

John R. Mayer,)	CASE NO. 98-M-734
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Summit County Board of)	(Dismissing Appeal)
Revision and the Summit)	
County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	-	John R. Mayer, <u>Pro Se</u> 3932 Deer Run Oval Richfield, Ohio 44286
For the County Appellees	-	Maureen O'Connor Summit County Prosecuting Attorney By: Marc R. Wolff Assistant Prosecuting Attorney 906 Key Bldg. 159 S. Main Street Akron, Ohio 44308

Entered September 18, 1998

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

This cause and matter comes on to be considered by the Board of Tax Appeals upon a purported notice of appeal filed herein on August 6, 1998, by the above-named appellant from a decision of the Summit County Board of Revision (BOR) dated July 2, 1998.

On September 14, 1998, this Board docketed a "Motion to Dismiss" filed by the Summit County Prosecuting Attorney. By motion, appellees assert that this Board is without jurisdiction to consider the appeal before us because the appellant failed to perfect his appeal in accordance with R.C. 5717.01. Appellees

advance two separate grounds in support of their claim. Appellees claim, first, that the appellant did not timely file his appeal with this Board and, second, that appellant failed to notify the BOR as required by statute.

To support their claim that the appellant failed to notify the BOR, appellees have provided an affidavit from Diane Gaugler, custodian of the records of the Summit County Board of Revision. By affidavit, Ms. Gaugler avers that she has reviewed the records relating to the above captioned appeal and has concluded that no notice of appeal was filed with the BOR¹. Ordinarily, when a claim of non-filing is made, this Board would accord the appellant a reasonable period of time to provide evidence that notice was given to a board of revision. See Dietrich v. Tuscarawas Cty. Bd. of Revision (Nov. 15, 1996), B.T.A. No. 96-M-624, unreported; KRS Holdings, Inc. v. Licking Cty. Bd. of Revision (June 17, 1994), B.T.A. No. 93-M-1132, unreported. However, as we find that the appellant did not timely file his

¹While the appellees claim that the BOR did not receive notice of the filing of the notice of appeal (and we agree that the BOR did not receive a copy of the Notice of Appeal filed with this Board), we do note that the Statutory Transcript contains a letter from appellant dated July 13, 1998. The letter, mailed to the BOR by certified mail on the same date, questions the BOR's decision. (S.T., Exh. 10) That letter may constitute sufficient notice to the BOR of appellant's intent to appeal. See Leach v. Hamilton Cty. Bd. of Revision (Interim Order, issued Aug. 21, 1998), B.T.A. Nos. 98-M-45 through 98-M-51, unreported. However, in the present matter, appellant failed to file his Notice of Appeal with this Board within thirty days of the mailing of the BOR's decision. Thus, even if this Board were to consider appellant's July 13, 1998, letter adequate notice to the BOR, the appellant would still have not furnished notice to this Board until after the thirty day period prescribed by law had expired.

notice of appeal with this Board, sufficient grounds for dismissal exist notwithstanding any response made by appellant.

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, either in person or by certified mail, with the board of tax appeals and with the county board of revision. If notice of appeal is filed by certified mail, the date of the United States postmark placed on the sender's receipt by the postal employee to whom the notice of appeal is presented shall be treated as the date of filing *** "

(Emphasis Added)

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.

In the present matter, the Statutory Transcript certified to this Board by the Summit County Auditor contains a photocopy of the BOR's decision letter, dated July 2, 1998, and the certified mail receipt related to the decision letter, with a postmark of the same date. (S.T. Exh. 12) Pursuant to R.C. 5717.01, appellant was

required to file his notice of appeal within 30 days of the date of the mailing of the BOR's decision.

Appellant's notice of appeal, filed by certified mail, was docketed with this Board in accordance with the postmark date. R.C. 5717.01. The notice of appeal was postmarked August 6, 1998, and therefore, filed on the same date. However, by filing on August 6, 1998, appellant failed to meet the thirty day time requirement imposed by statute.

Upon consideration of the entire record herein, we find and determine, as a matter of fact, the appellant did not file a copy of his notice of appeal with the Board of Tax Appeals as required by law. Accordingly, this Board has no jurisdiction to consider this appeal.

In consideration of the foregoing, it is the decision of the Board of Tax Appeals that the appellees' Motion to Dismiss is well taken and is hereby granted. The appeal herein is ordered dismissed.