

## OHIO BOARD OF TAX APPEALS

Janice Vance,	)	CASE NO. 2008-Z-1403
	)	
Appellant,	)	(PERSONAL INCOME TAX)
	)	
vs.	)	DECISION AND ORDER
	)	
Richard A. Levin, Tax	)	
Commissioner of Ohio,	)	
	)	
Appellee.	)	

APPEARANCES:

For the Appellant		- Janice Vance, pro se 3005 Baker Way Spring Hill, Tennessee 37174
For the Appellee		- Richard Cordray Attorney General of Ohio Lawrence D. Pratt Assistant Attorney General 30 East Broad Street, 25 <sup>th</sup> Floor Columbus, Ohio 43215

Entered February 10, 2009

Ms. Margulies and Mr. Dunlap concur. Mr. Johrendt not participating.

This appeal is now considered by the Board of Tax Appeals following the issuance of an order requiring the appellant to show cause as to why this board should not dismiss the appeal for lack of jurisdiction. The show cause order was issued upon this board's receipt of a certification from the Tax Commissioner indicating that the above-named appellant did not file a copy of her notice of appeal with the Tax Commissioner and did not appeal from a final determination or order of

the Tax Commissioner. While the appellant, Janice Vance, filed a response to the show cause order, the appellee Tax Commissioner did not do so.

The appellant is apparently appealing from a personal income tax assessment issued by the Tax Commissioner in connection with the appellant's move from Ohio to Tennessee in tax year 2005. In the Tax Commissioner's certification to this board, he indicated the following:

"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 Personal Income Tax, for case no. 02200701743244, issued prior to August 11, 2008, to Janice Vance. 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.

"As of the 22<sup>nd</sup> day of September 2008 no copy of the notice of appeal has been filed with the Tax Commissioner."

Although the appellant responded to the show cause order, she failed to address the two jurisdictional issues raised therein. The appellant, in her response to the show cause order,<sup>1</sup> indicated as follows:

"I have responded to all notices I have received from the State of Ohio on this matter. I'm at a loss of why I have

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<sup>1</sup> The appellant indicated that her appeal was scheduled for a mediation which was subsequently canceled. This board's mediation program is voluntary on the part of all parties to an appeal. Accordingly, any party to an appeal may decide not to participate in the mediation program at any time. The appellant also indicated that she had not yet received a hearing notice. In the instant appeal, a hearing notice was not sent to the parties pending this board's determination as to whether its jurisdiction had been properly invoked.

now received notice stating that I have not responded. I have attached copies of the correspondence. Since I never received a document from the same person twice, I'm not certain who has what. Perhaps something is misfiled.

“As you can see by reviewing the attached, an appeal was filed and a mediation conference call was scheduled for October 27, 2008. I was prepared to participate in this session. However, I received a notice on September 22 canceling the call. I did not cancel. I was told when I called the help line that I now had to wait for a hearing notice. To date I have not received such a notice.

“The facts are I have not worked or lived in Ohio since April 2005. I have provided documentation proving this. In addition, although I did not agree with the calculation of my taxable wages for the time period in 2005 I was in Ohio, I was willing to pay the recalculated amount. The check was returned to me. If you would give me the address of where I should send the check, I will do so.”

There are two jurisdictional issues before this board in this matter. First, with respect to the Tax Commissioner's certification that the appellant failed to file a copy of her notice of appeal with the Tax Commissioner, we must consider R.C. 5717.02. This statute sets forth certain prerequisites necessary to invoke the jurisdiction of this board, providing in pertinent part:

“Such appeals shall be taken by the filing of a notice of appeal with the board, *and with the tax commissioner* \*\*\* within sixty days after service of the notice of the \*\*\* determination \*\*\* by the commissioner \*\*\* has been given \*\*\*.” (Emphasis added.)

Second, with respect to the Tax Commissioner's certification that the appellant has not appealed from a final determination or order of the Tax Commissioner, we must consider the powers and duties of the Board of Tax Appeals

which are set forth in R.C. 5703.02. Specifically, that section provides, in pertinent part, that:

“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:

“(1) Actions of county budget commissions;

“(2) Decisions of county boards of revision;

“(3) Actions of any assessing officer or other public official under the tax laws of this state;

“(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;*

“(5) Adoption and promulgation of rules of the tax commissioner.” (Emphasis added.)

The Board of Tax Appeals is a creature of statute. *Cleveland Gear Co. v. Limbach* (1988), 35 Ohio St.3d 229. As a creature of statute and administrative agency, the board is limited to the powers vested in it by statute. See *Gen. Motors v. Limbach* (1993), 67 Ohio St.3d 90. Strict compliance with R.C. 5717.02 and R.C. 5703.02 is essential in order to vest this board with the authority to consider the merits of an appeal. See, e.g., *American Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147; *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 121. Before this board can consider the merits of an appeal, this board must have the requisite jurisdiction over an appeal.

In the instant matter, the appellant failed to indicate in her response whether she satisfied the two jurisdictional requirements identified in the show cause order. More specifically, the appellant did not indicate whether she filed a copy of her notice of appeal with the Tax Commissioner as required by R.C. 5717.02 and whether she appealed from a final determination or order of the Tax Commissioner as required by R.C. 5703.02. Having given the appellant an opportunity to respond to the jurisdictional issues identified in the show cause order, and, having received no responses which relate thereto, we are constrained to conclude that appellant failed to file a copy of her notice of appeal with the Tax Commissioner as required by R.C. 5717.02 and that appellant's filing does not constitute a notice of appeal from a final determination or other appealable order from the Tax Commissioner. Cf. *Rubber Assoc., Inc. v. Lawrence* (Apr. 6, 2001), BTA Nos. 1999-G-365, et seq., unreported; *Glastic Corp. v. Lawrence* (Mar. 31, 2000), BTA No. 1999-T-397, unreported.

Considering this board's powers and duties, as dictated by the provisions of R.C. 5717.02 and 5703.02, we find this board has no jurisdiction to make a determination regarding the issues raised by appellant in her notice of appeal filed with this board; accordingly, we conclude that such notice of appeal is insufficient to invoke the jurisdiction of this board. Therefore, considering the record before us, it is the decision and order of the Board of Tax Appeals that the instant matter be dismissed

for lack of jurisdiction. See, generally, *Chef Italiano Corp. v. Kent State Univ.* (1989),  
44 Ohio St.3d 86.

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