

**OHIO BOARD OF TAX APPEALS**

Vincenty & Company, Inc.,	)	
	)	
Appellant,	)	CASE NO. 2003-T-370
	)	
vs.	)	(PERSONAL PROPERTY TAX)
	)	
Thomas M. Zaino, Tax	)	DECISION AND ORDER
Commissioner of Ohio,	)	
	)	
Appellee.	)	

APPEARANCES:

For the Appellant -	Vincenty & Company, Inc. 555 Metro Place North Suite 153 Dublin, Ohio 43017
Notice of Appeal Filed By -	Lorraine Vincenty, President Vincenty & Company, Inc. 555 Metro Place North Suite 153 Dublin, Ohio 43017
For the Appellee -	Jim Petro Attorney General of Ohio Barton A. Hubbard Assistant Attorney General Taxation Section State Office Tower, 16 <sup>th</sup> Floor 30 East Board Street Columbus, Ohio 43215

Entered July 11, 2003

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

The Board of Tax Appeals considers this matter pursuant to a notice of appeal filed by Vincenty & Company, Inc., from a final determination of the Tax Commissioner. Therein, the commissioner determined that he was without jurisdiction

to consider Vincenty's petition for the abatement of personal property tax penalties assessed for the late filing of Vincenty's 2002 personal property tax return.

Our consideration of this matter includes Vincenty's notice of appeal and the statutory transcript certified to the BTA by the Tax Commissioner. Vincenty did not appear at the hearing scheduled in this matter, and the commissioner waived his appearance.<sup>1</sup>

We begin our review of this matter by observing that the findings of the Tax Commissioner are presumptively valid. Consequently, it is incumbent upon a taxpayer challenging a determination of the commissioner to rebut that presumption. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. When no competent and probative evidence is developed and properly presented to the BTA to establish the commissioner's determination as "clearly unreasonable or unlawful," the determination is presumed to be correct. *Id.* at 123.

Every taxpayer owning taxable personal property must file an annual personal property tax return with the county auditor of each county in which the property is located. See R.C. 5711.02. Returns must be filed, annually, between the fifteenth day of February and the thirtieth day of April. R.C. 5711.04. An extension of up to forty-five days may be granted, if timely applied for. R.C. 5711.04.

In the event a taxpayer fails to timely file a return, R.C. 5711.27 imposes the following penalties:

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<sup>1</sup> The hearing notice sent to Vincenty at its address of record was returned by the USPS as undeliverable. We attempted to send the notice to two other addresses found for the corporation, one from the statutory transcript and the other from the local telephone directory. In both instances, the notice was returned as undeliverable. Attempts to contact Vincenty by telephone were unsuccessful.

“No taxpayer shall fail to make a return within the time limits prescribed by law, or as extended pursuant to section 5711.04 of the Revised Code, nor fail to list in a return or disclose on an accompanying balance sheet or other information filed with the return any item of taxable property which he is required by sections 5711.01 to 5711.36 of the Revised Code to list therein.

“If a taxpayer does so fail the following shall apply:

“(A) In a case of a taxpayer who fails to make a timely return, the assessor shall add to the taxpayer's assessment as a penalty, one-half of the taxpayer's taxable value that is exempt from taxation under division (C)(3) of section 5709.01 of the Revised Code. \*\*\*

“(B) In the case of a taxpayer who fails to make a timely return, \*\*\* the assessor shall add to the assessment of each class or item of taxable property which the taxpayer failed to return, list or disclose and to any amount under division (A) of this section, a penalty of up to fifty per cent thereof; but if such taxpayer makes within sixty days after expiration of the time prescribed by such sections, a return or an amended or supplementary return \*\*\* such penalty shall be five per cent of the assessment \*\*\*.

“Either or both of the penalties provided in this section may be abated in whole or in part by the assessor when it is shown that such failure is due to reasonable cause.”

Vincenty's 2002 personal property tax return was due to be filed on or before April 30, 2002. However, the Franklin County Auditor did not receive the return until June 17, 2002. In accordance with R.C. 5711.27, Vincenty was assessed a penalty of five percent and the loss of one-half of the maximum allowable exemption.

R.C. 5711.28 sets forth the procedures required for the filing of a proper petition for penalty abatement with the commissioner:

“Whenever the assessor imposes a penalty prescribed by section 5711.27 of the Revised Code, the assessor shall send notice of such assessment to the taxpayer by mail.  
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“Within sixty days after the mailing of the notice of a penalty assessment prescribed by this section, the taxpayer may file with the tax commissioner, in person or by certified mail, a petition for the abatement of such penalty assessment. If the petition is filed by certified mail, the date of the United States postmark placed on the sender’s receipt by the postal employee to whom the petition is presented shall be treated as the date of filing. The petition shall have attached thereto and incorporated therein by reference a true copy of the notice of assessment complained of, but the failure to attach a copy of such notice and incorporate it by reference does not invalidate the petition. The petition shall also indicate that the taxpayer's only objection is to the assessed penalty and the reason for such objection.”<sup>2</sup>

R.C. 5711.28 specifically mandates that a petition for abatement must be filed within sixty days after the mailing of the assessment. The failure to comply with the sixty-day requirement will properly lead to a dismissal of the petition. *Classic Organ Installation v. Tracy* (Dec. 18, 1992), BTA No. 1991-K-1402, unreported.

In the instant matter, the statutory transcript contains a copy of the preliminary assessment certificate issued on the 2002 tax year, which shows an “assessed date” of August 14, 2002. In addition, the transcript contains an affidavit from the Department of Taxation indicating that the assessment was mailed on August 14, 2002. The transcript further shows that Vincenty’s petition for abatement was filed on December 12, 2002.

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<sup>2</sup> R.C. 5711.31 contains an analogous deadline for the filing of petitions that challenge other elements of a personal property tax assessment.

Vincenty does not challenge the above dates. Instead, Vincenty asks us to order the abatement because the untimely filing of both the return and the petition was due to the negligence or oversight of its accountant. However, in addition to the mandatory nature of the filing requirements, *Classic Organ*, supra, we have previously determined that reliance upon an accountant does not relieve a taxpayer of its duty to timely file its personal property tax returns. See, e.g., *Transcon, Inc. v. Limbach* (Apr. 26, 1991), 1989-F-697, unreported.

Under the facts presented, we are constrained to find that the petition for abatement was filed after the expiration of the mandatory sixty-day period. We find that Vincenty has failed to sustain its burden to demonstrate, by a preponderance of the evidence, that the commissioner's dismissal of the petition for abatement was either unreasonable or unlawful. It is therefore the decision and order of the Board of Tax Appeals that the final determination of the Tax Commissioner must be, and the same hereby is, affirmed.

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