

**OHIO BOARD OF TAX APPEALS**

|                                      |   |                               |
|--------------------------------------|---|-------------------------------|
| HealthSouth Corporation,             | ) | CASE NO. 2005-A-1386          |
|                                      | ) |                               |
| Appellant,                           | ) | (PERSONAL PROPERTY            |
|                                      | ) | TAX)                          |
| vs.                                  | ) |                               |
|                                      | ) | CERTIFICATION AND             |
| William W. Wilkins, Tax Commissioner | ) | ORDER                         |
| of Ohio,                             | ) |                               |
|                                      | ) | (Certifying Appeal as Pending |
| Appellee.                            | ) | Before the Board and Granting |
|                                      | ) | Motion to File Brief)         |
|                                      | ) |                               |

APPEARANCES:

For the Appellant - Siegel Siegel Johnson & Jennings Co., LPA  
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Columbus, Ohio 43220

For the Appellee - Richard Cordray  
Attorney General of Ohio  
Barton A. Hubbard  
Assistant Attorney General  
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Entered March 31, 2009

Ms. Margulies and Mr. Dunlap concur. Mr. Johrendt not participating.

This cause and matter came on to be considered once again by the Board of Tax Appeals following the receipt of a judgment entry of the Supreme Court of Ohio, in the case of *HealthSouth Corporation v. William W. Wilkins [Richard A. Levin]*, Tax Commissioner of Ohio, Case No. 2007-2281 on the docket of that court.

Upon consideration thereof, this board finds that under date of November 9, 2007, it journalized a decision and order wherein it reversed the decision of the Tax

Commissioner, thereby granting the taxpayer's request for refund. Thereafter, and within the time prescribed by law, the commissioner filed an appeal with the above-named court from the board's order.

Under date of February 17, 2009, said court vacated this board's decision and remanded the matter to the board for further proceedings consistent with the court's opinion. It further directed that a mandate be sent to this board to carry its judgment into execution. A copy of the judgment entry was received by this board on March 4, 2009, and the associated record was received on March 10, 2009.

Giving effect to the decision of the Supreme Court and acting under pertinent provisions of R.C. 5717.04, this matter is hereby certified as again pending before this board for further proceedings, consistent with the court's decision.

In addition, this matter is further considered by the Board of Tax Appeals upon a motion to file brief filed by counsel to the appellee Tax Commissioner. Specifically, said motion provides in pertinent part that:

"The appellee, Richard A. Levin, Tax Commissioner of Ohio, hereby moves the BTA for leave to file a brief in the present case in light of the Ohio Supreme Court's decision, issued on February 17, 2009, for which the Court's mandate was issued on March 3, 2009. *HealthSouth Corp. v. Levin*, Slip Opinion No. 2009-Ohio-584. The Court's decision vacated the BTA's previous Decision and Order issued on November 7 [sic], 2007, in BTA No. 2007-2281 [sic], and remanded the case back to the BTA for further consideration in light of the Supreme Court's decision. We request leave to file a brief in this matter in order to provide the BTA with our legal position and analysis concerning the application and interpretation of the Ohio Supreme Court's decision." Motion at 1.

The motion is considered upon the motion and memorandum in support thereof. No response thereto was filed by the appellant.

Based upon the directive from the Supreme Court, it is this board's obligation, on remand, to "complete its factfinding based upon the existing record. Because the parties have been afforded ample opportunity to present evidence, the BTA shall not take additional evidence on remand." *HealthSouth* at ¶36. Mindful of the foregoing, and in light of the fact that the commissioner has not previously submitted his position in writing to the board,<sup>1</sup> the Tax Commissioner shall be permitted to file his brief in this matter, on or before April 21, 2009. The appellant taxpayer shall file any reply thereto on or before May 12, 2009. Thereafter, the matter shall be deemed submitted and the board will proceed to make its determination herein.

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<sup>1</sup> As noted in the board's decision issued November 9, 2007 and reiterated by the court in its decision, although given an opportunity to do so, the appellee Tax Commissioner did not file a brief with the Board of Tax Appeals prior to the issuance of its decision and order in this matter.