

1 Evilsizor, Appellant, v. Tracy, Tax Commr., Appellee.

2 [Cite as Evilsizor v. Tracy (1995), ____ Ohio St.3d ____.]

3 Taxation -- Personal property tax -- Assessment -- Appeal from

4 determination of Tax Commissioner -- Notice of appeal not filed with

5 Board of Tax Appeals in a timely manner, when.

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7 (No. 94-1924 -- Submitted June 15, 1995 -- Decided August 23,

8 1995.)

9 Appeal from the Board of Tax Appeals, No. 93-B-1034.

10 Appellant, Daniel E. Evilsizor, appeals from an order of the Board of
11 Tax Appeals (“BTA”) which dismissed his appeal. Appellant failed to file
12 personal property tax returns for the years 1987, 1988, 1989 and 1990, and
13 the Tax Commissioner made forced assessments against him for those years.
14 Preliminary assessment certificates were issued against appellant under date
15 of June 21, 1991 for the four years in question. Appellant sought a review
16 and redetermination of the assessments in a letter to the commissioner dated
17 August 5, 1991.

1 On August 21, 1991, the commissioner issued a final determination in
2 response to appellant's request for review and redetermination. The
3 commissioner's final determination stated that he did not have jurisdiction
4 to consider the request because it was not filed within the required thirty-
5 day filing period. The commissioner mailed a copy of his final
6 determination to appellant by certified mail on August 22, 1991, but the
7 letter was returned marked unclaimed. The returned envelope showed that
8 notices had been given to the addressee, on August 23, 1991 and August 29,
9 1991, and, finally, the letter was returned by the post office September 7,
10 1991. Appellant confirmed that the address, post office box and zip code
11 shown on the letter sent to him were correct. The commissioner, on
12 September 18, 1991, mailed appellant a copy of the August 21, 1991 final
13 determination by ordinary first class mail, and it was not returned.
14 Appellant testified before the BTA that he had received the commissioner's
15 final determination sometime after September 20, 1991.

16 On September 8, 1993 appellant filed a notice of appeal with the
17 BTA. Counsel for the commissioner filed a motion to dismiss on April 5,

1 1994, alleging that appellant's notice of appeal was filed beyond the thirty-
2 day period set forth in R.C. 5717.02.

3 The BTA, on April 27, 1994, following a hearing, granted the
4 commissioner's motion to dismiss for lack of jurisdiction.

5 This cause is before the court upon an appeal as a matter of right.

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7 *Daniel E. Evilsizor, pro se.*

8 *Betty D. Montgomery, Attorney General, and Lawrence B. Pratt,*

9 Assistant Attorney General, for appellee.

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11 *Per Curiam.* On September 8, 1993, appellant filed a notice of appeal
12 with the BTA contesting the assessments made against him, and appealing
13 the commissioner's certificate of final determination dated August 21, 1991.

14 The commissioner filed a motion to dismiss appellant's appeal, contending
15 that the notice of appeal was not filed with the BTA in a timely manner.

16 The appellant contends that his notice of appeal was filed in a timely
17 manner because it was filed within thirty days of the second Monday of

1 August of the second year after the forced assessments were made against
2 him.

3 Appellant bases his contention upon his interpretation of R.C.
4 5711.25, which states that a personal property tax assessment becomes final
5 on the second Monday of August of the second year after the filing of a
6 return with the auditor. Appellant contends that the second year after the
7 filing of the returns was 1993 and that the second Monday of August was
8 August 9, 1993. Appellant's second step is to contend that R.C. 5717.02
9 gives him thirty days after the assessment became final to file his notice of
10 appeal and, therefore, his September 8, 1993 notice of appeal was timely.

11 This same contention has been presented to this court before and has
12 been rejected. Appellant's contention misconstrues both R.C. 5711.25 and
13 5717.02. Appellant's argument is essentially the same argument presented
14 to this court in *Michelin Tire Corp. v. Kosydar* (1974), 38 Ohio St.2d 254,
15 257, 67 O.O.2d 326, 328, 313 N.E.2d 394, 396. The court in *Michelin Tire*
16 pointed out that "[t]he effect of R.C. 5711.25 in finalizing assessment
17 certificates is akin to a statute of limitations, and does not represent a 'final

1 determination by the tax commissioner,' as those words are used in R.C.
2 5717.02.”

3 In this case, appellant had filed for review and redetermination with
4 the Tax Commissioner and the request had been denied. In the
5 commissioner’s letter of August 21, 1991 denying appellant’s request for
6 review and redetermination, the commissioner clearly stated that he was
7 making a “final determination” and that the appeal period for that final
8 determination was thirty days. However, there was no appeal filed by
9 appellant within thirty days of the August 21, 1991 date of that final
10 determination. There is no right of appeal from preliminary or amended
11 preliminary assessments which “become final” solely by virtue of the
12 passage of time under R.C. 5711.25. As the court stated in *Michelin Tire*,
13 R.C. 5717.02 “provides for an appeal from a final determination of the
14 commissioner, not from an assessment *per se*.” *Id.* at 255, 67 O.O.2d at
15 327, 394 N.E.2d at 395. In this case, appellant did not file a timely appeal
16 from a final determination of the commissioner and, thus, the BTA had no
17 jurisdiction to consider the appeal. *Am. Restaurant & Lunch Co. v. Glander*
18 (1946), 147 Ohio St.147, 34 O.O. 8, 70 N.E.2d 93.

