

OHIO BOARD OF TAX APPEALS

Gary Rhodes,)
)
 Appellant,) (CASE NO. 2008-N-9
) (MUNICIPAL INCOME TAX)
)
 vs.) DECISION AND ORDER
)
 Gahanna Municipal Board of Appeal¹)
 and Cindy Steele, Tax Administrator)
 for the City of Gahanna,)
)
 Appellees.)

APPEARANCES:

For the Appellant - Gary Rhodes, pro se
1944 Eagle Lane
Navarre, Florida 32566

For the Municipal Board of Appeal - Tom Weber
Gahanna City Attorney
200 South Hamilton Road
Gahanna, Ohio 43230

For the Tax Administrator - Cindy Steele
Tax Administrator
City of Gahanna Tax Division
200 South Hamilton Road
Gahanna, Ohio 43230

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 the Board of Tax Appeals on January 13, 2009. The record indicates that appellant, Gary Rhodes, filed a notice of appeal with this board on January 3, 2008. This appeal

¹ R.C. 718.11 requires the legislative authority of each municipal corporation that imposes a tax on income to maintain a board to hear appeals. R.C. 5717.011 refers to this body as a “municipal board of appeal.” The City of Gahanna’s board identifies itself as the “City of Gahanna Income Tax Review Board.”

was filed from a decision of the City of Gahanna Income Tax Review Board (“MBOA”).

In the order to show cause, this board inquired as to whether it had jurisdiction to consider the instant appeal. Appellant represented that he received the MBOA’s decision on November 10, 2007, which accorded him until January 9, 2008 to timely file his notice of appeal. This board received appellant’s notice of appeal on January 3, 2008, but the record before us reflected that the MBOA received a copy of the notice of appeal on January 10, 2008. Further, the record did not specify whether appellant sent copies of the notice of appeal to all required parties. In response to this board’s order, appellant provided us with a copy of two certified mail receipts. The appellees did not file a response to said order.

We note that while appellant timely filed his notice of appeal with this board, R.C. 5717.011(B) requires that a copy of the appeal must also be filed with the municipal board of appeal *and* the tax administrator, as an opposing party, within sixty days. R.C. 5717.011(B) provides:

“Appeals from a municipal board of appeal created under section 718.11 of the Revised Code may be taken by the taxpayer or the tax administrator to the board of tax appeals or may be taken by the taxpayer or the tax administrator to a court of common pleas as otherwise provided by law. If the taxpayer or tax administrator elects to make an appeal to the board of tax appeals or court of common pleas, *the appeal shall be taken by the filing of the notice of appeal with the board of tax appeals or court of common pleas, the municipal board of appeal, and the opposing party. The notice of appeal shall be filed within sixty days after the day the appellant receives notice of the decision issued under section 718.11 of the Revised Code.* The notice of appeal may be filed in person or by certified mail, express mail, or authorized delivery service as

provided in section 5703.056 [5703.05.6] of the Revised Code. If the notice of appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, 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. The notice of appeal shall have attached thereto and incorporated therein by reference a true copy of the decision issued under section 718.11 of the Revised Code, and shall specify the errors therein complained of, but failure to attach a copy of such notice and incorporate it by reference in the notice of appeal does not invalidate the appeal." (Emphasis added.)

The certified mail receipts received by this board from appellant indicate that his notice of appeal was sent to the Board of Tax Appeals and to the "Income Tax Dept."² The postmark on each certified mail receipt indicates a date of January 3, 2008, which is within the sixty-day filing period required by R.C. 5717.011(B). However, the certified mail receipts do not indicate that appellant filed his notice of appeal with each of the required parties. In order to comply with R.C. 5717.011(B), appellant must have separately filed his notice of appeal with both the MBOA and the tax administrator, as an opposing party. The transcript on appeal reflects that the tax administrator was an active participant, separate from the MBOA, in the prior proceedings.

Upon review, we are unable to find that appellant complied with the requirements of R.C. 5717.011(B), since appellant did not provide this board with certified mail receipts or other information that he filed with both the tax administrator, as an opposing party, and the MBOA. Here, appellant sent his appeal

² The certified mail receipt reflects the appeal sent to the "Income Tax Dept" was sent to an address that is identical for each appellee.

only to the “Income Tax Dept.” The certified mail receipt does not positively identify either required party.³ Further, while the address used on the certified mail receipt may apply to both appellees, we cannot construe a single certified mail receipt, addressed to apparently one party, as sufficient to notify all parties.

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. In the context of filing requirements for a notice of appeal from a county board of revision, the Supreme Court has held that the statutory requirements set forth in R.C. 5717.01 are mandatory and jurisdictional. *Bd. of Edn. of Mentor v. Bd. of Revision* (1980), 61 Ohio St.2d 332. This board has routinely held that strict compliance with such requirements is essential to vest jurisdiction with this board.

Based on the above, we must adhere to the condition set forth in R.C. 5717.011(B) that a notice of appeal must be filed with this board, the municipal board of appeal, and the tax administrator. Accordingly, we do not have jurisdiction to consider the instant appeal, since appellant did not file with each required party.

Therefore, 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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³ The transcript on appeal, certified to this board by the Tax Administrator for the city of Gahanna, notes that the MBOA received a copy of appellant’s notice of appeal on January 10, 2008. However, even if we construe appellant’s response to indicate that he filed with the MBOA, we still have no evidence that he then filed separately with the tax administrator. The transcript on appeal contains no copy of a notice of appeal filed with the MBOA or the tax administrator, only a notation that appellant’s notice of appeal was received by the MBOA.