

OHIO BOARD OF TAX APPEALS

Liberty West, LLC,)
)
 Appellant,) (CASE NO. 2007-M-1361
) (REAL PROPERTY TAX)
)
 vs.) ORDER
)
 Butler County Board of Revision and the) (Requiring Appellant to Show Cause)
 Butler County Auditor,)
)
 Appellees.)

APPEARANCES:

For the Appellant - Brandabur, Bowling & Crehan Co., LPA
 Michael J. Brandabur
 315 South Monument Avenue
 Hamilton, Ohio 45011

For the County Appellees - Robin N. Piper
 Butler County Prosecuting Attorney
 Bob Roberts
 P.O. Box 515
 Hamilton, Ohio 45012

Entered May 19, 2009

This matter is before the Board of Tax Appeals pursuant to a review of appeals pending upon the board’s docket. It appears from the notice of appeal and the statutory transcript submitted by the Butler County Auditor as secretary of the Butler County Board of Revision (“BOR”), that the appeal filed may not vest jurisdiction with this board.

R.C. 5717.01 provides the authority of the Board of Tax Appeals to hear determinations from a board of revision. That statute provides an appeal from a county board of revision may be taken within 30 days after the decision is mailed. The appellant in this matter, Liberty West LLC, attached to its notice of appeal a letter

on Butler County Board of Revision letterhead. The letter was signed by a deputy auditor and indicated that a clerical error had been corrected because improvements had been added to an incorrect parcel. The letter identified the authority for the correction as R.C. 319.36. However, that statute provides for the refund of taxes erroneously collected. The authority to correct clerical errors is found in R.C. 319.35, which provides:

“From time to time the county auditor shall correct all clerical errors the auditor discovers in the tax lists and duplicates in *** the description of lands or other property, the valuation or assessment of property *** or in the amount of such taxes or assessment, and shall correct the valuations or assessments on the tax lists and duplicates agreeably to amended, supplementary, or final assessment certificates. If the correction is made after a duplicate is delivered to the county treasurer, it shall be made on the margin of such list and duplicate without changing any name, description, or figure in the duplicate, as delivered, or in the original tax list, which shall always correspond exactly with each other.

“For the purposes of this section and section 319.36 of the Revised Code, a clerical error is an error that can be corrected by the county auditor from the inspection or examination of documents in the county auditor’s office or from the inspection or examination of documents that have been presented to the county auditor and have been recorded by the county recorder. Except as otherwise provided by law, any error in the listing, valuation, assessment, or taxation of real property other than a clerical error constitutes a fundamental error and is subject to correction only by the county board of revision as provided by law.”

The manner by which the value is increased is found in R.C. 319.40, which provides:

“When the county auditor is satisfied that lots or lands on the tax list or duplicate have not been charged with either the county, township, municipal corporation, or school district tax, he shall charge against it all such omitted tax for the preceding years, not exceeding five years, unless in the meantime such lands or lots have changed ownership, in which case only the taxes chargeable since the last change of ownership shall be so charged.”

The duties of the Board of Tax Appeals are prescribed in R.C. 5703.02,

which provides:

“There is hereby created the board of tax appeals, which shall exercise the following powers and perform the following duties:

“(A) Exercise the authority provided by law to hear and determine all appeals of questions of law and fact arising under the tax laws of this state in appeals from decisions, orders, determinations, or actions of any tax administrative agency established by the law of this state, including but not limited to appeals from:

“***

“(2) Decisions of county boards of revision;”

The letter received by the appellant was on board of revision stationery. However, the actions taken appear to be those of the county auditor pursuant to R.C. 319.35. The Board of Tax Appeals is an administrative agency. Manifestly, strict compliance with the tax laws of this state is essential to vest jurisdiction upon this board. *Zephyr Room Inc. v. Bowers* (1955), 164 Ohio St. 287; *Fineberg v. Kosydar* (1975), 44 Ohio St.2d 1; *Clippard Instrument v. Lindley* (1977), 50 Ohio St.2d 71.

The Board of Tax Appeals board must question the statutory authority upon which jurisdiction vests. Therefore, it is the order of this board that the

appellant show cause why this board should not dismiss the appeal before it. Any party wishing to be heard upon the legal sufficiency of the notice of appeal to establish jurisdiction shall file a written response within twenty-one (21) days of the issuance of this order. The matter is currently scheduled for hearing on June 10, 2009 at 1:30 p.m. That hearing is cancelled pending determination on the jurisdictional issue identified above.

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