BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

In Re:	Kent Turtle, d/b/a Kent Mar Ventures, Inc. Personal Property Account #P-134749 Tax Year 2007	)) Davidson County)

INITIAL DECISION AND ORDER DISMISSING APPEAL

Statement of the Case

The Davidson County Assessor of Property ("Assessor") has valued the subject property for tax purposes as follows:

APPRAISAL	ASSESSMENT
$168,300	$50,490

On October 25, 2007, the State Board of Equalization ("State Board") received an appeal by the taxpayer. As indicated on the appeal form, this assessment was not appealed to the Davidson County Board of Equalization ("county board") during its regular annual session for tax year 2007.

The undersigned administrative judge conducted a hearing on this matter on March 10, 2008 at the Davidson County Assessor's Office. Present at the hearing were the taxpayer, Kent Turtle, d/b/a Kent Mar Ventures, Inc., Allen Morgan, from the Davidson County Assessor's Office, Personalty Division and Jenny Hayes, attorney from the Metro. Legal Department representing the interest of the Assessor's Office.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The initial issue is whether or not the State Board of Equalization has the jurisdiction to hear the taxpayer's appeal. The law in Tennessee generally requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. T.C.A.§§ 67-5-1401 & 67-5-1412 (b). A direct appeal to the State Board of Equalization is only permitted if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. T.C.A. §§ 67-5-508(b) (2); 67-5-1412 (e). Nevertheless, the legislature has also provided that:

> The taxpayer shall have a right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such **reasonable cause**, the [state] board shall accept such appeal from the taxpayer up to March 1st of the year subsequent to the year in which the assessment is made *(emphasis added)*.

In analyzing and reviewing T.C.A. § 67-5-1412 (e), the Assessment Appeals Commission, in interpreting this section, has held that:

> The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of 'reasonable cause' provisions to waive these requirements except where the failure to meet them is **due to illness or other circumstances beyond the taxpayer's control**. *(Emphasis added), Associated Pipeline Contractors Inc.,* (*Williamson* County Tax Year 1992, Assessment Appeals Commission, Aug. 11, 1994). See also *John Orovets, (*Cheatham County, Tax Year 1991, Assessment Appeals Commission, Dec. 3, 1993).

Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond his control prevented him from appealing to the Davidson County Board of Equalization. It is the taxpayer's burden to prove that they are entitled to the requested relief.

In this case, the taxpayer, Mr. Turtle, did not appeal to the Davidson County Board of Equalization in a timely fashion after having received the Notice of Appraised Value noting that he had not filed a personal property schedule. According to his testimony he started operation until January or February of 2006. Mr. Turtle has not filed a schedule (in 2007) because he did not know he was to file a schedule B as required by statute.[1] The record shows that the notice was sent to Kent Mar Ventures, Inc. at 217 The Hollows Court in Hendersonville, TN, 37075, the taxpayers' proper home address.

Routinely, the assessment includes a statement of the taxpayer's right of appeal to the county board and specified the last day on which such an appeal would be accepted. The notice, in bold print, also advises that "**Failure to appeal the classification and/or assessment to the (county board) may result in the assessment becoming final without further right of appeal**."

The current status of the law is that a taxpayer who is aggrieved by a forced assessment has a right of appeal to the local and (if necessary) state boards of equalization; however, "such remedy shall be **conditioned** upon the filing with **the board of equalization** a complete listing or schedule of all the tangible personal property owned or used by the taxpayer in the operation of the taxpayer's business on the same form as required to be filed with the assessor." [Emphasis added.] Further, Tenn. Code Ann. § 67-5-1412(b) (1) provides that:

> **The taxpayer or owner must first make complaint and appeal to the local board of equalization** unless the taxpayer or owner has not been duly notified by the assessor of property of an increase in the taxpayer's or owner's assessment or change in classification as provided for in section 67-5-508. [Emphasis added.]

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[1] T.CA.§ 67-5-903; additionally it is the traditional rule in American Jurisprudence that *ignorance of the law is no excuse*. Thomas Jefferson to Andrew Limozin, 1787

In 1991, the General Assembly amended Tenn. Code Ann. § 67-5-1412(e) by adding the following language:

> The taxpayer or owner shall have the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the (State Board) shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

The Tennessee Attorney General has opined that:

> The requirement that a taxpayer must generally file an appeal with the local board of equalization before proceeding with an appeal to the State Board of Equalization, like the time deadline for filing an appeal, is a **jurisdictional prerequisite** which cannot be waived by the consent of the parties. [Emphasis added.] Tenn. Atty. Gen. Op. 92-62, p. 10.

It is argued that in this case, the taxpayer did not file a Schedule B nor respond in a timely fashion until he received his tax bill from the Davidson County Trustees Office which comes out in October.[2]

In the opinion of the Administrative Judge the taxpayer has not demonstrated that there is reasonable cause to excuse his failure to go to the County Board as required by statute.

Respectfully, based on the evidence in the record, the administrative judge finds that the taxpayer has not carried his burden to prove he is entitled to the relief he is requesting.[3]

ORDER

It is, therefore ORDERED that this appeal shall be dismissed for lack of jurisdiction by the State Board of Equalization.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the

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[2] Ms. Hayes, the County's Attorney, calls it playing the *Personal Property Lottery*, taking a chance that the assessments will remain low and then complaining if they don't.

[3] In the hearing of an appeal concerning the assessment of property the party seeking to change the current assessment shall have the *burden of proof.* Contested Case Procedures, Rules of the State Board of Equalization, Rule 0600-1-.11(1).

State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 31st day of March, 2008.

Andrei Ellen Lee

ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Kent Turtle
Jo Ann North, Assessor of Property