

OHIO BOARD OF TAX APPEALS

Norman L. Stutler,) CASE NO. 2008-M-2441
)
 Appellant,) (SALES TAX)
)
 vs.) ORDER
)
 Richard A. Levin,) (Requiring Appellant to Show Cause)
 Tax Commissioner of Ohio,)
)
 Appellee.)

APPEARANCES:

For the Appellant-	Norman Stutler, pro se 890 Jones Road Kershaw, North Carolina 29067
For the Appellee- Tax Commissioner	Richard Cordray Ohio Attorney General Lawrence Pratt Assistant Attorney General Taxation Section 30 E. Broad Street, 25 th Floor Columbus, Ohio 43215

Entered January 27, 2009

The above-captioned appeal is now considered, sua sponte, by the Board of Tax Appeals following a review of matters presently pending on the board’s docket. On January 26, 2009, the board received the following certification from the Tax Commissioner:

“The Tax Commissioner received a letter from the Board of Tax Appeals stating that it had received and docketed a notice of appeal filed by the Appellant.

“A diligent search of all of the records of the Department of Taxation failed to disclose any record of a Final Determination issued by the Tax Commissioner in the

matter of Sales Tax, for assessment no. 06200831009889, issued prior to December 9, 2008, to Norman L. Stutler. There is no jurisdictional basis for an appeal since no final order has been issued and no proceeding has been held before the Tax Commissioner.”

The powers and duties of the Board of Tax Appeals are provided in R.C. 5703.02. That section provides:

“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:

“***

“(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; ***.”

Consequently, this board has the power to review determinations made by the Tax Commissioner after such determinations have been the subject of a review by the commissioner’s appeals process and reduced to a final determination. *French v. Limbach* (1991), 59 Ohio St.3d 153, 514; *Waddell v. Limbach* (Sept. 2, 1988), BTA No. 1988-A-189, unreported.

The Board of Tax Appeals acknowledges that attached to appellant's notice of appeal is a copy of a notice of sales tax assessment issued by the Tax Commissioner. Also attached is a copy of a sales tax return for the same period identified through the sales tax assessment. The board further acknowledges that appellant seeks to challenge the sales tax assessment, as he claims he did report sales as required by law. However, strict compliance with the tax laws of this state is essential to vest jurisdiction upon this board. *Zephyr Room Inc. v. Bowers* (1955), 164 Ohio St. 287; *Fineberg v. Kosydar* (1975), 44 Ohio St.2d 1; *Clippard Instrument v. Lindley* (1977), 50 Ohio St.2d 71. If the appellant did not avail himself of the Tax Commissioner's review process, this board is unable to consider his claim.

Thus, this board provides the parties twenty-one (21) days of the issuance of this order to provide argument as to why this board has jurisdiction to consider the appellant's sales tax challenge and whether this matter should be dismissed.

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