

OHIO BOARD OF TAX APPEALS

Judith L. Morse,)	CASE NO. 2009-V-502
)	
Appellant,)	(SCHOOL DISTRICT INCOME TAX)
)	
vs.)	
)	DECISION AND ORDER
Richard A. Levin, Tax Commissioner of Ohio,)	
)	
Appellee.)	

APPEARANCES:

For the Appellant		- Judith L. Morse, pro se 215 Richmond Drive Flemingsburg, KY 41041
For the Appellee Tax Commissioner		- Richard Cordray Attorney General of Ohio Lawrence D. Pratt Assistant Attorney General Taxation Section State Office Tower, 25 th Floor 30 East Broad Street Columbus, OH 43215-3248

Entered June 9, 2009

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

This matter is before the Board of Tax Appeals upon a show cause order issued by this board. See Interim Order, April 28, 2009, BTA No. 2009-V-502, unreported. In that order, the board requested the appellant to show cause why this board should not affirm the Tax Commissioner's dismissal of appellant's petition for reassessment. Appellant has not responded to said order. In the interim, the Tax Commissioner has certified that appellant failed to serve a copy upon the commissioner as required by R.C. 5717.02.

On May 8, 2009, the Tax Commissioner certified to this board the following:

“The Final Determination issued by the Tax Commissioner on January 21, 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 9th day of February 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 9th day of March 2009 no copy of said notice of appeal has been filed with the Tax Commissioner.”

R.C. 5717.02 sets forth certain prerequisites necessary to invoke the jurisdiction of this board, providing in pertinent part:

“Such appeals shall be taken by the filing of a notice of appeal with the board, and with the tax commissioner *** within sixty days after notice of the *** determination *** by the commissioner *** has been given or otherwise evidenced as required by law.” (Emphasis added.)

Strict compliance with R.C. 5717.02 is essential in order to vest this board with the authority to consider the merits of an appeal. See, e.g., *American Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147; *Zephyr Room, Inc. v. Bowers* (1955), 164 Ohio St. 287; *Fineberg v. Kosydar* (1975), 44 Ohio St.2d 1; *Clippard Instrument v. Lindley* (1977), 50 Ohio St.2d 121.

Based on the record before us, we find that the Tax Commissioner did not receive a copy of appellant's notice of appeal; therefore, appellant has failed to invoke the jurisdiction of this board.

Even if this board had jurisdiction over the instant appeal, we would have nevertheless determined that the commissioner's dismissal was proper. Based upon the final determination, the commissioner determined that payment had not been made on the \$130.65 tax and \$12.95 interest and therefore he was without jurisdiction to consider appellant's petition for reassessment. If payment has not been made, appellant has not met a prerequisite to seeking review. R.C. 5747.13.

From the record before us, we would have found that the commissioner properly determined he was without jurisdiction to consider appellant's petition for reassessment.

However, based upon the above discussion, appellant failed to file her notice of appeal with the Tax Commissioner, and therefore, it is the order of the Board of Tax Appeals that appellant's notice of appeal be dismissed.

ohiosearchkeybta