

OHIO BOARD OF TAX APPEALS

Karl V. Metz, M.D., Inc.)	CASE NO. 2009-A-322
)	
Appellant,)	CORPORATION FRANCHISE TAX)
)	
vs.)	DECISION AND ORDER
)	
Richard A. Levin, Tax Commissioner of Ohio,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant - Rosenbaum & Associates, Inc.
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Cleveland, Ohio 44122

For the Appellee - Richard Cordray
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Entered April 21, 2009

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

This appeal is now considered by the Board of Tax Appeals following the issuance of an order requiring that “appellant show cause why this board should not dismiss the notice of appeal filed on behalf of Karl V. Metz, M.D., Inc., for lack of jurisdiction.” The order was issued by this board, sua sponte, upon review of the notice

of appeal filed with this board which objected to a collection notice for a previously issued franchise tax assessment.

The powers and duties of the Board of Tax Appeals 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 as an administrative agency, we are limited to the powers vested in this board by statute. See *General Motors v. Limbach* (1993), 67 Ohio St.3d 90. Based upon the record before this board, it does not appear that appellant appealed from a final determination or order of the

Tax Commissioner. Further, having given appellant an opportunity to clarify his intentions by responding to this board's show cause order, and, having received no such response, we are constrained to conclude that appellant's filing does not constitute a notice of appeal from a final determination or other appealable order from the Tax Commissioner. Cf. *Highline Capital v. Wilkins* (Mar. 31, 2006), BTA No. 2005-A-1068, unreported; *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. 5703.02, we find this board has no jurisdiction to make a determination regarding the issues raised by appellant; 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. See, generally, *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86.

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