

OHIO BOARD OF TAX APPEALS

Mary E. Schmidt,)
)
 Appellant,)
)
 vs.)
)
 Richard A. Levin, Tax)
 Commissioner of Ohio,) (Denying Motion for Reconsideration)
)
 Appellee.)

APPEARANCES:

For the Appellant - Mary E. Schmidt, pro se
6216 Eagles Lake Drive
Cincinnati, Ohio 45248

For the Appellee - Richard Cordray
Attorney General of Ohio
Lawrence D. Pratt
Assistant Attorney General
Taxation Section
State Office Tower, 25th Floor
30 East Broad Street
Columbus, Ohio 43215-3248

Entered May 21, 2009

Ms. Margulies and Mr. Dunlap concur. Mr. Johrendt not participating.

This matter is once again before the Board of Tax Appeals pursuant to a motion for reconsideration filed by the appellant.

On March 20, 2009, the Tax Commissioner certified to this board the following:

“The Final Determination issued by the Tax Commissioner on January 13, 2009 regarding the above-referenced assessment was sent by certified mail, return receipt requested, to the Appellant.

“The Final Determination was received by the Appellant on the 20th day of January 2009 by certified mail.

“The Tax Commissioner received a letter from the Board of Tax Appeals stating that it had received and docketed a notice of appeal from the Final Determination, filed by the Appellant.

“As of the 19th day of March 2009 no copy of said notice of appeal has been filed with the Tax Commissioner.”

Attached to said certification is a copy of a certified mail receipt addressed to the appellant and delivered on January 20, 2009, bearing what appears to be the signature of Mary Schmidt. Additionally, the Tax Commissioner has certified a copy of the final determination ultimately denying appellant’s exemption request, dated January 13, 2009.

On March 31, 2009, this board’s attorney examiner issued an order requiring appellant to show cause as to why the underlying appeal should not be dismissed for lack of jurisdiction because the appellant failed to serve a copy of the notice of appeal upon the Tax Commissioner pursuant to R.C. 5717.02. No response was provided by the appellant. On May 5, 2009 this board dismissed the underlying appeal. See *Schmidt v. Levin* (May 5, 2009) BTA No. 2009-V-167, unreported.

In *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, the court indicated that the test to be applied when considering a motion for reconsideration is whether the motion calls to the attention of the tribunal an obvious error in the decision or raises an issue for consideration that was either not considered or was not fully considered. In the present matter, the appellant’s motion fails to present such an issue.

In her motion, appellant argues after receiving this board's show cause order, she sent a copy of the notice of appeal to the Tax Commissioner on April 3, 2009.¹ Appellant acknowledges that more than sixty days had passed since the commissioner's final determination was served upon her on January 20, 2009. Appellant argues that if this board had informed her of her failure to serve a copy of the notice of appeal upon the commissioner more promptly, she might have had the opportunity to serve a copy of the notice of appeal upon the commissioner in a timely manner.

The commissioner's certification to this board that appellant had failed to serve the commissioner with a copy of the notice of appeal was filed with this board on Friday, March 20, 2009. The last day appellant could have filed her notice of appeal was three days later, Monday, March 23, 2009.² This board issued the show cause order to appellant on March 31, 2009, eleven days after first being made aware of the potential jurisdictional defect.

Based on the record before us, we find that the appellant has failed to raise any obvious error in this board's May 5, 2009 decision. The Tax Commissioner did not receive a copy of appellant's notice of appeal in a timely manner; therefore, appellant has failed to invoke the jurisdiction of this board.

Accordingly, it is the decision and order of the Board of Tax Appeals that appellant's motion for reconsideration be denied.

¹ Appellant appears to have addressed her correspondence to the "Board of Tax Commissioners." See Motion for Reconsideration.

² The last day fell on Saturday, March 21, 2009.

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