

**OHIO BOARD OF TAX APPEALS**

David and Nancy Wolf,	)	
	)	
Appellants,	)	CASE NO. 2005-T-398
	)	
vs.	)	(MUNICIPAL INCOME TAX)
	)	
Amberley Village Board of Review	)	ORDER
and the Amberley Village Tax	)	
Administrator,	)	DECISION AND ORDER
	)	
Appellees.	)	

**APPEARANCES:**

For the Appellants -	David and Nancy Wolf, pro se 7183 Meadowbrook Drive Cincinnati, Ohio 45237
Notice of Appeal filed by -	Lawrence B. Waldman, CPA Waldman, Pitcher & Company 4500 Cooper Road Suite 301 Cincinnati, Ohio 45242
For Amberley Village Bd. of Review -	Stephen Cohen Amberley Village Solicitor 7860 Gapstow Bridge Cincinnati, Ohio 45231-6058
For the Tax Admin. -	Jeremiah Caudill Amberley Village Tax Administrator 7149 Ridge Road Cincinnati, Ohio 45237

Entered August 26, 2005

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

On July 8, 2005, we issued an order requiring the appellants to show cause as to why the order of the Amberley Village Board of Review, which dismissed

an appeal filed by appellants, David and Nancy Wolf, should not be affirmed. No response to our order was received within the time specified.<sup>1</sup>

The record establishes that on February 17, 2005, the municipal tax administrator issued a decision regarding the Wolf's 2003 Amberley Village income tax return. On March 23, 2005, the Wolfs filed with the Amberley Village Board of Review a request for appeal, in which the Wolfs specified that the administrator erred in denying a municipal income tax credit carryover to the 2004 tax year. On March 31, 2005, the board of review determined that the request for appeal was not timely filed and dismissed the matter. The Wolfs now appeal that dismissal to this board.

R.C. 718.11 sets forth the requirements for bringing an appeal before a municipal board of appeals as follows:

“Whenever a tax administrator issues a decision regarding a municipal income tax obligation that is subject to appeal as provided in this section or in an ordinance or regulation of the municipal corporation, the tax administrator shall notify the taxpayer in writing at the same time of the taxpayer’s right to appeal the decision and of the manner in which the taxpayer may appeal the decision.

“Any person who is aggrieved by a decision by the tax administrator and who has filed with the municipal corporation the required returns or other documents pertaining to the municipal income tax obligation at issue in the decision may appeal the decision to the board [of appeal] created pursuant to this section by filing a request with the board. The request shall be in writing, shall state why the decision should be deemed incorrect or unlawful, and *shall be filed within thirty days after the tax administrator issues the decision complained of.*” (Emphasis added.)

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<sup>1</sup> The Wolfs did file a waiver of hearing before the BTA.

See, also, Section 31.12(C), Amberley Village, Ohio Code of Ordinances, which provides that a request for appeal must be filed with the board of review “within 30 days from the announcement of such ruling or decision by the administrator.”

A municipal board of appeal<sup>2</sup> is a creature of statute and has only the jurisdiction, power, and duties expressly given to it by the General Assembly or by ordinance. See *Steward v. Evatt* (1944), 143 Ohio St. 547; *Leiphart Lincoln-Mercury, Inc. v. Bowers* (1958), 107 Ohio App. 259. As such, an appellant has no inherent right to a review before the board of appeal. Such a right is statutory, and strict compliance with R.C. 718.11 is required in order to confer jurisdiction upon the board of appeal. Cf. *Austin Co. v. Cuyahoga Cty. Bd. of Revision* (1989), 46 Ohio St.3d 192; *American Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147. One of those requirements is that the request for appeal must be filed with the board of review within thirty days after the issuance of the tax administrator’s decision. Failing to comply with the requirement will lead to the dismissal of the appeal. See *Austin Co.*, supra; *Akron Standard Div. v. Lindley* (1984), 11 Ohio St.3d 10.<sup>3</sup>

In their notice of appeal, the Wolfs have not challenged the issuance date of the tax administrator’s decision, nor do they question the date of the filing of their request for appeal with the board of review. Instead, they represent that they were out of town until mid-March. As a result, they did not receive the decision until their

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<sup>2</sup> The appellee entity from which this appeal is taken is formally known as the “Amberley Village Board of Review.” However, the statutes generally refer to such an entity as a municipal “board of appeal.” See R.C. 718.11 and 5717.011.

<sup>3</sup> R.C. 5717.011 further provides that a copy of a notice of appeal to the BTA must be filed with both the board of appeal and the tax administrator. The record in this matter fails to disclose whether this statutory requirement has been met.

return, sometime around March 17, 2005. The Wolfs contend that their board of review appeal should be considered timely because their request was filed within thirty days after their receipt of the decision.

Nevertheless, the present situation is not one of discretion. R.C. 718.11 is explicit; the appeal time begins to run from the date the tax administrator's decision is issued, not from the date upon which the taxpayer receives the decision. While this situation may be regrettable, we must apply the pertinent law to the facts.

Based upon the foregoing, we are constrained to find that the Wolfs' request for appeal was filed with the Amberley Village Board of Review after the expiration of the thirty-day period mandated by R.C. 718.11 and Section 31.12(C), Amberley Village, Ohio Code of Ordinances. Accordingly, we affirm the Amberley Village Board of Review's dismissal of the appeal.

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