

Ted Wagner,	)	
	)	CASE NO. 96-G-469
Appellant,	)	
	)	(SALES TAX)
vs.	)	
	)	
Roger W. Tracy,	)	DECISION AND ORDER
Tax Commissioner of Ohio,	)	
	)	
Appellee.	)	

APPEARANCES:

For the Appellant	-	Ted A. Wagner, <u>Pro Se</u> 1462 Franklin Avenue Salem, Ohio 44460
For the Appellee	-	Betty D. Montgomery Attorney General of Ohio By: Richard C. Farrin Assistant Attorney General 16th Floor - State Office Tower 30 East Broad Street Columbus, Ohio 43226-0410

Entered March 14, 1997

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

This matter came to be considered by the Board of Tax Appeals upon a notice of appeal filed herein on May 3, 1996, by the above-named appellant from a final order of the Tax Commissioner dated April 18, 1996, wherein said official modified a sales tax assessment previously assessed against the appellant.

Appellee's decision reads, in pertinent part, as follows:

"The Tax Commissioner came this day to consider the above matter at Columbus, Ohio, and being fully advised thereon, finds that, based on the returns filed following the issuance of the assessment, the tax liability, additional late filing charge, and penalties are adjusted or affirmed as follows:

	<u>Assessment</u>	<u>Penalty</u>	<u>Total</u>
Sales Tax:	\$318.95	\$159.48	\$478.43
Late Filing Charge:	50.00	25.00	75.00
Total:			\$553.43

"Payment of \$316.56 was received after issuance of the assessment and will be credited against the above finding.

"The unpaid amount of Tax and additional charge for late filing bear interest as specified by the applicable statute from the thirty-first day after service of the notice of assessment to the date of payment."

The appellant's notice of appeal reads, in pertinent part, as follows:

"I am appealing the findings of the Tax Commissioner on our Case No. 96417576 with a Journal Entry of 18 Apr 96.

"I am waving (sic) 'oral arguments' and ask that you make a decision based on this appeal.

"I believe the Tax Commissioner erred in his findings that the return had not been filed, and I believed (sic) that he also erred in the amount of his assessment and penalties.

"I had filed a return and sent a check, even if the Tax Commissioner found no evidence to support that, upon notification I again filed another return with payment.

"Even if that second return is considered 'late', the penalty for late filing is \$50.00, which in this case works out to a 21% interest, which is a substantial penalty.

"The \$236.87, assigned by the Tax Commissioner is a 99% Penalty (sic) (74% for 9 months which works out to 99% based on a year) which I feel is unfair!

"Your consideration in this matter will be greatly appreciated."

This appeal is now submitted upon the notice of appeal, and the statutory transcript certified to the Board of Tax Appeals by the Tax Commissioner. The appellant waived the hearing for this matter. Although briefing dates were assigned in this matter, none were filed.

First, the Board notes that the findings of the Tax Commissioner are presumptively valid. Consequently, it is incumbent upon a taxpayer challenging a determination of the Tax Commissioner to rebut that presumption. Alcan Aluminum Corp. v. Limbach (1989), 42 Ohio St. 3d 121. When no competent and/or probative evidence is presented to this Board to establish that the Tax Commissioner's determination is "clearly unreasonable or unlawful," the determination is presumed to be correct. Id.

A review of the statutory transcript reflects that the appellant failed to timely file his sales tax return for June, 1995. Further, the appellant has failed to appear and present any evidence that the Tax Commissioner's determination in this regard is in error.

As to the appellant's contentions regarding the late filing charge and penalties assessed, R.C. 5739.12 states, in pertinent part, that:

"\* \* \* Any vendor who fails to file a return or pay the full amount of the tax shown on the return to be due under this section and the rules of the commissioner shall, for each such return he fails to file

or each such tax he fails to pay in full as shown on the return within the period prescribed by this section and the rules of the commissioner, forfeit and pay into the state treasury an additional charge of fifty dollars or ten per cent of the tax required to be paid for the reporting period, which ever is greater, as revenue arising from the tax imposed by this chapter, and such sum may be collected by assessment in the manner provided in section 5739.13 of the Revised Code. The commissioner may remit all or a portion of the additional charge and may adopt rules relating thereto. \* \* \*."

(Emphasis added)

Further, R.C. 5739.133 provides in pertinent part:

"(A) A penalty shall be added to every amount assessed under section 5739.13 or 5739.15 of the Revised Code as follows:

"(1) In the case of an assessment against a person who fails to file a return required by this chapter, fifty per cent of the amount assessed;"

Thus, the late filing charge and penalties were assessed according to the mandates of the statutes. The appellant has failed to present any evidence that the Tax Commissioner abused his discretion in failing to remit the charges and penalties at issue herein.

In conclusion, we find that the appellant has failed to meet his burden of coming forward with evidence sufficient to overcome the presumption in favor of the Tax Commissioner. Based on the foregoing, the Board finds that the Tax Commissioner's final order is correct and proper, and should be affirmed. Accordingly, it is the decision and order of the Board of Tax Appeals that the

final order of the Tax Commissioner must be, and hereby is,  
affirmed. ohiosearchkeybta