

OHIO BOARD OF TAX APPEALS

Siemens Business Services, Inc.,)	CASE NO. 2008-V-2530
)	
Appellant,)	(USE TAX)
)	
vs.)	ORDER
)	
Richard A. Levin, Tax)	(Denying Motion for Reconsideration
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 20, 2009

Ms. Margulies and Mr. Dunlap concur. Mr. Johrendt not participating.

This matter is once again before the Board of Tax Appeals pursuant to a motion for reconsideration filed by the appellant.

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.

On March 24, 2009, this board’s attorney examiner issued an order requiring appellant to show cause as to why the underlying appeal should not be dismissed for lack of jurisdiction because the appellant failed to serve a copy of the notice of appeal upon the Tax Commissioner pursuant to R.C. 5717.02. No response was provided by the appellant. On May 5, 2009 this board dismissed the underlying appeal. See *Siemens Business Services, Inc. v. Levin* (May 5, 2009) BTA No. 2008-V-2530, unreported.

In *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, the court indicated that the test to be applied when considering a motion for reconsideration is whether the motion calls to the attention of the tribunal an obvious error in the decision or raises an

issue for consideration that was either not considered or was not fully considered. In the present matter, the appellant's motion fails to present such an issue.

In its motion, appellant argues that this board's docketing notice sent to the commissioner sufficiently apprised the commissioner of the existence of the appeal. We disagree. In an analogous situation, the Ohio Supreme Court held that docketing letters sent by this board do not satisfy the requirement of R.C. 5717.01 that an appealing party file a notice of appeal with a county board of revision. *Austin Co. v. Cuyahoga Cty. Bd. of Revision* (1989), 46 Ohio St.3d 192. Similarly, this board has applied the same principle. *Rumora v. Ashtabula Cty. Bd. of Revision* (Mar. 30, 2001), BTA No. 2000-G-970, unreported; *Anderson v. Zaino* (Nov. 17, 2000), BTA No. 2000-K-735, unreported, at 3, fn. 1, "the filing of a singular notice of appeal with only this Board or the Department of Taxation does not satisfy the requirements necessary to invoke this Board's jurisdiction under R.C. 5717.02.". We find the notice requirement found in R.C. 5717.02, requiring the appellant to serve a copy of the notice of appeal upon the commissioner, is substantially similar to the same requirement found in R.C. 5717.01. For the same reasons reached by the court in *Austin*, we find that the docketing letters sent by this board do not satisfy the requirement of R.C. 5717.02 that the appealing party file a copy of the notice of appeal with the commissioner.

Further, appellant argues (although it received a copy of this board's May 5, 2009 decision and order) it never received this board's show cause order issued

on March 24, 2009.¹ Nevertheless, we view the instant motion of the appellant to be responsive to the issue raised in this board's show cause order (i.e., the commissioner's certification that the appellant had failed to deliver a copy of the notice of appeal to the commissioner pursuant to R.C. 5717.02.) Appellant fails to raise any argument as to how the commissioner's certification is in error.

Based on the record before us, we find that the appellant has failed to raise any obvious error in this board's May 5, 2009 decision. 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 appellant's motion for reconsideration be denied.

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¹ Both the show cause order and this board's decision and order were mailed to appellant's address as captioned above.