

OHIO BOARD OF TAX APPEALS

Sunny Hospitality, Inc.,)
)
 Appellant,)
)
 vs.)
)
 Frank Russo, Cuyahoga County)
 Auditor,)
)
 Appellee.)

CASE NO. 2009-A-224
(LOCAL LODGING TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellant - Alvaro G. Velez
Attorney at Law
1445 Worthington Woods Boulevard
Suite 108
Worthington, Ohio 43085

For the County Appellee - William D. Mason
Cuyahoga County Prosecuting Attorney
Kelli Kay Perk
Assistant Prosecuting Attorney
The Justice Center, Courts Tower
1200 Ontario Street, 8th Floor
Cleveland, Ohio 44113

Entered April 21, 2009

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a motion to dismiss filed by the appellee county auditor. The motion provides, in pertinent part:

“Now comes Appellee the Cuyahoga County Auditor, *** and moves this Honorable Board to dismiss the instant appeal due to Appellant having previously filed an administrative appeal on the same issues in the Cuyahoga County Court of Common Pleas, thereby vesting jurisdiction with the Common Pleas Court.”

In the memorandum in support of such motion, the appellee indicated that on February 6, 2009, appellant Sunny Hospitality, Inc. filed a notice of administrative appeal with the Cuyahoga County Court of Common Pleas from a final assessment by the Cuyahoga County Auditor’s Hotel/Motel Tax Department. The instant matter was also filed with this board on February 7, 2009. Thus, appellant “is attempting to appeal the same January 9, 2009 decision in both forums.” Memorandum at 1. In addition, both appeals raise identical issues for determination on appeal. The county auditor argues that by virtue of appellant first filing in the court of common pleas, it has deprived this board of jurisdiction over the instant appeal.

No response to the motion was filed by the appellant.

It appears this appeal may be one of first impression. In consideration of the instant motion, we believe that this board’s jurisdiction to hear the instant matter may be implicated by virtue of the general provisions of R.C. 5703.02, which sets forth in pertinent part that:

“There is hereby created the board of tax appeals, which shall exercise the following powers and perform the following duties:

“(A) Exercise the authority provided by law to hear and determine all appeals of questions of law and fact arising under the tax laws of this state in appeals from decisions, orders, determinations, or actions of any tax administrative agency established by the law of this state, including but not limited to appeals from:

“(1) Actions of county budget commissions;

“(2) Decisions of county boards of revision;

“(3) *Actions of any assessing officer or other public official under the tax laws of this state;*¹

“(4) Final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by him;

“(5) Adoption and promulgation of rules of the tax commissioner.” (Emphasis added.)

While we find no specific statutory guidance regarding such appeals to this board, see R.C. 5739.09, we compare, by analogy, the instant facts to appeals filed with both this board and the court of common pleas from a county board of revision. In that regard, R.C. 5717.05 states, in pertinent part:

“As an alternative to the appeal provided for in Section 5717.01 of the Revised Code, an appeal from the decision of the county board of revision may be taken directly to the court of common pleas of the county by the person in whose name the property is listed or sought to be listed for taxation. ***

¹ We acknowledge that in any appeal purportedly filed pursuant to R.C. 5703.02(A)(3), questions may arise in the absence of a more specific statute expressly granting a right of appeal, e.g., what constitutes an “appealable” action, what time frame exists for the filing of such appeal, with whom must the appeal be served, where must the appeal be filed, is the appellant required to “specify” error, etc. Compare, e.g., R.C. 5717.01, 5717.011, 5717.02. Compare, also, *Cleveland Championships 2000 v. City of Cleveland* (Mar. 9, 2001), BTA No. 2001-A-42, unreported; *Netherland v. Levin* (Dec. 14, 2007), BTA No. 2007-T-934, unreported.

“When the appeal has been perfected by the filing of notice of appeal as required by this section, and an appeal from the same decision of the county board of revision is filed under Section 5717.01 of the Revised Code with the board of tax appeals, the forum in which the first notice of appeal is filed shall have exclusive jurisdiction over the appeal.”

As this board previously stated in *3525 West 130th Ltd. v. Cuyahoga Cty. Bd. of Revision* (Oct. 20, 2006), BTA No. 2006-M-292, unreported, “R.C. 5717.05 sets up a race to the forum. Once an appeal is filed and perfected with a court of common pleas, any later-filed appeal with this board is without jurisdiction. R.C. 5717.05; *Cuyahoga Falls Bd. of Edn. v. Summit Cty. Bd. of Revision* (Mar. 9, 2001), BTA No. 2000-M-2019, unreported; *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Oct. 13, 1989), BTA No. 1989-C-205, unreported; *City of North Olmsted v. Cuyahoga Cty. Bd. of Revision* (Mar. 2, 1990), BTA No. 1989-B-408, unreported.”

Thus, based upon the foregoing, it appears that appellant first filed with the Court of Common Pleas of Cuyahoga County. It further appears exclusive jurisdiction of this appeal belongs to the Cuyahoga County Court of Common Pleas and not with the Board of Tax Appeals. Therefore, for the foregoing reasons, it is the decision of the Board of Tax Appeals that the county’s motion to dismiss, which has not been opposed, be granted. The matter herein is ordered dismissed.

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