

OHIO BOARD OF TAX APPEALS

Joseph B. Paley, M.D,) CASE NO. 2002-M-2485
)
 Appellant,) (REAL PROPERTY
) PENALTY REMISSION)
 vs.)
) DECISION AND ORDER
 Thomas M. Zaino,)
 Tax Commissioner of Ohio,)
)
 Appellee.)

APPEARANCES:

For the Appellant - Joseph B. Paley, M.D., pro se
9289 Ash Hollow Lane
Dayton, Ohio 45458

For the Appellee - Jim Petro
Attorney General of Ohio
Richard C. Farrin
Assistant Attorney General
30 East Broad St., 16th Floor
Columbus, Ohio 43215

Entered: March 7, 2003

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

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed February 28, 2003. This appeal is from a final determination of the Tax Commissioner wherein that official denied appellant's application for remission of real property tax late payment penalty, which was assessed pursuant to R.C. 323.121.

The matter is considered by the Board of Tax Appeals upon the notice of appeal and the statutory transcript certified to this board by the Tax Commissioner. Both appellant and appellee waived hearing.

While Dr. Paley did not appear at the hearing, it is evident from the record submitted by the Tax Commissioner that he failed to receive two tax bills which were due February 13, 2002. Dr. Paley indicates by way of letter attached to his request for remission that because he pays bills upon receipt, he did not realize that a payment of real property tax was due. It was not until June, 2002 (most likely when the bills for the second-half taxes were sent) that Dr. Paley found out about the delinquencies. At that time, Dr. Paley applied for remission of the penalties assessed upon the late payment of real property taxes.

The commissioner denied the application. The commissioner found that the applicant failed to meet the specific requirements of any exception listed in R.C. 5715.39. Dr. Paley has appealed the commissioner's finding to this board.

R.C. 5715.39, the statute upon which the commissioner based his denial, 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 by 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 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.” (Emphasis added.)

Unlike other penalty remission statutes, the Tax Commissioner is given no discretion in the remission of penalties which are levied against the late payment of real estate tax pursuant to R.C. 323.121. 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.

While this board empathizes with Dr. Paley, we do note that he does not allege any error that may have been made (i.e., the failure to receive a tax bill) by the county auditor or treasurer. Instead, it appears clear that the Montgomery County Treasurer mailed the tax bill to the address indicated on the auditor’s records. Both statutory and case law are clear – the failure to receive a tax bill does not, in and of itself, excuse failure to pay. R.C. 323.13; *Rathi v. Limbach* (May 3, 1991), BTA No.

89-F-1139, unreported. In order for remission to be statutorily authorized, Dr. Paley must prove more than just not receiving a tax bill. He must prove error on the part of the auditor or treasurer or an attempt to obtain a tax bill within 30 days of the date the taxes were due. This Dr. Paley has failed to do.

Dr. Paley indicates that in 37 years this is the first time he has ever experienced penalties on a tax bill. Such prompt attention to one's financial obligations is surely commendable. However, Dr. Paley should not look at this particular penalty as a fine for misfeasance, but merely as a mechanism through which the legislature can be assured that the funds necessary to operate the government are available in a prompt manner.

Giving consideration to the notice of appeal, the record in this matter, the case law and the findings of this board, the Board of Tax Appeals finds and determines that the final order of the Tax Commissioner must be and hereby is affirmed.

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