

OHIO BOARD OF TAX APPEALS

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| Houseworks Property Management, Co., LTD., |) | CASE NO. 2007-B-1205 |
| |) | |
| Appellant, |) | (REAL PROPERTY TAX) |
| |) | |
| vs. |) | DECISION AND ORDER |
| |) | |
| Hamilton County Board of Revision, and the Hamilton County Auditor, |) | |
| |) | |
| Appellees. |) | |

APPEARANCES:

| | | |
|--------------------------|---|--|
| For the Appellant | - | James L. Nieberding, Esq. Attorney at Law 1117 Broadway Street, 2d Floor Cincinnati, Ohio 45227 |
| For the County Appellees | - | Joseph T. Deters Hamilton County Prosecuting Attorney Thomas Scheve Assistant Prosecuting Attorney 230 East Ninth Street, Suite 4000 Cincinnati, Ohio 45202 |

Entered March 24, 2009

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

On January 20, 2009, an order was issued requiring appellant to show cause as to why this matter should not be dismissed for failure to timely file the notice of appeal. Appellant's response was filed herein on February 5, 2009.

R.C. 5717.01 provides, in relevant 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.* *** ” (Emphasis added.)

The notice of appeal indicates that the Hamilton County Board of Revision (“BOR”) mailed the appellant its decision on September 24, 2007. The notice of appeal filed with this board was docketed on October 22, 2007. However, the statutory transcript states that the notice of appeal was filed with the BOR on October 25, 2007, beyond the statutorily mandated deadline.

In its February 5, 2009 brief, appellant states that it filed its notice of appeal by certified mail with the Board of Tax Appeals (“BTA”) on October 22, 2008.¹ However, it indicates that its filing with the BOR was “via Ordinary US Mail” [sic] on October 22, 2008. Further, it contends that “OAC 5717-1-05(C) provides that *service by mail is complete upon mailing*, and effective upon the third day following mailing. Upon completion of mailing of notice of appeal, in accordance with provisions of OAC 5717-1-05, notice of appeal was filed with Board of Revision on that date of mailing, and deemed effective three days thereafter, October 24, 2008.” *Id.* at 2.

We cannot agree. Appellant’s cited code section refers to “all motions or pleadings, briefs, papers and other documents filed with the board *subsequent* to the notice of appeal” and service “upon the counsel of record or the parties,” not the filing of a notice of appeal with the BOR or BTA. (Emphasis added.) Ohio Adm. Code

¹ Appellant mistakenly states 2008 in its brief whereas the correct year is 2007.

5717-1-05(A).

In *Wolpert v. Butler Cty. Bd. of Revision* (Dec. 27, 1993), BTA No 1992-

R-898, unreported, we stated as follows:

“R.C. 5717.01 expressly requires that a notice of appeal be filed in person or by certified mail with the Board of Tax Appeals and with the county board of revision. When certified mail is used, the postmark of that mailing shall be treated as the date of filing. While the statute makes no provision for a notice sent by ordinary mail, the use of ordinary mail is generally permitted; provided, however, that the sender anticipates and takes precautions against the normal time delays and takes the risk of possible loss in ordinary mail delivery. The general rule is that the date of actual receipt of ordinary mail shall constitute the date of filing.

“***

“The date of the board of revision’s receipt of its copy of a notice of appeal to the Board of Tax Appeals is considered the date of filing where such notice of appeal is mailed by ordinary mail instead of certified mail. *Singh v. Franklin Cty. Bd. of Revision* (Apr. 15, 1986), [BTA No. 1985-E-771], unreported; *Schmaeman v. Cuyahoga Cty. Bd. of Revision* (Mar. 15, 1991), [BTA No. 1990-C-258], unreported. In such a case, ‘filing’ requires actual delivery into the official custody and control of the county board of revision. *Fulton v. State, ex rel. General Motors Corp.* [(1936), 130 Ohio St. 494, 500.]” *Id.* at 4-5.

The record before us reflects that the appellant’s notice of appeal was filed with the BOR on October 25, 2007. This is one day beyond the 30-day statutory deadline.

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. *Am. 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 we find that appellant did not file its notice of appeal with the BOR within thirty days of the September 24, 2007 mailing of the decision letter issued by the BOR, the Board of Tax Appeals does not have jurisdiction to consider the instant matter. See *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68.

Accordingly, it is the order of the Board of Tax Appeals that the above-styled matter must be, and is, dismissed.

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