

**OHIO BOARD OF TAX APPEALS**

Robert B. Kraemer,	)	CASE NO. 2008-Z-621
	)	
Appellant,	)	(SALES TAX PERSONAL
	)	LIABILITY)
vs.	)	
	)	ORDER
Richard A. Levin, Tax	)	
Commissioner of Ohio,	)	(Finding Jurisdiction and
	)	Ordering Tax Commissioner to
Appellee.	)	Certify Statutory Transcript)

APPEARANCES:

For the Appellant	-	Robert B. Kraemer c/o Michael J. Wilhelm & Associates 4440 Lake Forest Drive, Suite 116 Cincinnati, Ohio 45242
Notice of Appeal Filed By-		Michael J. Wilhelm & Associates Michael J. Wilhelm, CPA 4440 Lake Forest Drive, Suite 116 Cincinnati, Ohio 45242
For the Appellee	-	Richard Cordray Attorney General of Ohio Lawrence D. Pratt Assistant Attorney General Taxation Section State Office Tower, 25 <sup>th</sup> Floor 30 East Broad Street Columbus, Ohio 43215-3248

Entered February 10, 2009

This appeal is now considered following the issuance of an order requiring the appellant to show cause as to why this board should not dismiss the instant appeal for failure to file the notice of appeal with both this board and the Tax Commissioner within sixty days after service of the final determination. While the

appellant did not file a response to the show cause order, the appellee Tax Commissioner did.

In his response to the show cause order, the Tax Commissioner certified that the final determination dated February 11, 2008 was mailed by way of certified mail to the appellant and was returned unclaimed to the Department of Taxation. Thereafter, on March 24, 2008, the final determination along with a cover letter was mailed by way of first class mail to the appellant.

The appellant filed his notice of appeal with this board on May 21, 2008, or 58 days after March 24, 2008.

This board must determine whether it has jurisdiction to consider the instant appeal. R.C. 5717.02 sets forth the requirements for bringing a proper appeal from a final determination of the Tax Commissioner and provides, 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.)

The requirements of R.C. 5717.02 are legislatively mandated and must be strictly complied with before the subject matter jurisdiction of the Board of Tax Appeals may be invoked. *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.

Furthermore, the courts have repeatedly held that an appellant must timely file its notice of appeal with the Tax Commissioner, as well as this board, in order to invoke the jurisdiction of the Board of Tax Appeals. *Zephyr Room, Inc. v. Bowers* (1955), 164 Ohio St. 287; *Fineberg v. Kosydar* (1975), 44 Ohio St.2d 1; *Universal Equipment Co. v. Limbach* (Mar. 10, 1989), Sandusky App. No. S-88-20, unreported; *Ross v. Tracy* (Feb. 1, 1999), Stark App. No. 98-CA-00103, unreported. The failure to comply with this requirement properly leads to a dismissal of the appeal. *Akron Standard Div. v. Lindley* (1984), 11 Ohio St.3d 10.

In the instant matter, the appellant filed his notice of appeal with this board 58 days after March 24, 2008, the date on which the final determination was sent to the appellant by way of first class mail. Accordingly, the appellant filed his notice of appeal with this board within the 60-day period required by R.C. 5717.02. Based on the existing record, this board finds that the appellant timely filed his notice of appeal with this board and further finds that jurisdiction is proper.

This board is unable to determine, from the limited record before us, that the appellant timely filed his notice of appeal with the Tax Commissioner as required by R.C. 5717.02. Therefore, it is the order of this board that the Tax

Commissioner file the certified transcript *within fourteen days of the issuance of this order.*

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