

Tupper, Inc.,)	
)	
Appellant,)	CASE NO. 97-B-1669
)	
vs.)	
)	(SALES TAX)
Roger W. Tracy,)	
Tax Commissioner of Ohio,)	
)	DECISION AND ORDER
Appellee.)	

APPEARANCES:

For the Appellant	-	Thomas Tupper Tupper Inc. 7850 SR 609 Burghill, Ohio 44404-5730
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For the Appellee	-	Betty D. Montgomery Attorney General of Ohio By: Richard C. Farrin Assistant Attorney General State Office Tower 30 East Broad Street 16th Floor Columbus, Ohio 43266-0410
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Entered July 17, 1998

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

This appeal was filed herein on December 19, 1997 by appellant herein. Appellant appeals from a journal entry, dated November 12, 1997, of the Tax Commissioner (appellee), whereby said official found appellant liable for sales tax and penalty in the amount of \$375.00 for sales made during the month of August, 1996. Said journal entry reads, as follows:

"The Tax Commissioner came this day to consider the above matter and being advised thereon finds that the vendor failed to file tax returns for the period(s) assessed herein. A request has gone unanswered. Therefore, the assessed sales tax liability and additional charge for failure to file timely returns will stand as issued.

"Therefore, it is the order of the Tax Commissioner that this assessment stand as issued in the following amount:

	<u>Assessment</u>	<u>Penalty</u>	<u>Total</u>
Sales Tax	\$ 200.00	\$ 100.00	\$300.00
Additional Charge:	50.00	25.00	75.00
Total:			\$375.00 "

Appellant's notice of appeal reads, as follows:

"This is our formal notice of appeal of the final determination of the above referenced sales tax assessment. We previously filed a Petition for Reassessment for this sales tax assessment. We received a notice from you dated April 30, 1997 stating that our petition was being reviewed. We have no record of receiving anything further from you until we received the Final Determination. As our original petition stated, we feel that this return was filed and paid. Your consideration in this matter is greatly appreciated."

The matter is submitted to the Board of Tax Appeals upon the notice of appeal and the statutory transcript provided by the appellee. (S.T. 1-10) Also, pursuant to assignment, this Board held a telephone mediation conference in this matter on April 30, 1998. Neither the appellant, nor any representative of the appellant, participated. Appellee's counsel appeared in his behalf. Pursuant to assignment this Board then held an

evidentiary hearing in this matter on July 2, 1998. Neither the appellant, nor any representative of the appellant, appeared. Appellee's counsel appeared in his behalf.

The findings of the Tax Commissioner are presumptively valid. Alcan Aluminum Corp. v. Limbach (1989), 42 Ohio St. 3d 121. Further, it is presumed that the action of the Tax Commissioner was 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 County Board of Revision (1988), 37 Ohio St. 3d 16. Where one by appeal to the Board of Tax Appeals challenges the action and findings of the Tax Commissioner, he has the burden of demonstrating that the Tax Commissioner's action and findings are clearly unreasonable or unlawful. Alcan Aluminum Corp., supra; Hatchadorian, supra; Alliance Towers, Ltd., supra; R.R.Z. Associates v. Bd. of Revision (1988), 38 Ohio St. 3d 198; and Hatchadorian v. Bd. of Tax Appeals (1943), 142 Ohio St. 47. Where the taxpayer fails to produce competent and probative evidence to show that the Tax Commissioner's action is factually incorrect, the taxpayer will suffer for his failure because this Board must affirm the action of the Tax Commissioner. Alcan Aluminum Corp., supra; and Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision (1988), 37 Ohio St. 3d 318.

Here, the appellant has failed to produce sufficient evidence to show that the action and findings of the Tax Commissioner are unlawful or unreasonable. The only evidence before this Board are the matters contained in the appellee's statutory transcript. We have reviewed the evidence in light of

the appellant's notice of appeal and it appears that the filing and payment referred to in said notice of appeal relates to the previous month of July, 1998 and not the month with which we are herein concerned. (S.T. 2,5,6)

The evidence supports the action and findings of the Tax Commissioner. Accordingly, we hereby overrule all assignments of error.

It is the Decision and Order of the Board of Tax Appeals that the journal entry of the Tax Commissioner is affirmed. The Tax Commissioner is ordered to give effect to this Decision and Order.

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