

OHIO BOARD OF TAX APPEALS

Siemens Business Services, Inc.,)	CASE NO. 2008-V-2530
)	
Appellant,)	(USE TAX)
)	
vs.)	DECISION AND ORDER
)	
Richard A. Levin, Tax)	
Commissioner of Ohio,)	
)	
Appellee.)	

APPEARANCES:

For the Appellant		- Siemens Business Services, Inc. Ricardo L. Orsini, Tax Consultant 4400 Alafaya Trail, MS AL-888 Orlando, Florida 32826
For the Appellee		- Richard Cordray Attorney General of Ohio Lawrence D. Pratt Assistant Attorney General Taxation Section State Office Tower, 25th Floor 30 East Broad Street Columbus, Ohio 43215-3248

Entered May 5, 2009

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

This matter is before the Board of Tax Appeals pursuant to an order requiring appellant to show cause as to why the instant matter should not be dismissed. Appellant Siemens Business Services, Inc. appealed to this board from the Tax Commissioner's final determination granting in part and denying in part its petition for reassessment.

On March 20, 2009, the Tax Commissioner certified to this board the following:

“The Final Determination issued by the Tax Commissioner on December 3, 2008 regarding the above-referenced assessment was sent by certified mail, return receipt requested, to the Appellant.

“The Final Determination was received by the Appellant on the 12th day of December 2008 by certified mail.

“The Tax Commissioner received a letter from the Board of Tax Appeals stating that it had received and docketed a notice of appeal from the Final Determination, filed by the Appellant.

“As of the 19th day of March 2009 no copy of said notice of appeal has been filed with the Tax Commissioner.”

Attached to said certification is a copy of a certified mail receipt addressed to the appellant and delivered on December 12, 2008, bearing what appears to be the signature of M. Bates. Additionally, the Tax Commissioner has certified a copy of the final determination ultimately denying appellant’s exemption request, dated December 3, 2008.

Appellant has failed to respond to this board’s order inquiring as to whether appellant timely filed a copy of its notice of appeal with the commissioner.

R.C. 5717.02 sets forth certain prerequisites necessary to invoke the jurisdiction of this board, providing in pertinent part:

“Such appeals shall be taken by the filing of a notice of appeal with the board, and with the tax commissioner *** within sixty days after notice of the *** determination *** by the commissioner *** has been given or otherwise evidenced as required by law.” (Emphasis added.)

Strict compliance with R.C. 5717.02 is essential in order to vest this board with the authority to consider the merits of an appeal. See, e.g., *American Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147; *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 121.

Based on the record before us, we find that the Tax Commissioner did not receive a copy of appellant's notice of appeal; therefore, appellant has failed to invoke the jurisdiction of this board.

Therefore, it is the decision and order of the Board of Tax Appeals that the appeal filed by appellant be dismissed.

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