

Fuddruckers, Inc.,)	
)	CASE NO. 96-R-1052
Appellant,)	
)	(SALES TAX)
vs.)	
)	DECISION AND ORDER
Roger W. Tracy,)	
Tax Commissioner of Ohio,)	
)	
Appellee.)	

APPEARANCES:

Appeal filed by	-	Suzanne R. Dery Senior Tax Accountant Fuddruckers, Inc. One Corporate Place 55 Ferncroft Road Danvers, MA 01923
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 43266-0410

Entered March 14, 1997

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

This matter is before the Board of Tax Appeals upon a notice of appeal filed on behalf of Fuddruckers, Inc. Fuddruckers appeals from a final order of the Tax Commissioner, in which the Tax Commissioner dismissed its Petition for Reassessment on jurisdictional grounds.

The Commissioner's decision reads, in pertinent part, as follows:

"* * *

"The petition for reassessment was not filed within thirty days after the receipt of the notice of assessment, as required by

Section 5739.13 of the Ohio Revised Code. Therefore, the commissioner is without jurisdiction to consider the petition.

"It is therefore ordered that the petition be, and hereby is, dismissed."

This appeal is now submitted upon the notice of appeal and the statutory transcript certified to the Board of Tax Appeals by the Commissioner. ¹

The issue before the Board is whether the Tax Commissioner properly dismissed Fuddruckers' Petition for Reassessment.

The findings of the Tax Commissioner are presumptively valid. Alcan Aluminum Corp. v. Limbach (1989), 42 Ohio St. 3d 221. It is this Board's duty to determine whether the Tax Commissioner's actions were performed in good faith and in the exercise of sound judgment. Hatchadorian v. Lindley (1986), 21 Ohio St. 3d 66; Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision (1988), 37 Ohio St. 3d 16. The taxpayer has the affirmative duty to come forward and prove the Tax Commissioner's action and findings are unreasonable or unlawful. Alcan Aluminum Corp., supra; Hatchadorian, supra.

R.C. 5739.13 states, in pertinent part, as follows:

"Unless the vendor or consumer, to whom the notice of assessment is directed, files within thirty days after service thereof,

¹Fuddruckers waived hearing in this matter by letter dated February 5, 1997. On February 28, the Tax Commissioner's representative informed the Board that he would waive hearing.

either personally or by certified mail a petition in writing,

* * *, the assessment shall become conclusive and the amount of the assessment shall be due and payable, from the vendor or consumer so assessed, to the treasurer of state. * * *."

The thirty-day requirement under R.C. 5739.13 is mandatory. Unless the assessed party complies fully with the requirements set forth in R.C. 5739.13, the Tax Commissioner has no jurisdiction or authority to address the merits of the case and must dismiss the cause on jurisdictional grounds. See e Daiquiri Club, Inc . v. Peck (1953), 159 Ohio St. 52.

In the present case, a notice of assessment was issued on March 13, 1996. (S.T. 9) Fuddruckers received the notice of assessment on March 18, 1996. (S.T. 8) The Department of Taxation received Fuddruckers' petition, dated May 6, 1996, on May 14, 1996. (S.T. 2)

Based upon the foregoing, this Board finds that Fuddruckers did not file its Petition for Reassessment within thirty days as required by R.C. 5739.13. Thus, the Tax Commissioner acted properly in dismissing Fuddruckers' Petition for Reassessment on jurisdictional grounds.

Accordingly, it is the decision and order of the Board of Tax Appeals that the order of the Tax Commissioner must be, and hereby is, affirmed ohiosearchkeybta.