

OHIO BOARD OF TAX APPEALS

Louis J. Marino, Trustee,)
)
 Appellant,) CASE NO. 2005-P-1734
)
 vs.) (REAL PROPERTY TAX EXEMPTION)
)
 William W. Wilkins,) DECISION AND ORDER
 Tax Commissioner of Ohio,)
)
 Appellee.)

APPEARANCES:

For the Taxpayer - Louis J. Marino, Trustee
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Entered March 17, 2006

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

This matter is before us upon a motion to dismiss filed on behalf of the Tax Commissioner asserting that he, and in turn ourselves, lack jurisdiction over the subject matter of this appeal. The record before us consists of the notice of appeal, the motion to dismiss, and the accompanying exhibits. The appellant did not respond to

the motion. Upon careful review of the record before us, we find that the Tax Commissioner's final determination must be affirmed.

An "Application for Real Property Tax Exemption and Remission" was filed with the Ashtabula County Auditor in the name of Louis J. Marino, Trustee, on December 31, 2003. The application seeks to have the subject real property placed upon the tax exempt list for tax year 2003, and to have taxes and penalties remitted for tax years 2000, 2001, and 2002. But the treasurer's certificate attached to the application indicates that taxes, penalties and interest remain unpaid for tax year 2003. In addition, the treasurer's certificate indicates that a special assessment, together with penalties and interest thereon, also remains unpaid for tax year 2003.

The Supreme Court held in *Cleveland Clinic Foundation v. Wilkins*, 130 Ohio St.3d 382, 2004 Ohio 5468, in the syllabus:

"The Tax Commissioner may not consider an application for exemption of property unless the application has attached thereto a certificate executed by the county treasurer *showing that all assessments, interest, and penalties sought to be exempted have been paid in full to the date upon which the application for exemption is filed ***.*" (Emphasis added.)

Moreover, in *Strongsville Bd. of Edn. v. Wilkins*, 108 Ohio St.3d. 115, 2006-Ohio-248, the Supreme Court determined that the existence of nonremittable taxes that remain unpaid *at the time the application is filed*, as reflected by the county treasurer's certificate attached to the application for exemption, operates to deprive the Tax Commissioner of subject matter jurisdiction over the application. The fact that

such nonremittable taxes may subsequently be paid does not restore jurisdiction to the Tax Commissioner over the application for remission.

We would also observe that the General Assembly has provided in R.C. 323.11:

“The lien of the state for taxes *** shall attach to all real property *** on the first day of January, annually ***.”

In *City of Cleveland v. Limbach* (1988), 40 Ohio St.3d 295, the Supreme Court construed R.C. 323.11 to mean that the lien for real property taxes attaches on the first day of January *of the current tax year*, even though the amount of taxes due for the current tax year has not yet been ascertained. The Supreme Court noted:

“In the instant case, Cleveland argues that ‘unpaid taxes’ are taxes that have not been paid after they have become due, which is no earlier than December 31 of each year, and become a lien when they are past due. The commissioner argues that ‘unpaid taxes’ are any taxes that have not yet been paid, and that taxes for each year become a lien on the property on January 1 of that year under R.C. 323.11. Under Cleveland's view, the unpaid taxes here became a lien on December 31, 1982 *** and these unpaid taxes may be remitted. Under the commissioner's version, the unpaid taxes became a lien on January 1, 1982 *** and are unremittable. Since we agree with the commissioner, we affirm the board's decision.

“Taxes are not required to be calculated until September in each year (R.C. 319.28), and they are not due until December 31 of that year (R.C. 323.12). *Yet, under R.C. 323.11, they become a lien on the property on January 1 in each year ***.*” (Emphasis added.) *Id.* at 296.

Appellant's application states that 73.5% of the subject property is used for exempt purposes.¹ It, therefore, appears that 26.5% of the subject property is not used for exempt purposes, and that taxes pertaining thereto would be nonremittable. Moreover, the special assessment is nonremittable. Because the treasurer's certificate indicates that taxes, special assessments, penalties and interest for tax year 2003 were not paid at the time the application was filed, we are unable to find that "all nonremittable taxes, interest, and penalties have been paid in full to the date upon which the application for exemption is filed ***." *Strongsville Bd. of Edn.*, supra, at the syllabus. We, therefore, find that the Tax Commissioner did not err when he determined that he lacked jurisdiction to consider the appellant's exemption application and, accordingly, the final determination of the Tax Commissioner must be, and the same hereby is, affirmed.

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¹ St – 4.