

OHIO BOARD OF TAX APPEALS

Zachary W. Sprague,)
)
 Appellant,) (SCHOOL DISTRICT INCOME TAX)
)
 vs.) DECISION AND ORDER
)
 Richard A. Levin,)
 Tax Commissioner of Ohio,)
)
 Appellee.)

APPEARANCES:

For the Appellant- Zachary W. Sprague, pro se
436 Lisa Drive
Lodi, Ohio 44254

For the Appellee- Richard Cordray
Tax Commissioner Attorney General of Ohio
Lawrence Pratt
Assistant Attorney General
30 E. Broad Street, 25th Floor
Columbus, Ohio 43215

Entered April 14, 2009

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

On March 17, 2009, this board issued an order requiring appellant, Zachary W. Sprague, to show cause as to why the commissioner’s final determination should not be affirmed. The Tax Commissioner had dismissed Mr. Sprague’s petition for reassessment for a lack of subject-matter jurisdiction. Mr. Sprague has not filed a response to the show cause order.

The commissioner issued the subject assessment upon his determination that Mr. Sprague failed to file a 2004 school district income tax return and to pay the tax owed.¹ The assessment was in the amount of \$429.51, including tax, interest, and penalty. Mr. Sprague filed a timely petition for reassessment but did not remit the amount due. Upon review, the commissioner dismissed the petition for lack of jurisdiction because Mr. Sprague had failed to pay the tax and interest portions of the assessment, as required by R.C. 5747.13(E)(2). Although Mr. Sprague contests the assessment in his notice of appeal, he has not challenged the commissioner's determination that no payment had been remitted.

For purposes of the SDIT, R.C. 5747.13 provides the requirements for the filing of a petition for reassessment:

“(B) Unless the party assessed files with the tax commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment, signed by the party assessed or that party's authorized agent having knowledge of the facts, the assessment becomes final, and the amount of the assessment is due and payable from the party assessed to the commissioner with remittance made payable to the treasurer of state. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 of the Revised Code.

¹ Ohio Revised Code Chapter 5748 provides that voters in a school district may approve a school district income tax (“SDIT”) 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. According to the record, Mr. Sprague was a resident of the Loudonville-Perrysville Exempted Village School District for a portion of tax year 2004. Loudonville-Perrysville EVSD is a district that imposes a SDIT under R.C. Chapter 5748. In such circumstances, R.C. 5747.08 requires that every taxpayer file an annual return “for each tax imposed under Chapter 5748. of the Revised Code ***.” The commissioner has prescribed form SD-100 for this purpose.

“***

“(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 or qualifying entity 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 *** of the Revised Code, any amended return or amended report required by section 5747.10 *** of the Revised Code for the taxable year at issue, payment of the assessment, including interest but not penalty, is required ***[.]”

Pursuant to R.C. 5747.13, a taxpayer’s ability to challenge a school district income tax assessment is specifically dependent upon the payment of the assessment when filing a petition for reassessment. See *Pengov v. Ohio Dept. of Taxation*, 2006-Ohio-3711, *W.T. Grant Co. v. Lindley* (1977), 50 Ohio St.2d 7, *Niemeyer v. Collins* (1976), 45 Ohio St.2d 63, and *Pre-Fab Transit Co. v. Bowers* (1964), 176 Ohio St. 163. Based upon the foregoing, payment of the assessment, i.e., the tax and interest, became a condition precedent to Mr. Sprague’s challenge to that assessment.

While it may seem unfair to require payment of the SDIT assessment in order to authorize the commissioner’s review of a petition for reassessment, the situation is not a matter of discretion. We must apply the pertinent law to the facts. Here, we are constrained to find that Mr. Sprague has not complied with the requirements of R.C. 5747.13(E)(2). Because Mr. Sprague failed to pay the necessary portions of the assessment, the commissioner was without jurisdiction to consider the petition. Accordingly, the Board of Tax Appeals affirms the Tax Commissioner’s final determination.

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