

Stan Jankowski,)	
)	CASE NO. 96-M-794
Appellant,)	
)	(Real Property Exemption)
)	
vs.)	ORDER
)	
Roger W. Tracy,)	(Denying Motions Currently
Tax Commissioner of Ohio,)	Pending)
)	
Appellee.)	

APPEARANCES:

- | | |
|---|--|
| For the Appellant | - Stan Jankowski, <u>Pro Se</u>
9953 Meldon Drive
Streetsboro, Ohio 44241 |
| For the Tax
Commissioner | - Betty Montgomery
Ohio Attorney General
By: Richard C. Farrin
Assistant Attorney General
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Columbus, Ohio 43215 |
| For the City of
Streetsboro | - Timothy Ludick, Law Director
City of Streetsboro
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P.O. Box 608
Ravenna, Ohio 44266 |
| | and |
| | Alfred E. Schrader
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441 Wolf Ledges Parkway
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| For the Property
Owner, Step2
Company | - William M. Oldham
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195 South Main Street, Suite 300
Akron, Ohio 44308-1314 |

Entered May 2, 1997

Mr. Johnson, Ms. Jackson and Mr. Manoranjan concur.

This matter is before the Board of Tax Appeals as a result of certain motions filed by the appellant and the City of Streetsboro. The matter originally came before this Board as a result of a notice of appeal, filed by Stan Jankowski, appellant herein, from a Journal Entry of the Tax Commissioner, appellee herein, dated May 10, 1996, and received by the appellant on June 4, 1996.

There are currently five motions pending with this Board. On February 28, 1997, the City of Streetsboro filed a "Motion to Dismiss" and memorandum in support thereof. On March 5, 1997, the appellant filed four motions, separately titled "Motion to Reconsider", "Motion to Vacate", "Motion to Settle", and "Motion to Add and Discuss". A motion to continue the hearing previously scheduled for April 3, 1997 was also filed in this matter; that request was granted orally and confirmed by letter dated April 10, 1997.

This matter commenced when appellant submitted a letter to the Tax Commissioner requesting an investigation of certain enterprise zone tax abatement agreements entered into by the City of Streetsboro. The Commissioner considered the letter to be a complaint against the continuing exemption of real property pursuant to R.C. 5715.27(E). The appellant believed seven parcels of land located in Portage County had received improper real property tax exemptions. The Commissioner, by Journal Entry, determined that only one property, identified as Parcel No. 35-021-00-00-025.001 and owned by Step 2 Corporation, was currently listed as exempt. After consideration of appellant's arguments, the

Commissioner found the complaint against the continuing exemption of that specific property was without merit and denied the same.

The appellant subsequently appealed the Commissioner's journal entry to this Board. The notice of appeal provides:

"I AM APPEALING THE JOURNAL ENTRY ORDER AC 2155 and BC 0266 BASED UPON ENCLOSED FACTS.

"THE OHIO REVISED CODE, STREETSBORO CITY CHARTER AND PASS (sic) COURT CASES ALL EXPLAIN THE PROPER POSTING OF ORDINANCE (sic). PROPER PASSAGE AND EFFECTIVE DATES ARE VERY CLEAR.

"THE CURRENT OPINION OF STREETSBORO CITY LAW DIRECTOR, AN ORDINANCE IS NOT EFFECTIVE UNTIL PROPER PROCEDURE IS COMPLETED, FURTHER BACKS MY APPEAL.

"THE PARCEL FOR STEP 2 PARCEL 35-021-00- 00-025.001 WAS NOT IN EFFECT UNTIL CHANGE IN NEW ENTERPRISE LAW PASSED JULY 22, 1994 THUS THE STREETSBORO SCHOOL BOARD IS ENTITLED TO A 50/50 SPLIT IN CITY INCOME TAX PER REVISED CODE AM. SUB. S.B. NO 19 SECTION B, C AND D.

"TO DATE, (OVER TWO YEARS) THE MONEY AND NO AGREEMENT HAVE TAKEN PLACE.

"I HAVE ALL THE DOCUMENTS TO COME TO COLUMBUS AND SHOW.

"WAITING FOR THE HEARING DATE."

(Emphasis in Original)

The motions currently pending are considered upon the record before this Board. After review, this Board finds that we are able to consider the motions without the need for further evidence.

We will first consider the motion to dismiss, because if we find it to be well taken, the granting of said motion will

dispose of the appeal. R.C. 5717.02 sets forth the jurisdictional requirements which must be complied with in order to appeal a final order of the Tax Commissioner to the Board of Tax Appeals. That section provides in pertinent part:

"The notice of appeal shall have attached thereto and incorporated therein by reference a true copy of the notice sent by the commissioner *** to the taxpayer or enterprise of the final determination or redetermination complained of, and shall also specify the errors therein complained of ***
."

(Emphasis added.)

The requirements of R.C. 5717.02 are jurisdictional in nature and compliance is a necessary prerequisite before the Board of Tax Appeals has the power to consider the underlying appeal. Clippard Instrument Co. v. Lindley (1977), 50 Ohio St. 2d 121; Cooke v. Kinney (1981), 65 Ohio St. 2d 7.

In the present matter, the City of Streetsboro complains that the appellant, through his notice of appeal, has failed to identify or specify any purported errors made by the Tax Commissioner. As a result, the City argues, appellant has failed to vest this Board with the requisite jurisdiction to consider appellant's arguments.

Indeed, this Board is limited to considering only the specific errors identified by a notice of appeal. Moraine Hts. Baptist Church v. Kinney (1984), 12 Ohio St. 3d 134. The specificity requirement does not, however, require that this Board succumb to a "hypertechnical reading" of notices of appeal so as to

deny review of a pending matter. Jurisdiction vests when an appellant indicates the Commissioner's action which is questioned, cites applicable law, and asserts a treatment which it believes the Commissioner should have applied. Buckeye International, Inc. v. Limbach (1992), 65 Ohio St. 3d 264; Goodyear Tire & Rubber Co. v. Limbach (1991), 61 Ohio St. 3d 381.

In the present matter, we must agree that appellant's notice of appeal is less than a model of clarity. Nevertheless, it does represent appellant's best effort to bring matters which he believes important to the Board's attention. Unfortunately, as we will discuss infra, appellant raises certain claims which this Board may have no statutory authority to consider. However, appellant's notice of appeal does identify a finding by the Tax Commissioner (i.e., that Parcel 35-021-00-00-025.001, exempted by the Commissioner through Journal Entry dated December 23, 1994 is entitled to continuing exemption from real property taxation), which he claims was made in error. Appellant further claims the ordinance approving the enterprise zone agreement was unlawfully enacted. A valid enterprise zone agreement is one of the necessary requirements for the grant of real property tax exemption pursuant to R.C. 5709.61 et seq. The appellant's complaint is against a specific parcel's continued exemption granted pursuant to a valid enterprise zone agreement. This Board finds that the appellant has sufficiently identified an error upon which he bases his appeal. Therefore, this Board is vested with jurisdiction to review the arguments raised by appellant relative to the granting of the tax

exemption to Parcel No. 3-021-00-00-025.001, owned by Step 2 Corporation.

Appellant makes an other claim, which we will construe as a second assignment of error, in which he asserts that the Streetsboro School Board is entitled to a "50/50" split in city income tax revenues since 1994. This Board must question whether this Board has jurisdiction to consider this claim.

Appellant filed his original complaint pursuant to R.C. 5715.27(E). Such section provides:

"A complaint may also be filed with the commissioner by any person, board or office authorized by section 5715.19¹ of the Revised Code to file complaints with the county board of revision against the continued exemption of any property."

R.C. 5715.27(F) prescribes the Tax Commissioner's duties once such a complaint has been filed:

**** The Commissioner shall consider such *** complaint in accordance with procedures established by him, determine whether the property is subject to taxation or exempt therefrom, and certify his findings to the auditor, who shall correct the tax list and duplicate accordingly."

¹A number of persons and/or entities are authorized by R.C. 5715.19 to file complaints against "determinations affecting real property" with county boards of revision. That list includes any person owning real property within a county, the board of county commissioners, the prosecuting attorney, the treasurer, the board of township trustees of any township with territory within a county, any board of education with territory within a county, and the mayor or legislative authority of any municipal corporation within a county.

Appellant claims that Am. Su b. Senate Bill No. 19, enacted effective July 22, 1994, required the City of Streetsboro to share collected city income tax revenues with the Streetsboro School Board. Appellant claims that, since 1994, the city has failed to meet this obligation. We have reviewed Am. Sub. Senate Bill No. 19 and can find no duty on the part of the Tax Commissioner to review the City of Streetsboro's tax-sharing obligations with the school board, if such an obligation exists. We, further, cannot find that the law requires the Commissioner to deny exemption to a real property owner if the city fails to meet its revenue sharing obligations.

Finally, we recognize that the City of Streetsboro, by motion, argues that the Portage County Prosecuting Attorney's review of the abatement agreements and subsequent opinion that the agreements are valid and enforceable conclusively resolves the issues raised before this Board. However, the prosecuting attorney's opinion letter relates to the underlying issues to be considered by this Board and is more appropriately reviewed during our later examination of the matter on the merits.

In addressing the motions filed by the appellant, we note that while each motion is styled differently, the basic thrust is similar, if not identical. Through each motion, appellant requests this Board make findings relating to the actions of the Streetsboro City Mayor as they impact upon the actions of the Streetsboro City Council. For example, the "Motion to Reconsider" provides, as follows:

"Now come Plaintiff herein and request (sic) this board pursuant to Ohio Revised Code Sections 731.20, 731.21, 5706.63 and Streetsboro City Charter Sec 4.13 to reconsider all the within judgement (sic) rendered by the Tax Commissioner now and in the future any stated (sic) in original complaint the Enterprise Zone Abatement Agreements to Portage County Tax Auditor and to remove from the tax duplicate for the reason that the Defendants failed to comply with the mandatory language of the Ohio Revised Code and Streetsboro Charter to wit: Mayor Henzel did not perform her required duties and presented to the County Commissioners an untrue vote of council, the vote as required by charter was not adequate and further even if properly voted, could not take effect until August 28th, 1994 actual posted dated (sic) as required by revised code. At this time renewed enterprise laws were in effect, passed by the State Legislature. Documents were untrue, illegal, misleading, arbitrary, unreasonable and unsupported by the preponderance of substantial, reliable and probative evidence on the whole record. Further City schools under new revised code laws must receive 50% tax revenue as required by revised code."

The other motions filed similarly accuse the Mayor of failing to perform her required duties as they relate to the execution of enterprise zone agreements.

We remind Mr. Jankowski that this matter is an appeal from a final determination of the Tax Commissioner. As the appellant, he has an obligation to establish a right to the relief he requests. Belgrade Gardens v. Kosydar (1974), 38 Ohio St. 2d 135; Midwest Transfer Co. v. Porterfield (1968), 13 Ohio St. 2d 138. Mr. Jankowski requests a determination that the subject parcel is not entitled exemption from real property taxation. Moreover, Mr. Jankowski has the obligation show in what manner and

to what extent the Tax Commissioner's determination is in error.
Federated Dept. Stores, Inc .v. Lindley (1983), 5 Ohio St. 3d 213.

Considering all four of appellant's motions, we find said motions merely repeat the claims made by Mr. Jankowski through his notice of appeal. The motions fail to place into issue any matter which is appropriately considered through pre-hearing motion, such as the propriety of or limit to our ability to hear and consider the matter before us. The appellant is, further, precluded from expanding the issues before us by motion. Therefore, we find the motions currently filed by the appellant fail to raise proper issues for our consideration outside the Board's ultimate determination of his appeal upon the merits.

Thus, considering the record before us, we find that the City of Streetsboro's motion to dismiss for failure to specify error is overruled. However, the appellant's evidence will be limited to the issue of the proper granting of an exemption from real property taxation to Parcel No. 35-021-00-00-025.001, owned by Step 2 Corporation. This Board will hear no evidence relating to the proper division of city income tax revenues. Further, this Board finds the appellant's motions fail to raise any issue properly considered through motion and are overruled.

The matter will be scheduled for an evidentiary hearing during the month of June, 1997. The parties shall receive notice of the time and place of the evidentiary hearing in accordance with the Board's ordinary practices. It is further ordered that copies of this Order be served upon the parties through their counsel by certified mail

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