

**OHIO BOARD OF TAX APPEALS**

RORC Enterprises, Inc.,	)	CASE NO. 2008-T-1730
	)	
Appellant,	)	(REAL PROPERTY TAX)
	)	
vs.	)	ORDER
	)	
Muskingum County Board of Revision	)	(Requiring Appellant
and the Muskingum County Auditor,	)	to Show Cause)
	)	
Appellees.	)	

APPEARANCES:

For the Appellant	-	Kincaid, Taylor & Geyer William J. Taylor 50 N. Fourth Street P.O. Box 1030 Zanesville, OH 43702-1030
For the County Appellees -	-	D. Michael Haddox Muskingum County Prosecuting Attorney James R. Gorry Special Assistant Prosecuting Attorney 300 East Broad Street Suite 300 Columbus, OH 43215

Entered February 24, 2009

Upon review of the existing record, it is deemed necessary for this board to determine whether jurisdiction has been properly established in this matter. Through its notice of appeal filed with this board on September 23, 2008, appellant, RORC Enterprises, Inc., sought to challenge a decision of the Muskingum County Board of Revision (“BOR”) mailed on September 10, 2008.<sup>1</sup> However, as part of the record certified to this board, the BOR represents that appellant failed to file its notice of appeal with that tribunal as required by statute.

R.C. 5717.01 provides in pertinent part:

---

<sup>1</sup> Although the BOR’s decision is dated September 3, 2008, the auditor has certified, consistent with certified mail receipts included within the transcript, that said decision was mailed on September 10, 2008.

“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 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.)

In considering the import of the preceding statute, the Supreme Court in *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68, expressly held:

“Adherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. \*\*\* R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal.” (Citations omitted.)

While the transcript certified by the BOR includes copies of notices acknowledging the filing of said appeal with this board, “the BTA’s docketing letters do not replace appellants’ duty to file their notice of appeal with the board [of revision].” *Austin Co. v. Cuyahoga Cty. Bd. of Revision* (1989), 46 Ohio St.3d 192, 194. It appears appellant’s counsel became aware of this potential jurisdictional deficiency and, more than four months after the period for timely doing so, i.e., January 23, 2009, sent a copy of the notice of appeal to counsel for the county appellees. However, such service does not appear to have been made upon the BOR with the period prescribed R.C. 5717.01. Cf. *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147, paragraph three of the syllabus (holding that a notice of appeal may not be amended after the expiration of the statutorily prescribed period for perfecting such appeal). See, also, *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision* (1998), 80 Ohio St.3d 621, 623 (“Filing a copy of the notice of appeal

with the board of revision is, however, a different requirement from serving a copy of pleadings upon the board's attorney after litigation has begun at the BTA. R.C. 5715.44 provides that the county prosecutor is to act as counsel for the board of revision in defending any proceedings in any court in which the board of revision is a party. However, neither R.C. 5715.44 nor R.C. 5717.01 authorizes an appealing party to serve, or the prosecuting attorney to accept, a copy of a notice of appeal in lieu of filing with the board of revision.”).

Based on the existing record, it appears appellant's notice of appeal was not filed with the BOR within period or in the manner required by R.C. 5717.01. It is therefore the order of this board that appellant show cause why this appeal should not be dismissed. Any party wishing to be heard upon the legal sufficiency of appellant's appeal shall file a written response to this order within fourteen days of its issuance.

ohiosearchkeybta