

OHIO BOARD OF TAX APPEALS

Sardinia Church of Christ,)
)
 Appellant,) (REAL PROPERTY TAX EXEMPTION)
)
 vs.) DECISION AND ORDER
)
 William W. Wilkins, Tax)
 Commissioner of Ohio,)
)
 Appellee.)

APPEARANCES:

For the Appellant - Thomson, Zimmerman & Johnston, Co., LPA
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Milford, Ohio 45150

For the Appellee - Nancy H. Rogers
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Entered January 6, 2009

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

On November 18, 2008, an order was issued requiring the appellant, Sardinia Church of Christ, to show cause as to why this appeal should not be remanded to the Tax Commissioner with instructions to consider the exemption application

¹ Mr. Thomson has not formally entered an appearance in this matter pursuant to this board's Rules of Practice and Procedure. The record indicates that Mr. Thomson responded to this board's show cause order and has submitted documents on behalf of appellant relative to this appeal. Mr. Thomson also appears to be associated with Mr. Johnston's firm, and is located at this firm's address.

consistent with R.C. 5713.08. Appellant filed a response with this board on December 15, 2008. No response has been received from the commissioner.

In his final determination, the commissioner found that he could not review appellant's application for real property exemption for tax year 2002. However, the commissioner proceeded to exempt portions of the property and to order the remission of taxes, penalties, and interest for subsequent tax years. Statutory Transcript ("S.T.") at 1-3. A review of appellant's application for exemption indicates that the treasurer's certificate, attached to the application and certified by the county treasurer, shows that all taxes, special assessments, penalties and interest have been paid in full for tax year 2002, but further indicates that unpaid taxes, special assessments, penalties, and interest exist with regard to the subject property. S.T. at 15. The unpaid taxes are described as a "[r]ecoup due," with no corresponding tax year listed. *Id.* The commissioner asserts that this matter should be dismissed, based upon the apparent non-payment of CAUV recoupment charges by appellant.

R.C. 5715.27(A) provides the following:

"Except as provided in section 3735.67 of the Revised Code, the owner of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted from taxation and that taxes and penalties be remitted as provided in division (B) of section 5713.08 of the Revised Code."

In filing an application for exemption, a taxpayer must meet certain threshold requirements found in R.C. 5713.08. See, e.g., *Cleveland Clinic Found. v. Wilkins*, 103 Ohio St.3d 382, 2004-Ohio-5468; *Strongsville Bd. of Edn. v. Wilkins*, 108 Ohio St.3d 115, 2006-Ohio-248. Compare *Toledo v. Levin*, 117 Ohio St.3d 373, 2008-

Ohio-1119. In *Cleveland Clinic*, supra, at ¶15, the Ohio Supreme Court held that, pursuant to former R.C. 5713.08, the commissioner may not consider an application for real property tax exemption unless the certificate executed by the county treasurer shows that all assessments, interest, and penalties have been paid in full to the date upon which the application for exemption is filed, or that the applicant has entered into a valid undertaking with the county treasurer pursuant to R.C. 323.31(A) to pay all of the delinquent, nonremittable taxes, interest, and penalties charged against the property.

Further supporting its view that the requirements of R.C. 5713.08 should be closely followed, the court, in *Strongsville Bd. of Edn.*, supra, at ¶19, found that the commissioner had no authority to consider an application for exemption because the taxpayer needed to have paid in full all nonremittable taxes, interest, and penalties by the time taxpayer filed its application. The court found the applicant's exemption application defective pursuant to former R.C. 5713.08 even though a taxpayer had paid its taxes by the time the commissioner considered its application.

In comparison, the court in *Toledo*, supra, found jurisdiction as it related to one of two tax years in issue in an exemption application filed pursuant to former R.C. 5713.08.² The court held that, where the treasurer's certificate does not reflect any taxes or assessments as being unpaid, jurisdiction was proper for a later tax year, even though the treasurer's certificate only certified that taxes, assessments, interest, and penalties were paid through a prior tax year. *Toledo*, supra, at ¶28-29. The court found jurisdiction to be proper for 2003, even though the treasurer's certificate only

² The court affirmed this board's decision that the commissioner had no authority to consider the taxpayer's exemption application for tax year 2002, but found that the board erred in determining that the commissioner had no authority to consider the taxpayer's exemption application for tax year 2003.

certified that taxes, assessments, interest, and penalties were paid through 2001. The court also held that the “tax year,” for purposes of the requirement that a real property tax exemption application be filed by the end of the tax year, relates to the year in which the property is valued and tax is assessed, instead of a subsequent year in which the tax may be collected. *Toledo*, supra, at ¶19.

The Ohio General Assembly, in Sub.H.B. 160, amended portions of R.C. 5713.08. Following the June 20, 2008 enactment of this legislation, R.C. 5713.08 provides, in pertinent part:

“(B) If the treasurer’s certificate is not included with the application *or the certificate reflects unpaid taxes, penalties, and interest that may not be remitted*, the tax commissioner shall notify the property owner of that fact, and the applicant shall be given sixty days from the date that notification was mailed in which to provide the tax commissioner with a corrected treasurer’s certificate. If a corrected treasurer’s certificate is not received within the time permitted, the tax commissioner does not have authority to consider the tax exemption application. ***.”
(Emphasis added.)

In its response to this board’s show cause order, appellant submitted a letter from the county treasurer, addressed to appellant’s counsel and signed by the treasurer, stating that appellant apparently paid the CAUV taxes in issue on January 15, 2004. Appellant filed its application for real property tax exemption with the commissioner on April 23, 2003. See *Strongsville Bd. of Edn.*, supra. Also attached to appellant’s response were documents from the county treasurer’s duplicate noting the parent parcel from which appellant purchased its property. These documents show a tax due of \$3619.31 in appellant’s name, with a notation of “certified delinquent: 2004.”

A review of the record indicates that the treasurer's certificate in appellant's application for exemption, certified by the county treasurer on April 16, 2003, reflects unpaid taxes relating to a "[r]ecoup due." While we appreciate appellant's efforts in providing this board with evidence that the taxes in issue were paid, we are constrained to adhere to R.C. 5713.08(B), as amended in Sub.H.B. 160. This statute requires that if the treasurer's certificate reflects unpaid taxes, as in the instant matter, the tax commissioner must notify appellant of that fact, and the applicant shall be given sixty days to provide the commissioner with a corrected treasurer's certificate.

Here, we have no evidence in the record that these procedural events have occurred. Additionally, *Strongsville Bd. of Edn.* and *Cleveland Clinic*, supra, mandate that an applicant seeking a real property tax exemption must strictly adhere to the provisions of R.C. 5713.08. Therefore, it is the decision and order of the Board of Tax Appeals to remand this matter to the commissioner for further consideration, pursuant to R.C. 5713.08(B).³

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³ It is regretful that appellant has not yet had this matter addressed on the merits. This board, however, is unable to extend its jurisdiction beyond that expressly provided by statute. Cf. *Strongsville Bd. of Edn.*, supra.