

OHIO BOARD OF TAX APPEALS

Strongsville Board of Education,)
)
Appellant,)
) (REAL PROPERTY TAX EXEMPTION)
vs.)
)
) DECISION AND ORDER
Thomas M. Zaino,)
)
Tax Commissioner of Ohio, and)
)
The Salvation Army,)
)
) **Affirmed on Appeal Feb. 8, 2006**
) **Ohio Supreme Court**
Appellees.)

APPEARANCES: **108 Ohio St.3d 115, 2006-Ohio-248**

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Entered October 8, 2004

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

This matter is before the Board of Tax Appeals upon a notice of appeal filed on behalf of the above-named appellant. Appellant appeals a final determination of the Tax Commissioner, in which said official granted an exemption for the subject

real property under R.C. 5709.12. In granting the exemption the final determination of the Tax Commissioner stated in part:

“The property in question is used not merely as a thrift shop to generate retail sales, but it is also an integral part of the applicant’s work therapy program. This use is in furtherance of and is incidental to the applicant’s treatment program for the residents in its Adult Rehabilitation Center. The use of the property in question falls squarely within the decision of the Ohio Board of Tax Appeals in *The Salvation Army v. Kinney*, No. 82-A-1097 (Ohio B.T.A. July 23, 1985). That case involved property used as a thrift store that was an integral part of a rehabilitation program. The Board determined that the property was used for the charitable purpose of promoting the ‘rehabilitation of unfortunates’. In addition, the Board found that since the funds generated were used to keep the rehabilitation program in operation, then the generation of funds was an integral part of the rehabilitation program rather than profit, as that term is generally understood. Based on this decision, the property in question is used for a charitable purpose and satisfies the requirements of R.C. 5709.12.” S.T. at 2.

Appellant’s notice of appeal claims that the exemption should not have been granted under R.C. 5709.12, which provides for the exemption of property used for charitable or public purposes. Appellant contends that the property was not used for charitable purposes; rather, the thrift shop was used with a view toward obtaining a profit.

As a preliminary matter, at the hearing before this board counsel for the Strongsville Board of Education (“BOE”) raised jurisdictional issues which need to be addressed. On December 9, 1999, the Salvation Army filed an application for tax exemption for 1999, and remission of all taxes for 1998. The record reflects that when

the application was filed, the taxes for tax years 1997, 1998 and 1999 had not been paid. The BOE argues that pursuant to the requirements set forth in R.C. 5713.08, the Tax Commissioner did not have jurisdiction to consider the application. R.C. 5713.08

(A) provides, in part, as follows:

“The commissioner shall not consider an application for exemption of property unless the application has attached thereto a certificate executed by the county treasurer certifying one of the following:

“(1) That all taxes, assessments, interest, and penalties levied and assessed against the property sought to be exempted have been paid in full to the date upon which the application for exemption is filed, except for such taxes, interest, and penalties that may be remitted under division (B) of this section;

R.C. 5713.08(B), referenced above, provides:

“(B) Any taxes, interest, and penalties which have become a lien after the property was first used for the exempt purpose, but in no case prior to the date of acquisition of the title to the property by the applicant, may be remitted by the commissioner, except as provided in division (A) of section 5713.081 [5713.08.1] of the Revised Code.”

The Salvation Army contends that the certificate executed by the county treasurer need not be attached at the time the application is filed. Rather, as long as the certificate is filed before the Tax Commissioner considers the application, jurisdiction vests. The Salvation Army relies on a letter it received after the application was filed. The letter was dated June 22, 2000. It was sent by an administrative officer of the Tax Equalization Division of the Department of Taxation and stated, in part, as follows:

“The Tax Commissioner has received your application requesting exemption of certain real property from taxation. At the present time, the Tax Commissioner cannot consider your application for exemption because certain taxes have not been paid.

“The Tax Commissioner cannot consider your application until taxes, penalties and interest for tax year 1997 have been paid. Ohio Revised Code Section 5713.08 does not authorize the Tax Commissioner to remit unpaid taxes, penalties and interest for the year in which title to the property was acquired. Therefore, the taxes, penalties and interest for the year you acquired this property must be paid before the Tax Commissioner can consider this application. Once payment is made to the county treasurer, please send a copy of the receipt of payment to me at the address listed below within 30 days.

“If these taxes, penalties, and interest are not paid within 30 days after receipt of this notice, the application for exemption will be dismissed.” S.T. at 79.

The Salvation Army paid the taxes for tax year 1997 within the thirty days and the Tax Commissioner proceeded to consider the merits of the application. This board has considered cases in which the Tax Commissioner sent a similar letter to the applicant after the application for exemption was filed. See, e.g., *Allegheny West Conference of Seventh-Day Adventists v. Limbach* (May 10, 1991), BTA No. 1989-C-860, unreported; *William H. Cates, Sr., Evangelist Assoc., Inc. v. Tracy* (Sept. 23, 1994), BTA No. 1993-B-1214, unreported; *Faith Fellowship Ministries, Inc. v. Tracy* (Dec. 12, 1997), BTA Nos. 1995-L-1359, et seq., unreported; *Buckeye Elks Youth Development Center, Inc. v. Tracy* (July) 24, 1998), unreported. However, in those cases the applicants did not pay the taxes within 30 days and the Tax Commissioner determined that jurisdiction was lacking. On appeal to this board, we affirmed the Tax

Commissioner. Since the applicants in those cases did not pay the taxes within 30 days, we were not presented with the issue in the present case: whether or not the Tax Commissioner has jurisdiction to consider the application if payment of the taxes occurs after the application has been submitted, and, not insignificantly, in a calendar year following the calendar year in which the application was filed and the year for which exemption is sought.

R.C. 5715.27 also addresses applications for exemption from taxation.

Specifically, R.C. 5715.27(F) provides in part:

“An application for exemption *** shall be filed prior to the thirty-first day of December of the tax year for which exemption is requested ***. The commissioner shall consider such application *** *in accordance with procedures established by the commissioner* ***.”
(Emphasis added.)

Reading the above language, one could argue that allowing payment of the taxes after the application is submitted is a procedure of the commissioner vesting jurisdiction, notwithstanding the requirements of R.C. 5713.08. However, we find that this language does not refer to jurisdiction. It merely allows the commissioner to establish procedures to determine whether a property should be exempt after an application is properly filed. Likewise, R.C. 5715.27(H) is no help to the Salvation Army. It addresses changes which occur while an application is pending that relate to the taxability of the property, not changes affecting jurisdiction. This board is not aware of any statutory or judicial authority to waive the jurisdictional requirements of R.C.

5713.08. Further, the Salvation Army has not provided us with any such authority.¹ The language of the statute is clear and unambiguous. “The commissioner *shall not* consider an application for exemption of property unless the application *has attached thereto a certificate executed by the county treasurer certifying one of the following:*” (Emphasis added.) Not only must the application have the certificate attached, it must certify that the taxes are paid, or are the subject of remittance under section (B). The record reflects that the taxes for 1997 were not paid at the time the application was filed. The Salvation Army did not acquire the property until December 2, 1997; therefore, the taxes became a lien prior to acquisition. In *Cleveland v. Limbach* (1988), 40 Ohio St.3d 295, the court stated the following regarding R. C. 5713.08:

“Under the statute, then, the commissioner may consider an exemption application only if the county treasurer certifies that the taxes have been paid to the date upon which the application is filed, except for taxes that may be remitted. Under division (B), the commissioner may remit unpaid taxes which have become a lien after the property was first used for the exempt purpose, but she may *never* remit unpaid taxes that have become a lien prior to when the applicant acquired title.

“***

““The lien of the state for taxes levied for all purposes on the real and public utility tax list and duplicate for each year shall attach to all property subject to such taxes *on the first day of January*, annually *** and continue until such taxes, including any penalties, interest, or other charges accruing thereon are paid. *** ” Id. at 296-297. (Emphasis added.)

¹ In *Carter v. Zaino* (Jan. 18, 2002), BTA 2001-B-1087, unreported, a petition for abatement of penalty was filed late with the Tax Commissioner. Thereafter, the Tax Commissioner, in an effort to assist the taxpayer, sent a letter to the taxpayer inquiring whether there was a valid reason the petition was filed late. We stated in a footnote at page 2 that there was no “good cause” exception to the statutorily mandated deadlines. Id. at 315.

Consequently, the 1997 taxes could not be remitted by the Tax Commissioner under section (B). See, also, *Defiance College v. Board of Tax Appeals* (1972), 30 Ohio St.2d 1; *Cleveland v. Carney* (1959), 168 Ohio St. 533; *Northeast Ohio Regional Sewer Dist. v. Limbach* (1991), 72 Ohio App.3d 540.

Based on the foregoing, we find that the Tax Commissioner did not have jurisdiction to consider the merits of the application. We are aware of the harsh consequences of this ruling and are sympathetic to the situation; however, this board is a creature of statute and as such, we must rule according to the requirements set forth in the statute as to jurisdiction.

Having determined that jurisdiction did not vest with the Tax Commissioner, the other jurisdictional issues raised by the BOE need not be addressed.

Based on the record in this matter and the findings of this board, it is the decision and order of the Board of Tax Appeals that the final determination of the Tax Commissioner be reversed and that the above-styled appeal be remanded to the Tax Commissioner with instruction that he dismiss appellant's application for exemption.