

User Name: Allison Keen

Date and Time: 06 Jul 2016 9:38 a.m. EDT

Job Number: 34349042

Document(1)

1. [ORC Ann. 5711.28](#)

Client/Matter: -None-

Search Terms: penalty abatement

Search Type: Natural Language

Narrowed by:

Content Type

Statutes and Legislation

Narrowed by

Jurisdiction: Ohio

[ORC Ann. 5711.28](#)

Current with Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 84 (HB 512).

[Page's Ohio Revised Code Annotated](#) > [Title 57: Taxation](#) > [Chapter 5711: Listing Personal Property](#)

§ 5711.28 Notice of penalty assessment; petition for abatement; amended assessment certificate.

Whenever the assessor imposes a penalty prescribed by [section 5711.27](#) or [5725.17 of the Revised Code](#), the assessor shall send notice of such penalty assessment to the taxpayer by mail. If the notice also reflects the assessment of any property not listed in or omitted from a return, or the assessment of any item or class of taxable property listed in a return by the taxpayer in excess of the value or amount thereof as so listed, or without allowing a claim duly made for deduction from the net book value of accounts receivable, or depreciated book value of personal property used in business, so listed, and the taxpayer objects to one or more of such corrections in addition to the penalty, the taxpayer shall proceed as prescribed by [section 5711.31 of the Revised Code](#), but if no such correction is reflected in the notice, or if the taxpayer does not object to any such correction made, the taxpayer shall proceed as prescribed herein.

Within sixty days after the mailing of the notice of a penalty assessment prescribed by this section, the taxpayer may file with the tax commissioner, in person or by certified mail, a petition for abatement of such penalty assessment. If the petition is filed by certified mail, the date of the United States postmark placed on the sender's receipt by the postal employee to whom the petition is presented shall be treated as the date of filing. The petition shall have attached thereto and incorporated therein by reference a true copy of the notice of assessment complained of, but the failure to attach a copy of such notice and incorporate it by reference does not invalidate the petition. The petition shall also indicate that the taxpayer's only objection is to the assessed penalty and the reason for such objection.

Upon the filing of a petition for abatement of penalty, the commissioner shall notify the treasurer of state or the auditor and treasurer of each county having any part of the penalty assessment entered on the tax list or duplicate. The commissioner shall review the petition without the need for hearing. If it appears that the failure of the taxpayer to timely return or list as required under this chapter, or to file a complying report and pay tax under Chapter 5725. of the Revised Code, whichever the case may be, was due to reasonable cause and not willful neglect, the commissioner may abate in whole or in part the penalty assessment. The commissioner shall transmit a certificate of the commissioner's determination to the taxpayer, and if no appeal is taken therefrom as provided by law, or upon the final determination of an appeal which may be taken, the commissioner shall notify the treasurer of state or the proper county auditor of such final determination. If the final determination orders abatement of the penalty assessment, the notification may be in the form of an amended assessment certificate. Upon receipt of the notification, the treasurer of state or county auditor shall make any corrections to the treasurer's or auditor's records and tax lists and duplicates required in accordance therewith and proceed as prescribed by [section 5711.32](#) or [5725.22 of the Revised Code](#).

The decision of the commissioner shall be final with respect to the percentage of penalty, if any, the commissioner finds appropriate, but neither the commissioner's decision nor a final judgment of the board of tax appeals or any court to which such final determination may be appealed shall finalize the assessment of such property.

History

RS § 2750; S&C 1447; 56 v 175, § 18; GC § 5391; 114 v 714(742); 115 v 567; Bureau of Code Revision, 10-1-53; 139 v H 379 (Eff 9-21-82); 140 v H 379 (Eff 7-2-84); 141 v S 126 (Eff 9-25-85); 141 v H 201 (Eff

7-1-85); 141 v H 428 (Eff 12-23-86); [148 v H 612](#). Eff 9-29-2000; [151 v H 66](#), [§ 101.01](#), eff. 6-30-05.

Annotations

Notes

Amendment Notes

[151 v H 66](#), effective June 30, 2005, inserted “or 5725.17” in the first paragraph; inserted ‘as required under this chapter, or to file a complying report and pay tax under Chapter 5725. of the Revised Code, whichever the case may be” in the third paragraph; deleted “for the failure to return timely or list the property” following “finds appropriate” in the final paragraph; and made gender neutral changes.

Notes to Decisions

Generally

Standard of review

Generally

BTA acted reasonably and lawfully when it determined that the commissioner did not abuse his discretion in denying **abatement** of late filing **penalties**. Application of a policy requiring denial of **abatement** when there was more than one delinquent filing within a five-year look-back period was reasonable: [Smucker v. Levin, 113 Ohio St. 3d 337, 2007 Ohio 2073, 865 N.E.2d 866, 2007 Ohio LEXIS 1141 \(2007\)](#), remanded by 2007 Ohio [Tax LEXIS 1024](#) (Ohio B.T.A. July 20, 2007).

Standard of review

Ohio Board of Tax Appeals acted reasonably and lawfully in affirming a Tax Commissioner’s denial of a corporate taxpayer’s **abatement** request with respect to late-filing **penalties** pursuant to [R.C. 5711.27](#) and [5711.28](#), as no reasonable cause for the late filing was shown and use by the Commissioner of a five-year look-back for purposes of exercising his discretion on the **abatement** issue was allowable; although an **abatement** was granted to the parent corporation of the taxpayer, there were different issues involved and the parent had a record of filing in a timely manner, such that there was no violations of uniformity of taxation, equal protection, or due process pursuant to Ohio Const. art. I, §§ 2 and 16. [Smucker v. Levin, 113 Ohio St. 3d 337, 2007 Ohio 2073, 865 N.E.2d 866, 2007 Ohio LEXIS 1141 \(2007\)](#), remanded by 2007 Ohio [Tax LEXIS 1024](#) (Ohio B.T.A. July 20, 2007).

The Board of Tax Appeals need not use the exact words “unreasonable, arbitrary, or unconscionable” in determining a standard of review, when the Board’s decision, when read in toto, reveals that the Board applied such a standard: [Tom Kelsey Motor Sales, Inc. v. Limbach, 1991 Ohio App. LEXIS 1339 \(Ohio Ct. App., Lucas County Mar. 29, 1991\)](#).

Research References & Practice Aids

Cross-References to Related Sections

Penalty assessment **abatement**, [RC § 5711.32](#).

Service of order or notice, [RC § 5703.37](#).

