

Janet J. Jenrette,) CASE NO. 97-M-1027
)
Appellant,) (REAL PROPERTY
) PENALTY REMISSION)
vs.)
) DECISION AND ORDER
Roger W. Tracy,)
Tax Commissioner of Ohio,)
)
Appellee.)

APPEARANCES:

For the Appellant - Janet J. Jenrette, Pro se
5651 Colerain Ave.
Cincinnati, Ohio 45239

For the Appellee - Betty Montgomery
Ohio Attorney General
By: Richard C. Farrin
Assistant Attorney General
30 East Broad St., 16th Floor
Columbus, Ohio 43215

Entered: July 17, 1998

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

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed August 20, 1997. This appeal is from a final determination of the Tax Commissioner wherein that official denied appellant's application for remission of real property tax late payment penalty, which was assessed pursuant to R.C. 323.12.

The matter was submitted to the Board of Tax Appeals pursuant to R.C. 5717.02 upon the notice of appeal and the statutory transcript furnished this Board by the Tax Commissioner. Although a hearing was scheduled in this matter, appellant informed

the Board that it would be a hardship to attend. Thus, the facts presented are gleaned from the existing record.

It appears that appellant paid her real property taxes, due by June 20, 1996, sometime in January, 1997. At that time, penalties in the amount of 10 per cent of the tax due were imposed. Appellant then applied for remission of the tax imposed, giving the following as the reason her payment was untimely:

"I left work on January 16, 1995 because of harassment in the work environment. My physician placed me on a medical leave of absence because of stress related medical problems from the harassment and I then felt forced to resign from my job. I went on COBRA medical/dental insurance and I was required to pay \$231.69 per month for an individual insurance policy. (See copy of enclosed cancelled check). I required treatment for the resultant depression/anxiety from the harassment at work. Insurance only pays 50% with a limit of \$2500 per year for this type of medical care. I also have a learning disability that was misdiagnosed and left untreated until age 44 and I was in the process of receiving help for the learning disability when the harassment at work began. This compounded the problems that I have because of the learning disability.

"I also started having neurological problems in 1986 which have yet to be appropriately diagnosed and treated. This has resulted in astronomical medical bills and I have been in a lot of pain.

"Because of ongoing harassment and the untreated medical problems I have not been able to return to work. I therefore had to file for disability. I did not receive my first disability check until October of 1996 and I did not receive my back pay for disability until December 1996. (See copy of enclosed letter from Society Security.)

"I did not have the money to pay my property taxes because I had no income secondary to losing my job because of harassment, because I had enormous medical bills to pay above what insurance would pay, because of the high cost of medical insurance coverage, and because social security delayed their back payments until December 1996.

"I think it would be more appropriate to publish in the newspaper the names of the people who harassed me in the work environment and have them lose their jobs instead of me. (I also was receiving property and telephone harassment which no one would do anything about.)

"I feel I have been a true victim of our society. I think our society should stop pointing its finger at the victims and give us a chance. I also think our society should starting pointing its finger at the perpetrators to the problems and do something about that instead. The work would be a much safer place." (S.T., p. 3, 5)

The Commissioner denied remission, basing his denial on R.C. 5715.39. That section provides:

"The commissioner, on application by a taxpayer, shall remit a penalty for late payment of any real property taxes when:

"(A) The taxpayer could not make timely payment of the tax because of the negligence or error of the auditor or treasurer in the performance of a statutory duty relating to the levy or collection of such tax.

"(B) In cases other than those described by division (A) of this section, the taxpayer failed to receive a tax bill or a correct tax bill, and the taxpayer made a good faith effort to obtain such bill within thirty days after the last day for payment of the tax.

"(C) The tax was not timely paid because of the death or serious injury of the taxpayer, or his confinement in a hospital

within ten days preceding the last day for payment of the tax, if, in any case, the tax was subsequently paid within thirty days after the last day for payment of such tax.

"(D) The taxpayer demonstrates to the satisfaction of the commissioner that the full payment was properly deposited in the mail in sufficient time for the envelope to be postmarked by the postal service on or before the last day for payment of such tax."

Unlike other penalty remission statutes, the Tax Commissioner is given no discretion in the remission of penalties which are levied against the late payment of real estate tax pursuant to R.C. 323.13. R.C. 5715.39 is specific in defining the circumstances under which late payment penalties may be remitted. Even if a property owner's situation is sympathetic, if it does not fall within a prescribed fact pattern, the Commissioner is unable to remit the penalty.

While we empathize with the appellant's plight, we are unable to find her claim meritorious. Her reasons for late payment all relate to unfortunate circumstances for which the law makes no exception. Even if her medical problems would qualify as a "serious injury" under R.C. 5715.39(C), that section requires payment to be made within thirty days of the final day the taxes were due. As appellant failed to meet this condition, she does not meet the specific requirements for penalty abatement.

We also must address appellant's notice of appeal to this Board. In her letter requesting review of the Tax Commissioner's actions, appellant implies that she was without

funds to pay her real property taxes because the federal government was dilatory in making disability payments. Appellant then suggests that it is unjust to force her to pay interest to Hamilton County when the federal government paid no interest to her.

The penalties assessed upon her late payment were authorized by the General Assembly of the State of Ohio, not the federal government. Therefore, the timeliness of payment from a separate governmental entity has no bearing upon appellant's obligations to the county. Should the appellant have concerns with the method by which she received a federal benefit, she should bring those concerns to the appropriate controlling body.

Considering the entire record, the Board of Tax Appeals finds and determines, upon the record and as a matter of law, that the appellant has failed to factually establish entitlement to the requested remission of penalty as authorized and provided under the express terms of R.C. 5715.39. Therefore, the Tax Commissioner's final determination denying penalty remission was correct.

Giving consideration to the notice of appeal, the record in this matter, the case law and the findings of this Board, it is the decision and order of the Board of Tax Appeals that the final order of the Tax Commissioner is affirmed.