

OHIO BOARD OF TAX APPEALS

Danny R. Robinson d/b/a StoGus)
Lite Stop,)
)
Appellant,)
)
vs.)
)
Thomas M. Zaino, Tax Commissioner)
of Ohio,)
)
Appellee.)

CASE NO. 01-A-669

(PERSONAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant - Danny R. Robinson, *pro se*
100 E. Main Street
Cardington, Ohio 43315

For the Appellee - Betty D. Montgomery
Attorney General of Ohio
By: Richard C. Farrin
Assistant Attorney General
30 East Broad Street, 16th Floor
Columbus, Ohio 43215-3248

Entered: February 15, 2002

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a motion to dismiss filed herein by counsel for the appellee Tax Commissioner. Said motion provides in pertinent part that:

“Thomas M. Zaino, Tax Commissioner of Ohio, moves the Board of Tax Appeals to dismiss the above-styled appeal for the reason that it is not taken from a final determination or order of the Tax Commissioner as required

by R.C. 5717.02. As a result the Board of Tax Appeals is without jurisdiction to consider the appeal.”

The matter was submitted to the Board of Tax Appeals upon the purported notice of appeal, the motion to dismiss, the memorandum in support of said motion, and the record of the hearing held on January 31, 2002. Although duly notified of said hearing by letter dated January 7, 2002, no representative for the appellant appeared.

Initially we note the statutory duties of the Board of Tax Appeals, as set forth in R.C. 5703.02, which specifically provides in pertinent part, as follows:

“There is hereby created the board of tax appeals, which shall exercise the following powers and perform the following duties:

“(A) Exercise the authority provided by law to hear and determine all appeals of questions of law and fact arising under the tax laws of this state in appeals from decisions, orders, determinations, or actions of any tax administrative agency established by the law of this state, including but not limited to appeals from:

“(1) Actions of county budget commissions;

“(2) Decisions of county boards of revision;

“(3) Actions of any assessing officer or other public official under the tax laws of this state;

“(4) *Final determinations* by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by him;

“(5) Adoption and promulgation of rules of the tax commissioner.” (Emphasis added)

Further, R.C. 5717.02 specifies the types of appeals that may be taken to the Board of Tax Appeals, in pertinent part, as follows:

“ *** (a)ppeals from *final determinations by the tax commissioner* of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders *made by the commissioner* may be taken to the board of tax appeals by the taxpayer ***.”
(Emphasis added)

The Board of Tax Appeals is a creature of statute. *Cleveland Gear Co. v. Limbach* (1988), 35 Ohio St.3d 229. As a creature of statute and an administrative agency, we are limited to the powers vested in this Board by statute. See *General Motors v. Limbach* (1993), 67 Ohio St. 3d 90.

Specifically, the instant notice of appeal was filed with this Board on August 1, 2001, in the form of a copy of a letter seeking abatement of a personal property tax penalty assessed against appellant’s business. To such notice, appellant attached his Morrow County personal property tax statement, with no indication on any portion of his filing that the tax commissioner had first reviewed appellant’s request for abatement of penalties, *i.e.*, petition for abatement. In fact, the tax commissioner has confirmed that no final determination has been issued regarding such penalty assessment (Ex. 1). Accordingly, we conclude that appellant’s filing constitutes a premature filing of a notice of appeal from an assessment of personal property tax penalty by Morrow County and not a final determination issued by the Tax Commissioner. *Cf. Rubber Assoc., Inc. v. Lawrence* (Apr. 6, 2001), B.T.A. Nos. 99-G-365, *et seq.*, unreported; *Glastic Corp. v. Lawrence* (Mar. 31, 2000), B.T.A. No. 99-T-397, unreported. Pursuant to R.C. 5703.02, this Board has no jurisdiction to render a determination regarding such penalty assessment. Accordingly, it is the order of this Board that said notice of appeal, filed by the above-named appellant, must be, and hereby is,

dismissed for lack of jurisdiction. See, generally, *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86.

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