

OHIO BOARD OF TAX APPEALS

Anthony J. and Rebecca S. Busa,) CASE NO. 2007-H-268
)
Appellants,) (PERSONAL INCOME TAX)
)
vs.) DECISION AND ORDER
) **Affirmed on Appeal January 15, 2009**
Richard A. Levin,) **Cuyahoga Cty. Ct. of Appeals # 90422**
Tax Commissioner of Ohio,)
) **2009-Ohio-114**
Appellee.)

APPEARANCES:

- For the Appellants - Corsaro & Associates Co., LPA
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- For the Appellee - Marc Dann
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Entered August 17, 2007

Ms. Margulies, Mr. Eberhart and Mr. Dunlap concur.

This appeal is now considered by the Board of Tax Appeals following the issuance of an order requiring appellants to show cause why this board should not affirm the Tax Commissioner’s determination herein based on the Supreme Court’s holding in *Knust v. Wilkins*, 111 Ohio St.3d 331, 2006-Ohio-5791. In that decision, the court determined income earned by a grantor trust is taxable to the grantor rather than to the trust itself, even if the trust is an “electing small business trust,” or ESBT.

Appellants filed a brief in response to the show cause order, disputing the application of the *Knust* decision to the instant facts. Appellants' claims were fully considered in an order issued in *Vestfall v. Wilkins* (Mar. 2, 2007), BTA No. 2006-T-1054, unreported, appeal pending Sup. Ct. No. 2007-0584. Through that order, the board considered and rejected legal arguments involving the termination of the ESBT prior to the effective date of the relevant treasury regulations and whether the commissioner is without the authority to interpret the applicable federal statutes. The board concluded that these arguments lacked merit.

The board finds the same to be true in the present appeal. Even though appellants' ESBT terminated prior to December 29, 2000, that fact does not distinguish this case from the majority's decision in *Knust*.

Thus, based on the preponderance of the evidence in the record before us, it is the decision and order of the Board of Tax Appeals that the final determination of the Tax Commissioner must be, and hereby is, affirmed.

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