

OHIO BOARD OF TAX APPEALS

City of North Royalton,)
)
 Appellant,) (REAL PROPERTY TAX EXEMPTION)
)
 vs.)
) DECISION AND ORDER
)
 Richard A. Levin,)
 Tax Commissioner of Ohio,)
)
 Appellee.)

APPEARANCES:

For the Appellant- City of North Royalton
 Karen Fegan
 Director of Finance
 13834 Ridge Road
 North Royalton, Ohio 44113

For the Appellee- Richard Cordray
 Tax Commissioner Attorney General of Ohio
 Lawrence Pratt
 Assistant Attorney General
 30 E. Broad Street, 25th Floor
 Columbus, Ohio 43215

Entered June 2, 2009

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

On February 16, 2009, this board issued an order seeking input from the parties as to why the board should not affirm the Tax Commissioner’s dismissal of the above-captioned appeal. The issue identified in this board’s order was the failure of the appellant to pay non-remittable taxes prior to the filing of applications for exemption from real property tax. This matter is considered upon the appellant’s notice of appeal, the board’s order to show cause, and the record certified to the board

by the Tax Commissioner. There was no response to the show cause order issued by this board.

The appellant filed six applications for real property exemption seeking exemption from real property taxation for tax year 2008 and remission of taxes for tax year 2007. The Cuyahoga County Auditor indicated in each application that real property taxes were due. For some parcels, taxes were due for tax year 2007. S.T. 28, 43, 58, 107. For other parcels, taxes were due for tax years 2006 and 2007. S.T. 73, 90. As stated in the board's earlier order, the commissioner's determinations¹ read, in part, as follows:

“This is the final determination of the Tax Commissioner on an application for exemption of real property from taxation filed on January 29, 2008.

“The Ohio Supreme Court has determined that the Tax Commissioner does not have the statutory authority to consider an application for exemption until certain taxes, assessments, penalties and interest have been paid. Pursuant to Ohio Revised Code Section ('R.C.') 5713.08 and 5713.081, the Tax Commissioner may only remit taxes, penalties and interest for the three years prior to the year of application if the Tax Commissioner finds the property would have qualified for exemption for those years. *** Because the county treasurer's certificate attached to the application indicated the subject property had unpaid taxes, penalties, or interest for tax year 2007 or earlier years when the application for exemption was filed, the Tax Commissioner has no jurisdiction to consider this application.

“This determination of jurisdiction was made by the Ohio Supreme Court in *Cleveland Clinic Foundation v. Wilkins*

¹ The commissioner's determinations, except for the identifying information appearing in the reference section, are essentially identical.

(2004), 103 Ohio St.3d 382. Additionally, in *Strongsville Board of Education v. Wilkins*, [sic] (2005), 118 Ohio St.3d 115, the Ohio Supreme Court held that an application must be dismissed by the Tax Commissioner for lack of jurisdiction where the treasurer's certificate attached to the application shows that the taxes, assessments, penalties or interest that cannot be remitted were not paid at the time the application was filed. See also, *Ursuline Academy of Cleveland v. Bd. of Tax Appeals* (1943), 141 Ohio St. 559.

“In this case, the treasurer's certificate attached to the application indicates that taxes, assessments, penalties or interest that must be paid for the Tax Commissioner to have jurisdiction were not paid at the time the application was filed. On August 29, 2008, the Tax Commissioner notified the applicant via letter that the treasurer's certificate reflected unpaid taxes, penalties [sic] and interest that could not be remitted. The letter requested that the applicant pay the required amounts and provide a corrected treasurer's certificate within sixty days, which the applicant failed to do within the time allotted by R.C. 5713.08(B). Accordingly, the Tax Commissioner does not have jurisdiction to consider the application. Therefore, the application is dismissed.”

R.C. 5715.27(A) authorizes the owner of real property to file an application for exemption of real property from taxation with the Tax Commissioner.

However, pursuant to R.C. 5713.08:

“(A) ***

“An application for exemption of property shall include a certificate executed by the county treasurer certifying one of the following:

“(1) That all taxes, assessments, interest, and penalties levied and assessed against the property sought to be exempted have been paid in full for all of the tax years preceding the tax year for which the application for exemption is filed, except for such taxes, interest, and penalties that may be remitted under division (C) of this section;

“(B) If the treasurer’s certificate is not included with the application or the certificate reflects unpaid taxes, penalties, and interest that may not be remitted, the tax commissioner shall notify the property owner of that fact, and the applicant shall be given sixty days from the date that notification was mailed in which to provide the tax commissioner with a corrected treasurer’s certificate. *If a corrected treasurer’s certificate is not received within the time permitted, the tax commissioner does not have authority to consider the tax exemption application.*” (Emphasis added.)

In *Cleveland Clinic Found. v. Wilkins* (2004), 103 Ohio St.3d 382, 2004-Ohio-5468, the court held that the Tax Commissioner cannot consider an application for exemption where the treasurer’s certificate does not show that non-remittable assessments, interest, and penalties are paid in full. The Ohio Supreme Court also held, in *Strongsville Bd. of Edn. v. Wilkins*, 108 Ohio St.3d 115, 2006-Ohio-248, that a taxpayer must pay any non-remittable taxes prior to the filing of the exemption application.

The appellant’s notice of appeal and attachments thereto indicate that taxes assessed against the subject properties were paid on January 20, 2009. However, the Tax Commissioner’s letter issued on August 29, 2008. Payment of taxes on January 20, 2009 is outside the sixty-day window prescribed by R.C. 5713.08(B). Therefore, this board must conclude that the Tax Commissioner was correct when he dismissed the applications for exemption.

Given the foregoing, it is the order of the Board of Tax Appeals that the

final determinations of the Tax Commissioner must be, and hereby are, affirmed.

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