

OHIO BOARD OF TAX APPEALS

Siemens Business Services, Inc.,)	CASE NO. 2008-V-2530
)	
Appellant,)	(USE TAX)
)	
vs.)	ORDER
)	
Richard A. Levin, Tax Commissioner of Ohio,)	(Requiring Appellant to Show Cause)
)	
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 March 24, 2009

The Board of Tax Appeals is considering this matter, sua sponte, based on a review of the cases before us. Appellant has appealed from a final determination of the Tax Commissioner regarding a use tax assessment.

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.

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.)

As an administrative agency, 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.

It is therefore the order of this board that the appellant show cause as to why this board should not dismiss this instant appeal. Additionally, appellant's request for a mediation conference will remain pending until such time this board resolves the potential jurisdictional issue. All parties who wish to be heard upon the question of the legal sufficiency of the appellant's notice of appeal shall file a written response to this order within fourteen days of its issuance.

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