

OHIO BOARD OF TAX APPEALS

Consortium for Economic & Community Development, Incorporated,)	CASE NO. 2007-H-1217
)	
Appellant,)	(REAL PROPERTY TAX EXEMPTION)
)	
vs.)	DECISION AND ORDER
)	
Richard A. Levin, Tax Commissioner of Ohio,)	
)	
Appellee.)	

APPEARANCES:

For the Appellant	-	Consortium for Economic & Community Development, Inc. James Earl, Executive Director 8610 Hough Avenue Cleveland, Ohio 44106
For the Appellee	-	Richard Cordray Attorney General of Ohio Sophia Hussain Assistant Attorney General State Office Tower, 25 th Floor 30 East Broad Street Columbus, Ohio 43215

Entered June 16, 2009

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

This matter is before the Board of Tax Appeals upon a motion to affirm filed by the appellee Tax Commissioner based on the notice of appeal of the appellant Consortium for Economic & Community Development, Incorporated (“CECD”). The commissioner’s final determination states, in relevant part, as follows:

“This is the final determination of the Tax Commissioner on an application for exemption of real property from taxation filed on August 19, 2004. The agent examiner in this matter issued a recommendation on July 23, 2007,

recommending that the application be denied, to which the applicant did not respond with objections.

“On June 5, 2007, a letter was mailed to the applicant requesting additional information about this property. The applicant did not respond to that request and has not provided additional information about the use of this property. Pursuant to R.C. 5715.271 the property owner has the burden of proof to show that its property is entitled to exemption.

“Based on the information available to the Tax Commissioner, the Tax Commissioner finds that the property described in the application is not entitled to be exempt from taxation and the application is therefore denied for tax years 2004, 2005 and 2006. The Tax Commissioner further orders that penalties charged through the date of this determination be remitted.” Statutory transcript at 1.

The notice of appeal specifies the following alleged error in the commissioner’s final determination:

“We believe that the property listed does qualify for tax exemption as it houses and is owned by the Consortium for Economic and Community Development. The agency has been declared a 501(c)(3) by the Internal Revenue Service since 2002. Enclose[d] you will find a copy of the agency bylaws, the articles of incorporation and the determination of tax exempt status from the IRS.”

From the above notice of appeal, the commissioner asserts that the sole issue of error specified for this board’s review is whether the subject property is entitled to a presumption of exemption based on CECD’s status as a federally tax-exempt entity. The commissioner argues that even if this board finds CECD is a tax exempt non-profit organization, that finding alone would not result in property exemption. The commissioner asserts that we are jurisdictionally limited to a review of only the error stated, since “a notice of appeal does not confer jurisdiction [on this

board] to resolve an issue unless that issue is clearly specified in the notice of appeal.” Motion at 8, citing *Cleveland Elec. Illum. Co. v Lindley* (1982) 69 Ohio St.2d 71, 75.

This matter is now submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript (“S.T.”) certified to the board by the Tax Commissioner, and the motion. CECD did not file a response to the commissioner’s motion.

R.C. 5717.02 sets forth the requirements that must be met in order to appeal a final determination of the Tax Commissioner to the Board of Tax Appeals. Specifically, R.C. 5717.02 directs appellants to attach a copy of the commissioner’s final determination to notices of appeal and to “specify the errors therein complained of.”

CECD meets the first requirement of R.C. 5717.02 by attaching and incorporating the final determination in its notice of appeal. However, we find that the only alleged error specified in the notice of appeal relates to a determination of appellant’s status as a tax exempt non-profit organization. We agree that simply finding CECD to be a tax exempt non-profit organization would not necessarily entitle its property to exemption. See *Northeast Ohio Psychiatric Institute v. Wilkins*, (Dec. 14, 2007), BTA No. 2005-M-1683, unreported, affirmed 121 Ohio St.3d 292, 2009-Ohio-583 (holding “for purposes of real estate tax exemption, a corporation must be more than non profit; it must meet one of the definitions found in R.C. Chapter 5709); *Rehab Project v. Tracy* (May 23, 1997), BTA No. 1995-R-418, unreported (holding that “although [the entity] is a not-for-profit institution, that alone does not make it a charitable [entity entitled to exemption]”).

Moreover, the requirement to specify each error in a notice of appeal to this board is mandatory. *Satullo v. Wilkins*, 111 Ohio St.3d 399, 2006-Ohio-5856, at ¶23. “For more than 50 years, this court’s decisions interpreting the specificity requirement of R.C. 5717.02 have made clear that a notice of appeal filed with the BTA must explicitly and precisely recite the errors contained in the Tax Commissioner’s final determination.” *Cousino Constr. Co. v. Wilkins*, 108 Ohio St.3d 90, 2006-Ohio-162, at ¶41. Therefore, under R.C. 5717.02, a notice of appeal does not confer jurisdiction on this board to resolve an issue, unless that issue is clearly specified in the notice of appeal. *Lovell v. Levin*, 116 Ohio St.3d 200, 2007-Ohio-6054, at ¶35.

Beyond the issue of its federal tax exempt status, we cannot conclude that CECD’s notice of appeal clearly “specified” any other error “complained of.” A party appealing from the commissioner’s determination must set forth its specific argument. The notice of appeal filed by CECD set forth no specific law or argument as to why property exemption should be granted based on commissioner error. Accordingly, the board finds that the appellant’s notice of appeal fails to specify the error complained of in the Tax Commissioner’s final determination. Following the statutes and case law in this matter, the board is therefore constrained to find that the commissioner’s motion to affirm must be, and hereby is, granted.

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