

OHIO BOARD OF TAX APPEALS

Reynolds Avenue Transfer Station,)
)
 Appellant,)
)
 vs.) (REAL PROPERTY TAX)
)
 Franklin County Board of Revision,) DECISION AND ORDER
 Franklin County Auditor and the)
 Board of Education of the Columbus)
 City School District,)
)
 Appellees.)

APPEARANCES:

For the Appellant- Douglas K. Browell
Wiles, Boyle, Burkholder & Bringardner Co., LPA
115 West Main Street, Suite 100
Columbus, Ohio 43215

For the County Appellees- Ron O'Brien
Franklin County Prosecuting Attorney
By: Richard Hoffman
Assistant Prosecuting Attorney
373 South High Street, 20th Floor
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For the Board of Edn.- Mark H. Gillis
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Entered November 30, 2001

Mr. Johnson, Ms. Jackson, and Ms. Margulies concur.

The Board of Tax Appeals is considering this matter pursuant to a purported notice of appeal filed by the appellant, Reynolds Avenue Transfer Station. Appellant

attempts to appeal from a decision of the Franklin County Board of Revision (BOR) that determined the value of the subject real property for tax year 1999. The property is located in the City of Columbus – Columbus City school district and is identified on the Auditor’s records as parcel number 010-36349.

On April 18, 2001, counsel for the county appellees filed the following motion:

“Now comes Appellee, the Franklin County Auditor and the Franklin County Board of Revision, and moves this Board to dismiss the notice of appeals [sic] filed herein by Appellant, Reynolds Avenue Transfer Station, on the grounds that the Board lacks jurisdiction over these appeals. Specifically, Appellant did not file a copy of the notice of appeal for the case with the Franklin County Board of Revision or with this Board within 30 days of the date the decision was mailed, as required by R.C. 5717.01. ***”

An evidentiary hearing was held in this matter on June 7, 2001. Mike Varney, controller of Republic Services of Ohio IV, LLC (Republic Services), appeared at this hearing and testified on appellant’s behalf. Appellant is a subsidiary of Republic Services. Counsel for the Board of Education of the Columbus City School District (BOE) and counsel for the county appellees were also present at this hearing.

Subsequent to the hearing, this Board received an entry of appearance from counsel for appellant, as well as a request that a briefing schedule be assigned in this matter. This request was granted. Accordingly, this matter is submitted upon the purported notice of appeal, the statutory transcript certified by the Auditor pursuant to R.C. 5717.01, the record of the evidentiary hearing and the briefs filed on behalf of the parties.

The record reflects that on February 9, 2000 counsel for the BOE filed a complaint with the BOR, seeking to increase the value of the subject property to reflect the price paid in a recent sale of the property. The Franklin County Auditor sent notice of this complaint to the property owner, Republic Services, on March 8, 2000. A hearing was

scheduled before the BOR on May 15, 2000. Notice of this hearing was sent to the property owner by letter dated April 21, 2000. According to the certified mail receipt, the property owner received the hearing notification on May 3, 2000. However, no appearance was made on behalf of the property owner at the May 15, 2000 BOR hearing. At this hearing, the BOR orally rendered its decision to increase the value of the property to reflect the price paid in the February 1999 sale of the property.

On May 16, 2000, the BOR vacated its decision and ordered that a new hearing be held in this matter. On May 17, 2000, the BOR sent notice to the property owner that a new hearing would be held on June 13, 2000. The property owner received this second hearing notification on May 19, 2000. However, the property owner again failed to appear at the scheduled hearing and the BOR rendered a second decision wherein the value of the subject property was increased to reflect the price paid in the February 1999 sale of the property. This decision was mailed to the property owner by certified mail on June 16, 2000, and the return receipt indicates that the property owner received this decision on June 19, 2000. Appellant filed the subject appeal with this Board on March 29, 2001.

Mr. Varney testified that, based upon conversations with a member of the BOR, he was under the impression that the case before the BOR was still “open” and that another hearing would be scheduled. At the hearing before this Board, Mr. Varney submitted a copy of a scheduling letter sent from the BOR to the property owner on January 29, 2001. According to this letter, the BOR scheduled a subsequent hearing in this matter on February 22, 2001. In addition, Mr. Varney submitted a copy of a BOR hearing docket for February 22, 2001. According to this document, Republic Services of Ohio Hauling, LLC was scheduled for a hearing on February 22, 2001, together with a case other than the one involved in this matter. The statutory transcript does not support the claim that this matter remained open after issuance of the BOR’s decision letter of June 16, 2000. The subsequent hearing notice was issued in error and is a nullity.

R.C. 5717.01 provides the jurisdictional requirements necessary to perfect an appeal from a decision of a county board of revision:

"An appeal from a decision of a county board of revision may be taken to the board of tax appeals *within thirty days after notice of the decision of the county board of revision is mailed* as provided in section 5715.20 of the Revised Code. Such an appeal may be taken by the county auditor, the tax commissioner, or any board, legislative authority, public official, or taxpayer authorized by section 5715.19 of the Revised Code to file complaints against valuations or assessments with the auditor. Such appeal shall be taken by the filing of a notice of appeal, either in person or by certified mail, with the board of tax appeals and with the county board of revision. ***" (Emphasis added)

The Board of Tax Appeals is a creature of statute. In this regard, we must strictly comply with any jurisdictional requirements set by the statutes of this state. *Austin Co. v. Cuyahoga Cty. Bd. of Revision* (1989), 46 Ohio St.3d 192. See, also, *Fineberg v. Kosydar* (1975), 44 Ohio St.2d 1; *Zephyr Room, Inc. v. Bowers* (1955), 164 Ohio St. 287.

Upon consideration of the entire record before us, we find and determine, as a matter of fact, that the appellant did not file a copy of its notice of appeal with this Board within the time prescribed by R.C. 5717.01. The appellant's factual situation, while sympathetic, cannot excuse its late filing. The statutory requirements must be met for this Board to exercise jurisdiction.

The facts of this case are similar to *Loveland Park Baptist Church v. Kinney* (May 25, 1983), Warren App. No. 126, unreported. In that appeal, a church had filed an exemption request with the Tax Commissioner. The request was eventually denied. The pastor of the church, after contacting a representative of the Tax Commissioner's office, believed that the Commissioner's representatives were completing the steps necessary to perfect his appeal. It was only later that he learned that his appeal had not been filed with this Board. The pastor then filed an appeal, but it was dismissed because it was filed

outside the statutory window. The church appealed to the Twelfth District Court of Appeals, where the dismissal was affirmed. The Court of Appeals held:

“The pastor of the Loveland Park Baptist Church contends that he was confused and misled by the public officials as to what steps he needed to pursue to appeal the order of the Commissioner. He stated he was under the impression that the matter was being taken care of by the public officials. A year later, he learned he was mistaken and hence, filed the untimely appeal to the Board of Tax Appeals. The appellant is, in effect, arguing collateral estoppel. Even assuming arguendo that there were verbal misrepresentations, there is no provision for extending the time for an appeal on the grounds that the public officials made confusing and misleading statements inasmuch as collateral estoppel does not apply to the State with regard to a taxing statute. *Ormet Corp. v. Lindley* (1982), 69 Ohio St. 2d 263; *American Handling Co. v. Kosydar* (1975), 42 Ohio St. 2d 150 (collateral estoppel does not apply to confusing or misleading statements made by the Commissioner and his agents).”

Further, in *Psathas v. Cuyahoga Cty. Bd. of Revision* (Jan. 12, 2001), B.T.A. No. 00-M-1471, unreported, this Board rejected arguments similar to those advanced herein. In that case, a contact person at the county board of revision allegedly made representations that a second hearing on appellants’ complaint might be possible. The appellants argued that they relied upon this representation and, therefore, missed the thirty-day filing period with this Board. Relying upon the above-quoted statutes and case law, this Board granted the appellees’ motion to dismiss and held:

“The actions of an employee of the BOR, no matter how well-meaning, confusing or misleading, do not serve to excuse the untimely filing.”

As set forth above, the decision of the BOR was mailed to the appellant herein on June 16, 2000. However, appellant did not file its notice of appeal with this

Board until March 29, 2001. Since the record reveals that appellant failed to timely file its notice of appeal with this Board, and strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this Board, we find this Board has no jurisdiction to consider this appeal.¹

Based upon the foregoing, the Board of Tax Appeals finds that it is without jurisdiction to consider the merits of the subject appeal. Therefore, the Board determines that this matter should be dismissed.

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¹ As a final matter, at the hearing before this Board, counsel for the BOE moved this Board to dismiss this appeal, citing *Buckeye Boxes, Inc., Columbus Cello-Poly Corp. v. Franklin Cty. Bd. of Revision* (1992), 78 Ohio App.3d 634. According to counsel for the BOE, the appellant does not have standing to file this appeal because it did not file a complaint in this case and has never been a party to the action. Having already determined that we do not have jurisdiction to consider appellant's appeal, this issue is now moot.