

OHIO BOARD OF TAX APPEALS

New Paris, L. P.,	)	
	)	
Appellant,	)	CASE NO. 99-B-1953
	)	
vs.	)	
	)	(PERSONAL PROPERTY TAX)
Thomas M. Zaino,	)	
Tax Commissioner of Ohio,	)	
	)	DECISION AND ORDER
Appellee.	)	

APPEARANCES:

For the Appellant	-	New Paris, L.P. Dba Fairfield Inn Ronda Landry-Controller 23600 N. Milwaukee Avenue Suite 100 Vernon Hills, Illinois 60061
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For the Appellee	Betty D. Montgomery Attorney General of Ohio By: Phyllis J. Shambaugh, Assistant Attorney General State Office Tower 30 East Broad Street 16th Floor Columbus, Ohio 43266-0410
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Entered March 17, 2000

Mr. Johnson, Ms. Jackson and Mr. Manoranjan concur.

The Board of Tax Appeals is considering this matter pursuant to a notice of appeal filed herein by New Paris, L.P., appellant, herein. Appellant appeals from a certificate of determination of the Tax Commissioner which dismissed appellant's petition filed

pursuant to R.C. 5711.28. The certificate of determination provides in pertinent part:

“This matter now comes on for final determination. It involves a Petition pursuant to Section 5711.28 of the Ohio Revised Code (R.C.) for abatement of a personal property tax late filing penalty assessment.

“R.C. 5711.27 provides that if a personal property tax return is not filed within the dates required by R.C. 5711.04, there shall be assessed a penalty of one-half of the value exempted under R.C. 5709.01(C)(3) and an additional penalty of up to 50% of the remaining listed value.

“In this instance, the return was due by April 30, 1999. The tax return was mailed to the Preble Count Auditor, through the U.S. Postal Service first class mail with a postmark date of June 16, 1999, and received by the Auditor on June 18, 1999. A Penalty of a forfeiture of one-half of the exempt value and 5% of the remaining listed value was assessed on June 18, 1999, and mailed to the taxpayer on that date.

“R.C. 5711.28 provides that a taxpayer may file with the Tax Commissioner, in person or by certified mail, a Petition for Abatement of Penalty within thirty-days after the mailing of the notice of penalty assessment. The Petition shall have attached to it a copy of the notice of assessment, shall indicate that the taxpayer’s only objection is to the assessed penalty and shall state the reason for the objection. The taxpayer filed a Petition for Abatement of Penalty dated August 4, 1999, and received by the Tax Commissioner on August 9, 1999.

“In an effort to assist the taxpayer in perfecting this appeal, the Tax Commissioner sent a certified letter to the taxpayer on August 12, 1999. The letter asked if there was a valid reason why the Petition was filed after the thirty-day appeal period. The taxpayer explained that the petition was filed late because the assessment notice was sent to their Ohio location and the employees there did not forward it to corporate headquarters for ““awhile.””

“The Tax Commissioner notes that the assessment was sent to the Ohio location address, which is the address furnished by the taxpayer on the 1999 personal property tax return.

“In this case, the Tax Commissioner finds that the taxpayer’s letter, which was considered upon receipt as a Petition for Abatement of

Penalty, is deficient since it does not meet all the requirements of R.C. 5711.28 in that it was received by the Tax Commissioner fifty-two (52) days after the assessment notice was mailed. The Board of Tax Appeals, in its decision Straffon Desktop Production v. Roger W. Tracy decided April 23, 1993 states:

“The thirty-day requirement under R.C. 5711.28 is mandatory. Unless the assessed party complies fully with the requirements set forth in the statute, the Tax Commissioner has no jurisdiction or authority to address the merits of the case and must dismiss the cause on jurisdictional grounds.”

“Therefore, the Tax Commissioner dismisses the Petition for Abatement of Penalty since it was received more than thirty-days after the mailing of the assessment notice.”

In its notice of appeal, appellant states, in pertinent part, as follows:

“This letter is to file an appeal for the above mentioned case of a personal property tax late filing penalty assessment. There are several points that I would like to make.

1. On May 14<sup>th</sup> I called the auditor’s office to request that the forms be sent because they had not been previously received, nor had a card been received to request the forms.
2. During that conversation, the auditor’s office instructed me that “as long as they were sent before the end of September, it really didn’t matter.”
3. The forms were promptly received and completed. Because of an officer being out of town, they were mailed in on June 11, 1999. Also, during that two-week period in the beginning of June our corporate office had moved locations. A letter was also prepared with payment requesting an address change (see attachment A).
4. During the end of July, the corporate office received the assessment. This was mailed to us from the physical property location of 9797 US 40 W, New Paris, Oh 45347. It had been mailed to the property rather than the corporate office. The property, in turn did not know what it was regarding and held onto it for a period of time before finally sending it to me. Note also, that the envelope the assessment was in, did not have a post-marked date on it

- so we really do not know when it was received (see attachment B).
5. On August 4<sup>th</sup>, I sent a letter requesting that the reduction of the exemption and the late filing fee be waived due to this being an isolated, first-time incident (see attachment C).
  6. Mid-August, I received a notice stating that my petition was not received within the 30 days. It also stated that if there was a reason for the petition not being filed to please advise.
  7. On August 19<sup>th</sup>, I immediately informed Nancy Johnson of the history of this issue (see attachment D). We also made sure that all correspondences, assessments and forms in the future be sent directly to the corporate office.

“Had I received the assessment timely, my petition to have the penalties waived would have been received by your office within the time allowed. I hope that once you are able to review this, you will waive the penalties associated with this case. Safeguards at the corporate office and changes at the Department of Taxation regarding our property have been put in place so this will not happen again. Should you require any further information, please feel free to contact me.”

The matter was scheduled for an evidentiary hearing for February 3, 2000 pursuant to assignment and notice thereof. The Tax Commissioner appeared by and through counsel. No one appeared on behalf of the appellant. The matter was submitted to the Board of Tax Appeals upon the statutory transcript certified herein by the Tax Commissioner, and the evidence adduced at the hearing conducted herein.

R.C. 5711.28 provides in pertinent part:

“Within thirty days after the mailing of the notice of a penalty assessment prescribed by this section, the taxpayer may file with the tax commissioner, in person or by certified mail, a petition for abatement of such penalty assessment.”

A perusal of the statutory transcript supports the Commissioner's finding that the petition for abatement of the penalty assessment was filed well beyond the thirty day limit of R.C. 5711.28. The assessment notice was mailed on June 18, 1999 to the address of the taxpayer as supplied on its 1999 personal property tax return. The appellant requested an abatement of penalty by application dated August 4, 1999, which was received by the Tax Commissioner on August 9, 1999.

The time limitation set forth in R.C. 5711.28 governing petitions for reassessment is jurisdictional and mandatory. Strict compliance is essential to invoke the jurisdiction of the Tax Commissioner American Restaurant & Lunch Co v .Glander (1946), 147 Ohio St. 147. Where a taxpayer fails to file a petition for abatement within thirty days after notice of assessment, the Tax Commissioner lacks jurisdiction to hear the matter; and the Board lacks jurisdiction to consider facts related to the assessment Seafood Restaurant Inc v Limbach (Jan. 25, 1991) B.T.A. Case No. 89-B-317, unreported Per-Form Tool Mold, Inc. v Limbach (Feb. 16, 1990) B.T.A. Case No. 88-B-305, unreported. We therefore find that the Commissioner's determination that he lacked jurisdiction to consider the appeal was proper. The Commissioner's determination is hereby affirmed.