

OHIO BOARD OF TAX APPEALS

Steven R. and Chu Lin Sabin,)	
)	CASE NO. 2000-N-94
Appellants,)	
)	(PENALTY REMISSION)
vs.)	
)	DECISION & ORDER
Thomas M. Zaino,)	
Tax Commissioner of Ohio,)	
)	
Appellee.)	

APPEARANCES:

For the Appellants	-	Steven R. Sabin 5600 Maleka Court Columbus, Ohio 43235
For the Appellee	-	Betty D. Montgomery Attorney General of Ohio By: Richard C. Farrin Assistant Attorney General 30 East Broad Street 16th Floor Columbus, Ohio 43215

Entered: May 26, 2000

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

This appeal is taken from a final determination of the tax commissioner denying the Sabin's application for the remission of real property tax penalties.

The notice of appeal provides, in pertinent part:

"This letter is to inform you that we are appealing the ruling of the Tax Commissioner, DTE CASE NO. ER 4305, that states that we must pay the penalty for late payment of taxes. We believe that we qualify for waiving of the penalties under instance 2:

"Failure to receive a tax bill provided the taxpayer made a good faith effort to get a correct bill within 30 days after the last day for payment of taxes.

"We believe that the enclosed letter that was sent with the original 'APPLICATION FOR THE REMISSION OF REAL PROPERTY AND MANUFACTURED HOME TAX PENALTIES' demonstrated our effort even prior to the tax due date to receive and pay the appropriate tax bill. Incidentally, a copy of the enclosed letter was lost or never read. We have enclosed another copy of the letter with a copy of the order of the Tax Commissioner for reference."

An evidentiary hearing was scheduled, with Mr. and Mrs. Sabin appearing and testifying. The tax commissioner was represented by counsel. Accordingly, this matter is submitted to the Board of Tax Appeals upon the notice of appeal, the record of the hearing held and the statutory transcript of the proceedings before the tax commissioner.

Initially, we recognize the general proposition that the findings of the tax commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121; *Wheeling Steel Corp. v. Evatt* (1944), 143 Ohio St. 71. It is incumbent upon a taxpayer challenging a finding of the tax commissioner to rebut this 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), 28 Ohio St.2d 69. Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the tax commissioner's

determination is in error. *Federated Department Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213.

R.C. 323.13 requires the county treasurer to cause to be prepared and mailed or delivered to each person charged with taxes a tax bill for property subject to taxation. Pursuant to R.C. 323.13, the failure to receive a tax bill does not normally, in and of itself, excuse a failure to timely pay the bill. *Rathi v. Limbach* (May 3, 1991), B.T.A. No. 89-F-1139, unreported, *Baechle v. Tracy* (Feb. 25, 1994), B.T.A. No. 93-B-859, unreported.

A penalty is charged by the county treasurer against the taxes for late payment pursuant to R.C. 323.121. Unlike other penalty statutes, the tax commissioner has no discretion regarding the remission of these penalties. He may grant remission only if the express conditions of the statute are met. *Labuda v. Tracy* (June 13, 1993), B.T.A. No. 92-M-416, unreported.

Relief from late payment penalties is only authorized under certain limited circumstances, as set forth in R.C. 5715.39. That statute provides, in pertinent part:

"The commissioner, on application by a taxpayer, shall remit a penalty for late payment of any real property 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 his confinement in a hospital within ten days preceding the last day for payment of the tax, if, in any case, the tax was subsequently paid within thirty 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 postal service on or before the last day for payment of such tax."

The Sabins indicate they refinanced their mortgage on July 25, 1998. At that point in time there was no longer an escrow for the real property taxes. In August of 1998 Mrs. Sabin spoke with the bank about correcting the address for the property tax bills. The bank informed Mrs. Sabin that they would prepare the proper forms. Mrs. Sabin was then out of the country for several months attending an educational event. Upon returning in January of 1999, she checked with the bank and discovered the address had not been changed. In February she followed up again, and the bank informed her that she needed to change the address herself. Mrs. Sabin testified that during this time the bank had been acquired by another bank, and she was speaking with different people giving her different information. She then contacted the county and was told the bank had to effect the address change. Mrs. Sabin then contacted the bank and was told the bank would take care of it. In April she contacted the bank, and although the change was not made, the lady stated she would write a letter herself. Mrs. Sabin called the bank again in

May and June. She was told it was not taken care of. In July she called the bank and was told the address was changed. She then called the county and was told the address was not changed. She was told to call the Treasurer. Upon calling the Treasurer, she was told she owed the late fees.

The state legislature has determined that the failure to receive a property tax bill is insufficient to excuse the late payment of the tax. The last paragraph of R.C. 323.13 provides:

“Failure to receive any 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.”

R.C. 323.13 also provides:

“A change in the mailing address of any tax bill shall be made in writing to the county treasurer.”

Mrs. Sabin contends the efforts made show a good faith effort to get the tax bill, even though the decision denying the remission states that “the taxpayer failed to make a good faith effort to obtain a tax bill or a correct tax bill within thirty days after the due date.” The record indicates the taxes were due June 21, 1999. Mrs. Sabin’s attachment to her notice of appeal indicates she contacted the Treasurer in July of 1999, with no specific day mentioned. When questioned by the Tax Commissioner’s counsel, Mrs. Sabin indicated she was not sure which day in July she contacted the Treasurer about the bill. A copy of her

check is in the record, and it is dated July 31, 1999. We have no evidence that Mrs. Sabin attempted to obtain the bill within thirty days of June 21, 1999, and the date of the check causes an inference that the contact was more than thirty days past June 21.

The Sabins ask that the penalty be remitted under R.C. 5715.39(B), which states in part:

“*** 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.”

The record indicates the taxes were due June 21, 1999. Although Mrs. Sabin made contacts prior to the due date, there is no probative evidence that an effort was made within thirty days after the last day for payment of the tax, as required by the statute.

Therefore, the Board finds no statutory basis for remission of the penalty. Accordingly, it is the decision and order of the Board of Tax Appeals that the decision of the tax commissioner must be, and hereby is, affirmed. ohiosearchkeybta