

OHIO BOARD OF TAX APPEALS

Neal L. Grossman Trust,)
)
 Appellant,) CASE NO. 2000-S-1034
)
 vs.)
) (Penalty Remission)
 Thomas M. Zaino,)
 Tax Commissioner of Ohio,)
) DECISION AND ORDER
 Appellee.)

APPEARANCES:

For the Appellants- Neal Grossman and Estelle Wallace, Pro se
703 Wesley Court
Worthington, Ohio 43085

For the Appellees- Betty D. Montgomery
Attorney General of Ohio
By: Richard C. Farrin
Assistant Attorney General
State Office Tower, 16th Floor
Columbus, Ohio 43215

Entered December 8, 2000

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

This appeal is considered by the Board of Tax Appeals pursuant to a notice of appeal filed with this Board on August 12, 2000 by the above named appellant. The appeal is taken from a final determination of the Tax Commissioner, which denied appellant’s applications for remission of real property tax penalties.

An evidentiary hearing was held in this matter on October 24, 2000. Ms. Estelle Wallace, Mr. Grossman’s spouse, appeared at this evidentiary hearing and testified

on appellant's behalf. The appellee appeared at this hearing through counsel. Accordingly, the Board of Tax Appeals now considers this matter upon the notice of appeal, the statutory transcript certified to this Board by the Tax Commissioner pursuant to R.C. 5717.02, and the record of the evidentiary hearing.

Appellant initiated these proceedings by filing an application for the remission of real property tax penalties with the Tax Commissioner. In this application, appellant claimed that he did not receive a tax bill despite the fact that Countrywide Home Loans notified the Franklin County Treasurer on March 23, 1999 that future tax bills should be sent to the home owner. After citing the various grounds which give rise to the remission of penalties, the Tax Commissioner denied appellant's application, stating that the records of Franklin County do not indicate that a request to change the mailing address for the subject parcel was made in March of 1999. From this determination, the present appeal ensued.

In the notice of appeal, appellant contends:

"Please find attached a copy of a letter from Countrywide mortgage which states that the Franklin County Treasurer was notified that all future property tax bills for 703 Wesley Court Worthington, OH 43085 were to be forwarded to me at that address as of 3/23/1999, the date the loan was satisfied.

"Countrywide has not received any tax bills as of March 23, 1999. The Franklin County Treasurer was notified by first class mail which is standard procedure for notifying a Tax Collector's office of a change of billing address. As no further bills were received by Countrywide, it was assumed that the notice was received by your office. Therefore, the Franklin County Treasurer was negligent in notifying either Countrywide or me of the property tax due.

"I hereby respectfully request that you discharge any obligation to pay late charges or fees for the tax bill due 12/31/99 as the bill was paid promptly upon receipt, and your

office was notified by standard procedures used by Countrywide.”

As we proceed to consider the present appeal, we are compelled to point out that findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121; *Wheeling Steel Corp. v. Evatt* (1944), 143 Ohio St. 71. In addition, it is rebuttably presumed that the action of the Tax Commissioner was performed in good faith and in the exercise of sound judgement. It is incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut these presumptions and establish a right to the relief requested. *Belgrade Gardens, Inc. v. Kosydar* (1974), 38 Ohio St.2d 135; *Ohio Fast Freight v. Porterfield* (1972), 28 Ohio St.2d 69; *National Tube Co. v. Glander* (1952), 157 Ohio St. 407. Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the Tax Commissioner's determination is in error. *Federated Department Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213.

R.C. 5715.39 governs the instances in which the Tax Commissioner may remit a penalty imposed for failure to timely pay real property taxes and provides, in pertinent part:

"The commissioner, on application by a taxpayer, shall remit a penalty for late payment of any real property taxes when:

"(A) The taxpayer could not make timely payment of the tax because of the negligence or error of the auditor or treasurer in the performance of a statutory duty relating to the levy or collection of such tax.

"(B) In cases other than those described in division (A) of this section, the taxpayer failed to receive a tax bill or a correct tax bill, and the taxpayer made a good faith effort to obtain such bill within thirty days after the last day for payment of the tax.

"(C) The tax was not timely paid because of the death or serious injury of the taxpayer, or his confinement in a hospital within sixty days preceding the last day for payment of the tax, if, in any case the tax was subsequently paid within sixty days after the last day for payment of such tax.

"(D) The taxpayer demonstrates to the satisfaction of the commissioner that the full payment was properly deposited in the mail in sufficient time for the envelope to be postmarked by the postal service on or before the last day for payment of such tax."

Under R.C. 323.121, the county treasurer is required to impose a penalty if the taxes are not timely paid. Unlike other penalty statutes, however, the Commissioner has no discretion under R.C. 5715.39 to remit the penalties. He may grant remission only if the express conditions of the statute are met. *Labuda v. Tracy* (June 13, 1993), B.T.A. No. 92-M-416, unreported. Even if a property owner's situation is sympathetic, the Commissioner is unable to remit the penalty if the failure does not fall within one of the four narrowly defined fact patterns.

As set forth above, appellant claims that, through no fault of his own, he did not receive the tax bill in issue. However, failure to receive a tax bill does not excuse a taxpayer from payment. R.C. 323.13 See *Rothert v. Tracy* (Sept. 6, 1996), B.T.A. No. 96-G-83, unreported; *Vahedy v. Tracy* (Mar. 15, 1996), B.T.A. No. 95-G-562, unreported; *Rathi v. Limbach* (May 3, 1991), B.T.A. No. 89-F-1139, unreported. Under the statutory scheme, nonreceipt of a tax bill excuses nonpayment only under two narrow conditions. The taxpayer must prove either the auditor or treasurer erred in performing a statutory duty and that failure caused the nonreceipt, or within thirty days of the last day upon which a payment was due, the taxpayer made a good faith effort to receive a tax bill. If the taxpayer can prove either of the above conditions, the Tax Commissioner shall grant the remission requested.

The appellants have not offered sufficient evidence to establish that their failure to receive a tax bill was caused by the negligence of the Treasurer. Appellant

alleges that a change of address was filed with the Treasurer's office by their former mortgage company and that due to the negligence of the Treasurer, the address was not corrected in the tax records relating to the subject property. However, when questioned at the evidentiary hearing, appellant's spouse testified that she did not receive a copy of the documentation allegedly sent to the Treasurer's office by Countrywide Home Loans. Further, Ms. Wallace testified that, despite her request made prior to the hearing before this Board, Countrywide failed to send her a copy of the letter allegedly sent to the Treasurer's Office. Rather, Countrywide sent her a letter, (Appellant's Exhibit #1) addressed to Mr. Grossman from a customer service representative for Countrywide, indicating that Countrywide notified the "tax authority by letter dated 3/23/99 regarding this." Therefore, appellant appears to assert that he should not be responsible for the penalty, because he did not receive a tax bill through the "fault" of someone other than himself.

It is not the duty of the Board of Tax Appeals to lay blame. The law as it was enacted by the legislature does not give the Commissioner or this Board the ability to remit penalties for persons who relied upon the actions of seemingly responsible institutions. The law merely permits the Commissioner and this Board to remit penalties if those persons make an attempt to receive the tax bill within thirty days after the last day payment was due. *Humphreys v. Tracy* (Oct. 28, 1994), B.T.A. No. 93-M-1427, unreported.

In *Alter v. Tracy* (Jan. 19, 1996), B.T.A. Nos. 95-H-285, et seq., unreported, this Board considered a remission request under circumstances similar to those alleged in the instant matter:

"Thus, in *Tanyatanaboon v. Limbach* (Sept. 27, 1991), B.T.A. Case No. 90-F-1461, unreported, we held that where real property taxes have been formerly made by a mortgage company, and the responsibility for paying the taxes shifts from the mortgage company to the property owner, it is the property owner's duty to advise the county treasurer's office of the change in mailing address. If the owner fails to notify the Treasurer, any resulting delinquency in the payment of taxes will not entitle the owner to a remission of penalties." See also, *Waidman v. Tracy* (Feb. 12, 1999), B.T.A. No. 98-K-720,

unreported; *Gibson v. Limbach* (Feb. 22, 1991), B.T.A. No. 89-C-1084, unreported; *Nelson v. Tracy* (Oct. 28, 1994), B.T.A. No. 94-J-295, unreported.

Where there is no evidence of negligence on the part of the Treasurer, a taxpayer may still be entitled to remission if the taxpayer has made a good faith effort to obtain the bill within thirty days after the last day for payment. R.C. 5715.39(B). In this case, it is uncontested that appellant's real property taxes were to be paid by June 21, 1999. There is no evidence in the record to indicate that appellant made an effort to obtain the tax bill within the succeeding thirty days. It is also uncontested that appellant did not attempt to obtain a tax bill or to make payment of taxes owed until December 20, 1999. While we sympathize with appellant's circumstances, we cannot conclude from the record before us that appellants have demonstrated error on the part of the Commissioner.

Based upon the foregoing, the Board finds that the appellant has failed to meet his burden of showing that the Tax Commissioner erroneously denied the application for remission. Therefore, it is the decision and order of the Board of Tax Appeals that the journal entry of the Tax Commissioner must be, and hereby is, affirmed. ohiosearchkeybta