

BEFORE THE BOARD OF TAX APPEALS
STATE OF WASHINGTON

SPIEKER PROPERTIES,)	
)	
Appellant,)	Dockets Nos. 50119-50122
)	
v.)	Re: Property Tax Appeal
)	
SCOTT NOBLE,)	FINAL DECISION
King County Assessor,)	
)	
Respondent.)	

This matter came before the Board of Tax Appeals (Board) on the Board's own motion to dismiss for lack of jurisdiction. WAC 456-10-340.

FACTS

Kenney, Vice Chair--There is no dispute as to the facts. The King County Board of Equalization (BOE) mailed its decision to Appellant, Spieker Properties (Spieker), June 25, 1996. On July 29, this Board received an incomplete Notice of Appeal form from Spieker, postmarked July 26. The Notice of Appeal did not include a copy of the BOE order nor was it signed. Spieker was notified of the filing requirements and requested to submit a properly completed form. The following day, July 30, Spieker telefaxed a copy of the BOE order and a corrected Notice of Appeal to this Board. After reviewing the appeal file, the Clerk of the Board notified Spieker on September 6 that its appeal could not be accepted by this Board because it had not been filed within the thirty-day period required by the statute and regulation, RCW 84.08.130(1) and WAC 456-10-315(2).

Spieker says that following the BOE decision, it spent several days discussing with BOE the rationale for its decision. Spieker indicates that the talks did not change the result so it contacted this Board, "indicated the situation at hand, requested the appropriate documentation and forms, and began the dialogue." Spieker says:

To my knowledge this information was faxed to you prior to the deadline to which we received a reply letter indicating that some of our forms were incomplete. At no time did you indicate that we had not made the appropriate deadline(s). We subsequently corrected the forms and forwarded them for your review, which I believe you received on July 26, 1996. We mailed down additional forms and faxed them within the next few days.

ANALYSIS

Appeals by taxpayers from decisions of county boards of equalization must be filed with this Board within thirty days of the mailing of the county board's decision.

RCW 84.08.130(1) provides:

Any taxpayer . . . feeling aggrieved by the action of any county board of equalization may appeal to the board of tax appeals by filing with the board of tax appeals a notice of appeal within thirty days after the mailing of the decision of such board of equalization An appeal of an action by a county board of equalization shall be deemed to have been filed and served within the thirty-day period if it is postmarked on or before the thirtieth day after the mailing of the decision of the board of equalization.

This Board's rules governing timely filing and service of an appeal require that the Notice of Appeal be filed with this Board and served on the assessor, each within thirty days of the mailing of the county board's decision. WAC 456-10-320 provides:

(1) . . . [N]otice of appeal shall be filed with the board and a copy served upon all other parties in accordance with the provisions of this chapter. . . .

(2)(d) Appeals not timely filed as provided by statute and this regulation shall be dismissed.

The jurisdiction of this Board is entirely statutory in nature. As such, all statutory requirements must be met before jurisdiction is properly invoked. In this case, the thirty-day period in which to file an appeal from the county board's decision expired July 25. The appeal was postmarked July 26. There is no question but that Spieker failed to timely file the Notice of Appeal with this Board. By the express terms of the statute, RCW 84.08.130, above, the failure to timely file is fatal to the taxpayer's appeal. Cornerstone Columbia Development Co. v. Cook, BTA Dockets Nos. 32343-32345 (1987).

Spieker seeks to avoid this result by pointing to the actions of this Board. When it was asked to file a corrected appeal, Spieker says it was not notified that timeliness was an issue. In addition, Spieker believes that this Board should accept its appeal because (1) Spieker made good faith efforts to reconcile the problems with King County first; (2) Spieker contacted this Board once it became apparent that there would be no change in the BOE's decision; and, (3) Spieker completed the forms in what it thought was a timely manner.

This Board has no way of knowing if the thirty-day deadline for filing an appeal is met until it receives a copy of the dated BOE order. Spieker did not include the BOE order in its initial contact with this Board nor did the appeal form filed by Spieker note the date that the BOE order had been filed. Acting on the information it had available--an undated appeal notice--this Board requested the information needed for a properly completed appeal. When the information was received, it was apparent that the appeal was untimely. Spieker was notified of that fact and informed that it had the right to appeal that decision.

The failure to notify Spieker on July 29 that the appeal was untimely cannot influence this decision. This Board cannot invest rights in an appellant that do not already exist in the statute, neither by express delegation nor by failure to deny a defective appeal at the first opportunity. To accept or deny an appeal, we must first have the information needed to make the proper decision. This Board did not have sufficient information available to it when it first contacted Spieker and asked it to perfect its appeal. When the information was made available, however, this Board took the only action it could: it denied the appeal as being untimely.

DECISION

The appeal is dismissed for failure to timely file a Notice of Appeal with this Board.

DATED this 8 day of October, 1996.

BOARD OF TAX APPEALS

Lucille Carlson
LUCILLE CARLSON, Chair

Lawrence C. Kenney
LAWRENCE KENNEY, Vice Chair

Matthew J. Coyle
MATTHEW J. COYLE, Member

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Pursuant to MAC 456-10-735, you may file a petition for reconsideration of this Final Decision. You must file the petition for reconsideration with the Board of Tax Appeals within ten days of the date of mailing of the Final Decision. You must also serve a copy on all other parties. The filing of a petition for reconsideration suspends the Final Decision until action by the Board. The Board may deny the petition, modify its decision, or reopen the hearing.