

**OHIO BOARD OF TAX APPEALS**

Arlington Towers Company, )  
 )  
 Appellant, ) (CASE NO. 2007-Z-1365  
 ) (REAL PROPERTY TAX)  
 vs. ) DECISION AND ORDER  
 )  
 Clark County Board of Revision and )  
 Clark County Auditor, )  
 )  
 Appellees. )

APPEARANCES:

For the Appellant - Vorys, Sater, Seymour and Pease LLP  
Raymond D. Anderson  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008

For the County Appellees - Stephen A. Schumaker  
Clark County Prosecuting Attorney  
William D. Hoffman  
Assistant Prosecuting Attorney  
50 East Columbia Street  
P.O. Box 1608  
Springfield, Ohio 45501

Entered January 13, 2009

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a motion to remand filed with this board by the appellant. In its motion to remand, the appellant is seeking an order from this board remanding the instant matter to the Clark County Board of Revision (“BOR”) for consideration of the merits of the tax year 2006 real property valuation complaint filed by the appellant with the BOR. The county appellees filed a reply to the appellant’s motion to remand.

The facts in this matter are not in dispute. In addition to filing the motion to remand and reply thereto, the parties filed with this board a joint stipulation of facts wherein the parties stipulated to the following facts:

1. On Monday, April 2, 2007 at 4:25 p.m., counsel for the appellant sent to the Clerk for the BOR, at the Clerk's email address published on the Clark County Auditor's website, an electronic mail ("email") which contained as an attachment thereto<sup>1</sup> a real property valuation complaint for tax year 2006 with respect to the property at issue in the instant appeal.
2. Immediately following transmission of the email at 4:25 p.m. on April 2, 2007, counsel for the appellant telephoned the Clerk for the BOR who confirmed receipt of the email with the complaint attached thereto.
3. The complaint emailed to and received by the Clerk for the BOR was legible, signed, notarized and complete in all other respects required to constitute a valid real property valuation complaint.
4. The Clerk for the BOR electronically received the complaint prior to the BOR's close of business on April 2, 2007 which was the deadline for filing the complaint.<sup>2</sup>
5. On April 5, 2007, the Clerk for the BOR received an additional copy of the complaint by way of overnight delivery.
6. The BOR did not conduct a hearing on the merits of the complaint but rather issued a decision wherein it

---

<sup>1</sup> The appellant indicated in its motion to remand that the complaint was contained in an attachment to the email and said attachment was in Adobe Portable Document Format (PDF). The appellant further points out that "Adobe PDF documents look exactly like original documents and preserve source file information (i.e., prevent subsequent manipulation of the document by the recipient). See <http://www.adobe.com/products/acrobat/adobepdf.html>."

<sup>2</sup> Because March 31, 2007 fell on a Saturday, the filing deadline set forth in R.C. 5715.19(A) is extended to the next business day, or Monday, April 2, 2007. See *Mikla v. Cuyahoga Cty. Bd. of Revision* (Aug. 10, 2007), BTA No. 2007-V-263, unreported, footnote 1. See, also, R.C. 1.14.

dismissed the complaint.<sup>3</sup> “The sole reason that the BOR dismissed the complaint was that it was filed late.”

The appellant’s complaint sought a decrease in the value of the subject property. R.C. 5715.13 and R.C. 5715.19(A)(1) set forth requirements for the filing of decrease complaints. R.C. 5715.13 provides as follows:

“The county board of revision shall not decrease any valuation unless a party affected thereby or who is authorized to file a complaint under section 5715.19 of the Revised Code makes and files with the board a *written application* therefor, verified by oath, showing the facts upon which it is claimed such decrease should be made.” (Emphasis added.)

R.C. 5715.19(A)(1) provides, in pertinent part, as follows:

“[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 its motion to remand, the appellant argues that the emailed complaint satisfied the requirements set forth in the above statutes. In contrast, the county appellees argue in their reply brief that the BOR is a creature of statute and, as such,

---

<sup>3</sup> It should be noted that the statutory transcript certified to this board reflects that the BOR issued two decisions. S.T. at Ex. L. The BOR’s first decision was issued on September 24, 2007 and mailed to an incorrect address of the appellant’s counsel. *Id.* Within 30 days of its first decision, on October 15, 2007, the BOR issued a second decision and mailed its second decision to the correct address of the appellant’s counsel. *Id.* The appellant then filed its notice of appeal with both this board and the BOR on November 8, 2007, which is within 30 days of the mailing of the second BOR decision. *Cf. Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033. Compare *Cincinnati School Dist. Bd. of Edn. v. Bd. of Revision of Hamilton Cty.* (2000), 87 Ohio St.3d 363.

has only the authority granted to it by statute. The county appellees argue that full compliance with R.C. 5715.13 and R.C. 5715.19 is necessary before the BOR is empowered to act on the merits of a claim and the county appellees question whether the emailed complaint constitutes a “written application.”

While this matter before us is one of first impression for this board, we have considered similar issues that have arisen in the filing of complaints and notices of appeal. For instance, in *Colonial Storage Mgt. v. Bd. of Revision of Franklin Cty.* (1996), 112 Ohio App.3d 508, the Tenth District Court of Appeals affirmed our finding that the filing of a complaint that was a copy of a facsimile transmission invoked the jurisdiction of the county board of revision. In that case, the complaint was properly executed, signed and notarized in Illinois and then faxed to an attorney’s office in Columbus. The attorney proceeded to make copies of the faxed complaint and file such copies in person with the Franklin County Board of Revision. The board of revision dismissed the complaint as an improper filing and the appellant property owner appealed such determination to this board.

In determining the sufficiency of a copy of a faxed complaint, we applied the rationale stated in *Nucorp, Inc. v. Bd. of Revision* (1980), 64 Ohio St.2d 20, 22, specifically:

“While this court has never encouraged or condoned disregard of procedural schemes logically attendant to the pursuit of a substantive legal right, it has been also unwilling to find or enforce jurisdictional barriers not clearly statutorily or constitutionally mandated, which tend to deprive a supplicant of a fair review of his complaint on the merits.”

We went on to find that “all of the jurisdictional requisites” were present on the complaint that was filed and accordingly, there were “no statutorily or constitutionally created barriers” to that complaint.

Similarly, we have found that faxed notices of appeal were sufficient to invoke the jurisdiction of this board. See *Principal Mut. Life Ins. Co. v. Hamilton Cty. Bd. of Revision* (Interim Order, Feb. 23, 1996), BTA No. 1995-A-654, unreported; *Selnick v. Hamilton Cty. Bd. of Revision* (Interim Order, Mar. 15, 1996), BTA No. 1995-A-1258, unreported. See, also, *Ormet Primary Aluminum Corp. v. Wilkins* (Interim Order, Nov. 5, 2004), BTA Nos. 2004-T-616, et seq., unreported (concluding that a notice of appeal may be filed by fax with the tax commissioner). In *Principal*, supra, we permitted the filing of a notice of appeal by fax with a county board of revision, despite the fact that the governing statute did not express such a method of filing. In reaching our conclusions, we stated:

“This Board, in ‘filing’ notices of appeal, has always operated under the premise that so long as a filed document meets all of the substantive, core jurisdictional requirements set forth by statute, and it is timely, we cannot be so hypertechnical as to reject it based upon the means by which it is delivered to this office. This Board has accepted documents for filing without regard to their method of delivery, whether delivered in person, by ordinary, certified, registered or express mail, or courier. We would be hard pressed to dismiss appeals or refuse other documents, based upon the method of their delivery, if they are, in all jurisdictional respects, valid.” *Id.* at 6-7.

As such, this board has been reluctant to dismiss timely filed appeals simply based upon the filing method employed. We consider the method of filing to be a procedural, not a core, jurisdictional issue. See *Principal*, supra. The Ohio

Supreme Court has previously considered the meaning to be attributed to a statutory requirement “to file” in *Fulton v. State ex rel. General Motors Corp.* (1936), 130 Ohio St. 494, a statutory liquidation proceeding. Therein, the court considered what was intended by the legislature in its use of the term “filed ” in Section 710-98a, General Code. Specifically, that section, in discussing claims for preference, provided that “[A]ll such claims must be filed with the superintendent of banks on or before three months after the last publication of notice \*\*\*, and if not so filed the owner or owners thereof shall be forever barred from asserting the same in any manner as entitled to preference.” The court determined that the “depositing of a preference claim in the mails, properly addressed to the Superintendent of Banks, and postage prepaid, mailed before but delivered after the expiration of the time limit prescribed by Section 710-98a, General Code, does not constitute a filing under the statute.” In reviewing definitions of “file,” the court considered several sources, including 25 Corpus Juris, 1124, 1125, Section 4, which stated that “[t]he word ‘filed’ has a well defined meaning, signifying delivered to the proper officer and by him received to be kept on file; delivered into the actual custody of the officer designated by the statute, to be kept by him as a permanent record of his office.’ And on page 1127: “Filing is not complete until the document is delivered and received.”” The court went on to hold that the “date of mailing is therefore immaterial. The fact which is controlling is the time of actual delivery of the claim into the official custody and control of the Superintendent of Banks, for it was then that the claim was ‘filed’.” When a document is in good faith delivered to the proper officer to be filed, and by him

received to be kept in its proper place in his office, it is deemed filed. The endorsement upon it by such officer of the fact and date of filing is but evidence of such filing. *Fulton*, supra.

Thus, so long as other jurisdictional requirements are met, the timely filing and acceptance of a complaint by the county board of revision is sufficient to invoke its jurisdiction. In the instant matter, the record establishes that the BOR received the appellant's complaint prior to the expiration of the filing deadline provided by R.C. 5715.19(A)(1). The method of filing employed, email in this case, does not change the fact that the complaint was "delivered and received" by the BOR prior to the filing deadline. See *Principal*, supra; *Fulton*, supra. The BOR, apparently relying on the copy of the complaint filed on April 5, 2007 by way of overnight delivery rather than the complaint that was filed on April 2, 2007 by way of email, dismissed the complaint for the reason that it was filed late. We find that the complaint "delivered and accepted" by the BOR on April 2, 2007 was timely filed.

The county questions whether the complaint filed by way of email on April 2, 2007 constitutes a "written application" as required by R.C. 5715.13. The record before us reveals that the complaint that was filed on April 2, 2007 by way of email was identical to the complaint filed on April 5, 2007 by way of overnight delivery. The only difference is the method of filing. The means by which a document is filed should not alter its substance. See *Colonial Storage Mgt.*, supra. Based on the existing record before us in this case, we find that the complaint filed on April 2, 2007 constituted a written application for purposes of R.C. 5715.13.

Having found that the complaint constituted a written application for purposes of R.C. 5715.13 which was timely filed and accepted by the BOR, we conclude that said complaint properly invoked the jurisdiction of the BOR. Therefore, the appellant's motion to remand is well taken and we order that this matter be remanded to the BOR to be heard on the merits of the complaint.

ohiosearchkeybta