

Howard R. Harsell,	)	
	)	CASE NO. 97-R-600
Appellant,	)	
	)	
vs.	)	(REAL PROPERTY VALUE)
	)	
Summit County Board of	)	
Revision and the Summit	)	DECISION AND ORDER
County Auditor,	)	
	)	
Appellees.	)	

APPEARANCES:

For the Appellant	- Howard R. Harsell, <u>pro se</u> 678 Hudson Avenue Akron, Ohio 44306-1542
For the County Appellees	- Maureen O'Connor, Esq. Summit County Prosecuting Attorney By: Allyson Miller-Leonard, Esq. Assistant Prosecuting Attorney Tax Division 906 Key Building 159 South Main Street Akron, Ohio 44308-1317

Entered September 12, 1997

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

This matter came to be considered by the Board of Tax Appeals upon a purported notice of appeal filed June 9, 1997, by Howard R. Harsell. Mr. Harsell appeals a decision of the Summit County Board of Revision ("BOR"), wherein the BOR determined the taxable value of the subject real property for tax year 1996.

The subject property is located in the City of Akron taxing district and appears on the property record card as having permanent parcel number 67-38497. The subject property

is a single family residence, located in an allegedly marginal neighborhood.

The Summit County Auditor and the BOR determined the true value and taxable values of the subject property to be as follows:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 6,760	Land	\$ 2,370
Building	<u>20,520</u>	Building	<u>7,180</u>
Total	\$ 27,280	Total	\$ 9,550

Mr. Harsell, on the other hand, disagreed with the county's valuation, stating that:

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"I don't understand how property values can jump so much in 2 years, especially (sic) the land. They keep saying taxable value does not raise the taxes (sic) but look at the tax payments enclosed. They jumped 65% in one year.

\*\*\*"

On July 28, 1997, the county appellees filed a Motion to Dismiss and Memorandum of Law in Support of Motion to Dismiss. This motion was based on Mr. Harsell's failure "to comply with the jurisdictional mandates of Ohio Revised code 5717.01 by failing to file a notice of appeal with the Summit County Board of Revision."

An evidentiary hearing was scheduled on appellees' motion to dismiss. The county waived hearing, and Mr. Harsell did not appear. Mr. Harsell did, however, submit a statement, which reads as follows:

"I Howard R. Harsell request that the Board of Tax Appeals deny the appellees motion to dismiss.

"The Summit County Board of Revisions (sic) and the Summit County Auditor did not provide notice of appeals forms and instructions to me. The only instructions I received from these people was (sic) the instructions for the completion of DTE Form 1 which states only the following, 'If you disagree with the Board of Revisions (sic) decision, you may file an appeal with the Board of Tax Appeals in Columbus or with the Court of Common Pleas.['] Two copies of the instruction are enclosed.

"The enclosed instructions do not state that a notice of appeal must be filed with the Summit County Board of Revisions (sic). In reliance on the enclosed instructions I filed an appeal with the Board of Tax Appeals.

"I complied with the only instructions I received.

"The Summit County Board of Revisions (sic) and the County Auditor should be prevented from obtaining a dismissal of my appeal in view of the above instructions I received from them.

"The ability of the Summit County Board of Revisions (sic) and the Summit County Auditor to defend the assessment has not been affected by failure to file a notice of appeal with the Board of Revisions (sic).

"I on the other hand would be denied the right to a hearing on the merits or a mediation conference if the motion to dismiss is granted." (Emphasis in original)

This matter is now submitted upon the purported notice of appeal, the statutory transcript certified to the Board of Tax Appeals (S.T.), the county appellees' motion to

dismiss, and Mr. Harsell's written response to the county appellees' motion to dismiss.

Before this Board may review determinations of state taxing authorities, an appellant must comply with all of the jurisdictional requirements imposed by the Ohio General Assembly. Mid American Machine Tools v. Lindley (1981), 68 Ohio St.2d 91; see, also, Consolidated Freightways, Inc. v. Summit Cty. Bd. of Revision (1986), 21 Ohio St.3d 17.

Specifically, in the instant matter, this Board considered R.C. 5717.01, which provides that:

"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 an appeal may be taken by the county auditor, the tax commissioner, or any board, legislative authority, public official, or taxpayer authorized by section 5715.19 of the Revised Code to file complaints against valuations or assessments with the auditor. Such appeal shall be taken by the filing of a notice of appeal, either in person or by certified mail, with the board of tax appeals **and** with the county board of revision. \*\*\*."  
(Emphasis added.)

Thus, R.C. 5717.01 expressly requires that a notice of appeal be filed: (1) in person or by certified mail, (2) with the Board of Tax Appeals **and** with the county board of revision, (3) within thirty days after the BOR mails its decision to the parties.

In the present case, according to the statutory transcript and the county appellees' motion to dismiss, the BOR rendered its decision on May 13, 1997. It then mailed written notification of its decision to Mr. Harsell on May 14, 1997. Mr. Harsell signed for and received a copy of that decision on May 15, 1997.

On June 4, 1997, Mr. Harsell mailed his notice of appeal to the Board of Tax Appeals by regular U.S. mail, which was received and filed by the Board on June 9, 1997. However, Mr. Harsell failed to file his notice of appeal with the Summit County Board of Revision as required by R.C. 5717.01. See Affidavit of Diane Gaugler, custodian of the records of the Summit County Board of Revision, attached to the county appellees' motion.

Consequently, although regrettably, the evidence supports the conclusion that the notice of appeal was not timely filed with the Summit County Board of Revision as required by R.C. 5717.01.

The requirements of R.C. 5717.01 are legislatively mandated and must be strictly complied with. American Restaurant and Lunch Co. v. Glander (1946), 147 Ohio St. 147; Hanson Machinery Co. v. Limbach (1986), 22 Ohio St.3d 209; Austin v. Cuyahoga Cty. Bd. of Revision (1989), 46 Ohio St. 3d 192. The thirty-day filing requirement for timely filing a notice of appeal with both the county board of revision and the Board of Tax Appeals is mandatory and jurisdictional. Bd. of Edn. of Mentor v. Bd. of Revision (1980), 61 Ohio St.2d 332.

Failure to file with both in a timely manner is fatal to an appellant's appeal.

Mr. Harsell contends that this appeal should not be dismissed because he reasonably relied upon the instructions for completion of DTE Form 1 provided to him. However, those instructions specifically state that they were "developed to assist you in completing the **Complaint Against The Valuation of Real Property, \*\*\***," not a notice of appeal. Moreover, instructions provided by the state or local governmental unit are only a guideline to aid taxpayers; they are not the law. See Bruno v. Tracy (July 16, 1993), B.T.A. No. 92-R-113, unreported; Bondurant v. Limbach (Dec. 16, 1988), B.T.A. No. 87-E-613, unreported.

Upon consideration of the existing record and applicable statutes, the Board is constrained to find that the notice of appeal herein was not timely filed with the Summit County Board of Revision. Therefore, the county appellees' motion to dismiss the cause is well taken and must be granted. Thus, this Board is without jurisdiction to issue a decision finding value for the subject property.

Accordingly, it is the decision and order of the Board of Tax Appeals that Howard Harsell's appeal must be, and hereby is, dismissed for lack of jurisdiction. ohiosearchkeybta