

OHIO BOARD OF TAX APPEALS

David A. Kenney,)
)
 Appellant,)
)
 vs.)
)
 Lucas County Board of Revision,)
 Lucas County Auditor, and Board)
 of Education for Toledo Public)
 Schools,)
)
 Appellees.)

CASE NO. 2008-N-1676
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellant - David A. Kenney, pro se
511 Sumner Street
Toledo, Ohio 43609

For the County Appellees - Julia R. Bates
Lucas County Prosecuting Attorney
Carol Bruggeman
Assistant Prosecuting Attorney
700 Adams Street, Suite 250
Toledo, Ohio 43604

For the Bd. of Edn. - Spengler Nathanson P.L.L.
Michael W. Bragg
Four SeaGate, Suite 400
Toledo, Ohio 43604

Entered April 21, 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 24, 2009. In said order, this board stated that it may not have jurisdiction over the appeal, since the statutory transcript (“S.T.”) certified to this board by the Lucas County Auditor indicated that a copy of the notice of appeal was

not filed with the Lucas County Board of Revision (“BOR”), as required by R.C. 5717.01. Appellant has not filed a response to this board’s order.¹

The record in this matter indicates that appellant, David A. Kenney, timely filed a notice of appeal with the Board of Tax Appeals on September 11, 2008. However, a review of the statutory transcript reveals that a copy of the notice of appeal was not filed with nor received by the BOR. S.T., DTE Form 3, Line 6.

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.)

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. Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

¹ Pursuant to this board’s Rules of Practice and Procedure, specifically Ohio Adm. Code 5717-1-12(B), the appellant was given fourteen days to respond to this board’s order.

Based on the above, we are required to adhere to the condition set forth in R.C. 5717.01 that a notice of appeal must be filed with both this board and the county board of revision. 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 with the county board of revision, 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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