

OHIO BOARD OF TAX APPEALS

James & Lori Yorkavitz,)	CASE NO. 2008-B-2112
)	
Appellants,)	(REAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Medina County Board of Revision)	
and Medina County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellants-	Lori Yorkavitz, pro se 6784 Spring Glen Drive Valley City, Ohio 44280
For the County- Appellees	Dean Holman Medina County Prosecuting Attorney 72 Public Square Medina, Ohio 44256

Entered May 12, 2009

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

On March 31, 2009, the Board of Tax Appeals (“BTA”) issued an order seeking input from the appellants regarding a potential jurisdictional issue. It appears that the appellants failed to file within the time requirements necessary to invoke the jurisdiction of this board.

Appellants filed their response herein under date of April 16, 2009. The auditor’s office submitted additional information from the United States Postal Service on April 17, 2009. Thus, the board considers the matter upon the notice of appeal, the

statutory transcript certified to this board by the Medina County Auditor, and the parties' responses.

The statutory transcript indicates that, by certified mail, the BOR notified the appellants of its decision regarding the valuation of certain property located in Medina County on September 30, 2008. Appellants' notice of appeal was filed with this board and docketed on October 31, 2008. Manifestly, the filing date assigned was more than thirty days after the mailing of the notice to the appellants.

In their response, appellants point out that the statutory transcript indicates that a copy of their notice of appeal was received and filed with the Medina County Board of Revision ("BOR") on October 28, 2008. Attached to appellant's response, and to their notice of appeal, is a copy of an envelope addressed to the appellants from the Medina County Auditor which is postmarked October 3, 2008 and indicates postage paid in the amount of 42 cents.¹

However, the statutory transcript verifies the BOR decision was sent by certified mail on September 30, 2008 and was received by appellants on October 1, 2008. S.T., Ex. F. The auditor's April 17, 2009 response to this board's order confirms the October 1, 2008 receipt.

R.C. 5717.01 provides:

*"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*

¹ It is not clear from the record what this envelope contained. It does seem apparent that it did not contain the decision of the BOR, as that decision was mailed by certified mail and appellants signed for the decision on October 1, 2008. S.T., Ex. F.

authorized delivery service, with the board of tax appeals and with the county board of revision. If notice of appeal is filed by certified mail, express mail, or authorized delivery service ***, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing." (Emphasis added.)

The Board of Tax Appeals is a creature of statute. In this regard, we must strictly comply with any jurisdictional requirements set by the statutes of this state. *Austin Co. v. Cuyahoga Cty. Bd. of Revision* (1989), 46 Ohio St.3d 192. See, also, *Fineberg v. Kosydar* (1975), 44 Ohio St.2d 1; *Zephyr Room, Inc. v. Bowers* (1955), 164 Ohio St. 287. The board has no equitable authority which would allow it to consider value when notices of appeal are filed only a few days over the 30-day limitation. The statute allows no discretion when accepting jurisdiction. Either the appeal is timely filed, or, like in the present matter, it is not.

Appellants' contention that their timely BOR filing supports a conclusion of a timely BTA filing is not reflected by the record. R.C. 5717.01 requires a timely filing with both the BOR and this board. The record confirms appellants mailed their notice of appeal to the BTA by regular U.S. mail² rather than by an authorized form of delivery which would allow for the postmark date to be considered the date of filing at the BTA. Although appellants' notice of appeal to the BOR was apparently received on October 28, 2008, their notice of appeal was received *at the BTA* on October 31, 2008. As the appellants mailed their notice of appeal to this board by regular U.S. mail, October 31, 2008 shall be considered the date of filing at the BTA. *Wolpert v. Butler Cty. Bd. of Revision* (Dec. 27, 1998), BTA No. 1992-R-898, unreported.

Upon consideration of the entire record before us, we find and determine, as a matter of fact, that the appellants did not file a copy of their notice of appeal with this board within the time prescribed by R.C. 5717.01. The statutory requirements must be met for this board to exercise jurisdiction.

Therefore, the matter herein is ordered dismissed.

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² Postmarked October 28, 2008.