

OHIO BOARD OF TAX APPEALS

Lowes Window Cleaning, Inc.,)
)
 Appellant,) Case No. 99-J-1849
)
 vs.) (SALES TAX)
)
 Thomas M. Zaino,) DECISION AND ORDER
 Tax Commissioner of Ohio,)
)
 Appellee.)

APPEARANCES:

For the Appellant - Schnorf & Schnorf
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For the Appellee - Betty D. Montgomery
 Attorney General of Ohio
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Entered October 19, 2001

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

The Board of Tax Appeals is considering this matter pursuant to a notice of appeal filed herein by Lowes Window Cleaning, Inc. (“Appellant”) Appellant has appealed from a final determination of the Tax Commissioner that assessed sales tax against the appellant. The notice of appeal and final determination are incorporated herein by reference. The matter has been submitted to the Board of Tax Appeals upon the notice of appeal, the statutory

transcript certified herein by the Tax Commissioner, and the evidence adduced at the hearing conducted herein.

The appellant has not challenged the portion of the final determination that assessed sales tax for the period of June 1, 1993 through December 31, 1995. It has limited its appeal to the question of the late payment penalty.

During the period at issue the appellant employed an outside accountant to handle its tax matters. The appellant would take its monthly ledgers to the accountant who was responsible for performing all aspects of bookkeeping, payroll and taxes. The accountant would fill out the relevant forms and appellant's manager would sign the checks on a monthly basis. Appellant's manager initially became aware that the outside accountant was derelict in her duties when the State of Ohio performed an audit of appellant's business. Appellant then learned that the accountant had not filed sales tax returns or personal property returns.

The decision whether to remit a penalty is within the discretion of the Tax Commissioner. *Jennings & Churella Construction Co. v. Lindley* (1984), 10 Ohio St.3d 67. *Servomation Corp. v. Kosydar* (1976), 46 Ohio St.2d 21; *Interstate Motor Freight System v. Bowers* (1960), 170 Ohio St. 482. In *State ex rel. Sheppard v. Koblentz* (1962), 174 Ohio St. 120, the Court defined "abuse of discretion" to be "more than an error of judgment: rather it is necessary to show an act that is fostered by perversity of will, passion or prejudice."

The Board acknowledges that appellant's situation is unfortunate. It entrusted its tax matters to an outside accountant who gave no indication that she was not properly handling the responsibility. Nevertheless, the appellant is ultimately responsible for filing the return and is liable for penalties assessed as a result of its non-filing. *Young v. Tracy* (Apr. 8, 1994), B.T.A. No. 93-J-402, unreported; *Shelley v. Tracy* (Oct. 29, 1993), B.T.A. No. 91-X-1342, unreported; *Kader v. Limbach* (May 10, 1991), B.T.A. No. 88-E-395, unreported; *Morse v. Limbach* (Nov. 23, 1990), B.T.A. No 88-G-317, unreported.

The appellant has not submitted any evidence showing that the Commissioner abused his discretion in failing to remit the penalties imposed herein. The Board therefore affirms the penalty assessment.

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