

OHIO BOARD OF TAX APPEALS

James and Marguerite Jamieson,

Appellants,

vs.

Thomas M. Zaino, Tax Commissioner
of Ohio,

Appellee.

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CASE NO. 01-A-748

(REMISSION)

DECISION AND ORDER

For the Appellants- Marguerite Jamieson, *pro se*
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Shaker Heights, Ohio 44122

For the Appellee - Betty D. Montgomery
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Entered: October 19, 2001

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellants from a denial, by the Tax Commissioner, of appellants’ “Application for the Remission of Real Property Tax Penalties.”

The matter was submitted to the Board of Tax Appeals upon the notice of appeal and the statutory transcript certified to this Board by the Tax Commissioner. Both the appellants and the Commissioner waived their right to appear at a hearing before this Board.

In reviewing appellants' appeal, we recognize the presumption that the findings of the Tax Commissioner are valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. It is therefore incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut the presumption and establish a right to the relief requested. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. 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 Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213.

Initially, we note, according to appellants' Application for Remission, that appellants' real property taxes were due on January 23, 2001, but were not paid until April 27 and/or May 8, 2001. Appellants set forth their contentions about the late payment in their notice of appeal, in which Mrs. Jamieson wrote, as follows:

“Appeal is based on illness. In December came down with flu. Jan. 11 first day up, passed out, fell, head injury and right arm, shoulder and wrist. Intensive care and hospital followed by two months skilled care.

“Returned home, learned of tax situation. Sent check immediately. Next day called tax office in Cleveland. Was advised not to pay till [sic] I received letter from Lisa Evans. Unfortunately, check had been mailed. When I learned that – called Evans – not in office. Explained – told them to apply check to last half (not due yet). Sent check for first half and penalty. People, including Evans, let me think penalty would be forgiven.

“I feel my age¹, illness, and record of paying taxes deserves forgiveness.”

R.C. 323.13 requires that the county treasurer cause to be prepared and mailed or delivered to each person charged with taxes a tax bill for property subject to taxation. A penalty is

¹ Appellants' application for remission indicates that Mrs. Jamieson is 91 years old.

charged by the county treasurer against the taxes for late payment pursuant to R.C. 323.121. Unlike other penalty remission statutes, the Tax Commissioner is given no discretion in the remission of penalties that are levied against the late payment of real property tax pursuant to R.C. 323.13. R.C. 5715.39 is specific in defining the circumstances under which late payment penalties may be remitted. Even if a property owner's situation is sympathetic, if it does not fall within a prescribed fact pattern, the Commissioner is unable to remit the penalty. *Labuda v. Tracy* (June 13, 1993), B.T.A. No. 92-M-416, unreported.

Appellants' request for remission of penalty in the instant matter must be predicated on at least one of the provisions of R.C. 5715.39(A)-(D), which provide for remittance of such penalty 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.”

In the instant matter, we find that appellants have not established that their situation is reflective of any of the aforementioned statutory provisions. Although Mrs. Jamieson indicated that she had been ill and/or hospitalized around the time that the subject taxes were due, we cannot definitively determine from the scant record before us when she actually was hospitalized. More importantly, even if we could assume that her hospitalization occurred in January 2001, appellants did not pay the taxes in question within the time frame prescribed by statute, i.e., within sixty days of January 23, 2001.

Although we sympathize with appellants' unfortunate situation, we find that the Tax Commissioner's determination was reasonable and lawful. Appellants failed to demonstrate to this Board that they satisfied the prerequisites for remission of real property tax penalties as set forth in R.C. 5715.39. 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.

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