

OHIO BOARD OF TAX APPEALS

Philip E. Murray,)	
)	CASE NO. 2002-V-663
Appellant,)	
)	(INCOME TAX)
vs.)	
)	DECISION AND ORDER
Thomas M. Zaino, Tax)	
Commissioner of Ohio,)	
)	
Appellee.)	

APPEARANCES:

For the Appellant	- Philip E. Murray, pro se 3800 Church Hill Road Zanesville, Ohio 43701
For the Appellee	- Jim Petro Attorney General of Ohio Barton Hubbard Assistant Attorney General Taxation Section State Office Tower, 16th Floor 30 East Broad Street Columbus, Ohio 43215-3248

Entered March 7, 2003

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

This matter comes on for consideration upon documents filed by Philip E. Murray with the board which are deemed to be a notice of appeal.¹ The Tax Commissioner, in his final determination, dismissed Mr. Murray's petition for reassessment. The commissioner determined that he did not have jurisdiction to consider the petition because Mr. Murray had failed to file his petition for

¹ The document is actually a copy of a letter to the Tax Commissioner with attachments, seeking reconsideration of the commissioner's final determination. Mr. Murray has categorically stated that he does not intend an appeal to the Board of Tax Appeals.

reassessment within the sixty-day period required by R.C. 5747.13(B). Although Mr. Murray did not intend that we review the proceedings before the Tax Commissioner, we will review the statutory transcript (S.T.) certified to this board and the record of the evidentiary hearing at which Mr. Murray appeared. (R.)

Initially, we note that the findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. It is incumbent upon the appellant to rebut that 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), 29 Ohio St.2d 69; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138; *National Tube v. Glander* (1952), 157 Ohio St. 407. Appellant is assigned the burden of showing in what manner and to what extent the Tax Commissioner's determination is in error. *Federated Dept. Stores v. Lindley* (1983), 5 Ohio St.3d 213.

Pursuant to R.C. 5747.13(B), a taxpayer's ability to challenge an income tax assessment is specifically dependent upon the petition for reassessment being filed in a timely manner:

“Unless the party to whom the notice of assessment is directed files with the commissioner *within sixty days after service of the notice of assessment*, either personally or by certified mail, a petition for reassessment * * * the assessment shall become final * * *.” (Emphasis added.)

The Tax Commissioner has made a specific finding that Mr. Murray's petition for reassessment was filed late:

“Pursuant to the above language, the last day that a petition may have been timely filed was January 28, 2002. Since the petition was filed after that day, the assessment is final and the Tax Commissioner is without jurisdiction to consider the petition.” (S.T. at 1.)

The record reflects that the notice of assessment was served upon Mr. Murray on November 29, 2001 by certified mail. (See signed return receipt, S.T. at 7) Mr. Murray’s petition for reassessment was sent to the Tax Commissioner via certified mail on February 7, 2002, seventy days after he received the notice of assessment. (S.T. at 6)

At hearing before this board, Mr. Murray submitted documentary information consisting of correspondence pertinent to this appeal, as well as information relevant to the merits of his underlying petition for reassessment. (R. Appellant’s Exhibit 1) None of the information presented by Mr. Murray at hearing bears any relevance to whether he timely filed his petition for reassessment before the Tax Commissioner.

In his correspondence, Mr. Murray argues that he received the Tax Commissioner’s notice of assessment on December 8, 2001, and therefore, his petition for reassessment was timely. Beyond this allegation, Mr. Murray has failed to provide any evidence to overcome the signed certified mail return indicating his receipt of the notice of assessment on November 29, 2001. (S.T. at 7)

The Ohio Supreme Court held in *The American Restaurant and Lunch Company v. Glander* (1946), 147 Ohio St. 147:

“These requirements are specific and in terms that are mandatory. The very statute which authorizes the appeal prescribes the conditions and procedure under and by which such appeal may be perfected. Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred. ‘The party who seeks to exercise this right, must comply with whatever terms the statutes of the state impose upon him as conditions to its enjoyment.’”

Said holding applies to petitions filed with the Tax Commissioner in the same manner as it does to appeals filed before a court:

“It should be noted that we are not bound by *stare decisis* since *American Restaurant* specifically applies to ‘appeals’ only. However, finding no appreciable difference between appeals and reassessment petitions in this procedural context, we find the language of *American Restaurant* to be instructive.” *Akron Standard Division of Eagle-Picher Industries, Inc. v. Lindley* (1984), 11 Ohio St.3d 10, 11, footnote 2.

Upon careful review of the record before us, we find Mr. Murray did not intend to invoke our jurisdiction and further he has failed to meet any burden of demonstrating error on the part of the Tax Commissioner. Therefore, we conclude this matter should be dismissed.

ohiosearchkeybta