

OHIO BOARD OF TAX APPEALS

Clinton E. Wagner,)
)
 Appellant,) (CASE NO. 2008-N-1398
) (REAL PROPERTY TAX)
 vs.)
) DECISION AND ORDER
)
 Union County Board of Revision)
 and Union County Auditor,)
)
 Appellees.)

APPEARANCES:

For the Appellant - Clinton E. Wagner, pro se
19467 Bear Swamp Rd.
Marysville, Ohio 43040

For the County Appellees - David W. Phillips
Union County Prosecuting Attorney
Rick Rodger
Assistant Prosecuting Attorney
221 West 5th Street, Suite 333
Marysville, Ohio 43040

Entered May 5, 2009

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

This appeal is being considered following an order to show cause issued by this board on February 3, 2009. This board’s order stated that it may not have jurisdiction over the appeal, since the statutory transcript (“S.T.”) certified to this board by the Union County Auditor, as secretary of the Union County Board of Revision (“BOR”), indicated that appellant may not have filed his notice of appeal with this board within the thirty-day requirement imposed by R.C. 5717.01.

The record in this matter indicates that appellant, Clinton E. Wagner, filed a notice of appeal with the Board of Tax Appeals on August 19, 2008. Said

appeal was filed from a decision of the BOR, in which the BOR determined the taxable value of parcel no. 03-0008004.036.

The statutory transcript indicates that the BOR mailed its decision to appellant via certified mail on July 9, 2008. S.T., Ex. 7 and DTE Form 3, Line 4. Appellant filed his notice of appeal with this board on August 19, 2008, forty-one days after the date of mailing by the BOR. Appellant stated in his notice of appeal that he received the BOR's decision on July 22, 2008.

In determining whether we have jurisdiction to consider this matter, this board must be mindful of the jurisdictional requirements to appeal from a decision of a county board of revision, as set forth in R.C. 5717.01. R.C. 5717.01 provides, in pertinent part:

“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 division (A) of 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 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 & Lunch Co. v. Glander* (1946), 147 Ohio St. 147. The statutory requirements set forth in R.C. 5717.01 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.

While we empathize with appellant's situation as outlined in his response, we note that said response does not contain any information demonstrating that he complied with the thirty-day filing requirement mandated by R.C. 5717.01. We reiterate that it is the date of mailing by the BOR, not the date of receipt, that commences the activation of the thirty-day time period within which an appeal may be taken from a county board of revision. R.C. 5717.01 and 5715.20. Further, we note that the Board of Tax Appeals has no express or implied equity jurisdiction. *Columbus Southern Lumber v. Peck* (1953), 159 Ohio St. 564. As a creature of statute, we have only the jurisdiction, power, and duties expressly given by the General Assembly. *Steward v. Evatt* (1944), 143 Ohio St. 547; *Leiphart Lincoln-Mercury, Inc. v. Bowers* (1958), 107 Ohio App. 259. As such, an appellant has no inherent right to a review before this board. Such a right is statutory, and strict compliance with the specific provisions governing the filing of a notice of appeal is therefore required in order to confer jurisdiction upon this board. *Austin Co. v. Cuyahoga Cty. Bd. of Revision* (1989), 46 Ohio St.3d 192. Cf. *Olympic Steel, Inc. v. Cuyahoga Cty. Bd. of Revision*, 110 Ohio St.3d 1242, 2006-Ohio-4091, reconsideration denied, 2006-Ohio-5351.

Based on the above, we are constrained to adhere to the condition set forth in R.C. 5717.01 that a notice of appeal must be filed within thirty days after notice of the decision of the county board of revision is mailed as provided in R.C. 5715.20(A). Accordingly, as the Board of Tax Appeals does not have jurisdiction to consider the instant appeal since appellant did not file a notice of appeal within the

time period required by R.C. 5717.01, it is the decision and order of the Board of Tax Appeals that the instant appeal must be, and hereby is, dismissed.

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