

OHIO BOARD OF TAX APPEALS

Durabilt Inc.,)	CASE NO. 2008-Z-501
)	
Appellant,)	(USE TAX)
)	
vs.)	ORDER
)	
Richard A. Levin, Tax)	(Granting Motion to
Commissioner of Ohio,)	Deny the Amendment to the
)	Notice of Appeal)
Appellee.)	

APPEARANCES:

- For the Appellant - Durabilt Inc.
Eric E. Domer
P.O. Box 28
Green, Ohio 44232
- For the Appellee - Richard Cordray
Attorney General of Ohio
Ryan P. O'Rourke
Assistant Attorney General
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Entered March 24, 2009

This matter is before the Board of Tax Appeals pursuant to a motion filed by the appellee Tax Commissioner to dismiss the amended appeal which this board will construe to be a motion to deny the amendment to the original notice of appeal. In said motion, the appellee Tax Commissioner argues that this board lacks jurisdiction to consider the amendment to the notice of appeal due to the appellant's failure to timely file said amendment. The appellant filed a response to the Tax Commissioner's motion.

In his motion, the Tax Commissioner argues that this board should dismiss the amendment to the original notice of appeal for lack of jurisdiction due to the appellant's failure to file said amendment with this board within sixty days of the date of the appellant's receipt of the Tax Commissioner's final determination. In support thereof, the Tax Commissioner explained that his final determination dated February 8, 2008 was received by the appellant on February 22, 2008. The Tax Commissioner provided a copy of the certified mail return receipt reflecting that the appellant received the final determination on February 22, 2008. The Tax Commissioner further explained that sixty days from the date of the appellant's receipt of the final determination was April 22, 2008. While the appellant filed its notice of appeal on April 14, 2008, prior to the sixty-day filing deadline, the appellant did not file its amendment to the notice of appeal until May 14, 2008, well beyond the sixty-day filing deadline.

In its response to the Tax Commissioner's motion, the appellant argues that its amendment to the notice of appeal is "not distant from, but merely a clarification of, issues first raised in Durabilt's original Notice of Appeal."

R.C. 5717.02 sets forth the jurisdictional requirements to appeal from a final order of the Tax Commissioner to this board. R.C. 5717.02 reads, in pertinent part, as follows:

"Such appeals shall be taken by the filing of a notice of appeal with the board, and with the tax commissioner if the tax commissioner's action is the subject of the appeal, ***. The notice of appeal shall be filed *within sixty days* after service of the notice of the tax assessment, reassessment, valuation, determination, finding,

computation, or order by the commissioner ***.”
(Emphasis added.)

As the Board of Tax Appeals is an administrative agency, strict compliance with R.C. 5717.02 is essential to vest jurisdiction upon the board. *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147; *Clippard Instrument Laboratory, Inc. v. Lindley* (1977), 50 Ohio St.2d 121; *Craftsman Type, Inc. v. Lindley* (1983), 6 Ohio St.3d 82; *House of Good Shepard, Inc. v. Limbach* (1988), 37 Ohio St.3d 244. R.C. 5717.02 specifically requires that a notice of appeal be filed with both the Board of Tax Appeals and the Tax Commissioner within sixty days after service of the final determination.

In the instant appeal, a review of the notice of appeal and the Tax Commissioner’s motion establishes that the Tax Commissioner’s final determination was dated February 8, 2008 and was received by the appellant on February 22, 2008. S.T. at 191. The deadline for filing a notice of appeal in this matter was sixty days from February 22, 2008, or April 22, 2008. The appellant filed its notice of appeal with this board on April 14, 2008, prior to the sixty-day filing deadline. However, the appellant filed its amendment to the notice of appeal on May 14, 2008, after the sixty-day filing deadline.

Based upon the foregoing, this board must conclude that the appellant failed to timely file the amendment to its original notice of appeal as expressly required by R.C. 5717.02. Consequently, the Board of Tax Appeals is without jurisdiction to consider the appellant’s amendment to its original notice of appeal.

As the appellant has failed to invoke this board's jurisdiction with respect to its amendment, it is the order of this board that the appellee Tax Commissioner's motion to deny the amendment to the original notice of appeal is hereby granted. This matter will proceed in the ordinary course of this board's business with respect to the original notice of appeal filed by the appellant.

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