

OHIO BOARD OF TAX APPEALS

Palmer Screening & Design, LLC,)	CASE NO. 2009-V-234
)	
Appellant,)	(SALES TAX)
)	
vs.)	DECISION AND ORDER
)	
Richard A. Levin, Tax)	
Commissioner of Ohio,)	
)	
Appellee.)	

APPEARANCES:

For the Appellant - Josh Palmer
P.O. Box 46
North Georgetown, Ohio 44665

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

Entered April 21, 2009

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

On March 3, 2009, an order was issued requiring the appellant, Palmer Screening & Design, LLC, to show cause as to why this appeal should not be dismissed.¹ Appellant has not responded to said order.

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

¹ The board issued a show cause order on February 24, 2009 in response to a separate appeal filed by appellant. The instant appeal relates to a sales tax assessment for the period of August 1, 2008 through August 31, 2008, while the earlier appeal relates to a period of July 22, 2008 through July 31, 2008.

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.

On March 20, 2009, the Tax Commissioner filed with this board a certified statement relative to this appeal. It 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 Sales Tax, for Assessment No. 06200900268578, issued prior to February 10, 2008 to Palmer Screening & Design, LLC. 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.”

The record shows that appellant filed a notice of appeal with this board on February 11, 2009. Attached to the filing is a notice of assessment for \$754.23, which includes sales tax due, pre-assessment interest, a penalty, an additional charge, and an additional charge penalty. However, the record contains no evidence of a final determination issued in this matter by the commissioner.

Therefore, upon review, we conclude that appellant failed to appeal from a final determination of the commissioner, as required by R.C. 5717.02. *French* and

Michelin, supra. As appellant failed to properly perfect an appeal to the Board of Tax Appeals, we dismiss BTA No. 2009-N-234.

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