosecuting attorney, the mayor of a municipal corporation, a school board, or the legislative authority of a county, township, or municipal corporation. In addition, a property owner, their spouse or agents, or, in some cases, a school district may file a counterclaim in response to a complaint initiated by another party.

The act extends the authority to file a complaint or counterclaim to tenants of commercial or industrial property if the tenant is required under the lease agreement to pay the entire amount of taxes charged against the property and if the landlord, either through the lease or otherwise, authorizes the tenant to file the complaint or counterclaim. This authority also extends to officers, employees, or certain other agents of the tenant.⁵

These parties may file complaints or counterclaims beginning for tax year 2021.⁶

2020 COVID-19-related valuation complaint

In general, BOR complaints challenge the value of the property as of January 1 of the tax year for which it is being filed (the "tax lien date") and are filed at the beginning of the following tax year; e.g., a tax year 2020 complaint is filed at the beginning of 2021 and evaluates the property's value as of January 1, 2020. The deadline to file complaints is either March 31 or the deadline to pay the first half of property taxes for the prior tax year, whichever occurs later. Any change in a property's value pursuant to a BOR complaint generally applies to all subsequent tax years within the three-year period between a sexennial reappraisal and an assessment update in the third year of that cycle (the "interim period").⁷

The act authorizes an eligible party to file a special BOR complaint requesting that a property's tax valuation for tax year 2020 be determined as of October 1, 2020, instead of the tax lien date for that year (January 1, 2020), if the property's value between those dates has been reduced due to circumstances related to the COVID-19 pandemic or a COVID-19-related order issued by the Governor or a state agency. Such a complaint must be filed with the county auditor by September 2, 2021 (30 days after the act's effective date) and must state with particularity how the COVID-19-related circumstance or order resulted in that reduced value. The BOR must dismiss a complaint that only alleges a general decline in market conditions in the area where the property is located. Upon receiving a complaint, the county BOR may

⁵ R.C. 5715.19(A) and (B).

⁶ Section 5.

⁷ R.C. 5715.19.

consider the circumstances and set the property's value for tax purposes as of October 1, 2020, accordingly.⁸ Without the act's modifications for tax year 2020, the owner could not raise the circumstances or orders that caused a reduction in the property's value in a BOR challenge until tax year 2021, filed at the beginning of 2022.

Temporary triennial filing rule waiver

Generally, an eligible party may initiate a BOR complaint with respect to a particular parcel only once in each interim period, unless certain events occur in the meantime, such as the property having been sold.⁹ The act waives this rule for the tax year 2020 COVID-19-related complaints described above.¹⁰ It also waives this rule for valuation complaints filed for tax year 2021 or 2022 that only allege a reduction in a property's value due to circumstances related to the COVID-19 pandemic or state COVID-19 orders.

An eligible party seeking to take advantage of this waiver for tax year 2021 or 2022 must, similar to the special tax year 2020 complaint, allege with particularity in the complaint how the circumstance or order caused a reduction in the property's value. If the complaint merely alleges a general decline in value or market conditions in the area where the property is located or some other factor unrelated to COVID-19 circumstances or orders, the county BOR may not grant the waiver.¹¹

Tax increment financing (TIF) service payments

TIF background

Continuing law allows municipalities, townships, and counties to create a tax increment financing (TIF) arrangement to finance public infrastructure improvements. Through a TIF, the subdivision grants a real property tax exemption with respect to the incremental increase in the assessed value of designated parcels that are part of a development project. The owners of the parcels make payments in lieu of taxes to the subdivision equal to the amount of taxes that would otherwise have been paid with respect to the exempted improvements ("service payments"). TIFs thereby create a flow of revenue back to the subdivision that created the TIF, which generally uses those service payments to pay the public infrastructure costs necessitated by the development project.

Service payment enforceability

Continuing law provides that service payments are to be considered property taxes for all purposes, including for lien priority and collection, but does not specifically provide that the payments are a covenant running with the land. Statutorily prescribed TIF service payment

⁸ Section 3(A) to (D).

⁹ R.C. 5715.19(A)(2).

¹⁰ Section 3(E).

¹¹ Section 4.

obligations are generally subordinate to other real property tax exemptions.¹² In other words, if the property is exempted for any non-TIF reason (charitable use, for example), that exemption generally extinguishes the service payment obligation. In practice, however, some property owners contract with local governments to guarantee future TIF service payment obligations against subsequent property tax exemptions.

The act specifies that TIF service payment obligations arising from an agreement between the property owner and a local government guaranteeing future TIF service payment obligations against subsequent property tax exemptions are enforceable against subsequent property owners. Once a subdivision records a TIF service payment agreement with the county recorder, the covenant is fully binding against the property owner and any person subsequently acquiring an interest in the land. If a service payment is not paid, the subdivision can place a lien on the property and collect the payment in the same manner as other delinquent taxes (e.g., through foreclosure).¹³

This change applies to any proceedings commenced after, or pending on, August 3, 2021, the act's effective date, and any instruments recorded on, before, or after that date.¹⁴

HISTORY

Action	Date
Introduced	02-09-21
Reported, S. Ways & Means	02-23-21
Passed Senate (31-0)	02-24-21
Reported, H. Ways & Means	03-24-21
Passed House (95-0)	03-25-21
Senate concurred in House amendments (33-0)	04-21-21

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¹² R.C. 5709.911, not in the act.

¹³ R.C. 5709.91.

¹⁴ Section 6.