

OHIO BOARD OF TAX APPEALS

Charles E. Campbell,)
)
 Appellant,) (SCHOOL DISTRICT INCOME TAX)
)
 vs.) DECISION AND ORDER
)
 Richard A. Levin,)
 Tax Commissioner of Ohio,)
)
 Appellee.)

APPEARANCES:

- For the Appellant - Charles E. Campbell, pro se
13690 Hinton Mill Road
Marysville, Ohio 43040

- For the Appellee - Richard Cordray
Attorney General of Ohio
Lawrence D. Pratt
Senior Deputy Attorney General
State Office Tower, 25th Floor
30 East Broad Street
Columbus, Ohio 43215

Entered January 13, 2009

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 that “appellant show cause why this board should not affirm the Tax Commissioner’s dismissal of appellant’s petition for reassessment.” This board’s order was issued, sua sponte, after receipt of the October 23, 2008 notice of appeal, which was taken from a final determination of the commissioner, dated September 26, 2008, wherein the commissioner concluded that he was without jurisdiction to consider appellant’s petition for reassessment since payment of the

assessed tax and interest was not made, as required by R.C. 5747.13(E). Statutory transcript at 1.

Appellant filed a response to this board's order, in which he explains that subsequent to the commissioner's January 2007 assessment of \$171 in tax and interest, he filed a tax return that calculates \$7 tax due and paid that amount. Specifically, appellant claims that the Tax Commissioner's dismissal of the taxpayer's petition for reassessment was in error since a 2004 tax return was filed and payment was made. Appellant does not, however, dispute that the commissioner's \$171 assessment has not been paid. See appellant's response; attached copies of completed school district income tax form alleging \$7 tax due and \$7 money order receipt, both dated July 2007. Appellant provides no other evidence of payment of the full assessment.

Ohio Revised Code Chapter 5748 provides that voters in a school district may approve a school district income tax that will apply to each individual's earned income. This method of taxation is an alternative to the usual method that bases the tax on Ohio taxable income. Further, R.C. 5747.13(E) provides, in pertinent part, as follows:

“(E) The portion of an assessment that must be paid upon the filing of a petition for reassessment shall be as follows:

“***

“(2) If the taxpayer *** that is assessed *failed to file, prior to the date of issuance of the assessment, the annual return or report required by section 5747.08 or 5747.42 of the Revised Code, any amended return or amended report required by section 5747.10 or 5747.45 of the Revised Code for the taxable year at issue, or any report required by division (B) of section 5747.05 of the Revised Code to*

indicate a reduction in the amount of the credit provided under that division, *payment of the assessment, including interest but not penalty, is required*, except as otherwise provided under division (E)(6) or (7) of this section ***.” (Emphasis added.).

In the area of income taxation, a taxpayer’s right to contest an assessment is specifically made dependent on full payment of the assessment. R.C. 5747.13(E), *supra*. Accordingly, full payment of an assessment becomes a condition precedent to the right of a taxpayer to have an income tax assessment reviewed. Further, the requirement of prepayment prior to review of a tax assessment has been deemed constitutionally valid by the Supreme Court. See *Pre-Fab Transit Co. v. Bowers* (1964), 176 Ohio St. 163; *Niemeyer v. Collins* (1976), 45 Ohio St.2d 63; *W.T. Grant Co. v. Lindley* (1977), 50 Ohio St.2d 7. Thus, herein, appellant was required to make payment of the full assessment due upon the filing of his petition for reassessment. See *Pengov v. Ohio Dept. of Taxation*, Franklin App. No. 06AP-60, 2006-Ohio-3711, discretionary appeal not allowed, 2006-Ohio-6447; *Herr v. Tracy* (Sept. 20, 1996), BTA No. 1995-J-1345, unreported, affirmed (Apr. 28, 1997), Butler App. No. CA96-10-212, unreported. See, also, *Lage v. Zaino* (July 12, 2002), BTA No. 2001-T-846, unreported; *Mesina v. Tracy* (Aug. 5, 1994), BTA No. 1993-K-983, unreported; *Parkinson v. Tracy* (Mar. 18, 1994), BTA No. 1992-H-460, unreported.

While we sympathize with the appellant’s circumstances, from the record before us, we must find that the commissioner properly determined he was without jurisdiction to consider appellant’s petition for reassessment.

Therefore, based upon the record before this board, it is the decision and order of the Board of Tax Appeals that the decision of the Tax Commissioner must be, and hereby is, affirmed.

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