

OHIO BOARD OF TAX APPEALS

Joseph and Diane Tucker,)	CASE NO. 2004-V-714
)	
Appellants,)	
)	(REAL PROPERTY TAX)
vs.)	
)	
Erie County Board of Revision, and the)	DECISION AND ORDER
Erie County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellants	-	Joseph A. Tucker, pro se Diane L. Tucker, pro se 13411 Meadow Lane Vermilion, OH 44089
For the County Appellees	-	Kevin J. Baxter Erie County Prosecuting Attorney 247 Columbus Avenue Suite 319 Sandusky, OH 44870

Entered October 1, 2004

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

This appeal is now considered by the Board of Tax Appeals following an interim order issued by this board requiring appellants to show cause as to why the instant appeal should not be dismissed.

A review of the statutory transcript and the notice of appeal indicates that the original complaint, seeking a decrease in the auditor's valuation of the subject parcel, was filed by appellants. In its decision, the Erie County Board of Revision ("BOR") determined that the subject property's 2003 valuation should be decreased

from \$276,810 to \$263,590. Dissatisfied with this result, appellants filed a notice of appeal before this board.

In the instant case, a review of the notice of appeal indicates that it was docketed by this board consistent with the certified mailing date postmarked August 10, 2004. The statutory transcript (“S.T.”) certified to this board by the BOR indicates that the decision was mailed by the BOR to the appellants via certified mail on July 8, 2004. S.T. at tab 4.

Further, a review of the record before us shows that the BOR decision was mailed by the BOR thirty-three (33) days before the appeal was filed with this board.

Section 5717.01 provides:

“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, in person or by certified mail, express mail, or authorized delivery service, with the board of tax appeals and with the county board of revision. If notice of appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 [5703.05.6] of the Revised Code, 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 shall be treated as the date of filing.”
(Emphasis added.)

In their response to this board’s order, the appellants explain that they mistakenly filed a second complaint before the BOR, intending to appeal the BOR’s

decision of July 8, 2004. After realizing their error, appellants filed the instant appeal, albeit untimely.

The Ohio Supreme Court has consistently held that the requirements of R.C. 5717.01 are mandatory, and that compliance therewith is essential to vest jurisdiction in the Board of Tax Appeals. *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68. Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision* (1989), 46 Ohio St.3d 192. See, also, *Mentor Exempted Village School Dist. Bd. of Edn. v. Lake Cty. Bd. of Revision* (1980), 61 Ohio St.2d 332; *Cleveland City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1973), 34 Ohio St.2d 231.

Although we sympathize with appellants' unfamiliarity with the appeal process, we are constrained to follow the mandatory requirements of R.C. 5717.01. Therefore, we conclude that such notice of appeal is untimely and insufficient to invoke the jurisdiction of this board. Considering the record before us, it is the decision and order of the Board of Tax Appeals that this matter be dismissed.

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