

OHIO BOARD OF TAX APPEALS

Nicolae Cranga,)
)
 Appellant) BTA CASE NO. 99-L-1760
)
 vs.) DECISION AND ORDER
)
 Thomas M. Zaino,) Real Property Tax
 Tax Commissioner of Ohio,)
)
 Appellee.)

APPEARANCES:

For the Appellant - Nicolae Cranga, *pro se*
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Cincinnati, Ohio 45223

For the Appellee - Betty D. Montgomery
Attorney General of Ohio
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ENTERED: February 11, 2000

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

This matter is before us upon a notice of appeal filed pursuant to the provisions of R.C. 5717.02. Nicolae Cranga (hereinafter Appellant) appeals a final determination of the Tax Commissioner denying his application for the remission of real property tax penalties. The Appellant waived his appearance at an evidentiary hearing before the Board by written notice filed on January 24, 2000. Counsel for

the Appellee appeared at the hearing before the Board. The matter is submitted for our determination based upon the statutory transcript (ST) and the taped record (R) of the hearing before the Board. R.C. 5717.02.

The Appellant filed an application for the remission of real property tax penalties that were assessed in the amount of \$31.36 for late payment of the first installment of his 1998 real property tax bill, due February 1, 1999. The application indicates that the tax bill was sent to the Appellant at the property address. The United States Postal Service (hereinafter USPS) returned the tax bill to the Treasurer with a forwarding address to Vancouver, British Columbia. The Treasurer states that the bill was then sent to the Appellant according to the yellow label provided by the USPS. (ST 4) The Appellant asserts that the failure to receive the tax bill was due to the negligence of the County Treasurer in not properly writing the Canada postal zip code for the Vancouver address on the tax bill. (ST 3)

The Hamilton County Treasurer recommended that the request for remission of the penalty for late payment of the taxes be denied noting that there was no negligence or error by a county official. The Treasurer was not notified of the Appellant's change of address until June 4, 1999, four months after the tax bill was due. (ST 4) In fact the Appellant notes on the application for penalty remission that the tax bills were ultimately received in Vancouver by his daughter, and then sent back to the Appellant in Cincinnati. (ST 3) Although it does appear that the Treasurer's employee wrote the letter "S" as a "5", this does not constitute negligence or error on the part of the Treasurer or Auditor. R.C. 5715.39 also requires that the taxpayer make a good faith effort to obtain the tax bill within 30 days after the due date in order to be granted remission of the assessed penalty. The Tax Commissioner has denied the application for remission of penalty. (ST 4)

The only issue before the Board in the instant appeal is whether the Tax Commissioner properly denied the Appellant's request for the remission of the late

payment penalty assessed. Initially it must be noted that the findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. It is incumbent upon the Appellant to rebut that presumption and establish a right to the relief requested. *Belgrade Gardens, Inc. v. Kosydar* (1974), 38 Ohio St.2d 135; *Ohio Fast Freight v. Porterfield* (1972), 29 Ohio St.2d 69; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138; *National Tube v. Glander* (1952), 157 Ohio St. 407. The Appellant is assigned the burden of showing in what manner and to what extent the Tax Commissioner's determination is in error. *Federated Department Stores v. Lindley* (1983), 5 Ohio St.3d 213. Based upon a thorough review of the record before us, we find that the Appellant has failed to establish error on the part of the Tax Commissioner.

The General Assembly provides for relief from late payment penalties **only** under the limited circumstances of R.C. 5715.39. That statute provides as follows:

“*** **.

“The commissioner, on application by a taxpayer, shall remit a penalty for the late payment of any real property taxes or manufactured home taxes when:

“(A) The taxpayer could not make timely payment of the tax because of the negligence or error of the auditor or treasurer in the performance of a statutory duty relating to the levy or collection of such tax.

“(B) In cases other than those described in division (A) of this section, the taxpayer failed to receive a tax bill or a correct tax bill, and the taxpayer made a good faith effort to obtain such bill within thirty days after the last day for payment of the tax.

“(C) The tax was not timely paid because of the death or serious injury of the taxpayer, or the taxpayer’s confinement

in a hospital within sixty days preceding the last day for payment of the tax if, in any case, the tax was subsequently paid within sixty days after the last day for payment of such tax.

“(D) The taxpayer demonstrates to the satisfaction of the commissioner that the full payment was properly deposited in the mail in sufficient time for the envelope to be postmarked by the United States postal service on or before the last day for payment of such tax. A private meter postmark on an envelope is not a valid postmark for purposes of establishing the date of payment of such tax.

“*** ** **.”
(Emphasis added.)

The Tax Commissioner has no discretion in the imposition of the statutory penalties at issue. He must impose the penalties if the tax is not timely paid, and the specific circumstances of R.C. 5715.39 are not met. In *Frances M. Labuda v. Roger W. Tracy* (June 18, 1993), BTA Case No. 92-M-416, unreported, we observed:

"Like other statutory penalty provisions, R.C. 5715.39 is directive, requiring the Tax Commissioner to impose penalties if the tax remains unpaid. However, unlike other provisions, the Tax Commissioner is given no discretion in the remission of penalties which he is directed to levy against the late payment of real estate tax. R.C. 5715.39 is specific in defining the circumstances under which late payment penalties may be remitted."

Based upon the facts and the record before us, we cannot conclude that the Appellant has demonstrated error on the part of the Tax Commissioner. Nor can we ignore the clear statutory requirements of R.C. 323.13. That provision places the burden on the taxpayer to notify the treasurer in writing of any changes in the mailing address on the tax bill. R.C. 323.13 states in relevant part as follows:

“A change in the mailing address of any tax bill shall be made in writing to the county treasurer. *** Failure to receive any tax bill required by this section does not excuse failure or delay to pay any taxes shown on such bill or, except as provided in division (A) of section 5715.39 of the Revised Code, avoid any penalty, interest, or charge for such delay.”

The Appellant is not entitled to rely upon the USPS to effect change of address or effect the statutory notice required to be given to the treasurer. This Board’s decisions have consistently recognized that even in cases of difficult or extenuating circumstances, we are limited to our jurisdictional powers as set forth in the statute by the General Assembly. For example, in *Christopoulus v. Tax Commissioner* (October, 1971), BTA Case No. 71-10-2614, unreported, we observed:

"Since the Board of Tax Appeals is a creature of statute and is invested with only the jurisdiction given to it by law, and has no equity jurisdiction, it is obvious that we have no authority to remit the tax penalties, even under the distressing circumstances noted in your application."

See also *Phyllis A. Sparr and Jeffrey A. Jaswa v. Limbach* (October 31, 1985), BTA Case No. 84-G-1022, unreported. The Supreme Court confirmed our lack of equitable powers in *General Motors Corporation v. Limbach* (1993), 67 Ohio St.3d 90:

"GM's dilemma is that we have consistently held that equity does not apply to the state as to taxing statutes.

"In *State ex. rel. Donsante v. Pethtel* (1952), 158 Ohio St. 35, 48 O.O. 3, 106 N.E. 2d 626, paragraph one of the syllabus, we held:

"Where taxes are legally assessed, the taxing authority is without power to compromise, release or abate them except as specifically authorized by statute.' Accord *Interstate Motor Freight v. Donahue* (1966), 8 Ohio St.2d 19, 37 O.O. 2d 305, 221 N.E. 2d 711; *Weiss v. Limbach* (1992), 64 Ohio St.3d 79; 591 N.E. 2d 1242.

"Thus to date, we have not applied equitable principles to tax matters. We decline to do so now."

In the instant case we are restricted in our consideration of this matter to the provisions of R.C. 323.13 and 5715.39 as set forth by the General Assembly. It is beyond our authority to order the remission of the real property tax penalty assessed under these circumstances.

In his letter to the Board dated January 16, 2000, the Appellant asks this Board to provide the property owner with a property tax exemption form as was discussed in an Irvine, California newspaper article. There is not authority under Ohio law to provide exemption from taxation of real property to persons by reason of age. It should be noted that the Appellant is already receiving the homestead exemption credit on his tax bill. This credit reduces the property tax liability to property owners if they qualify. The Appellant also "appeals" the delinquent amount of \$608.28 noted by the Hamilton County Treasurer. It would appear that the Appellant was on a payment plan for previously delinquent real estate taxes, and when the February, 1999 payment was made late, the property owner defaulted on the payment plan agreement and the entire amount of delinquent tax plus the new penalty amount of \$31.36 became due.

The Board must confine its determination to whether the Tax Commissioner properly denied the remission of the penalty to the Appellant. The Board does not have jurisdiction in these proceedings to consider whether the amount of delinquent real property taxes owed by the Appellant on the subject property is correct.

Accordingly, the final determination of the Tax Commissioner is

AFFIRMED. ohiosearchkeybta