

MEMORANDUM

INTRODUCTION

Senate Bill 57 (SB 57 or “the bill”) was enacted this past spring and becomes effective August 3, 2021. The bill is a response to the COVID-19 pandemic and provides a process through which a property owner can seek a reduction in the true value of the owner’s property which is caused “due to a circumstance related to the COVID-19 pandemic or a state COVID-19 order.”¹ Collectively, we will refer to such complaints as a “COVID complaint.” The bill uses October 1, 2020, instead of the tax lien date, as the determinative date for purposes of showing a reduction in value due to COVID. For tax year 2020 (“TY 2020”), the bill provides a one-month window from August 3, 2021 through September 2, 2021² during which an “eligible person” – defined as anyone authorized to file a complaint under R.C. 5715.19(A)(1) - can file a COVID complaint at the BOR. The bill also authorizes the filing of COVID complaints for TY 2021 and TY 2022.

Unrelated to COVID-19, the bill also modifies R.C. 5715.19 to authorize a tenant of commercial or industrial property to file a valuation complaint.³ The tenant provision of the bill is straightforward and does not require further analysis at this time. Accordingly, this memo will address only the COVID-related provisions of the bill.

The bill went through various versions in both the House and Senate before it was enacted, and its final language has raised a number of questions among our members about how it applies to certain circumstances and how it is to be implemented. Among other questions, some of our members have asked about what must be included on the face of the complaint and whether under the bill the BOR has the authority to dismiss these COVID complaints, under the appropriate circumstances, for lack of jurisdiction. Like so many other bills that are passed by

¹ The bill does not define what constitutes “a circumstance” related to the COVID-19 pandemic, but does define a “State COVID-19 order” as meaning “any of the following issued on or after March 9, 2020, as the result of or in response to the COVID-19 pandemic: (a) An executive order issued by the Governor; (b) An order issued by the Director of Health under section 3701.13 of the Revised Code; (c) Any other order authorized by the Revised Code issued by another state official or state agency.”

² See <https://www.legislature.ohio.gov/download?key=16561&format=pdf>, page 3 (“Such a complaint must be filed with the county auditor by September 2, 2021 (30 days after the act’s effective date).”)

³ Specifically, the statute allows such a tenant to file a valuation complaint for commercial or industrial property if “the lease requires the tenant to pay the entire amount of taxes charged against the property, and the lease allows, or the property owner otherwise authorizes, the tenant to file such a complaint with respect to the property.”

the General Assembly, the language of SB 57 is less than ideal and is reasonably subject to varying interpretations. Ultimately, as these COVID complaints are heard at the BOR and appealed to the BTA or the courts, those bodies will determine the meaning of the language used in the bill. We, unfortunately, don't have the luxury of time and will be required to implement this law starting August 3.

With that in mind, this memo attempts to determine the legislative intent behind the bill – as the BTA or a court would – and to respond to questions raised in connection with the bill. This memo is divided into three parts: Part 1 is a brief Q & A “executive summary” that addresses the most common questions about the bill; Part 2 is a more detailed legal analysis keyed to the questions addressed in Part 1, and discusses, amongst other things, the legislative intent behind the bill and the areas of current law that support that legislative intent; and (3) Part 3 is an implementation checklist which you may want to consider using at your BOR. Many of your most pressing practical questions may be answered in the Q & A section, but we encourage you to also review the legal analysis as it will shed light on the intent of the legislature in enacting the bill and show where SB 57 is in accord with current BOR practice in some areas, while differing in others.

Before starting our review, we have set out below the critical language contained in Section 3, Subsections (B) and (C) of the bill and highlighted some of the more critical language that will be discussed in greater depth in the sections that follow.

(B) ...an eligible person may request in a valuation complaint for tax year 2020 that the assessment of true value in money of the property be determined as of October 1, 2020, instead of the tax lien date for that year, provided the request reflects a reduction in true value between those two dates due to a circumstance related to the COVID-19 pandemic or a state COVID-19 order. An eligible person that files such a valuation complaint **shall allege with particularity** in the complaint how such a circumstance or order caused the reduction in true value of the property. **The board of revision shall dismiss a valuation complaint that merely alleges a general decline in economic or market conditions in the area or region in which the property that is the subject of the complaint is located.**

(C) For any valuation complaint filed by an eligible person for tax year 2020 that includes a request described in division (B) of this section, the board of revision shall consider evidence of diminished true value as of October 1, 2020, due to any circumstances related to the COVID-19 pandemic or state COVID-19 orders, and, if the board determines that this evidence is satisfactory, shall adjust the property's true value in money for that tax year to reflect that diminished valuation as of that date. That adjusted value shall apply to subsequent tax years in accordance with section 5715.19 of the Revised Code.

Finally, this memo is not intended to render legal advice and is offered for general information purposes only. As you review this memo and/or as questions arise in the conduct of your COVID hearings, we strongly recommend that you consult with your BOR's legal advisor, typically the county's prosecuting attorney, to get their view on the best way you should

approach the particular issue you are addressing. Their view, of course, should control over anything contained in this memo.

PART 1
“EXECUTIVE SUMMARY” Q & A

1. **QUESTION:** Under SB 57, can a COVID complaint be dismissed on jurisdictional grounds?
SUMMARY ANSWER: Yes. See below.

2. **QUESTION:** Should a COVID complaint be dismissed if, on its face, it does not “allege with particularity” how the COVID-related circumstance or order caused the reduction in value?
SUMMARY ANSWER: There must be compliance with the “allege with particularity” language of SB 57, but that language sets a “low bar.” If the complaint simply alleges on its face (1) that the reduction in value was caused as a result of COVID (or other words to that effect) or a state covid order, and (2) sets forth the dollar amount of the reduction sought as a result, then the complaint should **not** be summarily dismissed on jurisdictional grounds and should be heard at an evidentiary hearing. If the complaint does not on its face meet those requirements, then it should be dismissed in accordance with whatever procedures your BOR uses to dismiss complaints on other jurisdictional grounds (ie: like where there is a failure to allege a requested value as in line 9 on the DTE 1).

3. **QUESTION:** If the BOR determines to dismiss a complaint on jurisdictional grounds, what procedures should be utilized?
SUMMARY ANSWER: SB 57 does not specify what procedures should be used to implement the dismissal of the complaint on jurisdictional grounds. We recommend that your county BOR utilize whatever procedures you are currently using for jurisdictional dismissals like, for instance, where a complaint is dismissed for failure to insert an amount on line 9 (formerly line 8) of the DTE Form 1.

4. **QUESTION:** Is there an ambiguity between Subsection (B) (“Sub B”) of SB 57 which appears to allow for a jurisdictional dismissal and Subsection (C) (“Sub C”) of SB 57 which appears to require an evidentiary hearing?
SUMMARY ANSWER: Sub B and Sub C can be reconciled and there is not a conflict between the language of Sub B which allows for a jurisdictional dismissal and the language of Sub C which appears to require a hearing. Under the proper factual circumstances, a complaint can be dismissed under Sub B and, if not dismissed, then a hearing can be held under Sub C.

5. **QUESTION:** Assuming a hearing is held, what standard should be used to determine if the complainant has shown that COVID-related circumstances or orders were the cause of the reduction in value?

SUMMARY ANSWER: There are strong parallels between the rapid onset of COVID and its accompanying damage, and the law of causation in tort law relating to injuries or damage. It is recommended that BORs become familiar with the meaning of “proximate cause” as used in tort law as well as the “but for” test in proximate causation. BORs are urged to contact their legal advisor for guidance in specific cases.

6. **QUESTION:** Does a COVID-related reduction in valuation for TY 2020 apply only starting on October 1, 2020 and moving forward from that date, or should that COVID-related reduction in valuation relate back to January 1, 2020?

SUMMARY ANSWER: While the COVID-related damage for TY 2020 should be assessed as of October 1, 2020, any reduction in value should relate back to the tax lien date, January 1, 2020.

7. **QUESTION:** Should COVID-related complaints for tax years 2021 or 2022 use the October 1, 2020 date for valuation-reduction purposes, or should they use their respective tax lien dates – January 1, 2021 or January 1, 2022 – as the date for valuation reduction purposes?

SUMMARY ANSWER: The respective tax lien dates – January 1, 2021 and January 1, 2022 - should be used as the valuation dates for COVID-related complaints for tax years 2021 and 2022.

PART 2
LEGAL ANALYSIS

1. **QUESTION:** Under SB 57, can a COVID complaint be dismissed on jurisdictional grounds?

SUMMARY ANSWER: Yes. See below.

2. **QUESTION:** Should a COVID complaint be dismissed if, on its face, it does not “allege with particularity” how the COVID-related circumstance or order caused the reduction in value?

SUMMARY ANSWER: There must be compliance with the “allege with particularity” language of SB 57, but that language sets a “low bar.” If the complaint simply alleges on its face (1) that the reduction in value was caused as a result of COVID (or other words to that effect) or a state covid order, and (2) sets forth the dollar amount of the reduction sought as a result, then the complaint should **not** be summarily dismissed on jurisdictional grounds and should be heard at an evidentiary hearing. If the complaint does not on its face meet those requirements, then it should be dismissed in accordance with whatever procedures your BOR uses to dismiss complaints on other jurisdictional grounds (ie: like where there is a failure to allege a requested value as in line 9 on the DTE 1).

3. **QUESTION:** If the BOR determines to dismiss a complaint on jurisdictional grounds, what procedures should be utilized?

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Dismissal on Jurisdictional Grounds

As you know, the CAAO’s lobbyist, Tom Pappas, was actively involved in getting certain CAAO-supported language into the bill and is familiar with the background of its enactment. According to Tom, the drafters of the bill intended to establish some, at least minimal, jurisdictional requirements before a COVID complaint could be heard. Because the law is well settled that “When construing a statute, [a court’s] primary concern is legislative intent”⁴ and the intent of the legislature is determined “by considering the object sought to be attained,”⁵ Tom’s information regarding the background and intent of the bill is significant. Unfortunately, it is not the final word and we must review the history and language of the statute itself as would the BTA and/or a reviewing court.

⁴ [State v. Pettus](#), 2020-Ohio-4836, ¶ 10.

⁵ [State v. Pettus](#), 2020-Ohio-4836, ¶ 11.

But before we get to the language of the bill itself, as background, an understanding of how the bill changed from its initial introduction to its final passage is instructive as to what the legislature intended.⁶ The bill that eventually became SB 57 went through several iterations, but when it was originally introduced it (1) did *not* include the “allege with particularity” language, (2) did *not* establish any jurisdictional barrier to filing the complaint or obtaining an evidentiary hearing, and (3) did *not* allow for a “summary” or jurisdictional dismissal.⁷ The “allege with particularity” requirement was added later at the House Ways and Means Committee and was the language that ultimately passed into law. There are a number of reasons why it appears that the final version of the bill intended to allow for dismissals based upon lack of jurisdiction.

First, the addition of the “allege with particularity” language after the legislature had considered the initial bill (that did not contain such limiting language), makes clear that the legislature was not satisfied with an “open door” to a COVID filing and that it intended to erect some jurisdictional requirements – although those requirements might not be difficult to meet – before it would allow COVID complaints to be heard. Such concerns were well warranted, of course, given that literally every person in the State of Ohio – including all real property owners - was affected by COVID. The subsequent addition of the statute’s limiting language indicates that the legislature may have wanted to avoid a flood of unsupported, generalized COVID complaints asserting little more than that because COVID hurt the general economy (a fact that is undeniable), it must have also hurt (reduced) their particular property’s value (a proposition that does *not* naturally flow from damage to the general economy). As shown below, the intent underlying such limiting language in SB 57 follows well established law which states that generalized allegations of damage to a property do *not*, of and by themselves, establish that the

⁶ The COVID-complaint provision was originally introduced in H.B. 38 in the 133rd G.A. (2019-2020). After passing the House, the bill went to the Senate Insurance and Financial Institutions Committee where it included provisions for COVID valuation complaints to be filed for tax years 2020, 2021, and 2022 and also waived the rule prohibiting a second filing in the triennial if it was a COVID complaint. See <https://www.legislature.ohio.gov/download?key=15158&format=pdf>. The bill passed the Senate, with amendments from the House version, on December 22, 2020 (see https://search-prod.lis.state.oh.us/solarapi/v1/general_assembly_133/bills/hb38/PS/04?format=pdf) but the G.A. term expired before final action could be taken on the amended bill. Upon the initiation of the 134th G.A. (2021 – 2022) S.B. 57, dealing with property tax exemptions for certain housing used by individuals diagnosed with mental illness or substance use disorder was introduced and passed the Senate without any COVID-related provisions. See <https://www.legislature.ohio.gov/download?key=15634&format=pdf>. It was then sent to the House Ways and Means Committee (“HWMC”) where the COVID provisions were added back into the bill. See <https://www.legislature.ohio.gov/download?key=16182&format=pdf>. As reported out of the HWMC the bill contains, *for the first time*, the language requiring the complaint to “allege with particularity.” The new language as reported out of the HWMC stated “An eligible person that files such a valuation complaint *shall allege with particularity in the complaint how such a circumstance or order caused the reduction in true value of the property. The board of revision shall dismiss a valuation complaint that merely alleges a general decline in economic or market conditions in the area or region in which the property that is the subject of the complaint is located.*” See https://search-prod.lis.state.oh.us/solarapi/v1/general_assembly_134/bills/sb57/RH/03/sb57_03_RH?format=pdf. Thereafter, with those revisions, the bill was sent to the full House which passed the bill with the “allege with particularity” language intact. See https://search-prod.lis.state.oh.us/solarapi/v1/general_assembly_134/bills/sb57/PH/04/sb57_04_PH?format=pdf. The bill was then sent to the Senate where it passed as Substitute Senate Bill 57 with the “allege with particularity” language. See https://search-prod.lis.state.oh.us/solarapi/v1/general_assembly_134/bills/sb57/EN/05/sb57_05_EN?format=pdf.

⁷ The applicable language from the Senate Insurance and Financial Institutions Committee (“SIFIC”) read as follows: “(B) Subject to section 5715.19 of the Revised Code, an eligible person may request in a valuation complaint for tax year 2020, 2021, or 2022 that the assessment of true value in money of the property account for any reduction in true value due to a circumstance related to the COVID-19 pandemic or a state COVID-19 order that occurred in the tax year for which the complaint was filed, but after the tax lien date for that year.” See https://search-prod.lis.state.oh.us/solarapi/v1/general_assembly_133/bills/hb38/RS/03?format=pdf. There is no mention of a requirement in the complaint to “allege with particularity.”

damage necessarily caused a reduction in the property's value. There must be a direct, and quantifiable, causal link between the damage and the specific reduction in value.

In addition, there is one more indication that the legislature intended to establish a jurisdictional barrier before an evidentiary hearing would be granted. One of the purposes seemingly served by the "particularity" requirement of the SB 57 is to notify the auditor and BOR that a COVID complaint – as opposed to a standard valuation complaint – is being filed. Such a requirement makes sense because SB 57 varies from standard BOR practice in that it allows a complaint to be filed after the normal March 31 filing deadline (at least for TY 2020 cases), and also allows for a second filing within the triennial. But these departures from standard practice are *only* permitted if it is a COVID complaint allowed under SB 57. Without the COVID allegation on the face of the complaint, the auditor and BOR may reasonably believe that the filing is a standard valuation complaint that has missed the normal March 31 deadline. While practices may vary by county, it would not be uncommon for such an untimely complaint to be dismissed on jurisdictional grounds without the need for an evidentiary hearing. A similar jurisdictional dismissal would also not be unusual if the complaint was a second filing within the triennial period. Thus, SB 57's "allege with particularity" serves the important purpose of notifying the auditor and BOR that this complaint is different from a routine valuation complaint and may have a different filing deadline and the opportunity for a second filing.

But there is more to indicate that jurisdictional dismissals were intended by the legislature under SB 57. In addition to Tom's information about the legislature's intent, the language of the bill itself would appear to allow for a complaint to be dismissed on jurisdictional grounds. Subsection (C) of SB 57 states that the BOR "*shall dismiss* a valuation complaint that merely alleges a general decline in economic or market conditions in the area or region..." (italics added). As shown below, such language – particularly the use of the words "shall dismiss" – implicates the jurisdiction of the BOR and indicates that where the requirements of jurisdiction are not met, the complaint should be dismissed. Indeed, in numerous BTA and court decisions the use of the phrase "the complaint is dismissed" or some variant thereof, is most

frequently associated with a rejection of the complaint on jurisdictional grounds.⁸ Where jurisdictional requirements are not met at the BOR, a complaint must be dismissed.⁹

There is also support, under established law, for the view that the failure to meet jurisdictional requirements should result in a dismissal for lack of jurisdiction. The Court of Appeals has stated that:

In hearing and ruling on complaints, a board of revision must first examine the complaint to determine whether it meets the jurisdictional requirements set forth in R.C. 5715.13 and 5715.19. [citation omitted] The board *must dismiss* any complaint that does not meet those requirements. When seeking to invoke the jurisdiction of a board of revision, a complainant must comply with the requirements of R.C. 5715.19.¹⁰ (italics added).

For example, in the context of a complaint that was filed by a person not authorized under the statute to file a complaint, the Supreme Court has stated that the dismissal of the complaint was proper because the “Board of Revision was without jurisdiction to render a decision on the complaint.”¹¹ Further, where a complainant fails on Line 8 (now Line 9) to specifically state the amount of value or undervaluation on which the complaint is based the requirement is mandatory

⁸ See *Kohl's Illinois, Inc. v. Marion County Board of Revision*, 140 Ohio St.3d 522, 2014-Ohio-4353, ¶ 26 (“...jurisdictional limitations typically relate to the violation of statutory requirements, such as the March 31 deadline for filing complaints or the prohibition of a second filing within the triennium. Unless the defect involves violation of a statute, it is typically not jurisdictional.”). Such jurisdictional grounds can include, amongst others, an untimely filing, a second unauthorized filing within the same triennial period, or the filing by one not authorized to file a complaint. See, for just a few of numerous examples, *Jake Fludd III v. Cuyahoga County Board of Revision* (October 15, 2015), BTA No. 2014-3675 (“Appellant appears to argue that, because his tax year 2012 *complaint was dismissed* on jurisdictional grounds...”); *The Mews at Pinnacle Club LLC v. Franklin County Board of Revision* (October 19, 2010), BTA No. 2010-1012 (“The BOE asserts that the underlying *complaint was dismissed* by the Franklin County Board of Revision (“BOR”) on the grounds that it was filed after the period statutorily prescribed for submitting real property complaints.”); *David C. Rogers v. Lucas County Board of Revision* (April 10, 2010), BTA No. 2009-1640 (“The appellees argue that this board is without jurisdiction to hear the instant appeal because the appellant failed to file the underlying complaint in a timely manner; *the complaint was dismissed* by the Lucas County Board of Revision.”); *Thomas & Harriet Asimakis Co-TRs v. Cuyahoga County Board of Revision* (December 5, 2013), BTA No. 2013-2417 (“The BOR decision letter indicates that the *complaint was dismissed* for unauthorized practice of law...”); *4850 Chaincraft Road, Ltd. v. Cuyahoga County Board of Revision* (November 17, 2006), BTA No. 2006-1737 (“The subject *complaint was dismissed* by the BOR when it determined that it lacked jurisdiction to consider the complaint.”); *Point East Condominium Assoc., Inc. v. Cuyahoga County Board of Revision*, 8th Dist. Cuyahoga Nos. 73083, 73084, 1998 WL 382165 (“...a board of revision lacks jurisdiction over a counter-complaint once the original *complaint is dismissed* for lack of jurisdiction.”); *Kathleen L. Parker v. Giant Eagle, Inc.*, 7th Dist. Mahoning No. 01 C.A. 174, 2002-Ohio-5212 (“The trial court's judgment is hereby modified to reflect that Appellant's *complaint is dismissed* for lack of subject matter jurisdiction.”).

⁹ See, for example, *Hilltop Commons, L.L.C. v. Mingo*, 10th Dist. Franklin No. 11AP-1089, 2012-Ohio-5661, ¶ 42 (“Because Hilltop's complaint failed to invoke the BOR's subject-matter jurisdiction, the BOR did not possess the power to determine the claim on its merits...”); *North Olmsted Board of Education v. Cuyahoga County Board of Revision*, 122 Ohio App.3d 654, 658 (8th Dist. 1998) (“The Supreme Court further determined that when a party files a complaint against the property of another, as here, the burden is on that party to prove that he or she has standing. The court found that Society National Bank had the burden of proving standing to bring its complaint and, having failed to do so, Society National Bank failed to invoke the jurisdiction of the board of revision. The court then affirmed the dismissal of Society National Bank's complaint for its failure to have invoked the jurisdiction of the board of revision.”).

¹⁰ *Kuntz 2016, LLC v. Montgomery County Auditor*, 2nd Dist. Montgomery No. 28038, 2018-Ohio-4635, ¶¶ 12, 13.

¹¹ *C.I.A Properties v. Cuyahoga County Auditor*, 89 Ohio St.3d 363 (2000), 2000-Ohio-192.

and jurisdictional.¹² Similarly, where there is a failure to comply with the jurisdictional requirements at the BTA, those cases are also dismissed.¹³

The “Allege with Particularity” Requirement

[NOTE: SOME OR ALL OF THIS “ALLEGE WITH PARTICULARITY” SECTION MAY NOT BE NEEDED, OR MAY NEED MODIFICATION, IF THE STATE TAX DEPARTMENT DEVELOPS INSTRUCTIONS OR A FORM FOR COVID COMPLAINTS WITH A CHECK-OFF BOX OR OTHER INFORMATION THAT SATISFIES THE “PARTICULARITY” REQUIREMENT.]

SB 57 requires that a complainant “allege with particularity” how “a circumstance related to the COVID-19 pandemic or a state COVID-19 order” caused the reduction in the property’s true value (hereafter, “the Allege with Particularity Requirement”). It further states that the BOR shall dismiss a complaint “that merely alleges a general decline in economic or market conditions in the area or region...”

But what does it mean for a complaint to “allege with particularity” how COVID-19 caused the value reduction? Unfortunately, the statute does not provide specific guidance as to the meaning of that phrase. In general, in the absence of specific statutory guidance courts searching for the meaning of statutory language will often reason by analogy to other, more established areas, of the law.¹⁴ Fortunately, there is a close analogy that interprets the meaning of the words “with particularity” in the context of a court-filed pleading.

Rule 9(B) of the Ohio Rules of Civil Procedure addresses what a party must plead in its complaint where it alleges fraud or mistake. “In all averments of fraud or mistake, the circumstances constituting such fraud or mistake shall be *stated with particularity.*” That language tracks closely with SB 57’s language in subsection (B) which states that “such a valuation complaint shall *allege with particularity* in the complaint...”

The fact that Civil Rule 9(B) deals with fraud is irrelevant for our purposes. The value of the analogy is that Civil Rule 9(B) informs us as to *the degree of factual detail* required to satisfy the “particularity” requirement. It is *that* standard, transferable by analogy to the Allege with Particularity Requirement of SB 57, that is instructive for our purposes. And under well-established case law “The ‘particularity’ requirement of Civ. R. 9(B) means that the pleading

¹² [Shinkle v. Ashtabula County Board of Revision](#), 135 Ohio St.3d 227, 2013-Ohio-397, ¶ 18.

¹³ [Shumei Man v. Cuyahoga County Board of Revision](#) (May 17, 2021), BTA No. 2020-2031.

¹⁴ See, for example, *Management Recruiters of Marysville, Inc. v. Brown Group Recreational Products, Inc.*, 34 Ohio App.3d 72 (3rd Dist. 1986) (“Using such an analogy, the plaintiff employment agency would have to establish that...”); *Wilson v. South Central School District*, 107 Ohio App.3d 610 (6th Dist. 1995) (“The legislature said that the policy must specify the types of misconduct for which a pupil may be suspended. “Specify” means to use explicit language. By analogy, one can refer to the term “specific bequest” in probate law.”); *In the Matter of: Avery Health Care Center*, 155 N.E.3d 286 (10th Dist.), 2020-Ohio-3383, fn. 4 (“By way of analogy, we note that a member of a limited liability company has no personal liability...”); *State v. Cook*, 83 Ohio St.3d 404 (1998) (“History does not tell us whether this sort of notification ought to be regarded as punishment. Thus, we must draw on analogy.”); *State v. Yuen*, 10th Dist. Franklin No. 01-AP-1410, 2002-Ohio-5083. (italics added).

must contain allegations of fact which tend to show *each and every element of a cause of action* for fraud.”¹⁵ (italics added). A similar “particularity” standard should apply in reviewing the complaint filed under SB 57. By analogy, such a complaint would be sufficient under SB 57 if, like under Civil Rule 9(B), it showed all elements of the COVID claim that are required under SB 57.

SB 57 appears to require that only two “elements” must be proven for there to be a facially sufficient claim: (1) that there was “a circumstance related to the COVID-19 pandemic or a state COVID-order” and that such circumstance or order (2) caused the reduction in true value. In addition, under existing law, the amount of that alleged reduction due to COVID would have to be included in the complaint. We can reasonably anticipate that across the state complainants will use a variety of language in the complaint to allege that a reduction in value is warranted. But key to your review of those complaints to determine if there has been compliance with SB 57 is whether there is a direct causal link alleged between “a circumstance related to the COVID-19 pandemic or a state COVID-19 order” and the “reduction in true value of the property.” While we can expect that at the *evidentiary hearing* the complainant would also include evidence about the method used to calculate the reduction, as a matter of *facial sufficiency* in the complaint the Allege with Particularity Requirement of SB 57 would not appear to require that the methodology used to calculate the reduction be set forth on the face of the complaint.

Procedures to Dismiss a Complaint on Jurisdictional Grounds

SB 57 does not specify the procedures to be used to implement a dismissal of a COVID complaint on jurisdictional grounds and there is no indication in the bill that, in dismissing COVID complaints on jurisdictional grounds, there should be any changes from the procedures currently used by your BOR to dismiss standard valuation complaints for lack of jurisdiction. Accordingly, we recommend that your county BOR utilize whatever procedures you are currently using for jurisdictional dismissals like, for instance, where a complaint is dismissed for failure to insert an amount on line 9 (formerly line 8) of the DTE Form 1, where a second complaint is filed in the same triennial (without meeting one of the exceptions), or where a person engaging in the unauthorized practice of law files a complaint.

4. **QUESTION:** Is there an ambiguity between Subsection (B) (“Sub B”) of SB 57 which appears to allow for a jurisdictional dismissal and Subsection (C) (“Sub C”) of SB 57 which appears to require an evidentiary hearing?

SUMMARY ANSWER: Sub B and Sub C can be reconciled and there is not a conflict between the language of Sub B which allows for a jurisdictional dismissal and the language of Sub C which appears to require a hearing. Under the proper factual circumstances, a complaint can be dismissed under Sub B and, if not dismissed, then a hearing can be held under Sub C.

Resolving the Seeming Ambiguity Between Subsections (B) and (C)

¹⁵ [Rieger v. Podeweltz](#), 2nd Dist. Montgomery C.A. No. 23520, 2010-Ohio-2509, ¶ 9.

As enacted, Sub B and Sub C of Section 2 of SB 57 read as follows:

(B) Subject to section 5715.19 of the Revised Code, an eligible person may request in a valuation complaint for tax year 2020 that the assessment of true value in money of the property be determined as of October 1, 2020, instead of the tax lien date for that year, provided the request reflects a reduction in true value between those two dates due to a circumstance related to the COVID-19 pandemic or a state COVID-19 order. *An eligible person that files such a valuation complaint shall allege with particularity in the complaint how such a circumstance or order caused the reduction in true value of the property. The board of revision shall dismiss a valuation complaint that merely alleges a general decline in economic or market conditions in the area or region in which the property that is the subject of the complaint is located.* (italics added)

(C) *For any valuation complaint filed by an eligible person for tax year 2020 that includes a request described in division (B) of this section, the board of revision shall consider evidence of diminished true value as of October 1, 2020, due to any circumstances related to the COVID-19 pandemic or state COVID-19 orders,* and, if the board determines that this evidence is satisfactory, shall adjust the property's true value in money for that tax year to reflect that diminished valuation as of that date. That adjusted value shall apply to subsequent tax years in accordance with section 5715.19 of the Revised Code. (italics added).

Some have argued that the wording of Sub B, particularly the italicized language which arguably allows for a summary dismissal of a complaint for facial insufficiency where the complaint fails to “allege with particularity” a COVID-caused reduction in value (“The board of revision *shall dismiss...*”), conflicts with the italicized language of Sub C which appears to require an evidentiary hearing (“...the board of revision *shall consider* evidence of diminished true value...”). In reviewing the entirety of Sub B and Sub C, it is clear that those two subsections are not in conflict. The Ohio Supreme Court has stated that “In reviewing a statute, a court cannot pick out one sentence and disassociate it from the context, but must look to the four corners of the enactment to determine the intent of the enacting body.”¹⁶

At the outset, the language of Sub C states that it applies to “*a request described in division (B) of this section.*” As discussed above, a request described in Sub B is required to “allege with particularity.” If there is compliance with Sub B, then a hearing should go forward under Sub C. Sub C assumes that there has already been compliance with Sub B because a complaint that is heard under Sub C has already complied with the particularity requirement of Sub B. In other words, you don’t get to a Sub C hearing unless you have already complied with Sub B.

In addition, existing law makes clear that the BOR is to engage in a two-step analysis to determine the legal sufficiency of a complaint. As stated by the Supreme Court:

¹⁶ [State v. Wilson](#), 77 Ohio St.3d 334, 336 (1997).

A review of the applicable statutes...shows that a board of revision has been given jurisdiction to hear and rule on complaints submitted to it. As part of its jurisdiction to hear and rule on complaints, a board of revision must undertake a two-step analysis. First, the board of revision must examine the complaint to determine whether it meets the jurisdictional requirements set forth by the statutes. Second, if the complaint meets the jurisdictional requirements, then the board of revision is empowered to proceed to consider the evidence and determine the true value of the property.

... In *Stanjim Co. v. Mahoning Cty. Bd. of Revision* (1974) [citation omitted] we stated that “full compliance with R.C. 5715.19 and 5715.13 is necessary before a county board of revision is empowered to act on the merits of a claim.” Thus, only after a board of revision determines that the complaint meets the jurisdictional requirements can it proceed to the second step to determine the case on the merits. If the complaint does not meet the jurisdictional requirements, then the board of revision must dismiss it because the complaint has not invoked the board's power to proceed to a consideration of the merits.¹⁷

It is well established that R.C. 5715.19, which is the primary statute setting forth the procedural requirements for BOR valuation hearings, allows for a jurisdictional dismissal where circumstances allow under its subsection (A)(2)¹⁸ as well as a hearing where circumstances allow under its subsection (C).¹⁹ Accordingly, the structure and sequencing of Sub B and Sub C in SB 57 would appear to follow established law and use the same reasoning. It allows for a jurisdictional dismissal under its Sub B, where circumstances warrant, and a hearing under its Sub C, where the circumstances warrant. As such, there is no conflict between Sub B and Sub C.

5. **QUESTION:** Assuming a hearing is held, what standard should be used to determine if the complainant has shown that COVID-related circumstances or orders were the cause of the reduction in value?

SUMMARY ANSWER: There are strong parallels between the rapid onset of COVID and its accompanying damage, and the law of causation in tort law relating to injuries or damage. It is recommended that BORs become familiar with the meaning of “proximate cause” as used in tort law as well as the “but for” test in proximate causation. BORs are urged to contact their legal advisor for guidance in specific cases.

¹⁷ *Elkem Metals Co., Ltd. Partnership v. Washington County Board of Revision*, 81 Ohio St.3d 683, 686, 1998-Ohio-601 (1998).

¹⁸ See R.C. 5715.19(A)(2) which reads, in applicable part, that “No person...shall file a complaint against the valuation or assessment of any parcel...if it filed a complaint against the valuation or assessment of that parcel for any prior tax year in the same interim period...” In support that such requirement is jurisdictional, see *Auburn Parking LLC v. Cuyahoga County Board of Revision* (April 18, 2019), BTA Nos. 2018-349, 2018-364 (“The Ohio Supreme Court has been very clear that R.C. 5715.19(A)(2) limits the jurisdiction of the BOR.”); See also *SCIT, Inc. c/o Winmar Company, Inc. v. Cuyahoga County Board of Revision* (September 11, 1998), BOR No. 97-S-674 (“The BOR dismissed appellant's 1995 complaint for lack of jurisdiction pursuant to R.C. 5715.19(A)(2).”)

¹⁹ See R.C. 5715.19(C) which reads, in applicable part, that “The board of revision shall hear and render its decision on a complaint within one hundred eighty days after the last day a complaint may be filed with the board under division (A)(1) of this section or, if a complaint is filed within thirty days after receiving notice from the auditor as provided in division (B) of this section, within one hundred eighty days after such filing.”

The Meaning of “To Cause”?

In connection with its “allege with particularity” requirement, SB 57 requires that the complainant show how a COVID circumstance or order “caused” the reduction in value. What is alleged in the complaint, of course, will need to be proven at the evidentiary hearing and the bill provides no guidance as to the meaning of the word “caused” as used in the bill. The question is reasonably asked: How does a complainant prove that COVID “caused” the reduction? How does the complainant establish the link between COVID and the reduction in value? These are good, and important, questions for which, unfortunately, the bill provides no guidance.

Ultimately, of course, each BOR will have to carefully consider the evidence at its COVID hearings to determine whether such a link has been established. But because the rapid onset of the pandemic and its accompanying damage share strong parallels with tort law, we can draw from that well-established body of law to help guide the BOR as to how to determine causation.

One of the key elements that a plaintiff must prove in a tort action is the element of causation or, as it’s known in the law, “proximate cause.” Proximate cause is the link, the connection, between what the defendant did (or did not) do, and the injury or damage that occurred. Juries considering tort cases in Ohio are instructed that proximate cause “is an act or failure to act that in the natural and continuous sequence directly produced the (injury) (death) (damages) and without which the (injury) (death) (damages) would not have occurred.”²⁰ It has sometimes been called the “but for” test: but for the act (or omission) of the defendant, would the damage have occurred? As stated by the Supreme Court:

The standard test for establishing causation is the *sine qua non* or “but for” test. Thus, a defendant's conduct is a cause of the event (or harm) if the event (or harm) would not have occurred *but for* that conduct; conversely, the defendant's conduct is not the cause of the event (or harm) if the event (or harm) would have occurred regardless of the conduct.²¹

More recently, the Court has reiterated that:

Causation is established using the “but for” test. [citation omitted] A defendant's conduct is the cause of the harm if the harm would not have occurred but for the defendant's act or failure to act. [citation omitted] It is not enough for the plaintiff to assert or speculate that the defendant's actions or failure to act *might* have caused the injury. [citation omitted] There must be evidence of causation before the plaintiff's negligence claim may be submitted to the jury.²²

²⁰ See Ohio Jury Instructions, CV 405.01 Proximate cause [Rev. 2/11/17].

²¹ *Anderson v. St. Francis-St. George Hospital, Inc.*, 77 Ohio St.3d 82, 84 (1996)

²² *Rieger v. Giant Eagle, Inc.*, 157 Ohio St.3d 512, 2019-Ohio-3745, ¶ 12.

Because there are strong parallels to tort law, the “but for” test might be helpful to your BOR in determining COVID causation. But in addition to concepts in tort law, the BOR’s determination in any given case must also be guided by the well-established BOR law, discussed below, regarding the connection that must be established between allegations of damage and a property’s reduction in value. As will be shown, merely because damage has been alleged does not by force of that damage alone prove that there has been a reduction in a specific property’s value.

The Connection Between Damage to Property and Its Reduction in True Value

As stated above, COVID-related claims are closely analogous to claims involving damage to property because, like those property damage claims, they arise from the onset – often unexpected and rapid – of forces outside the normal workings of the real estate market. Fortunately, there is a well-established body of substantive law that deals with what a complainant must prove at the BOR in a property damage claim to establish the alleged reduction in true value. The law is clear that general allegations of damage to the subject property or a general decline in a neighborhood or geographic area are insufficient to prove a reduction in the subject’s true value. As stated by the BTA:

In this case, [the owner] relied on testimony of negative conditions, specifically purported issues with its shape and topography. While we acknowledge the existence of these conditions, it is unclear whether and to what extent they affect the subject’s value. “Without affirmative evidence of the property’s value or specific analysis of how the property’s condition affected its value, any evidence of defects in the property is inconsequential.”²³

There must be a direct link between the allegedly damaging conditions and the alleged reduction in the subject property’s value. According to the BTA: “A party must do more than demonstrate the existence of negative factors; a party must also *quantitatively show* the impact such factors have on the property’s value.”²⁴ (emphasis added) Further, “In the absence of an appraisal quantifying the effect of any adverse factors on the value of the property, we [the BTA] find the evidence insufficient to justify the requested reduction.”²⁵ In other words, based on this well-established law, a complainant asserting a COVID-related reduction in true value will need to quantify in dollars the amount of the reduction in value just as any complainant would have to do in the case of damage caused to a property by non-COVID events. In that regard, SB 57’s language that the complaint must do more than “allege[s] a general decline in economic or market conditions in the area...” appears to be in accordance with existing law.

²³ *Helen D. Linter, Tr v. Franklin County Board of Revision* (January 5, 2020), BTA No. 2019-328. See also

²⁴ *South-Western City Schools Board of Education v. Franklin County Board of Revision* (April 3, 2020), BTA No. 2018-2034.

²⁵ *South-Western City Schools Board of Education v. Franklin County Board of Revision* (April 3, 2020), BTA No. 2018-2034. See also the recently decided case of *David C. Henkel & Lisa C. Henkel v. Cuyahoga County Board of Revision* (May 24, 2021), BTA No. 2020-2231 (“To the extent that the property owners asserted that defects of the subject property, i.e., the damage that resulted from the water damage, they failed to quantify the specific diminution that resulted from such damage. *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, at ¶7 (“There was no evidence or testimony submitted that established how those defects might have impacted the property value such that it warranted a [] reduction. Without such evidence, the list of defects are simply variables in search of an equation.” (Internal citations omitted.) This Board has repeatedly rejected the argument that defects, not quantified by a proper appraisal, are sufficient evidence to reduce real property value.”).

This means that the complainant must forge an evidentiary connection between COVID-circumstances, or a state COVID order, and the reduction in value. Presumably, this would require evidence (1) as to how COVID *caused* the reduction in value, (2) the dollar amount of that COVID-caused reduction, and (3) how that dollar amount was calculated. As a practical matter, it may prove extremely difficult, if possible at all, for the owner of a residential property to forge such an evidentiary connection using either the sales or the cost approaches. Even showing that there has been a drop in comparable residential sales prices across a neighborhood or geographic area still does not establish the causative connection between those reductions in sales prices and COVID. There are a host of reasons why an area or region could experience a drop in prices, with COVID being only one of them.

We cannot, of course, predict the course that these hearings will take at the BOR as hearings are held and SB 57 is implemented. Nonetheless, it would appear, as a practical matter, that forging any direct link between COVID and a reduction in true value for commercial properties will likely require the opinion of an appraiser and that the appraiser's opinion will most likely rely on the income approach.

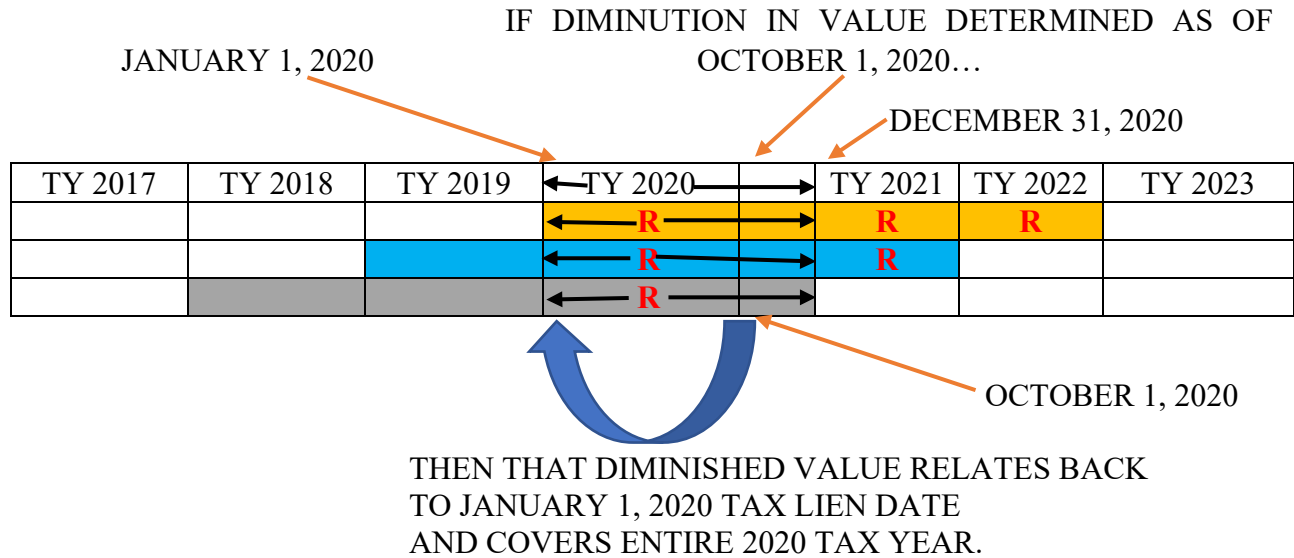
6. **QUESTION:** Does a COVID-related reduction in valuation for TY 2020 apply only starting on October 1, 2020 and moving forward from that date, or should that COVID-related reduction in valuation relate back to January 1, 2020?

SUMMARY ANSWER: While the COVID-related damage for TY 2020 should be assessed as of October 1, 2020, any reduction in value should relate back to the tax lien date, January 1, 2020.

SB 57 states that “For any [COVID] valuation complaint...for tax year 2020...the board of revision shall consider evidence of diminished true value as of October 1, 2020...” The bill further states that any adjusted value “shall apply to subsequent tax years in accordance with section 5715.19...” If the BOR determines that a COVID-related reduction of value is warranted, the bill does not specify whether that reduction would relate-back and apply to the entire tax year – starting on January 1, 2020 – or if the reduction in value would apply only to the fourth quarter (October 1, 2020 through December 31, 2020) of TY 2020, and only thereafter carry forward. Both the legislative intent and the language of the bill indicate that for TY 2020, if a COVID-related adjustment is made based on diminished value as of October 1, 2020, then that diminished value should relate back to the TY 2020 tax lien date and apply to the entire tax year.

According to Tom Pappas, it was the intent of the legislature to reduce the value for the entirety of TY 2020 if a diminution of value was found as of the October 1 date. The language of SB 57 supports that view. In applicable part, Subsection (C) of Section 3 states that if there is satisfactory evidence that a COVID-related adjustment to true value is warranted, the BOR “shall adjust the property’s true value *for that tax year* [TY 2020] to reflect that diminished valuation *as of that date* [October 1, 2020].” (italics added).

Thus, there is a two-step process. First, the BOR must determine whether there was “evidence of diminished true value as of October 1, 2020.” Just as January 1 is date on which valuation is determined under existing law, for purposes of COVID complaints under SB 57 that valuation-determination date is changed to October 1, 2020. That is the date that the value is set. If a new value as of October 1, 2020 is established, that value relates back and is used as the new value for the TY 2020 tax lien date: January 1, 2020. Charted out, it looks like this (R is a reduction in true value and the three different colored bands represent the three triennial periods which are intersected by the October 1, 2020 date):



The statute clearly states that the adjustment is “for that [the 2020] tax *year*.” It does not state that the reduction is for the last quarter of the tax year. Accordingly, the statute makes clear that any COVID-related reduction in value for TY 2020 relates back to January 1, 2020.

7. **QUESTION:** Should COVID-related complaints for tax years 2021 or 2022 use the October 1, 2020 date for valuation-reduction purposes, or should they use their respective tax lien dates – January 1, 2021 or January 1, 2022 – as the date for valuation reduction purposes?

SUMMARY ANSWER: The respective tax lien dates – January 1, 2021 and January 1, 2022 - should be used as the valuation dates for COVID-related complaints for tax years 2021 and 2022.

Section 3 of SB 57, discussed above, contains subsections (A) through (E) and deals *only* with tax year 2020.²⁶ Section 4 of SB 57 is different. It does *not* apply to TY 2020 and, instead,

²⁶ Subsection (A) of Section 3 contains definitions of various terms. Subsection (B) of Section 3 makes clear that it applies to “a valuation complaint for tax year 2020.” The remaining subsections – (C), (D), and (E) – of Section 3 also make clear that they apply only to COVID-related complaints for TY 2020. For example, subsection (C) states, in applicable part, that “For any valuation complaint filed...for tax year 2020...” Subsection (D) states that it relates to “a valuation complaint authorized under subdivision (B) of this section...” which, by definition, applies only to TY 2020. Finally, subsection (E) of Section 3 similarly indicates that it applies to “a valuation complaint authorized under division (B) of this section...”

applies only to tax years 2021 and 2022. Thus, there is a clear distinction in the applicability of Section 3 and Section 4.

Section 4 states that an eligible person “may file a valuation complaint that conforms with the requirements of this section for tax year 2021 or 2022...” regardless of whether a previous valuation complaint has been filed in the same triennial period. Further, it states that in order to qualify for the exception to the second-filing prohibition under R.C. 5715.19(A)(2), “the valuation complaint must solely request that the assessment of true value...account for any reduction in true value due to a circumstance related to the COVID-19 pandemic or a state COVID-19 order...” Section 4 also makes clear that, like those who file a COVID complaint for TY 2020, those who file a COVID-complaint for TY 2021 or 2022 must also “allege with particularity” and may not “merely allege[s] a general decline in economic or market conditions in the area...”

Unlike Section 3, Section 4 does *not* provide a special valuation-assessment date that differs from the normal tax lien date to assess the COVID-caused diminution in property value. Thus, there is no parallel in Section 4 to the October 1, 2020 special assessment date in Section 3 that applies to TY 2020. Reading Sections 3 and 4 together, it is clear that SB 57 made a one-year exception applicable only to TY 2020 to allow for a valuation assessment on a date that differs from the normal January 1 tax lien date. This makes sense, of course, because the pandemic had not yet reached Ohio as of the January 1 tax lien date for 2020 and no state COVID-19 order was issued until more than two months later. Thus, if the legislature did not alter the TY 2020 valuation assessment date from the January 1 tax lien date, then the bill would have served no purpose because there was no COVID damage as of January 1, 2020.

But that reasoning does *not* apply to the January 1 tax lien date for TY 2021; a date on which the COVID-19 pandemic was clearly impacting Ohio. Further, that reasoning also does not apply to the January 1 tax lien date for TY 2022 where the COVID-19 may still be impacting Ohio. SB 57 makes no exception in Section 4 for a different filing or valuation date for TYs 2021 and 2022, as it did for TY 2020 in Section 3. Thus, there is no reason in logic under Section 4 of SB 57 to deviate from standard practice in using the January 1 date as the valuation assessment date for both TY 2021 and TY 2022. According to Tom Pappas, the legislative intent for TYs 2021 and 2022 was to return to the standard January 1 tax lien date and the language and construction of Sections 3 and 4 of SB 57 appears to support that intent.

- _____ 6. OTHER ASPECTS OF R.C. 5715.19 – Comply with any other applicable provisions of R.C. 5715.19 pursuant to standard practice. [SB 57, Section 3(D) – “The county auditor and county board of revision *shall otherwise proceed* as provided in section 5715.19 of the Revised Code for complaints filed under this section.”]

AT THE HEARING

- _____ 7. PROCEDURAL ASPECTS OF HEARING – Conduct COVID related hearing procedurally in same manner as other valuation hearings [i.e.: complainant testimony first; opponent testimony after complainant testimony; burden of proof on complainant, etc.]

- _____ 8. SUBSTANTIVE LAW APPLICABLE TO HEARING – Consult with your county prosecutor or legal advisor. However, the complainant will have to prove with particularity: (1) how the COVID-19 circumstance or state COVID-19 order caused the reduction in value to the subject property; (2) the quantification of that damage in dollars; and (3) the manner in which that dollar amount was determined.

- _____ 9. EVIDENCE TO CONSIDER AT THE HEARING – Evidence to be considered at the hearing, particularly as it relates to the income approach to valuation, may include (but not be limited to) the following:

- a) Audited financial statements or tax returns for the owner of the real estate for calendar years 2018, 2019, and 2020.
- b) Year-to-date financial data including income and expenses, up to and including sixty (60) days prior to the hearing for calendar year 2021.
- c) An appraisal for the real property in question utilizing the authorized approaches to value.
- d) Description and amounts of any federal funds intended for support that have been received as of the date of the appeal including, but not limited to, funds received under the CARES act.
- e) A written summary report outlining and supporting the request.

POST-HEARING

- _____ 10. ISSUE WRITTEN DECISION PURSUANT TO STANDARD PRACTICE

____ 11. IF COVID-RELATED REDUCTION IS GRANTED, THEN ADJUST
THE AUDITOR'S RECORDS TO ACCOUNT FOR THE COMMENCEMENT
OF THE ADJUSTMENT (BACK TO THE TAX LIEN DATE FOR TY 2020)
AND THE CARRY FORWARD OF THAT VALUE

Senate Bill 57 (SB57):

SB57 is a response to the COVID-19 pandemic. It is a process that a property owner can seek a reduction in the true value of their property which is caused “due to a circumstance related to the COVID-19 pandemic or a state COVID-19 order.”

Further information for SB57:

- SB57 uses October 1, 2020 as the tax lien date- instead of January 1, 2020.
- Any reduction granted is for the full tax year 2020.
- A second filing in the same triennial period is permitted, i.e., file in 2021 for TY20-may file again in 2022 for TY21.
- School board notification required if difference in opinion to market value is \$50,000 or greater.

Filing details for SB57:

- Any eligible person/property owner can file a COVID complaint to the board of revision.
- For TY20, the complaint must be filed from August 3, 2021 through September 2, 2021.
- SB57 also authorizes filing COVID complaints for TY21 and TY22.

The face of DTE1 (complaint form)

- The eligible complainant **shall allege with particularity** on the complaint how COVID (or other words to that effect) caused a reduction in the true value of the property(s).
- The dollar amount of the reduction sought as a result of the above.
- To date, there is not an updated complaint form issued by DTE-Stay Tuned.

SB57 requires two elements to be proven:

- what circumstance related to the COVID-19 pandemic or a state COVID-order caused.....

AND

- the reduction in true value (need a dollar amount.)

How can these elements be proven?

Examples include, but not limited to:

1. Audited financial statements or tax returns for the owner of the real estate for calendar years 2018, 2019, and 2020.
2. Year-to-date financial data including income and expenses, up to and including sixty (60) days prior to the hearing for calendar year 2021.
3. An appraisal for the real property in question utilizing the authorized approaches to value.
4. Description and amounts of any federal funds intended for support that have been received as of the date of the appeal including, but not limited to, funds received under the CARES act.
5. A written summary report outlining and supporting the request.

**These documents submitted prior to the scheduled hearing is beneficial, but not required.

Hearing process:

- Hearings are to be conducted procedurally in the same manner as valuation hearings (i.e., complainant testimony first, opponent testimony, etc.)
- We advise each county to consult with your prosecutor or legal advisor. However, the complainant will have to prove with particularity: (1) how the COVID-19 circumstance or state COVID-19 order caused the reduction in value to the subject property; (2) the quantification of that damage in dollars; and (3) the manner in which that dollar amount was determined.

Post Hearing:

- If COVID related reduction is granted, Auditor's records adjusted to reflect all of TY2020 and the carry forward of that value.
- A written decision pursuant to standard practices sent to all parties of a complaint.

IF values are determined diminished:

IF DIMINUTION IN VALUE DETERMINED AS OF October 1, 2020

JANUARY 1, 2020

DECEMBER 31, 2020

TY 2017	TY 2018	TY 2019	← TY 2020 →	TY 2021	TY 2022	TY 2023
			← R →	R	R	
			← R →	R		
			← R →			

OCTOBER 1, 2020

THEN THAT DIMINISHED VALUE RELATES BACK TO JANUARY 1, 2020 TAX LIEN DATE AND COVERS ENTIRE 2020 TAX YEAR.

Questions (we have answers to!)

- Should a COVID complaint be dismissed if, on its face, it does not “allege with particularity” how the COVID-related circumstance or order caused the reduction in value?
- **Answer:**
- YES! There must be compliance with the “allege with particularity” language of SB 57. The board of revision shall dismiss a valuation complaint that merely alleges a general decline in economic or market conditions in that area in which the subject property of the complaint is located.

Questions (we have answers to!)

- Does a COVID-related reduction in valuation for TY 2020 apply only starting on October 1, 2020 and moving forward from that date, or should that COVID-related reduction in valuation relate back to January 1, 2020?
- **Answer:**
- While the COVID-related damage for TY2020 should be assessed as of October 1, 2020, any reduction in value should relate back to the tax lien date, January 1, 2020.

Questions (we have answers to!)

- Should COVID-related complaints TY2021 or TY2022 use the October 1, 2020 date for valuation-reduction purposes, or should they use their respective tax lien dates – January 1, 2021 or January 1, 2022 – as the date for valuation reduction purposes?
- **Answer:**
- The respective tax lien dates – January 1, 2021 and January 1, 2022 - should be used as the valuation dates for COVID-related complaints for tax years 2021 and 2022.

Your Questions

