

ORIGINAL

IN THE SUPREME COURT OF OHIO

Willis Day Warehousing Co.	:	
	:	
Appellant,	:	Case No. 2010-0115
	:	
Wood County Board of Revision and the	:	
Wood County Auditor	:	Appeal from the Ohio Board of
	:	Tax Appeals Case No. 2006-M-1749
Appellees.	:	and Case No. 2007-M-868

**APPELLANT WILLIS DAY WAREHOUSING CO.'S
MEMORANDUM CONTRA APPELLEES
WOOD COUNTY AUDITOR AND WOOD
COUNTY BOARD OF REVISION'S MOTION TO DISMISS**

Ronald B. Noga (0013345)
1010 Old Henderson Road, Suite 1
Columbus, Ohio 43220
614/326-1954
614/447-1673 – fax
rnoga@nogalaw.net

Attorney for Appellant
Willis Day Warehousing Co.

James Gorry (0032461)
1299 Carron Drive
Columbus, Ohio 43220
Dublin, Ohio 43017
614/327-1067
jgorry@richgillislawgroup.com

Attorney for Appellees Wood County
Auditor and Board of Revision

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SUPREME COURT OF OHIO

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I. STATEMENT OF FACTS

The instant case is an appeal taken from a decision of the Ohio Board of Tax Appeals.

The Notice of Appeal was timely filed with the Ohio Board of Tax Appeals and this Court on January 20, 2011 as required by O.R.C. Section 5717.04.

The Decision appealed from concerned only jurisdictional requirements pertaining to the filing of complaints before County Boards of Revision stemming from increases in valuations by County Auditors subsequent to the Complaint deadline of O.R.C. Section 5715.19. Copy of BTA Decision attached.

The Decision of the Ohio Board of Tax Appeals did not “determine the taxable value of the property whose valuation or assessment by the county board of revision is complained of” nor did it “determine the valuation of an alleged discriminatory valuation as referred to in O.R.C. Section 5717.03(B) and, therefore, the notice requirements of O.R.C. Section 5717.03 Subparagraph (B) did not apply.

Rather, the Decision of the Board of Tax Appeals was a determination governed by O.R.C. Section 5717.03 Subparagraph (E) which does NOT require service of a copy of the Board of Tax Appeals’ Decision upon the Tax Commissioner.

The Appellees herein have filed a Motion to Dismiss contending Appellant failed to serve a copy of the Notice of Appeal upon the Tax Commissioner as required by O.R.C. Section 5717.04 when Subparagraph (B) of O.R.C. Section 5717.03 applies. Appellees contend that Appellant thereby failed to invoke the jurisdiction of this Court.

The following discussion will demonstrate the Motion of Appellees is based on an erroneous premise in that Subparagraph (B) of O.R.C. Section 5717.03 is inapplicable in this case and, therefore, the Appellees’ motion must be overruled.

II. SERVICE OF A NOTICE OF APPEAL TO THIS COURT ON THE TAX COMMISSIONER IS NOT REQUIRED WHERE THE DECISION OF THE BOARD OF TAX APPEALS PERTAINS ONLY TO JURISDICTIONAL ISSUES.

The Appellees in filing their motion to dismiss rely on a series of cases in which this Court has held that the notice of appeal to this Court must also be served on the Ohio Tax Commissioner. Olympic Steel Inc. v. Cuyahoga County Board of Revision (2006), 110 Ohio St.3d 1242; Columbus City School District Bd. Of Ed. v. Franklin County Bd. of Revision (2007), 114 Ohio St. 3d 1224.

The thread running through those cases is that the sixth paragraph of O.R.C. Section 5717.04 requires the Tax Commissioner be made an appellee and be served a copy of the notice of appeal as a jurisdictional requirement in certain circumstances. The sixth paragraph of O.R.C. Section 5717.04 provides:

In all such appeals the tax commissioner OR all persons to whom the decision of the board appealed from is required by such section to be sent, other than the appellant, shall be made appellees. Unless waived, notice of the appeal shall be served upon all appellees by certified mail. The prosecuting attorney shall represent the county auditor in any such appeal in which the auditor is a party. (Capitalization added).

The use of the disjunctive “or” in the sixth paragraph makes it clear that the Tax Commissioner need not be made an appellee if the Decision of the Board of Tax Appeals is not required to be “sent” to the Tax Commissioner under O.R.C. Section 5717.03.

That O.R.C. 5717.03 determines whether Decisions must be “sent” to the Tax Commissioner is evidenced by the fourth paragraph of O.R.C. Section 5717.04 which provides:

Appeals from decisions of the board upon all other appeals or applications filed with and determined by the board may be instituted by any of the persons who were parties to such appeal or application before the board, by any persons to whom the decision of the board appealed from was by law required to be sent, or

by any other person to whom the board sent the decision appealed from, as authorized by section 5717.03 of the Revised Code.

Turning to O.R.C. Section 5717.03 it is clear that if the Board of Tax Appeals determines the taxable value of the property or determines a valuation to correct a discriminatory valuation, the Decision falls under Subparagraph (B) of O.R.C. Section 5717.03 and the Tax Commissioner is to be “sent” a copy of the Decision.

However, as stated above the Decision of the Board of Tax Appeals in this case did not determine the value of any property and therefore did not fall within the ambit of subparagraph (B).

Rather, the Decision of the Board of Tax Appeals in this case logically falls under Subparagraph (E) of O.R.C. Section 5717.03 which provides:

(E) In the case of all other appeals or applications filed with and determined by the board, the board’s order and the date when the order was filed by the secretary for journalization shall be sent by the board to the person who is a party to such appeal or application, to such persons as the law requires, and to such other persons as the board deems proper.

Subparagraph (E) has no requirement that the Tax Commissioner be “sent” a copy of the Board’s Order and, therefore, there is no requirement on this Appellant that the Tax Commissioner be served with a copy of the notice of appeal or be made an Appellee herein.

Further, Appellant had no notice, nor is aware of any evidence in the record, that the Board of Tax Appeals “sent” a copy of the Decision to the Tax Commissioner. Without such notice Appellant cannot be deprived of its right to appeal for failure to serve the Tax Commissioner.

Appellant further submits that the statutory analysis set forth above is a rational reading of the statutes in issue and serves the purposes of the parties and state and county agencies concerned. The issues presented by this appeal arise out of the Board of Tax Appeals Decision

pertaining to its own jurisdiction and the jurisdiction of the Wood County Board of Revision. In that Decision the Board of Tax Appeals held it had no jurisdiction over an appeal of a Decision of the Wood County Board of Revision because the Complaint filed with Wood County was filed after the March 31 deadline of O.R.C. Section 5715.19 for tax year 2005 even though the tax valuation of Appellant's property had been increased by the Auditor without notice after that same deadline. Additionally, the Board held it could not take jurisdiction over an appeal for a subsequent year (2006) in the same triennium period due to the filing of the Complaint for 2005. The merits as to valuation were never reached by the Board with respect to either Complaint. Since no valuation determination was ever made nor was the valuation issue even considered, there was no triggering of the requirement to send the Board's decision to Tax Commissioner under Subparagraph (B) of O.R.C. Section 5717.03. And, since the issues pertained solely to the jurisdictional requirements of the Board of Revision and the Board of Tax Appeals on appeals from a county board of revision, there is no rationale for the Tax Commissioner to participate as the Tax Commissioner plays no role whatsoever in the resolution of these specific issues. In sum, the jurisdictional issues presented here are unique to the responsibilities of county boards of revision and county auditors and do not pertain to a statutory responsibility of the Tax Commissioner. Requiring service of the Notice of Appeal in this case on the Tax Commissioner would be an essentially "futile act" similar to that described by Justice Lundberg Stratton in dissent in Columbus City School District BOE v. Franklin County Board of Revision (2007), 114 Ohio St.3d 1224, 1227.

The above analysis demonstrates that this case is distinct from the situations in both Olympic Steel, supra, and Columbus City School BOE, supra, cited by Appellees, where valuation determinations by the Board of Tax Appeals had been made triggering the notice

requirement of O.R.C. Section 5717.03(B) rather than O.R.C. Section 5717.03(E), applicable herein. In both of those cases the rights of other parties were impacted by valuation determinations. No such rationale exists here.

Further support for Appellant's analysis is found in HK New Plan Exchange Property Owner II, LLC v. Hamilton County Board of Revision, et al. (2009), 121 Ohio St.3d 1224. In that case this Court held that when the Board of Tax Appeals did not have an obligation to certify a decision to a party, the appellant also had no obligation to serve that party as an Appellee. Similarly in this case the character of the Decision of the Board of Tax Appeals did not require the BTA to "send" the Decision to the Tax Commissioner and therefore there was no obligation on Appellant to serve a copy of the Notice of Appeal on the Tax Commissioner.

Finally, the Legislature itself has evidenced an intent to downgrade the notice and service requirements related to these appeals. In 2009 Ohio HB1 (153 v. H1) effective October 16, 2009 (subsequent to the cases relied on by Appellee) the requirement that the Board of Tax Appeals "certify" its Decisions under O.R.C. Section 5717.03(B) to the Tax Commissioner was deleted and the word "sent" inserted. Appellant submits this change implies a strict, mandatory, jurisdictional approach to consideration of this service requirement is no longer intended. The difference between "certifying" a Decision and "sending" a Decision is not merely stylistic. "Certification" of documents, "certification" of service of pleadings, "certified" copies of Decisions and Orders all constitute and imply a higher order of importance and legal significance than mere "sending". Appellant in the spirit of this argument has "sent" its Notice of Appeal to the Tax Commissioner by "certified" mail in conjunction with filing this Memorandum Contra which also has been sent to the Tax Commissioner even though Appellant submits such notice is not required in this case as the argument above demonstrates. Nonetheless, in an abundance of

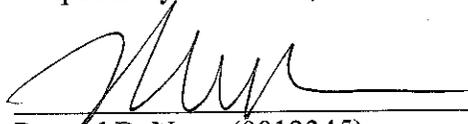
caution Appellant submits that, at a minimum, by this action even if Subparagraph (B) of O.R.C. Section 5717.03 were to apply, Appellant has been sufficiently compliant to maintain jurisdiction in this Court.

III. Conclusion

The Decision of the Board of Tax Appeals appealed from in this case does not fall with the category of determinations described in Subparagraph (B) O.R.C. Section 5717.03 and, therefore, the service requirements relative to the notice of appeal do not include the Tax Commissioner. Accordingly, any failure to serve the Tax Commissioner with a copy of the notice of appeal in this case does not divest this Court of jurisdiction of this appeal.

Therefore, the Appellee's motion to dismiss should be overruled.

Respectfully submitted,



Ronald B. Noga (0013345)
1010 Old Henderson Road, Suite 1
Columbus, Ohio 43220
614/326-1954
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra Appellees Wood County Auditor and Wood County Board of Revision's Motion to Dismiss has been sent by ordinary U.S. mail, postage prepaid, to James Gorry, Attorney for Appellees, 1299 Carron Drive, Columbus, Ohio 43220 and Tax Commissioner of Ohio, 30 East Broad Street, 20th Floor, Columbus, Ohio 43215, on this 20 day of January, 2011.



Ronald B. Noga

Board of Revision ("BOR") called into question the jurisdictional validity of that appeal, as the original complaint was not filed in accordance with the law. The record also calls into question the jurisdictional validity of BTA No. 2007-M-868. When a complaint for an earlier year in a triennial period is filed, a subsequent complaint may not have jurisdictional validity even if the earlier complaint is also found to be jurisdictionally deficient.

R.C. 5715.19 sets forth the requirements for the filing of a complaint with a county board of revision:

"(A)(1) *** a complaint against any of the following determinations for the current tax year¹ shall be filed with the county auditor on or before the thirty-first day of March of the ensuing tax year:

"(d) The determination of the total valuation or assessment of any parcel that appears on the tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code[.]"

The record supports a finding that the complaint which was the genesis of BTA No. 2006-M-1794 and challenged value for tax year 2005 apparently was filed on August 8, 2006, well after the time period provided by R.C 5715.19(A)(1). The appellant argues, however, that the appeal period should be tolled because actions of the Wood County Auditor created a situation in which it was physically impossible

¹ The relevant triennium for Wood County includes tax years 2005, 2006 and 2007. The complaint which was the genesis of BTA No. 2006-M-1794 challenged value for tax year 2005. The complaint which was the genesis of BTA No. 2007-M-868 challenged value for tax year 2006.

to meet the time limitations provided by statute.

The facts as deduced from the record are as follows: The appellant, Willis Day Warehousing Co. ("Willis Day"), is the owner of certain property located in Wood County. The property in question is subject to a "Current Agricultural Use Valuation" ("CAUV") adjustment. The CAUV adjustment was in existence at the time the first tax bill for tax year 2005 was issued. After that tax bill was issued, the auditor's staff realized the CAUV deduction applied to Willis Day's assessment was not correct because of changes made by a recent software conversion. S.T. BTA No. 2006-M-1794, Ex. E. The auditor's staff corrected the error prior to the issuance of the second-half tax bill. Id.

Willis Day received notice of the valuation correction through its second-half bill. After some discussion with the Wood County Auditor, Willis Day filed a complaint challenging the valuation change. S.T. BTA No. 2006-M-1794 Complaint, Cover letter. The BOR considered the complaint, concluding that the auditor's value was correct and Willis Day did not provide sufficient evidence to support a change in value. Id. Ex. E. An appeal to this board followed.

A review of the record before this board caused us to question the validity of the BOR's actions. The requirements of R.C. 5715.19 are specific and mandatory in nature. When a statute confers the right of appeal, adherence to the terms and conditions set forth therein is essential to the enjoyment of the right conferred. *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147.

Therefore, the BOR's first action should have been to question its own jurisdiction.

Willis Day claims, however, that the BOR's actions were lawful because case law permits it to file outside the time prescribed by R.C. 5715.19. Willis Day first claims that the auditor's failure to provide notice in sufficient time for the corporation to timely file a real property valuation complaint permits a tolling of the period during which complaints may be filed. In support of this claim, Willis Day cites *Slone v. Bd. of Embalmers and Funeral Directors of Ohio* (1995), 107 Ohio App.3d 628, and *Knickerbocker Properties Inc. XLII v. Delaware Cty. Bd. of Revision*, 119 Ohio St.3d 233, 2008-Ohio-3192. Neither case is apposite.

The gravamen in *Slone* was the failure to serve a determination directly upon the party affected. The Ohio Board of Embalmers and Funeral Directors revoked the license of the appellant in *Slone*, but mailed notice of the revocation by certified mail only to the appellant's counsel. In that case, the appellate court concluded that the 15-day period during which the appellant could have appealed did not begin to run until notice was sent directly to him.² In *Knickerbocker*, the board of revision failed to provide proper notice to the property owner of a complaint filed against the property owner. The court held that jurisdiction was proper because the requirements of the statute had been met. However, the court's decision is applicable to this appeal:

² The holding in *Slone* is consistent with the Ohio Supreme Court's holding in *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033, wherein the court concluded when a county board of revision's decision had not been mailed to all persons identified by former R.C. 5715.20, the filing of a notice of appeal with this board was premature.

“When a *statute* specifically requires a litigant to perform certain acts in order to invoke the jurisdiction of an administrative tribunal (or the jurisdiction of a court to review an administrative decision), the performance of such acts usually constitutes a prerequisite to the tribunal’s jurisdiction. See *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147, ***, paragraph one of the syllabus; *Zier v. Bur. of Unemp. Comp.* (1949), 151 Ohio St. 123, ***, paragraph one of the syllabus. By contrast, this case involves the manner in which the BOE filled out the valuation complaint form prescribed by the Tax Commissioner. Knickerbocker does not cite any statute that requires the complainant to provide an address.” *Id.* at ¶10. (Emphasis sic, parallel citations omitted.)

In the present appeal, R.C. 5715.19 specifically requires that a complaint challenging valuation must be filed by March 31 of the ensuing year. In this matter, the complaint was not filed until August 9 of the ensuing year. Therefore the complaint was untimely.

This is not the board’s first opportunity to consider this issue. In *Edgewater Yacht Club v. Cuyahoga Cty. Bd. of Revision* (June 29, 2001), BTA No. 1997-R-369, unreported, the auditor increased the value of certain property in the second year of a triennium and at the same time included within the tax bill a retroactive increase for the first year of the triennium. The property owner was made aware of the increase when it received its tax bill for the second year. The property owner challenged value for both the first year and the second year of the triennium. As to the jurisdictional validity of the challenge of value for the first year of the triennium, the board held:

“The jurisdiction of the BOR and this Board is established by statute. *** R.C. 5715.19(A)(1) provides that:

“*** a complaint against any of the following determinations for the **current tax year** shall be filed with the county auditor on or before the thirty-first day of March of the ensuing tax year:

“(d) The determination of the total valuation or assessment of any parcel that **appears on the tax list** ***.”

(Emphasis added.)

“Thus, according to the statute, a county board of revision is vested with jurisdiction to consider complaints filed only for the ‘current tax year’ if they are timely filed by March 31 of the subsequent year.

“Edgewater filed its complaint on February 7, 1996. (S.T. Exh. A) Therefore, pursuant to R.C. 5715.19(A)(1), the BOR was not empowered to decide value for 1994, only 1995.*** This proposition is further supported by the case law. *Dublin City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Jan. 14, 2000), B.T.A. Nos. 97-M-960 and 961, unreported; *Fiery v. Lucas Cty. Bd. of Revision* (Sept. 10, 1993), B.T.A. No. 91-R-698, unreported; *Hunt v. Lorain Cty. Bd. of Revision* (Apr. 8, 1988), B.T.A. No. 86-D-709, unreported.” Id. at 3.

In a footnote, the board held:

“The Board acknowledges that the 1995 tax bill was the first notice Edgewater had of a change in the value of the yacht basin for 1994. There may exist an alternative remedy under such circumstances. See R.C. 2723.01.” Id. Footnote 6.

Willis Day also argues that the changes made to the tax duplicate were unlawful. We are unable to reach the substance of the claim, as we must find that the

BOR lacked jurisdiction to consider the matter.

As to the jurisdictional validity of BTA No. 2007-M-868, Willis Day timely filed a complaint challenging value of the same properties for the 2006 tax year. S.T., BTA No. 2007-M-868, Ex. 1. The BOR effectively dismissed the appeal, acknowledging the complaint filed in the earlier year, and stating "Pursuant to ORC 5715.19A(2) a complaint shall not be filed more than once within that three year period [since the last appraisal]." S.T., BTA No. 2007-M-868, Ex. E.

The BOR was correct. In *Elkem Metals Co., L.P. v. Washington Cty. Bd. of Revision* (1998), 81 Ohio St.3d 683, the Ohio Supreme Court rejected the contention that a subsequent complaint filed within the same triennium was jurisdictionally valid when the initial complaint was dismissed as defective. The BTA found that when an initial complaint is jurisdictionally invalid and void ab initio, that complaint did not rise to a "filing" that would invoke the prohibition against a second filing as set forth in R.C. 5715.19(A)(2). The court held otherwise.

Therefore, this board must find that neither complaint filed with the BOR effectively lodged jurisdiction in that body. The complaint filed in BTA No. 2006-M-1794 was untimely, but, even jurisdictionally defective, served as a bar to the filing of another complaint by Willis Day during the triennium. Therefore, BTA No. 2006-M-1794 is remanded to the BOR with instructions to dismiss the complaint. The

board affirms the actions taken by the BOR in BTA No. 2007-M-868.³

Mr. Dunlap concurs.

I reluctantly concur with the decision dismissing the complaint. The outcome highlights the Board of Tax Appeals' lack of authority to apply the fairness principles of equity to a factual situation requiring a resolution other than the foregoing dismissal.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.


Sally F. Van Meter, Board Secretary

³ The board notes that counsel for Willis Day filed a motion to compel discovery on August 28, 2008. At the evidentiary hearing held on October 30, 2008, counsel for the county appellees sought an additional 10 days to respond to the discovery. The additional time was granted. Through his written brief in support of jurisdiction, counsel informed the board that the discovery was answered but there remained an issue as to an unfulfilled request for the production of certain documents. Our cursory review of the discovery requests revealed sufficient delineation of the issues through the interrogatories. Therefore, the failure to respond to the production requests is deemed, in this instance, moot.

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ORC Ann. 5717.03

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*** CURRENT THROUGH LEGISLATION PASSED BY THE
128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE
SECRETARY OF STATE THROUGH FILE 58 ***

*** ANNOTATIONS CURRENT THROUGH OCTOBER 1, 2010

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH
OCTOBER 1, 2010 ***

TITLE 57. TAXATION
CHAPTER 5717. APPEALS

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§ 5717.03. Decision of the board of tax appeals

(A) A decision of the board of tax appeals on an appeal filed with it pursuant to section 5717.01, 5717.011 [5717.01.1], or 5717.02 of the Revised Code shall be entered of record on the journal together with the date when the order is filed with the secretary for journalization.

(B) In case of an appeal from a decision of a county board of revision, the board of tax appeals shall determine the taxable value of the property whose valuation or assessment by the county board of revision is complained of, or in the event the complaint and appeal is against a discriminatory valuation, shall determine a valuation which shall correct such discrimination, and shall determine the liability of the property for taxation, if that question is in issue, and the board of tax appeals' decision and the date when it was filed with the secretary for journalization shall be sent by the board to all persons who were parties to the appeal before the board, to the person in whose name the property is listed, or sought to be listed, if such person is not a party to the appeal, to the county auditor of the county in which the property involved in the appeal is located, and to the tax commissioner.

In correcting a discriminatory valuation, the board of tax appeals shall increase or decrease the

value of the property whose valuation or assessment by the county board of revision is complained of by a per cent or amount which will cause such property to be listed and valued for taxation by an equal and uniform rule.

(C) In the case of an appeal from a review, redetermination, or correction of a tax assessment, valuation, determination, finding, computation, or order of the tax commissioner, the order of the board of tax appeals and the date of the entry thereof upon its journal shall be sent by the board to all persons who were parties to the appeal before the board, the person in whose name the property is listed or sought to be listed, if the decision determines the valuation or liability of property for taxation and if such person is not a party to the appeal, the taxpayer or other person to whom notice of the tax assessment, valuation, determination, finding, computation, or order, or correction or redetermination thereof, by the tax commissioner was by law required to be given, the director of budget and management, if the revenues affected by such decision would accrue primarily to the state treasury, and the county auditors of the counties to the undivided general tax funds of which the revenues affected by such decision would primarily accrue.

(D) In the case of an appeal from a municipal board of appeal created under section 718.11 of the Revised Code, the order of the board of tax appeals and the date of the entry thereof upon the board's journal shall be sent by the board to all persons who were parties to the appeal before the board.

(E) In the case of all other appeals or applications filed with and determined by the board, the board's order and the date when the order was filed by the secretary for journalization shall be sent by the board to the person who is a party to such appeal or application, to such persons as the law requires, and to such other persons as the board deems proper.

(F) The orders of the board may affirm, reverse, vacate, modify, or remand the tax assessments, valuations, determinations, findings, computations, or orders complained of in the appeals determined by the board, and the board's decision shall become final and conclusive for the current year unless reversed, vacated, or modified as provided in section 5717.04 of the Revised Code. When an order of the board becomes final the tax commissioner and all officers to whom such decision has been sent shall make the changes in their tax lists or other records which the decision requires.

(G) If the board finds that issues not raised on the appeal are important to a determination of a controversy, the board may remand the cause for an administrative determination and the issuance of a new tax assessment, valuation, determination, finding, computation, or order, unless the parties stipulate to the determination of such other issues without remand. An order remanding the cause is a final order. If the order relates to any issue other than a municipal income tax matter appealed under sections 718.11 and 5717.011 [5717.01.1] of the Revised Code, the order may be appealed to the court of appeals in Franklin county. If the order relates to a municipal income tax matter appealed under sections 718.11 and 5717.011 of the Revised Code, the order may be appealed to the court of appeals for the county in which the municipal corporation in which the dispute arose is primarily situated.

(H) At the request of any person that filed an appeal subject to this section, the decision or order of the board of tax appeals issued pursuant to division (B), (C), (D), or (E) of this section shall be sent by certified mail at the requestor's expense.

History:

GC § 5611-1; 107 v 550; 118 v 344; 119 v 34(48); Bureau of Code Revision, 10-1-53; 127 v 65; 128 v 410 (Eff 11-4-59); 131 v 1339 (Eff 11-5-65); 135 v S 174 (Eff 12-4-73); 136 v H 920 (Eff 10-11-76); 137 v H 634 (Eff 8-15-77); 140 v H 260. Eff 9-27-83; 150 v H 95, § 1, eff.

6-26-03; 153 v H 1, § 101.01, eff. 10-16-09.

☞ Section Notes:

The effective date is set by § 812.10 of 153 v H 1.

The provisions of § 156, H.B. 95 (150 v --), read as follows:

SECTION 156. (B) The amendment by this act of sections 718.11, 5717.011, and 5717.03 of the Revised Code apply to matters relating to taxable years beginning on or after January 1, 2004.

The effective date is set by section 183 of H.B. 95 (150 v --).

EFFECT OF AMENDMENTS

153 v H 1, effective October 16, 2009, substituted "sent by the board" for "certified by the board by certified mail" in (B) through (E); substituted "sent" for "certified" in the second sentence of (F); added (H); and made a stylistic change.

☞ Related Statutes & Rules:

Cross-Reference to Related Statutes:

Application for exemption; rights of board of education, RC § 5715.27.

Assessment of real property; rules and procedures, RC § 5715.01.

Liability shall relate back to original valuation, RC § 5717.06.

Parties to appeal, RC § 5717.04.

Transfer of property to name of purchaser by county auditor, complaint against values or allocation of assessments when, RC § 319.20.

☞ Practice Manuals & Treatises:

Anderson's Appellate Practice and Procedure in Ohio § 17.03 Notice of Appeal

LexisNexis 50 State Surveys, Legislation & Regulations

Real Property Tax Assessment & Valuation

☞ Case Notes & OAGs:

ANALYSIS

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- ☞ Allocation of purchase price
- ☞ Appeals
- ☞ Appraisal methodology
- ☞ Continuance

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ORC Ann. 5717.04

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*** CURRENT THROUGH LEGISLATION PASSED BY THE
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 SECRETARY OF STATE THROUGH FILE 58 ***
 *** ANNOTATIONS CURRENT THROUGH OCTOBER 1, 2010

 *** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH
 OCTOBER 1, 2010 ***

TITLE 57. TAXATION
 CHAPTER 5717. APPEALS

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ORC Ann. 5717.04 (2011)

§ 5717.04. Appeal from decision of board of tax appeals to supreme court; parties who may appeal

The proceeding to obtain a reversal, vacation, or modification of a decision of the board of tax appeals shall be by appeal to the supreme court or the court of appeals for the county in which the property taxed is situate or in which the taxpayer resides. If the taxpayer is a corporation, then the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the supreme court or to the court of appeals for the county in which the property taxed is situate, or the county of residence of the agent for service of process, tax notices, or demands, or the county in which the corporation has its principal place of business. In all other instances, the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the court of appeals for Franklin county.

Appeals from decisions of the board determining appeals from decisions of county boards of revision may be instituted by any of the persons who were parties to the appeal before the board of tax appeals, by the person in whose name the property involved in the appeal is listed or sought to be listed, if such person was not a party to the appeal before the board of tax appeals, or by the county auditor of the county in which the property involved in the appeal is

Practitioner's Toolbox

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Resources & Practice Tools

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 - > Anderson's Ohio Civil Practice with Forms § 312.06 Appeals from the Board of Tax Appeals
 - > Anderson's Ohio Civil Practice with Forms § 317.02 Appeals
 - > Anderson's Appellate Practice and Procedure in Ohio § 12.06 Appeals from the Board of Tax Appeals

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Appeals from decisions of the board of tax appeals determining appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be instituted by any of the persons who were parties to the appeal or application before the board, by the person in whose name the property is listed or sought to be listed, if the decision appealed from determines the valuation or liability of property for taxation and if any such person was not a party to the appeal or application before the board, by the taxpayer or any other person to whom the decision of the board appealed from was by law required to be sent, by the director of budget and management, if the revenue affected by the decision of the board appealed from would accrue primarily to the state treasury, by the county auditor of the county to the undivided general tax funds of which the revenues affected by the decision of the board appealed from would primarily accrue, or by the tax commissioner.

Appeals from decisions of the board upon all other appeals or applications filed with and determined by the board may be instituted by any of the persons who were parties to such appeal or application before the board, by any persons to whom the decision of the board appealed from was by law required to be sent, or by any other person to whom the board sent the decision appealed from, as authorized by section 5717.03 of the Revised Code.

Such appeals shall be taken within thirty days after the date of the entry of the decision of the board on the journal of its proceedings, as provided by such section, by the filing by appellant of a notice of appeal with the court to which the appeal is taken and the board. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten days of the date on which the first notice of appeal was filed or within the time otherwise prescribed in this section, whichever is later. A notice of appeal shall set forth the decision of the board appealed from and the errors therein complained of. Proof of the filing of such notice with the board shall be filed with the court to which the appeal is being taken. The court in which notice of appeal is first filed shall have exclusive jurisdiction of the appeal.

In all such appeals the tax commissioner or all persons to whom the decision of the board appealed from is required by such section to be sent, other than the appellant, shall be made appellees. Unless waived, notice of the appeal shall be served upon all appellees by certified mail. The prosecuting attorney shall represent the county auditor in any such appeal in which the auditor is a party.

The board, upon written demand filed by an appellant, shall within thirty days after the filing of such demand file with the court to which the appeal is being taken a certified transcript of the record of the proceedings of the board pertaining to the decision complained of and the evidence considered by the board in making such decision.

If upon hearing and consideration of such record and evidence the court decides that the decision of the board appealed from is reasonable and lawful it shall affirm the same, but if the court decides that such decision of the board is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter final judgment in accordance with such modification.

The clerk of the court shall certify the judgment of the court to the board, which shall certify such judgment to such public officials or take such other action in connection therewith as is required to give effect to the decision. The "taxpayer" includes any person required to return any property for taxation.

Any party to the appeal shall have the right to appeal from the judgment of the court of appeals on questions of law, as in other cases.

History:

GC § 5611-2; 107 v 550; 116 v 104(123), § 2; 118 v 344(355); 119 v 34(49); Bureau of Code Revision, 10-1-53; 125 v 250 (Eff 10-2-53); 135 v S 174 (Eff 12-4-73); 137 v H 634 (Eff 8-15-77); 140 v H 260 (Eff 9-27-83); 142 v H 231. Eff 10-5-87; 153 v H 1, § 101.01, eff. 10-16-09.

Section Notes:

The effective date is set by § 812.10 of 153 v H 1.

EFFECT OF AMENDMENTS

153 v H 1, effective October 16, 2009, substituted "sent" for "certified" throughout the third, fourth, and sixth paragraphs; and made a stylistic change.

Related Statutes & Rules:

Cross-Reference to Related Statutes:

Application for exemption; rights of board of education, RC § 5715.27.

Assessment of real property; rules and procedures, RC § 5715.01.

Cigarette distributor license, suspension for delinquency, RC § 5743.61.

Finality of board decision, RC § 5717.03.

Liability shall relate back to original valuation, RC § 5717.06.

Liquor permit holders; annual examination of tax records; notification of delinquency or liability; effect on renewal of permit, RC § 4303.27.1.

Transfer of property to name of purchaser by county auditor, complaint against values or allocation of assessments when, RC § 319.20.

Ohio Rules:

Appellate Rule 13 through Rule 33 applicable, AppR 1.

Notice of appeal from the board of tax appeals, SCTPracR II § 3.

Practice Manuals & Treatises:

Anderson's Ohio Civil Practice with Forms § 312.06 Appeals from the Board of Tax Appeals

Anderson's Ohio Civil Practice with Forms § 317.02 Appeals

Anderson's Appellate Practice and Procedure in Ohio § 12.06 Appeals from the Board of Tax Appeals

Anderson's Appellate Practice and Procedure in Ohio § 17.02 Appeals

Anderson's Appellate Practice and Procedure in Ohio § 17.03 Notice of Appeal