

**OHIO BOARD OF TAX APPEALS**

Orange Village,	)	
	)	CASE NO. 2005-R-126
Appellant,	)	
	)	(REAL PROPERTY TAX
vs.	)	EXEMPTION)
	)	
William W. Wilkins,	)	DECISION AND ORDER
Tax Commissioner of Ohio,	)	
	)	
Appellee.	)	

APPEARANCES:

For the Appellant	- Roger S. Delman, Treasurer Orange Village 4600 Lander Road Orange Village, OH 44022
For the Appellee	- Jim Petro Attorney General of Ohio Richard C. Farrin Assistant Attorney General, Taxation Section State Office Tower, 16th Floor 30 East Broad Street Columbus, OH 43215

Entered June 17, 2005

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

This matter is before the Board of Tax Appeals pursuant to a show cause order issued by this board. See Interim Order, Apr. 8, 2005, BTA No. 2005-R-126, unreported. In that order, the board requested that the appellant, Orange Village, show cause why this board should not dismiss the appellant's notice of appeal for lack of jurisdiction. The parties had 14 days to respond to the board's order, which have now passed. To date, the appellant has not filed a response to this order.

The Tax Commissioner previously filed a certification with this board on March 24, 2005. In that document, the Tax Commissioner stated that a copy of appellant's notice of appeal was not filed with the commissioner as required by R.C. 5717.02. Therefore, the Board of Tax Appeals now considers this matter upon the show cause order, the Tax Commissioner's certification, and the existing record.

R.C. 5717.02 sets forth the procedures required for bringing a proper appeal from a final determination of the Tax Commissioner:

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“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 \*\*\*. The notice of such appeal may be filed in person or by certified mail, express mail, or authorized delivery service. If the notice of such appeal is filed by certified mail, express mail, or authorized delivery service \*\*\*, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. \*\*\*.” (Emphasis added.)

The requirements of R.C. 5717.02 are legislatively mandated and must be strictly complied with before the subject matter jurisdiction of the Board of Tax Appeals may be invoked. *Clippard Instrument Laboratory, Inc. v. Lindley* (1977), 50 Ohio St.2d 121; *House of Good Shepard, Inc. v. Limbach* (1988), 37 Ohio St.3d 244; *American Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147. R.C. 5717.02 specifically requires that a notice of appeal be filed with both the Board of Tax Appeals and the Tax

Commissioner within sixty days after notice of the commissioner's final determination is given. The failure to comply with this requirement properly leads to a dismissal of the appeal. *Akron Standard Div. v. Lindley* (1984), 11 Ohio St.3d 10.

A review of the notice of appeal and the commissioner's certification establishes that the commissioner issued a final determination in this matter on December 6, 2004. The Tax Commissioner's certification contains a copy of the domestic return receipt used in the mailing of the commissioner's final determination, demonstrating both the mailing date of December 7, 2004 and that the determination was signed for on behalf of Orange Village on December 9, 2004. The last date on which an appeal could have been timely filed was Monday, February 7, 2005. However, the purported notice of appeal was not filed with the Tax Commissioner.

Orange Village has not offered any evidence to challenge either the dates involved or the representations made in the commissioner's certified statement.

Based upon the foregoing, we must conclude that Orange Village failed to timely file its notice of appeal with the Tax Commissioner, as expressly required by R.C. 5717.02. Consequently, the Board of Tax Appeals is without jurisdiction to consider the notice of appeal.

As Orange Village has failed to perfect an appeal to the Board of Tax Appeals, it is the decision and order of this board that this matter must be, and the same hereby is, dismissed.