

OHIO BOARD OF TAX APPEALS

J.H. Riesenberg, Jr. & Associates, Inc.,)	CASE NO. 2008-Z-811
)	
Appellant,)	(CORPORATION
)	FRANCHISE TAX)
vs.)	
)	DECISION AND ORDER
Richard A. Levin, Tax Commissioner of Ohio,)	
)	
Appellee.)	

APPEARANCES:

For the Appellant		- J.H. Riesenberg, Jr. & Associates, Inc. 7440 Jager Court Cincinnati, Ohio 45230
For the Appellee		- Richard Cordray Attorney General of Ohio Lawrence D. Pratt Assistant Attorney General 30 East Broad Street, 25 th 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 had not filed a copy of its notice of appeal

with the Tax Commissioner as required by R.C. 5717.02. Neither the appellant nor the appellee Tax Commissioner filed a response to the show cause order.

This board must now determine whether it has jurisdiction to consider the instant matter. In his certification to this board, the Tax Commissioner indicated the following:

“The Final Determination issued by the Tax Commissioner on June 11, 2008, regarding the above-referenced assessment was sent by certified mail, return receipt requested, to the Appellant.

“The Final Determination was received by the Appellant on the 23rd day of June 2008 by certified mail.

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

“As of the 25th day of September 2008 no copy of said notice of appeal has been filed with the Tax Commissioner.”

R.C. 5717.02 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.)

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 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.

Based on the existing record, it does not appear that appellant filed a copy of its notice of appeal with the Tax Commissioner. Further, having given appellant an opportunity to clarify its intentions by responding to the show cause order, and, having received no such response, we are constrained to conclude that appellant failed to file a copy of its notice of appeal with the Tax Commissioner as required by R.C. 5717.02. Accordingly, it is the order of this board that the instant appeal be dismissed for lack of jurisdiction.

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