

OHIO BOARD OF TAX APPEALS

Jeffrey D. Schwartz [and Margaret Y. Schwartz],)	CASE NOS. 2009-A-428
)	2009-A-429
)	
Appellants,)	(PERSONAL INCOME TAX)
)	
vs.)	DECISION AND ORDER
)	
Richard A. Levin, Tax Commissioner of Ohio,)	
)	
Appellee.)	

APPEARANCES:

For the Appellants - Rotatori Bender Co., LPA
J. Scott Broome
800 Leader Building
526 Superior Avenue East
Cleveland, Ohio 44114-1498

For the Appellee - Richard Cordray
Attorney General of Ohio
Lawrence Pratt
Assistant Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215

Entered June 2, 2009

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

These appeals are now considered by the Board of Tax Appeals following the issuance of an order requiring that “appellant[s] show cause why this board should not dismiss the notices of appeal filed on behalf of Jeffrey D. Schwartz [and Margaret Y. Schwartz] for lack of jurisdiction.” The order was issued by this

board, sua sponte, upon review of the notices of appeal filed with this board which objected to notices of individual income tax assessment against appellants.

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 appellants appealed from a final determination or order of the

Tax Commissioner. Further, having given appellants an opportunity to clarify their intentions by responding to this board's show cause order, and, having received no such response, we are constrained to conclude that appellants' filings do not constitute notices 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 appellants; accordingly, we conclude that such notices of appeal are 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 matters be dismissed. See, generally, *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86.

ohiosearchkeybta