

OHIO BOARD OF TAX APPEALS

Columbus Road Enterprises, Ltd.,)	CASE NO. 01-M-843
)	
Appellant,)	(Remission)
)	
vs.)	DECISION AND ORDER
)	
Thomas M. Zaino,)	(Dismissing Appeal)
Tax Commissioner of Ohio,)	
)	
Appellee.)	

APPEARANCES:

For the Appellant-	Mark V. Prestier, President Columbus Road Enterprises, Ltd. 3819 Columbus Rd. N.E. Canton, Ohio 44705
Appeal filed by-	Phillips & Phillips, CPA's, Inc. 3924 Cleveland Ave. N.W. Canton, Ohio 44709
For the Appellee- Tax Commissioner	Betty D. Montgomery Ohio Attorney General By: Richard C. Farrin Assistant Attorney General 30 E. Broad Street, 16 th Floor Columbus, Ohio 43215-3428

Entered: February 15, 2002

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

This cause and matter comes to be considered by the Board of Tax Appeals upon a purported notice of appeal filed herein under date of September 18, 2001, by the above-named appellant. Appellant seeks to challenge real property tax penalties assessed against the late payment of real property taxes due February 15, 2001.

On November 23, 2001, counsel for appellee filed herein a “Motion to Dismiss Appeal,” and supporting memorandum, which states, in pertinent part, as follows:

“Thomas M. Zaino, Tax Commissioner of Ohio, moves the Board of Tax Appeals to dismiss the above-styled appeal for the reason that the notice of appeal was not filed with the Board or the Tax Commissioner within sixty days after service of the notice of the Tax Commissioner’s final determination was given to appellant by reason which taxpayer failed to properly invoke the jurisdiction of the Board under R.C. 5717.02.”

On November 29, 2001, pursuant to assignment and notice duly given, this cause and matter came on for an evidentiary hearing. Only counsel for the Tax Commissioner appeared. Counsel submitted into evidence appellee's Exhibit A, a “Certification” signed by the Tax Commissioner, which reads as follows:

“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 Attachment A attached hereto is a true and complete copy of the original return receipt form from the certified mail receipt of the Tax Commissioner’s Final Determination, in the matter of Application for Remission of Real Property and Manufactured Home Tax Penalties, Case No. GR 2236 and issued to Columbus Road Enterprises LTD, Mark V. Prestier, President, ***, which document is an official record of the Department of Taxation.

“I further certify that the entry attached hereto as Attachment B is a true and complete copy of the Final Determination issued by the Tax Commissioner on June 25, 2001.

“I further certify that Attachment C attached hereto is a true and complete copy of the original notice of appeal envelope sent by the taxpayer and received by the Tax Commissioner on September 20, 2001.”

The matter was submitted to the Board of Tax Appeals upon the purported notice of appeal, appellee’s motion to dismiss and supporting memorandum, the record of the evidentiary hearing, and the exhibit received into evidence at said hearing.

R.C. 5717.02 provides the jurisdictional requirements to appeal from a final order of the Tax Commissioner to this Board. R.C. 5717.02 reads, in pertinent part, as follows:

“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 as provided in section 5703.37, 5709.64, 5709.66, or 5733.42 of the Revised Code.”

(Emphasis Added)

The Board of Tax Appeals is an administrative agency. Manifestly, strict compliance with the tax laws of this state is essential to vest jurisdiction upon this Board. *Zephyr Room Inc. v. Bowers* (1955), 164 Ohio St. 287; *Fineberg v. Kosydar* (1975), 44 Ohio St.2d 1; *Clippard Instrument v. Lindley* (1977), 50 Ohio St.2d 71. As is evident from the record, appellant’s notice of appeal, filed September 18, 2001 with this Board and September 20, 2001 with the Tax Commissioner, was not filed within 60 days of the receipt of the Tax Commissioner’s final determination.

The purported notice of appeal filed with this Board essentially seeks remission of real property tax penalty because the owner of the property did not receive a tax bill. The remission application indicates that the bill “was mailed to the wrong address.” Appellant’s accountant states that the postman erroneously delivered the bill to the wrong address. In either event, failure to receive a tax bill is not an excuse for non-payment unless there was error on the part of the treasurer or auditor, or the property owner attempted to receive a new bill within certain time constraints. See R.C. 5715.30; *Baechle v. Tracy* (Feb. 25, 1994), B.T.A. No. 93-B-859, unreported. Therefore, even if this Board had jurisdiction to consider appellant’s claim, which we do not, we would be unable to conclude that the Tax Commissioner erred in denying remission.

As a result of appellant's failure to follow the requirements of R.C. 5717.02, no jurisdiction to hear and/or consider the cause on its merits has been conferred upon the Board of Tax Appeals. Accordingly, it is the decision of the Board of Tax Appeals that the appellee's motion to dismiss is well taken and is hereby granted. The appeal herein is ordered dismissed.

ohiosearchkeybta