

**OHIO BOARD OF TAX APPEALS**

City of North Royalton, )  
 )  
 Appellant, ) (REAL PROPERTY TAX EXEMPTION)  
 )  
 vs. ) ORDER  
 )  
 Richard A. Levin, ) (Requiring Appellant to Show Cause)  
 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, 25<sup>th</sup> Floor  
 Columbus, Ohio 43215

Entered February 17, 2009

This matter is before the Board of Tax Appeals pursuant to a review of appeals pending upon the board’s docket. It appears from appellant’s appeal<sup>1</sup> that the Tax Commissioner dismissed the appellant’s applications for exemption of real property from taxation for lack of jurisdiction.

The commissioner’s determinations<sup>2</sup> read, in part, as follows:

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<sup>1</sup> It appears that appellant challenges six final determinations through one notice of appeal.

<sup>2</sup> The commissioner’s determinations, except for the identifying information appearing in the reference section, are essentially identical.

“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 [sic] 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* (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;

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“(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.

While this matter is only recently filed with the board and the Tax Commissioner's statutory transcript has not yet been submitted, the appellant's notice of appeal and attachments thereto indicate that taxes assessed against the subject properties were paid on January 20, 2009. As the Tax Commissioner's final determination was dated December 12, 2008, and the order itself indicates that notification of the necessary payment was mailed August 29, 2008, it appears from the scant information received by this board that an amended treasurer's certificate was not presented to the Tax Commissioner within the time limits prescribed by R.C. 5713.08(B).

Additionally, through his final determination, the Tax Commissioner provided instruction to the appellant as to how to file a new application once the requirements of R.C. 5713.08(B) were met. The Tax Commissioner provided through his final determination:

*“If the applicant desires to file a new application for exemption showing that all the required taxes, penalties and interest are paid and the Tax Commissioner determines the property qualifies for exemption, the applicant may have taxes, penalties and interest remitted for up to the three qualifying years prior to the year in which the new application is filed, pursuant to R.C. 5713.08 and 5713.08. The applicant is advised to refile such application with the county auditor. For the applicant's convenience, an application is enclosed with this final determination.”*  
(Emphasis added.)

It is apparent that the commissioner determined that non-remittable taxes were due and therefore he was without jurisdiction to consider appellant's petition for reassessment. If such taxes were outstanding at the time the commissioner issued his final determination, then he was correct in his conclusion. Therefore, it is the order of the Board of Tax Appeals that the appellant show cause why this board should not affirm the Tax Commissioner's dismissal.

All parties who wish to be heard upon this issue shall file a written response to this order within fourteen days of its issuance.

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