

OHIO BOARD OF TAX APPEALS

Zachary W. Sprague,)	CASE NO. 2008-T-2540
)	
Appellant,)	(SCHOOL DISTRICT INCOME TAX)
)	
vs.)	ORDER
)	
Richard A. Levin,)	(Requiring Appellant to Show Cause
Tax Commissioner of Ohio,)	and Ordering Tax Commissioner to
)	Certify Transcript)
Appellee.)	

APPEARANCES:

For the Appellant-	Zachary W. Sprague, pro se 436 Lisa Drive Lodi, Ohio 44254
For the Appellee- Tax Commissioner	Richard Cordray Attorney General of Ohio Lawrence Pratt Assistant Attorney General 30 E. Broad Street, 25 th Floor Columbus, Ohio 43215

Entered March 17, 2009

This matter is before the Board of Tax Appeals pursuant to a review of appeals pending upon the board’s docket. It appears from appellant’s notice of appeal that the Tax Commissioner dismissed the appellant’s petition for reassessment for lack of jurisdiction.

The Tax Commissioner’s decision reads, in part, as follows:

“This is the final determination of the Tax Commissioner with regard to a petition for reassessment under R.C. 5747.13 concerning the following school district income tax assessments:

“***

“The petitioner was assessed for failure to file a school district income tax return. The petitioner did not pay the assessed tax and interest; therefore the petitioner failed to submit the required payment with the petition for reassessment. There is no jurisdiction to consider the petition since payment of assessed tax and interest was not made as required by R.C. 5747.13(E)(2).

“Accordingly, the matter is dismissed for lack of jurisdiction, and the assessment will stand as issued.”

The Tax Commissioner’s final determination refers the appellant to R.C.

5747.13, which provides in pertinent part as follows:

“(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.

“***

“(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 ***[.]”

From the limited record before us, consisting of appellant's notice of appeal and a copy of the final determination from which the appeal is taken, it appears that the commissioner issued an assessment for failure to file a school district income tax return. As the Tax Commissioner had previously issued tax assessments, he determined that he was without jurisdiction to consider appellant's challenge to those assessments without payment of those assessments.

Appellant appears to challenge the accuracy of the tax itself, arguing that he moved out of the school district for which the tax is collected during the year. However, appellant must meet the prerequisite to seeking review before his claim of non-liability can be considered. Therefore, it is the order of the Board of Tax Appeals that the appellant show cause why this board should not affirm the Tax Commissioner's actions in dismissing appellant's petition for reassessment.

All parties who wish to be heard upon this issue shall file a written response to this order within fourteen days of its issuance. Additionally, the Tax Commissioner has not filed a statutory transcript in this matter. It is ordered that such a transcript be filed within the time for filing responses to the show cause order.

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