

OHIO BOARD OF TAX APPEALS

John & Cheryl J. Swallow,) CASE NOS. 2004-M-722, 723
)
Appellants,) (REAL PROPERTY TAX)
)
vs.) DECISION AND ORDER
)
Hamilton County Board of Revision and)
the Hamilton County Auditor,)
)
Appellees.)

APPEARANCES:

For the Appellants - Gregory G. Spitz, Esq.
1538 Cedar Avenue
Cincinnati, Ohio 45224

For the County- Appellees Michael K. Allen
Hamilton County Prosecuting Attorney
By: Thomas J. Scheve
Assistant Prosecuting Attorney
230 E. Ninth Suite, Suite 4000
Cincinnati, Ohio 45202-2151

Entered October 15, 2004

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

These matters come to be considered by the Board of Tax Appeals upon two purported notices of appeal filed by appellants herein under date of August 13, 2004. Appellants challenge decisions, dated July 15, 2004, of the Hamilton County Board of Revision (“BOR”).

On September 10, 2004, counsel for the county appellees filed the following motion in each appeal:

“Now comes the Appellee Hamilton County Auditor, by and through his undersigned counsel, pursuant to O.A.G. [sic] 5717-1-11 and moves the Court [sic] to dismiss the above-captioned appeal on the grounds that a copy of the appeal was not filed with the Hamilton County Board of Revision (BOR) as required by R.C. 5717.01 and such failure is a jurisdictional defect.”

The acting auditor of Hamilton County certified through the statutory transcript filed with this board on September 10, 2004, that the BOR did not receive copies of the notices of appeal that were filed with this board. This fact was not contested through the appellants’ memoranda in opposition to appellees’ motion to dismiss. Therefore, the board finds that the BOR did not receive a copy of the notices of appeal.

R.C. 5717.01 provides the jurisdictional requirements necessary to appeal a decision of a county board of revision:

“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 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 *** 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 the receipt recorded by the authorized delivery service shall be treated as the date of filing. ***.” (Emphasis added.)

While the appellants argue that the failure to comply with R.C. 5717.01 amounted to harmless error, the Board of Tax Appeals is a creature of statute. In this regard, we must strictly comply with any jurisdictional requirements set by the statutes of this state. *Austin Co. v. Cuyahoga Cty. Bd. of Revision* (1989), 46 Ohio St.3d 192. See, also, *Fineberg v. Kosydar* (1975), 44 Ohio St.2d 1; *Zephyr Room, Inc. v. Bowers* (1955), 164 Ohio St. 287. The board has no ability to overlook a statutory requirement even if the county appellees received notice of the filing of the appeals from another source. See *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68.

Upon consideration of the entire record before us, we find and determine, as a matter of fact, that the appellants did not file a copy of their notice of appeal with the BOR within the time prescribed by R.C. 5717.01. Accordingly, this board has no jurisdiction to address the merits of these appeals.

In consideration of the foregoing, it is the decision of the Board of Tax Appeals that the appellees' motions to dismiss are well taken and are hereby granted. The matters herein are ordered dismissed.

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