

OHIO BOARD OF TAX APPEALS

Maurice J. Evans and)
Debra L. Southard,)
)
Appellants,)
)
vs.)
)
Montgomery County Board of Revision)
and Montgomery County Auditor,)
)
Appellees.)

CASE NO. 2008-T-1595
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellants - Debra L. Southard, pro se
1525 Weslean Road
Dayton, Ohio 45406

For the County Appellees - Mathias H. Heck, Jr.
Montgomery County Prosecuting Attorney
Laura G. Mariani
Assistant Prosecuting Attorney
301 West Third Street
P.O. Box 972
Dayton, Ohio 45422

Entered January 27, 2009

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

The county appellees have moved this board to dismiss the instant appeal. The county asserts that subject-matter jurisdiction has failed to vest in this board because the notice of appeal was not timely filed with either this board or the BOR. The appellants have not responded to the motion.

R.C. 5717.01 sets forth the requirements for bringing an appeal before the Board of Tax Appeals as follows:

“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.¹ *** 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. If 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 requirements of R.C. 5717.01 must be strictly complied with before the subject matter jurisdiction of the Board of Tax Appeals may be invoked. *Austin Co. v. Cuyahoga Cty. Bd. of Revision* (1989), 46 Ohio St.3d 192; *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147. One of those requirements is that the notice of appeal must be filed with both the Board of Tax Appeals and the board of revision within thirty days after the certified mailing of the board of revision’s decision. Failing to comply with the requirement will lead to the dismissal of the appeal. *Austin Co.*, supra; *Akron Standard Div. v. Lindley* (1984), 11 Ohio St.3d 10.

¹ R.C. 5715.20(A) provides: “Whenever a county board of revision renders a decision on a complaint filed under section 5715.19 of the Revised Code, it shall certify its action by certified mail to the person in whose name the property is listed or sought to be listed and to the complainant if the complainant is not the person in whose name the property is listed or sought to be listed. A person’s time to file an appeal under section 5717.01 of the Revised Code commences with the mailing of notice of the decision to that person as provided in this section. ***”

A review of the transcript of the board of revision's proceedings, certified to the BTA by the Montgomery County Auditor, indicates that notice of the BOR's decision was mailed by certified mail to the complainants on July 29, 2008. S.T. at DTE Form 3 and Ex. F. Thus, the last date upon which the appellants could file an appeal was August 27, 2008. R.C. 5717.01. Appellants' notice of appeal was filed with this board on September 1, 2008.² A copy of the appellants' notice of appeal was filed with the BOR on September 2, 2008.

Because the notice of appeal was filed with both this board and the BOR after the thirty-day deadline established by R.C. 5717.01, this board is without subject-matter jurisdiction. Accordingly, we dismiss BTA No. 2008-T-1595.

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² The notice of appeal was mailed to the BTA by U.S.P.S. certified mail on September 1, 2008, giving the notice of appeal a deemed filing date of the date of mailing. R.C. 5717.01. The board physically received the notice of appeal on September 3, 2008.