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“The petitioner failed to submit the required payment with the petition for reassessment. The requirement that a specified payment ‘be made at the time of filing the petition for reassessment pursuant to R.C. 5747.13(B) and (E) is clear and mandatory. Unless the assessed party complies fully with the requirements set forth in the statute, the Tax Commissioner has no jurisdiction or authority to address the merits of the petition for reassessment and must dismiss the cause on jurisdictional grounds.’ *Ray v. Zaino* (Mar. 8, 2002), BTA No. 01-N-363, unreported. See *Pengove v. Ohio Dept. of Taxation*, Franklin App. No. 06-AP-60, 2006-Ohio-3711, discretionary appeal not allowed, 2006-Ohio-6447.

“Accordingly the matter is dismissed for lack of jurisdiction, and the assessment stands as issued.”

The Tax Commissioner’s final determination refers the appellant to R.C.

5747.13, which provides 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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“(5) If the employer assessed filed, prior to the date of issuance of the assessment, the annual return required by division (E)(2) of section 5747.07 of the Revised Code covering the period at issue, and a balance of the taxes shown due on the return as computed on the return remains unpaid, payment of only that portion of the assessment representing the unpaid balance of tax and interest is required[.]”

From the limited record before us, consisting of appellant’s notice of appeal and attachments thereto, including a copy of the final determination from which the appeal is taken, it appears that the commissioner issued an employer withholding tax assessment for the years January 1, 1998 through December 31, 2002 on September 13, 2007. It further appears that the appellant filed a petition for reassessment on or about November 7, 2007. It is in the consideration of that petition for reassessment that the Tax Commissioner determined that taxes and interest to the state remained outstanding.

Records attached to appellant’s notice of appeal indicate that the tax assessed was paid on or about April 9, 2009.<sup>1</sup> Nevertheless, the law requires the payment of tax and interest with the filing of the petition for reassessment. It does not appear that the appellant has met the jurisdictional prerequisites to review.

Therefore, it is the order of the Board of Tax Appeals that the appellant show cause why this board should not affirm the Tax Commissioner’s actions in dismissing appellant’s petition for reassessment.

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<sup>1</sup> Ordinarily, attachments to a notice of appeal are not considered by the board. See *Fairchild Corp. v. Tracy* (Dec. 20, 1996), BTA No. 1995-T-137, unreported. However, in the present matter, the payment of the tax itself does not satisfy the prerequisite to review by the Tax Commissioner

All parties who wish to be heard upon this issue shall file a written response to this order within fourteen days of its issuance.

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