

## OHIO BOARD OF TAX APPEALS

Lease Plan USA, Inc.,	)	
	)	CASE NO. 2004-A-1328
Appellant,	)	
	)	(PERSONAL PROPERTY TAX)
vs.	)	
	)	
William W. Wilkins, Tax Commissioner	)	DECISION AND ORDER
of Ohio,	)	
	)	
Appellee.	)	

APPEARANCES:

For the Appellant	-	NO APPEARANCE Lease Plan USA, Inc. 1165 Sanctuary Parkway Alpharetta, Georgia 30004
Notice of Appeal Filed By	-	Debra A. Goffinet, Senior Tax Clerk Lease Plan USA, Inc. 1165 Sanctuary Parkway Alpharetta, Georgia 30004
For the Appellee	-	Jim Petro Attorney General of Ohio Richard C. Farrin Assistant Attorney General 30 East Broad Street, 16 <sup>th</sup> Floor Columbus, Ohio 43215

Entered March 11, 2005

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

This appeal is now considered by the Board of Tax Appeals following the issuance of our order requiring appellant to show cause why this board should not dismiss the instant appeal for lack of jurisdiction based upon appellant's failure to file its notice of appeal with the Tax Commissioner in a timely fashion. The issuance of

our order was precipitated by the appellee commissioner's filing of a certification indicating that no copy of the instant appeal was filed with the Tax Commissioner. No responses to our show cause order were received.

Specifically, the commissioner, in his certification filed with this board, indicated that he had issued final assessment certificates to appellant on November 12, 2004, which were received by appellant on November 22, 2004. Although appellant filed a notice of appeal from such determination with this board on December 4, 2004, as of January 28, 2005, appellant had not filed a copy of such notice of appeal with the commissioner.

R.C. 5717.02 specifically provides the jurisdictional requirements to appeal from a decision of the Tax Commissioner. It reads in pertinent part, as follows:

“Such appeals shall be taken by the filing of a notice of appeal with the board, and *with the tax commissioner* if the tax commissioner's action is the subject of the appeal \*\*\*. The notice of appeal shall be filed *within sixty days* after service of the notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner \*\*\* has been given \*\*\*.” (Emphasis added.)

The filing requirements set forth in R.C. 5717.02 are specific and mandatory in nature, and cannot be waived, even by a tax official. See *Verifone, Inc. v. Limbach* (1994), 69 Ohio St.3d 699. When a statute confers the right of appeal, adherence to the terms and conditions set forth therein is essential to the enjoyment of the right conferred. *American Restaurant and Lunch Co. v. Glander* (1946), 147 Ohio St. 147; *Zephyr Room Inc. v. Bowers* (1955), 164 Ohio St. 287; *Fineberg v. Kosydar* (1975), 44 Ohio St.2d 1; *Clippard Instrument v. Lindley* (1977), 50 Ohio St.2d 121.

Based upon the evidence in the instant record, this board finds that no notice of appeal was filed with the Tax Commissioner within the time prescribed by law. It is, therefore, the order of the Board of Tax Appeals that the above-styled matter must be and hereby is dismissed.

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