

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, Stark County Auditor, and Fairless Local School District Board of Education,)	(Retaining Jurisdiction)
)	
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
For the Appellee Bd. of Edn.		- Means, Bichimer, Burkholder & Baker Co., LPA Robert M. Morrow 2006 Kenny Road Columbus, OH 43221-3502

Entered March 24, 2009

On March 3, 2008, this board issued an order requiring the appellants to show cause as to why this appeal should not be dismissed. Specifically, the order inquired into

whether the appellants' notice of appeal was timely filed with the Stark County Board of Revision.¹ The appellants have timely responded to the order.

In the instant matter, the transcript certified to the BTA by the Stark County Auditor specifies that notice of the BOR's decision was mailed by certified mail to the complainants on March 25, 2008. S.T. at DTE Form 3. The appellants thereafter filed a notice of appeal with this board on April 23, 2008.² The record certified by the BOR further indicates the appeal was filed with the BOR on April 29, 2008.

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.³ *** 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

¹ 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 “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.

² While physically received by this board on April 25, 2008, the notice of appeal was accorded a constructive filing date of April 23, 2008 because it was sent by certified mail on that date. See R.C. 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.”).

³ 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. ***”

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.

In its response to the show cause order, the appellants represent that they mailed their notice of appeal to both this board and the BOR by certified mail on April 23, 2008. In addition, while the transcript includes a copy of appellants' notice of appeal, which reflects a "filed" date of April 29, 2008, the transcript does not indicate the manner of delivery used by the appellants. S.T. at Ex. G. It has been further represented that the BOR acknowledges that it does not have any evidence in its possession to refute appellants' affirmation that the notice was sent to the BOR by certified mail on April 23, 2008. Cf. *Home Properties of New York, Inc. v. Franklin Cty. Bd. of Revision* (Oct. 20, 2000), BTA No. 1999-M-2018, unreported.

Based upon the foregoing, the BTA concludes that, while the notice of appeal may have been physically received by the BOR on April 29, 2008, the appellants' mailing of

the notice of appeal to the BOR by certified mail results in a constructive filing date of April 23, 2008. As the filing date is within the time prescribed by R.C. 5717.01, the BTA orders that this matter proceed before it pursuant to the board's rules of practice and procedure.

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