

**OHIO BOARD OF TAX APPEALS**

James McCabe, )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 Franklin County Board of Revision, )  
 Franklin County Auditor, and Board of )  
 Education of the Hilliard City Schools )  
 District, )  
 Appellees. )

CASE NO. 2007-A-1692  
(REAL PROPERTY TAX)  
DECISION AND ORDER

APPEARANCES:

For the Appellant - James McCabe, pro se  
2910 Scioto Darby Executive Court  
Hilliard, Ohio 43026

For the County Appellees - Ron O'Brien  
Franklin County Prosecuting Attorney  
Paul M. Stickel  
Assistant Prosecuting Attorney  
373 South High Street, 20<sup>th</sup> Floor  
Columbus, Ohio 43215

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

Entered April 14, 2009

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

This appeal is now considered by the Board of Tax Appeals following the issuance of an order “that appellant show cause why this board should not remand

the instant appeal to the Franklin County Board of Revision with instructions to dismiss the underlying decrease complaint for failure to file such complaint with the BOR in a timely fashion.” This matter is now determined based upon the response to such order filed by the taxpayer, as well as the remainder of the record before the board, including the statutory transcript, certified to this board by the county board of revision.

The appellant has appealed from a decision of the Franklin County Board of Revision in which it had determined the taxable value of the subject real property for tax year 2006. However, there is a question whether the BOR properly exercised jurisdiction over the decrease complaint filed by appellant because it appears that appellant’s complaint for tax year 2006 was filed after the statutory deadline for doing so, i.e., March 31, 2007.

Specifically, appellant filed his original decrease complaint for tax year 2006 on June 19, 2007. In consideration of whether such filing was timely, we refer to R.C. 5715.19, which sets forth the period within which a complaint must be filed in order to timely contest a county auditor’s determination of taxable value of real property. Specifically, R.C. 5715.19(A) provides in pertinent part:

“(1) Subject to division (A)(2) of this section, a complaint against any of the following determinations for the *current tax year* shall be filed with the county auditor *on or before the thirty-first day of March of the ensuing tax year* \*\*\*:

“ \*\*\*

“(d) The determination of the total valuation or assessment of any parcel that appears on the tax list \*\*\*.” (Emphasis added.)

In response to this board's order, Mr. McCabe indicated that "[t]he reason for the late filing was that I didn't receive a notice concerning the results of the hearing on the valuation for 2005 taxes and therefore didn't know of the property valuation for the 2006 year until I received my tax bill in June. I was told \*\*\* that since I hadn't received notification, I should file a complaint form which she would send me for the 2006 tax year."

Based upon the foregoing, it appears that Mr. McCabe blames his late filing for tax year 2006 on the fact that he did not receive notice of the BOR's decision regarding the subject property for tax year 2005. According to statements made at the BOR hearing, the school board apparently previously filed complaints against the subject property for tax years 2003 and 2005. S.T., Ex. 9. It is not clear from the record when those determinations were rendered by the BOR for tax years 2003 and 2005 and/or whether appellant was properly notified of such determinations. However, regardless of any alleged deficiencies, this board does not have jurisdiction to consider and rule upon such arguments due to the untimely filing of the instant complaint. Cf. *Cincinnati Sch. Dist. Bd. of Educ. v. Hamilton Cty. Bd. of Revision* (2000), 87 Ohio St.3d 363.

Further, if it is appellant's contention that he simply followed the BOR employee's instructions for filing the instant appeal, we note that estoppel does not apply against the state, even where an employee makes a misleading or confusing statement. See *Reynolds Avenue Transfer Station v. Franklin Cty. Bd. of Revision* (Nov. 30, 2001), BTA No. 2001-S-217, unreported. Additionally, the fact that a

representative of the BOR's office may have given incorrect information does not assist the appellant in vesting jurisdiction. "The actions of an employee of the BOR, no matter how well-meaning, confusing or misleading, do not serve to excuse the untimely filing." *Psathas v. Cuyahoga Cty. Bd. of Revision* (Jan. 12, 2001), BTA No. 2000-M-1471, unreported. An untimely filing by the appellant is not curable by suggesting that the BOR failed to give accurate information. See, also, *Salama v. Cuyahoga Cty. Bd. of Revision* (Nov. 9, 2007), BTA No. 2007-V-450.

Given the uncontroverted record before us, we necessarily conclude that appellant did not file his decrease complaint for tax year 2006 in a timely manner with the BOR, thus failing to invoke the jurisdiction of the BOR. Cf. *MF Real Estate Partners LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 22, 2006), BTA No. 2006-A-1097, unreported; *Wenz v. Wood Cty. Bd. of Revision*, Wood App. No. WD-03-072, 2004-Ohio-2781. Accordingly, it is the order of this board that the instant appeal be remanded to the Franklin County Board of Revision with instructions to dismiss the underlying decrease complaint for failure to file such complaint with the BOR in a timely fashion.

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