

OHIO BOARD OF TAX APPEALS

Benjamin J. Duensing,)	
)	CASE NO. 2009-T-280
)	
Appellant,)	(SCHOOL DISTRICT INCOME TAX)
)	
vs.)	ORDER
)	
Richard A. Levin, Tax)	(Requiring Appellant to Show Cause)
Commissioner of Ohio,)	
)	
Appellee.)	

APPEARANCES:

For the Appellant -	Benjamin J. Duensing, pro se 4635 Butler Road Wakeman, Ohio 44889
For the Appellee -	Richard Cordray Attorney General of Ohio Sophia Hussain Assistant Attorney General Taxation Section State Office Tower, 25th Floor 30 East Broad Street Columbus, Ohio 43215-3248

Entered June 16, 2009

The Board of Tax Appeals is a creature of statute and has only that jurisdiction conferred upon it by the General Assembly. R.C. 5703.02. *Steward v. Evatt* (1944), 143 Ohio St. 547. R.C. 5717.02 confers jurisdiction upon the BTA over appeals from the actions of the commissioner and provides that “*** appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be taken to the board of tax appeals by the

taxpayer ***.” R.C. 5717.02 thus provides that final actions of the commissioner, including final determinations, are the only determinations that are appealable to the Board of Tax Appeals. *French v. Limbach* (1991), 59 Ohio St.3d 153, 154; *Michelin Tire Corp. v. Kosydar* (1974), 38 Ohio St.2d 254.

With regard to the instant matter, the Tax Commissioner filed with this board a certified statement, which reads, in part:

“A diligent search of all of the records of the Department of Taxation failed to disclose any record of a Final determination entered by the Tax Commissioner in the manner of School District Income Tax, for Assessment No. 04200621377434, issued prior February 20, 2009 to Benjamin J. Duensing. 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.”

A review of the record suggests that the appellant has filed with this board a copy of the commissioner’s “Notice of Income Tax Refund Offset.” Thus, this matter does not appear to be taken from any final action of the Tax Commissioner. Accordingly, the Board of Tax Appeals orders that appellant show cause why the board should not dismiss this appeal for a lack of subject matter jurisdiction.

Any party wishing to be heard upon the legal sufficiency of the notice of appeal to establish jurisdiction with the BTA shall file a written response within fourteen (14) days of the issuance of this order.

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