

## OHIO BOARD OF TAX APPEALS

Beck Juanita F., et al.,	)	
	)	CASE NO. 2008-T-530
Appellants,	)	
	)	(REAL PROPERTY TAX)
vs.	)	
	)	ORDER
Stark County Board of Revision and the Stark County Auditor,	)	
	)	(Requiring Appellants to Show Cause)
Appellees.	)	

APPEARANCES:

For the Appellants	-	Ray W. Hacker, pro se 5228 Kings Gateway Bloomfield Hills, MI 48302-2810
For the County Appellees	-	John D. Ferrero Stark County Prosecuting Attorney David M. Bridenstine Assistant Prosecuting Attorney P.O. Box 20049 Canton, OH 44701-0049
Copy to <sup>1</sup>	-	Means, Bichimer, Burkholder & Baker Co., LPA Robert M. Morrow 2006 Kenny Road Columbus, OH 43221-3502

Entered March 3, 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 a notice of appeal filed with this board on behalf of “Beck Juanita F., et al.,”<sup>2</sup> appellants sought to

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<sup>1</sup> The transcript includes a copy of a complaint filed on behalf of Fairless Board of Education, presumably filed pursuant to R.C. 5715.19(B). Although no entry of appearance has been filed on behalf of this entity, a copy of this order will be sent to its counsel. Should this entity intend to participate in these proceedings, counsel should immediately file an entry of appearance in this matter as required by Ohio Adm. Code 5717-1-03.

<sup>2</sup> During the course of these proceedings, it appears preliminary inquiry may have been made regarding the jurisdictional sufficiency of appellants’ initial complaint which identified the owner of the subject property as

challenge a decision of the Stark County Board of Revision (“BOR”) which was mailed on March 25, 2008. While the notice of appeal filed with this board is docketed as having been filed on April 23, 2008,<sup>3</sup> the record certified by the BOR indicates the appeal was not filed with that body until April 29, 2008.

Pertinent in this regard, R.C. 5717.01 provides in part:

“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.)

See, also, *Austin Co. v. Cuyahoga Cty. Bd. of Revision* (1989), 46 Ohio St.3d 192; *PFD Dev.*

*PLL v. Auditor*, Greene App. No. 05-CA-0122, 306-Ohio-5129.

Footnote Contd. \_\_\_\_\_

“Beck Juanita F. et al.,” a reference which appears consistent with property record cards included within the transcript. While the reference to “et al.” does not disclose all the owners of the property, discussions during the BOR hearing suggest that Ray Hacker, the individual who was listed as a contact person on line 4 of the complaint and who apparently signed the complaint and notice of appeal, appears to have had at least a partial ownership interest in the property. Such interest is also suggested by additional property record cards included within the transcript, suggesting ownership is shared by “Hacker, Ray W & Anita V.,” as well as a document forwarded to this board by the county appellees’ counsel.

<sup>3</sup> It should be noted that appellants’ appeal, while physically received by this board on April 25, 2008, was accorded a constructive filing date of April 23, 2008 because it was sent by certified mail on that date. See R.C.

Although the record is silent as to the manner of delivery used by appellants in filing their appeal with the BOR, the transcript includes a copy of appellants' notice of appeal which reflects a "filed" date of April 29, 2008. Because it appears appellants' notice of appeal may not have been filed with the Stark County Board of Revision within the period expressly required by R.C. 5717.01, it is the order of this board that appellants show cause why this appeal should not be dismissed. Any party wishing to be heard upon the legal sufficiency of appellants' appeal shall file a written response to this order within fourteen days of its issuance.

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Footnote Contd. \_\_\_\_\_  
5717.01 ("If notice of appeal is filed by certified mail \*\*\* the date of the United States postmark placed on the sender's receipt by the postal service \*\*\* shall be treated as the date of filing.").