

OHIO BOARD OF TAX APPEALS

Hajj Gaston,)	
)	CASE NO. 2008-T-1961
Appellant,)	
)	(REAL PROPERTY TAX)
vs.)	
)	ORDER
Medina County Board of Revision)	
and Medina County Auditor,)	(Denying Motion to Dismiss)
)	
Appellees.)	

APPEARANCES:

For the Appellant -	Hajj Gaston, pro se 19 Meadow Crest Hinckley, Ohio 44233
For the County Appellees -	Dean Holman Medina County Prosecuting Attorney Christine M. Brothag Assistant Prosecuting Attorney 72 Public Square Medina, Ohio 44256

Entered May 19, 2009

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 filed with the BOR. The appellant has responded to the motion, asserting that the notice of appeal was timely filed with both this board and the BOR.

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.

A review of the transcript of the board of revision’s proceedings, certified to the BTA by the Medina County Auditor, indicates that notice of the BOR’s decision was mailed by certified mail to the complainant on September 22, 2008. See

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. ***”

R.C. 5715.20(A). Appellant's notice of appeal was thereafter filed with this board on October 15, 2008. The auditor also certifies that no copy of the appellant's notice of appeal was filed with the BOR See S.T. at DTE Form 3.

Nevertheless, despite the auditor's certification, the board notes that the statutory transcript contains an Exhibit H, which the BOR has described as an "appeal." S.T. at DTE Form 3. Exhibit H is a copy of a letter dated September 25, 2008 from appellant to the BOR. The letter lists appellant's name, the parcel number of the property involved in this matter, and provides, "I would like to Appeal the Boards [sic] decision." S.T. Ex. H. On the letter, someone has handwritten the BOR case number involved in this appeal. Although no filing date is recorded on the letter, another handwritten notation indicates that forms were mailed to appellant on October 2, 2008. Thus, the board concludes that the letter was filed on or before the October 2, 2008 date.

Although not filed on DTE Form 4, which has been prescribed for the filing of a notice of appeal to the BTA from a decision of a BOR, the letter expresses an intent to appeal the BOR's decision. In *GAMED Investment Co. v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Oct. 28, 1994), BTA Nos. 1993-G-285, 1167, unreported, the BTA considered the validity of a notice of appeal which did not use the Department of Tax Equalization form prescribed for appeals to this board. The taxpayer filed a notice of appeal from a BOR decision by letter, rather than by using DTE Form 4. The board of education subsequently filed a motion to dismiss, citing lack of use of the DTE Form 4 and the failure to include all the information required

by the form. In denying the motion, this board first noted that R.C. 5717.01, while setting forth jurisdictional requirements necessary to perfect an appeal, did not expressly prescribe a form to be used when filing:

“It follows then, that, although the tax commissioner has the requisite authority to prescribe forms, specifically the DTE Form 4, such form may not be applied so as to deprive an appellant a review of its complaint upon the merits so long as the jurisdictional prerequisites of R. C. 5717.01 are satisfied. This rationale is not inconsistent with the Supreme Court’s holding in *Nucorp, Inc. v. Bd. of Revision* (1980), 64 Ohio St.2d, wherein the Court stated:

““While this court has never encouraged or condoned disregard of procedural schemes logically attendant to the pursuit of a substantive legal right, it has also been unwilling to find or enforce jurisdictional barriers not clearly statutorily or constitutionally mandated which tend to deprive a supplicant of a fair review of his complaint on the merits.***” Id. at 3.

In *GAMED*, the board determined that, along with a copy of the board of revision’s determination letter, the critical information to be presented to this board is the “*** 1) Complaint number assigned by the Board of Revision; 2) Parcel number of the subject property; 3) The date of the Board of Revision’s decision; 4) Taxing year; 5) Taxable values of the property as determined by the Board of Revision.” Thus, the board concluded that the use DTE Form 4 was not required so long as the above-identified information was sufficient for this board to inform all interested parties of the substance of appellant’s appeal.

In later decisions, the board held that even less information is required to be included on a notice of appeal. In *Leach v. Hamilton Cty. Bd. of Revision* (Aug.

21, 1998), BTA Nos. 1998-M-44, et seq., unreported, the BTA held that, in an appeal from a decision of a BOR, it is sufficient to simply state that the appellant is appealing such decision; no other information is necessary:

“The other information required by the Tax Commissioner’s prescribed form, while helpful, merely reiterates information obtainable within a board of revision’s case history or constitutes the appellant’s opinion. A board of revision has no statutory obligations which cannot be met because information triggering those obligations has not been disclosed. Therefore and in accordance with [*Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision* (1998), 80 Ohio St.3d 591], we must find that a notice of appeal is sufficient to vest jurisdiction even if it contains only notice of intent to challenge the decision of a county board of revision.” Id. at 3.

See, also, *Rose Hill Securities, et al., v Summit Cty. Bd. of Revision* (Interim Order, Oct. 28, 2005), BTA Nos. 2004-M-1163, 1164, 1165, unreported. Compare *New World Communications of Ohio v. Wilkins*, 106 Ohio St.3d 1458, 2005-Ohio-3490, reconsideration denied, 106 Ohio St.3d 1510, 2005-Ohio-4605 (“When an appeal is taken from a decision of the Board of Tax Appeals to this court, the copy of the notice of appeal required to be filed with the Board of Tax Appeals pursuant to R.C. 5717.04 must be the same notice of appeal filed with this court. Since appellant failed to comply with this requirement, the motion to dismiss is granted.”)

Based upon the foregoing, the board concludes that the appellant, within thirty days of the certification of the BOR’s decision, did file a letter with the BOR identifying the owner of the property, the parcel in issue, and an express intent to appeal the BOR’s decision. Given the foregoing, the board finds that the requirements

of R.C. 5717.01 have been satisfied and jurisdiction has properly vested. *Leach*, supra.

The county's motion is without merit and is hereby denied.

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