

**OHIO BOARD OF TAX APPEALS**

Board of Education of the Olentangy )  
Local Schools, )  
 ) CASE NO. 2006-A-1506  
 Appellant, )  
 ) (REAL PROPERTY TAX)  
 vs. )  
 ) ORDER  
 Delaware County Board of Revision, )  
 Delaware County Auditor, and Rich’s ) (Denying Motion to Dismiss)  
 Department Stores, Inc., )  
 )  
 Appellees. )

APPEARANCES:

For the Appellant - Rich, Crites & Dittmer, LLC  
Mark H. Gillis  
300 East Broad Street, Suite 300  
Columbus, Ohio 43215

For the County Appellees - David Yost  
Delaware County Prosecuting Attorney  
140 North Sandusky Street  
Delaware, Ohio 43015

For the Appellee Property Owner - Karen H. Bauernschmidt Co., LPA  
Karen H. Bauernschmidt  
1370 West 6<sup>th</sup> Street, Suite 200  
Cleveland, Ohio 44113

Entered January 5, 2007

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

This appeal is now considered by the Board of Tax Appeals following the receipt of a motion to dismiss from the appellee property owner. Specifically, the

motion provides:

“Now comes one of the Appellees, Rich’s Department Stores, Inc., \*\*\* and pursuant to O.A.C. 5717-1-12, moves this Board to dismiss the Board of Education’s appeal for failing to incur the jurisdiction of the Board of Tax Appeals. The appeal filed by the Board of Education is jurisdictionally defective. The Board of Education failed to timely file its Notice of Appeal with the Delaware County Board of Revision as required by §5717.01.”

Rich’s further amplified its motion to dismiss in its reply to the BOE’s response to its original motion, arguing:

“(1) the BOE never filed a copy of this appeal with the Delaware County Board of Revision as required under R.C. §5717.01; (2) there is no way to link the U.S. Postal Service Certified Mail Receipt and Return Receipt to the cover letter provided by the BOE since there are no references in the letter as to the Certified Mail Article Number; and (3) there is no way to ascertain<sup>1</sup> whether the subject appeal was included in the envelope mailed to Todd Hanks using the U.S. Postal Service Certified Mail Receipt and Return Receipt provided by the BOE.”

The statutory requirements of R.C. 5717.01 provide in pertinent part, as follows:

“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 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 \*\*\* the date of the United

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<sup>1</sup> Outside the representations made by the board of revision in its certification of the statutory transcript to this board, there is no way to ever definitively determine what, if anything, is included in a particular envelope mailed to a board of revision. If a board of revision represents that it received a specific filing in a particular envelope, then, without some basis to question such representation, we find no reason to question the veracity of the board of revision’s certification.

States postmark placed on the sender's receipt by the postal service \*\*\* shall be treated as the date of filing. \*\*\*" (Emphasis added.)

Specifically, the board of revision decision from which the appellant took its appeal was mailed to all parties on September 13, 2006. Therefore, in order for the subject notice of appeal to have been timely filed with the board of revision, it must have been deemed filed on or before October 13, 2006.<sup>2</sup> The appellee property owner filed the instant motion as a result of the date stamp placed upon the copy of the board of education's notice of appeal filed with the board of revision, i.e., October 16, 2006.

In response to said motion, the appellant board of education provided a copy of the cover letter and associated green cards from the certified mailing of the subject notice of appeal to the board of revision, indicating a certified mail postmark date for the notice of appeal of October 12, 2006. Further, in the statutory transcript certified to this board by the county board of revision, a copy of the envelope in which the board of education's notice of appeal was mailed indicates the same certified mail receipt number as that provided by appellant's counsel and the same mailing date of October 12, 2006. S.T. at Ex. 7. Thus, the envelope, which the BOR certified contained the subject notice of appeal, and the certified mail receipts, which the BOE indicated were attached to the mailing of the subject notice of appeal, are linked by the same certified mail receipt number. The property owner claims that there needs to be a link between the certified mail receipt number and the cover letter; however, we

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<sup>2</sup> October 12, 2006 is the date on which appellant's notice of appeal was deemed filed with this board.

disagree. The cover letter is separate and distinct from the notice of appeal and does not constitute the actual notice of appeal; in establishing jurisdiction, we are concerned with the notice of appeal and find that what the cover letter sets forth is not determinative of the instant motion.

We acknowledge that the jurisdictional concerns that have been raised stem from the board of revision's failure to attribute a constructive filing date to the BOE's notice of appeal as required by R.C. 5717.01. However, regardless, based upon the entire record, it is indisputable that the board of education made a timely filing by certified mail with the board of revision.<sup>3</sup>

The property owner further argues that the BOE has not established jurisdiction with this board because it filed its notice of appeal with the county auditor instead of the board of revision. However, this board has previously stated, and the Supreme Court acknowledged, that "[a]lthough R.C. 5717.01 expressly requires the filing of a notice of appeal 'with the county board of revision,' there is no specific statutory provision expressly stating how or with whom such physical filing is to be accomplished or effectuated, although it is clear from various statutory provisions that the county auditor is charged with various administrative activities on behalf of the entity known as the county board of revision." *Phoenix Dye Works v. Cuyahoga Cty. Bd. of Revision* (Sept. 6, 1985), BTA No. 1984-D-660, unreported. See, also, *Salem Medical Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision* (1998), 80 Ohio St.3d

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<sup>3</sup> We note that the board of revision also failed to attribute a constructive filing date to the property owner's notice of appeal filed with the board of revision in this matter. The date of filing with the BOR is listed as October 13, 2006, instead of the constructive date of October 10, 2006.

621. Not unlike the appellant in *Phoenix*, supra, the BOE herein transmitted its notice of appeal to the county auditor with a cover letter clearly identifying the BOR case from which it was appealing. Just as we determined in *Phoenix*, “the Board of Tax Appeals finds and determines, upon the record, that the delivery of the notice of appeal to the \*\*\* County Auditor, who is a member of the \*\*\* County Board of Revision, with a letter identifying the particular board of revision case and case number, and asking that the notice of appeal be accepted for filing, constitutes substantial compliance with the statutory filing requirement of R.C. 5717.01.”

The requirements of R.C. 5717.01 are specific and mandatory in nature. When a statute confers the right of appeal, adherence to the terms and conditions set forth therein is essential to the enjoyment of the right conferred. *American Restaurant and Lunch Co. v. Glander* (1946), 147 Ohio St. 147. The statutory requirements for filing a notice of appeal from a decision of a county board of revision are mandatory and jurisdictional. *Bd. of Edn. of Mentor v. Bd. of Revision* (1980), 61 Ohio St.2d 332. As strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board, and since the record clearly demonstrates that appellant filed its notice of appeal with the county board of revision within 30 days of the mailing of the decision letter issued by the board of revision, the Board of Tax Appeals finds that it has jurisdiction to consider the instant matter. See *Bd. of Edn. of the Cleveland Municipal School District v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Dec. 29, 2006), BTA No. 2006-V-1370, unreported.

Accordingly, it is the order of the Board of Tax Appeals that the appellee property owner's motion to dismiss be denied.

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