

# OHIO BOARD OF TAX APPEALS

Marketing Services by Vectra, Inc.,	)	
	)	CASE NO. 99-R-2017
Appellant,	)	
	)	(PERSONAL PROPERTY TAX)
vs.	)	
	)	
Thomas M. Zaino,	)	DECISION AND ORDER
Tax Commissioner of Ohio,	)	
	)	
Appellee.	)	

## APPEARANCES:

Appeal Filed By - Ben Zellin, CPA  
Becker and Company  
9344 Lanham Severn Road, #200  
Lanham, Maryland 20706

For the Appellee - Betty D. Montgomery, Esq.  
Attorney General of Ohio  
By: Richard C. Farrin, Esq.  
Assistant Attorney General  
Taxation Section  
16<sup>th</sup> Floor - State Office Tower  
30 East Broad Street  
Columbus, Ohio 43266-0410

**ENTERED:** March 17, 2000

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

This matter is before the Board of Tax Appeals pursuant to a “Motion to Dismiss Appeal” filed by counsel for the tax commissioner. The motion asks this Board to dismiss the appellant’s notice of appeal for the reason that no copy of the notice was filed with the tax commissioner, as required by R.C. 5717.02.

The Board of Tax Appeals now considers this matter upon the motion to dismiss, the memorandum in support of the motion attached thereto, and the record of the motion hearing (“R.”). The appellant, Marketing Services by Vectra, Inc. (“Marketing Services”), did not appear at the hearing before this Board. The commissioner was represented at the hearing by counsel, who submitted documents certified by the commissioner to support the motion.

R.C. 5717.02 sets forth the procedures required for bringing a proper appeal from a Final Determination of the tax commissioner:

“Except as otherwise provided by law, appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be taken to the board of tax appeals by the taxpayer \*\*\*.

“Such appeals shall be taken by the filing of a notice of appeal with the board, **and with the tax commissioner** if his action is the subject of the appeal within thirty days after notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner \*\*\* has been given or otherwise evidenced as required by law. The notice of appeal may be filed in person or by certified mail. If the notice of appeal is filed by certified mail, the date of the United States postmark placed on the sender’s receipt by the postal employee to whom the notice of appeal is presented shall be treated as the date of filing.” (Emphasis added.)

The requirements of R.C. 5717.02 are legislatively mandated and must be strictly complied with before the subject matter jurisdiction of the Board of Tax Appeals may be invoked. *Clippard Instrument Laboratory, Inc. v. Lindley* (1977), 50 Ohio St.2d

121; *House of Good Shepard, Inc. v. Limbach* (1988), 37 Ohio St.3d 244; *American Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147. R.C. 5717.02 specifically requires that a notice of appeal be filed with both the Board of Tax Appeals and the tax commissioner within thirty days after notice of the commissioner's final determination is given. The failure to comply with this requirement properly leads to a dismissal of the appeal. *Akron Standard Div. v. Lindley* (1984), 11 Ohio St.3d 10.

A review of the notice of appeal and the commissioner's certification establish that the commissioner issued a final determination in this matter on November 10, 1999, wherein he denied appellant's request for the abatement of penalties levied for the late filing of Marketing Services' 1999 personal property tax return. The determination was mailed, by certified mail, on November 15, 1999. Attachment B to the commissioner's certification contains a copy of the Domestic Return Receipt used in the mailing, demonstrating both the mailing date and that Belinda Burwell signed for the determination on behalf of Marketing Services on November 16, 1999. The purported notice of appeal was filed with this Board on December 18, 1999.

In his certified statement of February 18, 2000, the commissioner states that a "diligent" search of the Department of Taxation's records "discloses no filing in this Office of a notice of appeal to the Board of Tax Appeals from the final determination entered in the matter of Personal Property Tax, case no. 00-01112, by the Commissioner and issued to Marketing Services By Vectra, Inc. \*\*\*." Marketing Services has not

offered any evidence to challenge either the dates involved or the representations made in the commissioner's certified statement.

Based upon the foregoing, we must conclude that Marketing Services failed to timely file its notice of appeal with the tax commissioner, as expressly required by R.C. 5717.02. Consequently, the Board of Tax Appeals is without jurisdiction to consider the notice of appeal.

As Marketing Services has failed to perfect an appeal to the Board of Tax Appeals, it is the decision and order of this Board that this matter must be, and the same hereby is, dismissed.