

OHIO BOARD OF TAX APPEALS

Sutter Home Winery, Inc.,)
)
 Appellant,) CASE NO. 99-P-1343
)
 vs.) (INCOME TAX)
)
 Thomas M. Zaino,) DECISION AND ORDER
 Tax Commissioner of Ohio,)
)
 Appellee.)

APPEARANCES:

For the Appellant - Sutter Home Winery, Inc.
 % Mark Smithers, V.P. – Finance
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For the Appellee - Betty D. Montgomery
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Entered: December 10, 1999

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

Sutter Home Winery, Inc. appeals a final determination of the tax commissioner in accordance with the provisions of R.C. 5717.02. The tax commissioner found he lacked jurisdiction because Sutter Home Winery, Inc. failed to file its petition for reassessment within the thirty-day period permitted by R.C. 5747.13(B). Upon careful review of the record before us, we find Sutter Home Winery, Inc. failed to meet its burden of demonstrating error on the part of the tax commissioner. Accordingly, we affirm the tax commissioner’s dismissal of Sutter Home Winery, Inc.’s petition for reassessment.

This matter came on for hearing on November 9, 1999. No one appeared on behalf of either party. The matter is now before us for our consideration based upon the notice of appeal, the statutory transcript and the record of the merit hearing.

R.C. 5747.13(B) provided during the relevant time periods:

"Unless the party to whom the notice of assessment is directed files with the commissioner **within thirty days after service of the notice of assessment**, either personally or by certified mail, a petition for reassessment * * * the assessment shall become final * * * ." (Emphasis added.)

The tax commissioner has made a specific finding that Sutter Home Winery, Inc.'s petition for reassessment was filed late:

"There is no jurisdiction to consider the petition since the petition for reassessment was not filed within the thirty day period required by R.C. 5747.13(B)." (St - 1.)

The findings of the tax commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. It is incumbent upon Sutter Home Winery, Inc. 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. Sutter Home Winery, Inc. 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.

The tax commissioner's finding is supported by the evidence. A certified mail postal receipt confirms that service of the notice of assessment was effected upon Sutter Home Winery Inc. on **March 30, 1999**. (R – 12.) Sutter Home Winery, Inc.'s petition for reassessment was not filed with the tax commissioner until **May 11, 1999**. (R – 11.) This is beyond the thirty-day time period set forth in R.C. 5747.13(B).

In *Leiphart Lincoln-Mercury, Inc. v. Bowers* (1958), 107 Ohio App. 259, the Lucas County Court of Appeals observed:

"The courts of Ohio have fully recognized as fundamental and elementary that a litigant has no inherent right of appeal or review, that there is no common law right of appeal, which right is purely statutory, and that to have jurisdiction of an appeal provisions of law providing the method of appeal must be complied with."

The Ohio Supreme Court held in *The American Restaurant and Lunch Company v. Glander* (1946), 147 Ohio St. 147:

"These requirements are specific and in terms that are mandatory. The very statute which authorizes the appeal prescribes the conditions and procedure under and by which such appeal may be perfected. Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred. "The party who seeks to exercise this right, must comply with whatever terms the statutes of the state impose upon him as conditions to its enjoyment."

This applies to petitions filed with the tax commissioner in the same manner as it does to appeals filed before a court:

"It should be noted that we are not bound by *stare decisis* since *American Restaurant* specifically applies to 'appeals' only. However, finding no appreciable difference between appeals and reassessment petitions in this procedural context, we find the language of *American Restaurant* to be instructive." *Akron Standard Division of Eagle-Picher Industries, Inc. v. Lindley* (1984), 11 Ohio St.3d 10, 11, footnote 2.

Sutter Home Winery, Inc. has failed to satisfy its burden of demonstrating error on the part of the tax commissioner. *Alcan Aluminum Corp. v. Limbach, supra, Belgrade Gardens, Inc. v. Kosydar, supra, Ohio Fast Freight v. Porterfield, supra, Midwest Transfer Co. v. Porterfield, supra, National Tube v. Glander, supra, Federated Department Stores v. Lindley, supra.*

Accordingly, and for each of the foregoing reasons, the final determination of the tax commissioner dated the 22nd day of July, 1999, must be, and the same hereby is, AFFIRMED.