

OHIO BOARD OF TAX APPEALS

George T. Lemming and )  
Donna M. Lemming, )  
 )  
Appellants, )  
 )  
vs. )  
 )  
Richard A. Levin, Tax )  
Commissioner of Ohio, )  
 )  
Appellee. )

CASE NO. 2008-V-94  
(PERSONAL INCOME TAX)  
DECISION AND ORDER

APPEARANCES:

For the Appellants	- George T. Lemming, pro se 118 West Market Street Perrysville, OH 44864
For the Appellee Tax Commissioner	- Richard Cordray Attorney General of Ohio Sophia Hussain Assistant Attorney General Taxation Section State Office Tower, 25th Floor 30 East Broad Street Columbus, Ohio 43215-3248

Entered January 27, 2009

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

This matter is before the Board of Tax Appeals upon a notice of appeal filed by George T. Lemming from a final determination of the appellee Tax Commissioner dismissing the appellants' petition for reassessment of school district income taxes.

We now consider this matter upon the notice of appeal and the statutory transcript certified by the commissioner. Appellants did not appear at the hearing conducted before this board and counsel for the commissioner rested upon the information contained in the statutory transcript.

The commissioner's decision reads as follows:

"This is a final determination of the Tax Commissioner on a petition for reassessment pursuant to R.C. 5747.13 concerning the following school district income tax assessment:

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"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, and the assessment will stand as issued." S.T. at 1.

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.

In appellants' notice of appeal, Mr. Lemming explains that he was informed by a representative of the Ohio Department of Taxation that "if I send all the back taxes and file appeal [sic] that he would drop the fines and interest."

R.C. 5747.13 reads 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.

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

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“(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 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.)

After the commissioner received appellants’ petition for reassessment, the commissioner sent correspondence to the appellants informing them of their obligation to pay the tax and interest owed under R.C. 5733.11(E) before the petition could be properly considered. The letter further informed appellants that the petition would be dismissed for lack of jurisdiction if they failed to make payment by October 25, 2007. S.T. at 7.

Our review of the commissioner’s final determination reveals that the commissioner acknowledged appellants’ payment of the \$47 in delinquent tax; however, it appears that appellants failed to remit the \$8.27 in interest assessed. From the record before us, we find that the commissioner properly determined he was without jurisdiction to consider appellants’ petition for reassessment.

Appellants allege that an employee of the department gave instructions contrary to what is required under Ohio law. However, we are mindful of the Supreme Court's holding in *Sekerak v. Fairhill Mental Health Ctr.* (1986), 25 Ohio St.3d 38, 39, in which it stated that, “[i]t is well-settled that as a general rule ‘\*\*\* the principle of estoppel does not apply against a state or its agencies in the exercise of a governmental function.’\*\*\*” (Citations omitted.) See, also, *Sun Refining & Marketing Co. v. Brennan* (1987), 31 Ohio St.3d 306, 307. Further, we note that the Supreme Court has refused to apply estoppel against the state based on oral statements or representations made by its employees or agents. See *Switzer v. Kosydar* (1973), 36 Ohio St.2d 65; *American Handling Equipment v. Kosydar* (1975), 42 Ohio St.2d 150.

We sympathize with the appellants' circumstances in which their failure to pay \$8.27 in interest on a \$47 tax delinquency deprives them of the opportunity to contest the \$500 penalty. As a creature of statute, however, we have only the jurisdiction, power, and duties expressly given by the General Assembly. *Steward v. Evatt* (1944), 143 Ohio St. 547; *Leiphart Lincoln-Mercury, Inc. v. Bowers* (1958), 107 Ohio App. 259. As such, appellants have no inherent right to a review of their petition for reassessment before the commissioner or before this board. Such a right is statutory, and strict compliance with the specific provisions governing the filing of a petition for reassessment is therefore required in order to confer jurisdiction upon this board.

Therefore, it is the order of the Board of Tax Appeals that the Tax Commissioner's final determination dismissing appellants' petition for reassessment must be, and hereby is, affirmed.

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