

OHIO BOARD OF TAX APPEALS

PRIDE OF CLEVELAND SCOOTERS LLC, (et.
al.),

CASE NO(S). 2016-375

Appellant(s),

(SALES TAX)

vs.

DECISION AND ORDER

JOSEPH W. TESTA, TAX COMMISSIONER OF
OHIO, (et. al.),

Appellee(s).

APPEARANCES:

- For the Appellant(s) - PRIDE OF CLEVELAND SCOOTERS LLC
Represented by:
STEVEN A. DIMENGO
BUCKINGHAM, DOOLITTLE & BURROUGHS, LLC
3800 EMBASSY PARKWAY, SUITE 300
AKRON, OH 44333
- For the Appellee(s) - JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO
Represented by:
KODY R. TEAFORD
ASSISTANT ATTORNEY GENERAL
30 E. BROAD STREET
25TH FLOOR
COLUMBUS, OH 43215

Entered Tuesday, April 11, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is before the Board of Tax Appeals pursuant to an appeal filed by Pride of Cleveland Scooters LLC (“taxpayer”) from a final determination of the Tax Commissioner. It is decided upon the notice of appeal, the statutory transcript (“S.T.”) certified to this board by the commissioner, the evidence (“Ex.”) and testimony (“H.R.”) presented at this board’s hearing, and any written argument filed by the parties.

The findings of the Tax Commissioner are presumed valid. *Alcan Aluminum Corp. v. Limbach*, 42 Ohio St.3d 121 (1989). It is therefore incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut the presumption and establish a right to the relief requested. *Belgrade Gardens v. Kosydar*, 38 Ohio St.2d 135 (1974); *Midwest Transfer Co. v. Porterfield*, 13 Ohio St.2d 138 (1968). Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the Tax Commissioner’s determination is in error. *Kern v. Tracy*, 72 Ohio St.3d 347 (1995); *Federated Dept. Stores, Inc. v. Lindley*, 5 Ohio St.3d 213 (1983). Where no competent and probative evidence is presented to this board by the appellant to show that the Tax Commissioner’s findings are incorrect, then the Board of Tax Appeals must affirm the Tax Commissioner’s findings. *Kern*, supra; *Kroger Co. v. Limbach*, 53 Ohio St.3d 245 (1990); *Alcan*, supra.

Through the notice of appeal, taxpayer seeks review of the commissioner's denial of its sales tax refund claim relating to tax year 2013. In the final determination, the commissioner indicated that the taxpayer

“needed to provide proof of its original and amended figures for the refund period.” S.T. at 1. The agent reviewing the information provided by the taxpayer “determined that the *** [taxpayer] had not supplied the original versus the amended sales tax amounts *** [and] the agent could not determine how the amended figures were derived.” S.T. at 1. Accordingly, the refund request was denied.



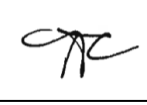
At the hearing before this board, the taxpayer offered the testimony of the accountant it used to file the refund claim, whom it had retained based upon her extensive knowledge of the software program used by the taxpayer for filing its taxes. H.R. at 9. She testified to her attempts to understand how the original sales tax returns had been prepared and her ultimate conclusion that the original sales tax filings must have been prepared using the wrong reports, as generated by the software. H.R. at 13-14, 30-31, 37.

The taxpayer provided this board with copies of its sales receipts for the year in question (Ex. A), its profit and loss statement (Ex. B), explanatory spreadsheets prepared by the accountant that had previously been submitted with the amended monthly returns (Ex. C), the accountant’s summary (Ex. D), and the receipts for the transactions with the Bureaus of Motor Vehicles (Ex. E). We note that the subject refund request was made in conjunction with requests for two other years, specifically 2012 and 2014, which were both granted by the commissioner. All refund requests were prepared by the same accountant, in the same manner, using the same methodology and source information. H.R. at 28, 34-35.

In his final determination, the commissioner indicated that the information submitted by the taxpayer, in response to his denial of the requested refund, was insufficient; yet, upon review, we believe the information submitted comported with the commissioner’s request. The taxpayer’s accountant credibly testified that she could not recreate the steps taken by the taxpayer in calculating the tax due on its original returns, and, therefore, her ability to provide documentation related to the original returns is arguably limited, at best. With regard to the amended returns, the record demonstrates that the taxpayer provided a month-by-month summary of sales transaction details, including receipt number, customer name, and transaction date. While “the agent could not determine how the amended figures were derived,” S.T. at 1, we believe there was sufficient evidence provided to determine whether the taxpayer’s request for refund was proper.

Even if the record before the commissioner could have been construed as deficient in some manner, we conclude that all of the evidence now in the record, including the additional documentation provided, i.e., the receipts contained in Exhibits A and E which the commissioner stipulated were authentic and accurate, H.R. at 6, is sufficient for a determination of the refund request. For example, we randomly chose the month of February 2013 for our specific review, and we concluded that the tax detail, as presented with the original refund request, appears to accurately reflect, with minor exception, the taxable sales for that month, based upon the receipts for February 2013. Ex. A.

We therefore conclude that the appellant has provided competent, probative evidence of its sales for tax year 2013. We hereby remand this matter to the commissioner for further review of all documentation provided for purposes of reconsideration of the taxpayer’s request for refund for tax year 2013.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Harbarger		
Ms. Clements		
Mr. Caswell		

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



Kathleen M. Crowley, Board Secretary