

OHIO BOARD OF TAX APPEALS

Scripps Howard Broadcasting Co.,)
)
 Appellant,) CASE NO. 2004-R-329
)
 vs.) (PERSONAL PROPERTY TAX)
)
 William W. Wilkins,) DECISION AND ORDER
 Tax Commissioner of Ohio,)
)
 Appellee.)

APPEARANCES:

For the Appellant - No Appearance
Scripps Howard Broadcasting¹
312 Walnut Street
P.O. Box 5380
Cincinnati, OH 45202

Notice of Appeal - William S. Fee
Filed By Vice President and General Manager
Scripps Howard Broadcasting
312 Walnut Street
P.O. Box 5380
Cincinnati, OH 45202

For the Appellee - Jim Petro
Attorney General of Ohio
Richard C. Farrin
Assistant Attorney General
State Office Tower - 16th Floor
30 East Broad Street
Columbus, OH 43215

Entered October 1, 2004

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

¹ The notice of appeal was filed by William S. Fee, Vice President and General Manager of Scripps Howard Broadcasting. The appellant's response to the board's show cause order, however, was filed by Michael W. Carroll, Assistant Treasurer.

This matter is before the Board of Tax Appeals pursuant to a show cause order issued by this board on July 16, 2004. In that order, the board requested that the appellant, Scripps Howard Broadcasting Co. (“Scripps”), show cause why this board should not dismiss the appellant’s notice of appeal for lack of jurisdiction. The parties had fourteen days to respond to the board’s order, which have now passed. On August 2, 2004, the appellant filed its response to this order. The appellee has not responded.

The Tax Commissioner previously filed a certification with this board on July 2, 2004. In that document, the Tax Commissioner stated that a copy of appellant’s notice of appeal was not filed with the commissioner as required by R.C. 5717.02.

Therefore, the Board of Tax Appeals now considers this matter upon the show cause order, the Tax Commissioner’s certification, the appellant’s response, and the existing record.

R.C. 5717.02 sets forth the procedures required for bringing a proper appeal from a final determination of the Tax Commissioner:

“***

“Such appeals shall be taken by the filing of a notice of appeal with the board, **and** with the tax commissioner if the tax commissioner’s action is the subject of the appeal, ***. The notice of appeal shall be filed **within sixty days** after service of the notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner ***. The notice of such appeal may be filed in person or by certified mail, express mail, or authorized delivery service. If the notice of such appeal is filed by certified mail, express mail, or authorized delivery service ***, the date of the United States postmark placed on the sender’s receipt by the postal service or the date of

receipt recorded by the authorized delivery service shall be treated as the date of filing. ***.” (Emphasis added.)

The requirements of R.C. 5717.02 are legislatively mandated and must be strictly complied with before the subject matter jurisdiction of the Board of Tax Appeals may be invoked. *Clippard Instrument Laboratory, Inc. v. Lindley* (1977), 50 Ohio St.2d 121; *House of Good Shepard, Inc. v. Limbach* (1988), 37 Ohio St.3d 244; *American Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147. R.C. 5717.02 specifically requires that a notice of appeal be filed with both the Board of Tax Appeals and the Tax Commissioner within sixty days after the service of final assessment certificates. The failure to comply with this requirement properly leads to a dismissal of the appeal. *Akron Standard Div. v. Lindley* (1984), 11 Ohio St.3d 10.

A review of the notice of appeal and the commissioner’s certification establishes that the commissioner issued the final assessment certificates on February 6, 2004. Those final assessment certificates of valuation relate to personal property located in Cuyahoga, Hamilton, and Summit counties pertaining to tax year 2000. The Tax Commissioner’s certification contains copies of these assessment certificates, showing an issue date of February 6, 2004. Although a notice of appeal was timely filed with the Board of Tax Appeals on April 5, 2004, the purported notice of appeal was not filed with the Tax Commissioner.

Scripps has not offered any evidence to challenge either the dates involved or the representations made in the commissioner’s certified statement. It has simply argued that the appellant was not provided with instructions for how to file its appeal in

accordance with the Ohio Taxpayer's Bill of Rights, and that it believed there was a tolling of the sixty-day time limit to file its appeal with the Tax Commissioner.

Taxpayers are required to follow the law of the state of Ohio. They cannot rely on income tax forms or instructions thereto because instructions to the returns are not the law. *Ricchuiti v. Limbach* (Oct. 23, 1992), BTA No. 1989-K-1124, unreported; see, also, *Benedetti v. Zaino* (June 25, 2004), BTA No. 2003-R-1817, unreported. Therefore, although Scripps claims that it was not provided with instructions on how to appeal the commissioner's decision, the proper procedure for filing an appeal was available and could have been found in the statute.²

Furthermore, there is no tolling provision in the statute. Without question, the sixty-day provision confers jurisdiction on the Board of Tax Appeals to hear the appeal. If a notice of appeal is not filed within sixty days after the receipt of the Tax Commissioner's decision, the Board of Tax Appeals lacks jurisdiction to hear the matter. The reason for such time period is to have a finality to the action. *Seafood Restaurant, Inc. v. Limbach* (Jan. 25, 1991), BTA No. 1989-B-317, unreported.

The time period for appeal of an agency decision does not commence, however, where the agency fails to notify the appellant of its decision. *Slone v. Ohio Bd. Of Embalmers & Funeral Directors* (1995), 107 Ohio App.3d 628. Failure of notice of a decision justifies tolling the appeal time. See *State ex rel. Hughes v. Celeste* (1993), 67

² It should be noted that although the copies contained in appellant's notice of appeal do not show the reverse side, the attached January 28, 2004 letter from the Department of Taxation to Scripps states that the "[c]omplete instructions for filing the appeal are detailed on the reverse of the assessment certificate."

Ohio St.3d 429; *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St. 3d 363; 2000 Ohio 452.

In the present matter, there is no contention or evidence that Scripps failed to receive a copy of the Tax Commissioner's decision. Therefore, there is no reasonable basis for the tolling of the sixty-day appeal period.

Based upon the foregoing, we must conclude that Scripps failed to timely file its notice of appeal with the Tax Commissioner, as expressly required by R.C. 5717.02. Consequently, the Board of Tax Appeals is without jurisdiction to consider the notice of appeal.

As Scripps has failed to perfect an appeal to the Board of Tax Appeals, it is the decision and order of this board that this matter must be, and the same hereby is, dismissed.

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