

OHIO BOARD OF TAX APPEALS

Erievew Metal Treating Co.,)	CASE NO. 2008-Z-118
)	
Appellant,)	(REAL PROPERTY TAX
)	EXEMPTION)
vs.)	
)	DECISION AND ORDER
Richard A. Levin, Tax)	
Commissioner of Ohio,)	
)	
Appellee.)	

APPEARANCES:

For the Appellant	-	Erievew Metal Treating Co. George A. Kappos, Jr. 4465 Johnston Parkway Cleveland, Ohio 44128
For the Appellee	-	Richard Cordray Attorney General of Ohio Sophia Hussain Assistant Attorney General 30 East Broad Street, 25 th Floor Columbus, Ohio 43215

Entered April 14, 2009

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

This appeal is now being considered upon a motion to affirm filed by the appellee Tax Commissioner wherein he argues that this board should affirm his final determination dated November 23, 2007. The appellant, Erievew Metal Treating Co. (“Erie”), did not file a response to the Tax Commissioner’s motion to affirm.

A review of the record in this appeal reveals that Erie filed an application for exemption from real estate taxes for parcel number 142-22-019 on February 23,

2005 for tax year 2004. S.T. at 17. On said application, “Erievue Metal Treating Co.” is listed as the “applicants [sic] name.” Id. The application also reflects that title to the subject property is held in the name of “Trio Diversified Co” and that title to the subject property was acquired by Trio Diversified Co (“Trio”) on May 1, 1995. Id. Further, “EMT leases from Trio (same ownership)” appears on the line seeking an explanation if the titleholder to the subject property is different from the applicant. Id. This application was based on an enterprise zone agreement dated as of February 7, 1996 by and among the City of Cleveland (“City”), Erie, Trio and another corporation. S.T. at 1, 21. The application indicates that exemption was sought under “Ord #948-95 of Chapter 5709 ORC.” S.T. at 17. This application was assigned LE 1260 as its DTE application number. Id.

On November 23, 2007, the Tax Commissioner issued his final determination wherein he dismissed the application for exemption on the grounds that he lacked jurisdiction to consider it. S.T. at 1-2. Citing R.C. 5715.27(A), the Tax Commissioner stated in his final determination that he did not have the statutory authority to consider the application since the applicant, Erie, was not the owner of the property, but rather was an affiliate of the property owner. Id. The Tax Commissioner also pointed out that a second application for exemption was filed for the subject property on the same date as the application at issue herein, February 23, 2005. S.T. at 1-2, 18. This second application reflected Trio as the applicant and the owner of the property. Id. The same parcel number, 142-22-019, was listed on both applications. S.T. at 18. The second application, however, was based on a separate enterprise zone

agreement between the City and Trio dated as of September 23, 2002. S.T. at 1. The second application was assigned LE 1528 as its DTE application number and was approved for exemption status on April 21, 2006. S.T. at 1, 18.

Erie filed the instant appeal with respect to the Tax Commissioner's February 23, 2007 final determination and dismissal of DTE Application Number LE 1260 therein. In its notice of appeal, Erie acknowledges that it made application for the exemption while Trio owned the subject property. Erie explains that it was reflected as the applicant due to a "clerical error," when Trio should have been reflected as the applicant as Trio was the owner of the property. Erie explains, however, that the ownership structure of Erie and Trio is identical (i.e., same shareholders with same percentages of ownership). Finally, Erie explains that the two exemption applications were not for the same property but rather were for different properties. DTE Application Number LE 1260, which was dismissed, relates to property addressed in the enterprise zone agreement dated as of February 7, 1996, whereas DTE Application Number LE 1528, which was approved, relates to property addressed in the enterprise zone agreement dated as of September 23, 2002. Erie argues that both exemption applications should have been granted since the requirements set forth in both enterprise zone agreements were satisfied.

In his motion to affirm, the Tax Commissioner argues that his final determination should be affirmed since the owner of the property, Trio, did not make application for exemption in DTE Application Number LE 1260 as required by R.C. 5715.27(A), but rather Erie, an affiliate of Trio, applied for exemption status. The Tax

Commissioner further argues that Trio and Erie are separate legal entities and the mere fact that they are affiliates does not alter the analysis or the result. That is, Erie's affiliation with Trio does not afford Erie the ownership rights of Trio. Under the aforementioned circumstances, the Tax Commissioner argues that he lacked jurisdiction to consider the application. The appellant did not file a response to the Tax Commissioner's motion to affirm.

In reviewing appellant's appeal, we first recognize the presumption that the findings of the Tax Commissioner are valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. It is therefore incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut that presumption and establish a right to the relief requested. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the Tax Commissioner's determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213.

The Tax Commissioner relied on R.C. 5715.27(A) in arriving at his determination. R.C. 5715.27(A) sets forth the requirements for filing an application for exemption and provides, in pertinent part, as follows:

“*** *the owner*, a vendee in possession under a purchase agreement or a land contract, the beneficiary of a trust, or *a lessee for an initial term of not less than thirty years* 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, interest, and penalties be remitted as

provided in division (C) of section 5713.08 of the Revised Code.” (Emphasis added.)

We note that R.C. 5715.27 was amended by House Bill 160 effective June 20, 2008, subsequent to the Tax Commissioner’s November 23, 2007 final determination in this matter. The provision set forth above is the statute as amended. House Bill 160 dictates that we consider the amended statute in the instant matter as opposed to the statute that was in effect at the time the Tax Commissioner considered the exemption application¹ as said bill provides, in pertinent part, as follows:

“Sections *** and 5715.27 of the Revised Code, as amended by this act, are remedial in nature and apply to the tax years at issue in any application for exemption from taxation pending before the Tax Commissioner, the Board of Tax Appeals, the Court of Appeals, or the Supreme Court on the effective date of this act and to that property that is the subject of any application.”

R.C. 5715.27(A), as amended, specifically provides that an owner, among others, may file an application for exemption. In the instant matter, the Tax Commissioner argues, and Erie concedes, that the exemption application was not filed by the owner of the property. Erie, however, argues that reflecting Erie as the applicant was “simply a clerical error” and that the ownership structure of Erie and Trio is identical (i.e., same shareholders with same percentages of ownership).

¹ R.C. 5715.27(A) in effect at the time the Tax Commissioner considered the exemption application read as follows:

“[T]he *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.” (Emphasis added).

The Ohio Supreme Court considered R.C. 5715.27(A), before its amendment, in *Performing Arts School of Metro. Toledo, Inc. v. Wilkins*, 104 Ohio St.3d 284, 2004-Ohio-6389. Notwithstanding the fact that *Performing Arts*, supra, preceded the amendment to R.C. 5715.27(A), *Performing Arts*, supra, is relevant in the determination of whether an applicant has the proper standing to file the application. In that case, the exemption application was filed by a lessee and not the owner, but the owner joined in the exemption application after the filing deadline. The court concluded that “parties must meet strict standing requirements in order to satisfy the threshold requirement for the administrative tribunal to obtain jurisdiction.” *Id.* at ¶6, citing *State ex rel. Tubbs Jones v. Suster* (1998), 84 Ohio St.3d 70, 77, fn. 4. Finding that the term “owner” as used in R.C. 5715.27 refers to only legal titleholders of real property for which tax exemption is sought, the court held that a lessee did not have standing to file an application for exemption, and the fact that the owner joined in the exemption application after the filing deadline had passed did not cure the jurisdictional defect.

Thus, the use of the term “owner” in R.C. 5715.27(A) means a legal titleholder of the property. In the instant case, the legal titleholder of the property was Trio, not Erie. Since Erie was not a legal titleholder of the property, it cannot qualify as an owner under R.C. 5715.27(A). We cannot conclude that Erie should be deemed to be an owner under R.C. 5715.27(A) due to its affiliation with Trio. Erie and Trio are two separate legal entities and must be treated as such. See *North v. Higbee Co.*

(1936), 131 Ohio St. 507 (concluded that a parent corporation and its subsidiary are separate corporate entities).

Our consideration of whether Erie had the necessary standing to file the application for exemption does not end there, however. Under R.C. 5715.27(A), as amended, the category of those persons or parties who have standing to file an application for exemption has been expanded. Specific to the instant matter, R.C. 5715.27(A), as amended, provides that “a lessee for an initial term of not less than thirty years of any property may file an application.” Erie’s exemption application reflected that “EMT leases from Trio ***.” S.T. at 17. Thus, we must consider whether Erie qualifies as a lessee under R.C. 5715.27(A), as amended. A review of the record before us reveals that the only indication of Erie leasing the property is the reference to “EMT leases from Trio” on the application. The existing record is void with respect to any of the terms of the lease arrangement between Erie and Trio. It is not clear from the record before us whether Erie’s lease constitutes “an initial term of not less than thirty years” as required by R.C. 5715.27(A). Accordingly, we are unable to conclude that Erie satisfied the requirements related to a lessee set forth in R.C. 5715.27(A).

Based on the above, we find that the appellant and applicant, Erie, failed to meet the procedural requirements of R.C. 5715.27(A), as amended, and therefore, lacked standing to file the exemption application. Accordingly, the Tax Commissioner correctly found he had no jurisdiction to consider the application for exemption. The commissioner’s powers, like those of the Board of Tax Appeals, are statutory. Strict

adherence to statutory provisions is the hallmark of legislatively created bodies. *Ohio Utilities Co. v. Collins* (1976), 48 Ohio St. 2d 169.

Therefore, considering the record, statutes and case law, the Board of Tax Appeals finds and determines that the Tax Commissioner was correct when he found that Erie did not have standing to file the exemption application. Thus, the final determination of the Tax Commissioner must be, and hereby is, affirmed.

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