

OHIO BOARD OF TAX APPEALS

Floyd R. Smith,)	
)	CASE NO. 2003-V-821
Appellant,)	
)	(REAL PROPERTY TAX)
vs.)	
)	DECISION AND ORDER
Butler County Board of Revision and the)	
Butler County Auditor,)	
)	
Appellees.)	

APPEARANCES:

- | | | |
|-------------------------------|---|--|
| For the Appellant | - | Floyd R. Smith, pro se
1180 North Third Street
Hamilton, OH 45011 |
| For the County
Appellees - | - | Robin N. Piper
Butler County Prosecuting Attorney
Dan Ferguson
Assistant Prosecuting Attorney
315 High Street
11 th Floor
Hamilton, OH 45012-0515 |

Entered December 19, 2003

Ms. Jackson, Ms. Margulies, and Mr. Eberhart concur.

This appeal is now being considered upon an order requiring appellant to show cause issued by this board’s attorney examiner on November 7, 2003.

Specifically the order requires the appellant to show cause as to why this board should not dismiss this appeal given the requirement under R.C. 5717.01 mandating that a copy of the notice of appeal be filed with the Butler County Board of Revision (“BOR”) within thirty (30) days after the mailing of the BOR’s decision. As previously stated in this board’s order, the certification (DTE Form 3) of the auditor

represents that a copy of the notice of appeal filed by appellant has not been received by the BOR. No party has filed a response to this board's order.

R.C. 5717.01 provides, in relevant 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 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, 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. If notice of appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 [5703.05.6] 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.” (Emphasis added.)

The Ohio Supreme Court has consistently held that the requirements of R.C. 5717.01 are mandatory, and that compliance therewith is essential to vest jurisdiction in the Board of Tax Appeals. *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68. Failure to comply with the appellate statute is fatal to the appeal.¹ *Austin Co. v. Cuyahoga Cty. Bd. of Revision* (1989), 46 Ohio St.3d 192. See, also, *Mentor Exempted Village School Dist. Bd. of Edn. v. Lake Cty. Bd. of*

¹ Once the thirty-day period for filing a notice of appeal has expired and the decision of the BOR has become final, the Board of Tax Appeals is without authority to hear the appeal. See *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 2000-Ohio-452, *Lutz v. Evatt* (1945), 144 Ohio St. 635.

Revision (1980), 61 Ohio St.2d 332; *Cleveland City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1973), 34 Ohio St.2d 231.

Therefore, because the notice of appeal was not timely served on the Butler County Board of Revision, pursuant to R.C. 5717.01, we lack the requisite jurisdiction over the instant appeal. It is the decision and order of the Board of Tax Appeals that the instant matter be dismissed.

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