

OHIO BOARD OF TAX APPEALS

Charles A. and Connie M. Duensing,)
)
 Appellants,) (SCHOOL DISTRICT INCOME TAX)
)
 vs.)
)
) DECISION AND ORDER
)
 Richard Levin, Tax Commissioner)
 of Ohio,)
)
)
 Appellee.)

APPEARANCES:

For the Appellants - Charles A. Duensing, pro se
 Connie M. Duensing, pro se
 4635 Butler Road
 Wakeman, Ohio 44889

For the Appellee - Richard Cordray
 Attorney General of Ohio
 Sophia Hussain
 Assistant Attorney General
 Rhodes State Office Tower, 25th Floor
 30 East Broad Street
 Columbus, Ohio 43215

Entered June 2, 2009

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

This matter is before the Board of Tax Appeals pursuant to an order requiring appellants to show cause as to why the instant matter should not be dismissed. On February 20, 2009 this board received correspondence from the appellants concerning what appears to be a dispute concerning a school district income tax assessment. Said correspondence has been construed as a notice of appeal from a final determination of the Tax Commissioner. However, the correspondence is silent as to the existence of any final determination issued by the Tax Commissioner.

No response has been submitted to this board's order.

On May 4, 2009, the Tax Commissioner certified to this board the following:

“The Tax Commissioner received a letter from the Board of Tax Appeals stating that it had received and docketed a notice of appeal by the Appellant.

“A diligent search of all of the records of the Department of Taxation failed to disclose any record of a Final Determination issued by the Tax Commissioner in the matter of School District Income Tax, for Assessment No. 04200608345765, issued prior to February 20, 2009, to Charles A. & Connie M. 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.”

R.C. 5717.02 sets forth certain prerequisites necessary to invoke the jurisdiction of this board, providing in pertinent part:

“The notice of appeal shall have attached thereto and incorporated therein a true copy of the notice sent by the commissioner *** of the final determination *** complained of, ***.”

Strict compliance with R.C. 5717.02 is essential in order to vest this board with the authority to consider the merits of an appeal. See, e.g., *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147; *Zephyr Room, Inc. v. Bowers* (1955), 164 Ohio St. 287; *Fineberg v. Kosydar* (1975), 44 Ohio St.2d 1; *Clippard Instrument v. Lindley* (1977), 50 Ohio St.2d 121.

Furthermore, R.C. 5717.02 provides that this board only has jurisdiction over appeals from a final determination made by the Tax Commissioner. In *French v.*

Limbach (1991), 59 Ohio St.3d 153, the court held that “the BTA has jurisdiction to hear appeals only from the *final determinations* of the Tax Commissioner.” *Id.* at 154. See, also, *Toledo Blank, Inc. v. Zaino* (Aug. 24, 2001), BTA No. 1999-L-333, unreported, and *Robinson v. Zaino* (Feb. 15, 2002), BTA No. 2001-A-669, unreported.

Based on the record before us, appellants have failed to demonstrate that there was any final determination of the Tax Commissioner from which they could appeal. Therefore, appellants have failed to invoke the jurisdiction of this board.

Therefore, it is the decision and order of the Board of Tax Appeals that the notice of appeal filed by the appellants be dismissed.

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