

OHIO BOARD OF TAX APPEALS

William Gillman, and)	
Gail Gillman,)	
)	Case No. 01-J-642
Appellants,)	
)	(REMISSION)
vs.)	
)	DECISION AND ORDER
Thomas M. Zaino,)	
Tax Commissioner of Ohio,)	
)	
Appellee.)	

APPEARANCES:

For the Appellants	- William Gillman <i>Pro Se</i> 7550 Fernwood Drive Cincinnati, Ohio 45237
For the Appellee	- Betty D. Montgomery Attorney General of Ohio Richard C. Farrin Assistant Attorney General 30 East Broad Street 16 th Floor Columbus, Ohio 43215-3428

Entered December 14, 2001

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

The Board of Tax Appeals is considering this matter pursuant to a purported notice of appeal filed herein by William Gillman and Gail Gillman. (“Appellants”) Appellants have attempted to appeal from a decision of the Tax Commissioner that denied appellants’ application for remission of a real property tax late payment penalty.

On October 16, 2001 counsel for the Tax Commissioner filed a motion to dismiss the appeal. The body of the motion provides:

“Appellee, Thomas M. Zaino, Tax Commissioner of Ohio, moves the Board of Tax Appeals to dismiss the above-styled appeal for the reason that no notice of appeal was filed with the Tax Commissioner as expressly required by R.C. 5717.02, by reason of which Appellant failed to properly invoke the jurisdiction of the Board.”

The matter had been scheduled for hearing pursuant to assignment and notice thereof. The Tax Commissioner appeared by and through counsel. No one appeared on behalf of the appellants. The matter has been submitted to the Board of Tax Appeals upon the notice of appeal, the motion to dismiss, and the evidence adduced at the within hearing.

At the hearing counsel submitted a certification of the Tax Commissioner. The body provides in part:

“I, Thomas M. Zaino, do hereby certify that I am the duly appointed and qualified Tax Commissioner of the State of Ohio, and as such have custody of all of the records of the Department of Taxation and that a diligent search of those records discloses no filing in the Office of a notice of appeal to the Board of Tax Appeals from the final determination entered in the matter of an Application for Remission of Real Property and Manufactured Home Tax Penalties, Case No. GR 3055, by the Commissioner and issued to William & Gail Gillman, 7550 Fernwood Drive, Cincinnati, Ohio 45237. The final determination issued by the Tax Commissioner on July 20, 2001, and submitted as Attachment A, is certified as a true and complete copy of the original entry.

“I further certify that Attachment B attached hereto is a true and complete copy of the original return receipt card from the certified mail delivery of the Tax Commissioner’s Final Determination for the herein referenced Case No. GR 3055.”

The return receipt card indicates that the document denying the application for the Remission of Real Property and Manufactured Home Tax Penalties was signed on July 25, 2001. On August 3, 2001 the appellants filed a copy of a notice of appeal dated July 30, 2001 from the Commissioner’s determination with this Board. However, the appellants have failed to file a copy of the notice of appeal with the Tax Commissioner.

R.C. 5717.02 provides in pertinent part:

“Such appeals shall be taken by the filing of a notice of appeal with the board, and with the tax commissioner if his action is the subject of the appeal * * * within sixty days after service of the notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner * * * has been given * * * .”

The evidence has established that the appellants filed no notice of appeal with the Tax Commissioner. The Supreme Court has held that strict compliance with the requirements of R.C. 5717.02 is essential to invoke the jurisdiction of this Board. *House of Good Shepherd, Inc. v. Limbach* (1988), 37 Ohio St.3d 244; *Hanson Machinery Co. v. Limbach* (1986), 22 Ohio St.3d 209.

Since the appellants have failed to comply with the mandatory requirements of R.C. 5717.02, the Board lacks jurisdiction to address the merits of

appellants' claim. The Board therefore finds and determines that the within matter should be, and hereby is, dismissed.

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