

OHIO BOARD OF TAX APPEALS

Gary Rhodes,)	
)	CASE NO. 2008-N-9
Appellant,)	
)	(MUNICIPAL INCOME TAX)
vs.)	
)	ORDER
Gahanna Municipal Board of Appeal ¹ and Cindy Steele, Tax Administrator for the City of Gahanna,)	
)	(Requiring Appellant to Show Cause)
)	
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 January 13, 2009

A review of the record in this matter indicates that the Board of Tax Appeals received a notice of appeal from appellant, Gary Rhodes, on January 3, 2008.

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.”

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

Specifically, this board must determine whether it has jurisdiction to consider the instant matter. Appellant has represented, in his notice of appeal to this board, that he received the MBOA’s decision on November 10, 2007. Accordingly, the last day upon which appellant could file his notice of appeal was January 9, 2008. While it appears that this board timely received appellant’s notice of appeal, 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 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, said transcript contains no copy of a notice of appeal filed with the MBOA or the Tax Administrator, nor does the record contain any information as to how such appeal may have been delivered to the MBOA. Included as part of the transcript on appeal is a docketing notice from this board, dated January 10, 2008, which contains the handwritten notation “[t]his notice was received between 1-10-2008 and 1-17-2008 when documentation was submitted to the Board of Tax Appeals.” The issuance of docketing letters by this board does not serve as a substitute for a notice of appeal or otherwise excuse an appellant from its obligations to strictly adhere to and satisfy the obligations expressly imposed by statute. Cf. *Austin Co. v. Cuyahoga Cty. Bd. of Revision* (1989), 46 Ohio St.3d 192. If appellant indeed filed his appeal with the MBOA on January 10, 2008, it would appear such appeal is untimely. Based upon a preliminary review of the existing record, this board must consider whether jurisdiction is proper. It is therefore ordered that appellant show cause why this board should not conclude that he failed to comply with the jurisdictional requirements of R.C. 5717.011(B). Any party wishing to be heard upon

the legal sufficiency of the filing to establish jurisdiction with this board shall file a written response within fourteen (14) days of the issuance of this order.²

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² If service was not completed upon a party within the time expressed by R.C. 5717.011, such information should be brought to this board's attention.