

**OHIO BOARD OF TAX APPEALS**

Brian G. Davis, )  
 )  
 Appellant, ) CASE NO. 2002-R-1823  
 )  
 vs. ) (REAL PROPERTY  
 ) PENALTY REMISSION)  
 Thomas M. Zaino, )  
 Tax Commissioner of Ohio, ) DECISION AND ORDER  
 )  
 Appellee. )

APPEARANCES:

For the Appellant - Brian G. Davis, pro se  
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Columbus, OH 43221

For the Appellee - Jim Petro  
Attorney General of Ohio  
Janyce C. Katz  
Assistant Attorney General  
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Entered March 7, 2003

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

This cause is before the Board of Tax Appeals upon a notice of appeal filed by Brian G. Davis. Mr. Davis appeals a decision of the Tax Commissioner, in which the commissioner denied the appellant’s application for the remission of a real property tax penalty assessed for late payment of 2001 real property taxes. The property is identified in the books and records of the Franklin County Auditor as parcel number 560-16279-00.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to the board by the Tax Commissioner ("S.T."), and the record of evidentiary hearing held before the board ("R.")<sup>1</sup>

According to his statements on the application for the remission of real property tax penalties, Mr. Davis refinanced the subject property in January of 2002. Taxes were due June 20, 2002. Mr. Davis did not receive a tax bill. He attempted to obtain a tax bill on July 23, 2002, and the taxes were paid on July 27, 2002. (S.T. 3) Because these taxes were paid late, a ten percent penalty of \$131.88 was assessed.

Mr. Davis filed an application for the remission of real property tax penalties. This request was denied by the Franklin County Treasurer and subsequently by the Tax Commissioner on October 25, 2002. (S.T. 4) It is from that final determination that Mr. Davis now appeals.

At the outset, we note 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 that 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.

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<sup>1</sup> Mr. Davis waived his appearance at the hearing. The Tax Commissioner was represented by counsel.

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. This section further provides that a change in mailing address of any tax bill should be made in writing to the county treasurer. 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.

Specifically, the last paragraph of R.C. 323.13 states that:

"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."

See *Rathi v. Limbach* (May 3, 1991), BTA No. 1989-F-1139, unreported; see, also, *Baechle v. Tracy* (Feb. 25, 1994), BTA No. 1993-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 certain conditions expressed in the statute are met. Even if a property owner's situation is sympathetic, if it does not fall within a prescribed exception, the commissioner is unable to remit the penalty. *Labuda v. Tracy* (June 13, 1993), BTA No. 1992-M-416, unreported.

Relief from late payment penalties is authorized only under the limited circumstances set forth in R.C. 5715.39. That statute provides as follows:

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“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 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 review of the record shows that Mr. Davis has failed to establish any of the circumstances set forth in R.C. 5715.39. Mr. Davis asserts in his application that he did not receive the tax bill or notice that his real property taxes were due, and that he did not attempt to obtain one until July 23, 2002.

The board recognizes Mr. Davis's unfortunate circumstance of not receiving his property tax bill in a timely fashion. Unfortunately, the General Assembly has determined that the failure to receive a property tax bill is insufficient to excuse the late payment of the tax. Furthermore, nothing in the record establishes any negligence on the

part of the county treasurer. Additionally, Mr. Davis did not attempt to obtain a tax bill until July 23, 2002, more than thirty days after the last day for payment of the tax, June 20, 2002, which is the condition for remission.

Consequently, the board is obligated to follow the statutory mandate as prescribed by Ohio law. We are unable to accept the position that failure to timely receive a tax bill justifies the remission of the statutory penalty.

Therefore, the board finds that Mr. Davis has not established any of the four statutory grounds justifying a remission of the penalty pursuant to R.C. 5715.39. Thus, upon consideration of the evidence in the existing record and the applicable law, the board is obligated to conclude that Mr. Davis is not entitled to a remission of the penalty incurred.

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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