

**OHIO BOARD OF TAX APPEALS**

Judith L. Morse,	)	CASE NO. 2009-V-502
	)	
Appellant,	)	(SCHOOL DISTRICT INCOME
	)	TAX)
vs.	)	
	)	ORDER
Richard A. Levin, Tax	)	
Commissioner of Ohio,	)	(Requiring Appellant to Show
	)	Cause and Requiring Tax
Appellee.	)	Commissioner to Certify Statutory
	)	Transcript)

APPEARANCES:

For the Appellant	- Judith L. Morse, pro se 215 Richmond Drive Flemingsburg, KY 41041
For the Appellee Tax Commissioner	- Richard Cordray Attorney General of Ohio Lawrence D. Pratt Assistant Attorney General Taxation Section State Office Tower, 25th Floor 30 East Broad Street Columbus, OH 43215-3248

Entered April 28, 2009

This matter is before the Board of Tax Appeals pursuant to a review of appeals pending upon the board’s docket. It appears from appellant’s appeal that the Tax Commissioner dismissed the petition for reassessment for lack of jurisdiction.

The commissioner’s decision reads, in part, as follows:

“This is the final determination of the Tax Commissioner with regard to a petition for reassessment under R.C. 5747.13 concerning the following school district income tax assessment:

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“The petitioner was assessed for failing to file a school district income tax return. The petitioner did not pay the assessed tax and interest. Therefore, the petitioner failed to submit the

required payment with the petition for reassessment. There is no jurisdiction to consider the petition since payment of assessed tax and interest was not made as required by R.C. 5747.13(E)(2).

“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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“(2) If the taxpayer or qualifying entity that is assessed failed to file, prior to the date of issuance of the assessment, the annual return or report required by section 5747.08 or 5747.42 of the Revised Code, any amended return or amended report required by section 5747.10 or 5747.45 of the Revised Code for the taxable year at issue, or any report required by division (B) of section 5747.05 of the Revised Code to indicate a reduction in the amount of credit provided under that division, payment of the assessment, including interest but not penalty, is required, except as otherwise provided under division (E)(6) or (7) of this section;”

From the limited record before us, consisting of appellant's notice of appeal<sup>1</sup> and a copy of the final determination from which the appeal is taken, it appears that the commissioner determined that payment had not been made and therefore he was without jurisdiction to consider appellant's petition for reassessment. If payment has not been made, appellant has not met a prerequisite to seeking 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 dismissal of his petition for reassessment. Additionally, it appears the notice of appeal may have been filed beyond the sixty-day timeframe pursuant to R.C. 5717.02, therefore it is further ordered that appellant show cause as to why this board should not dismiss the instant appeal for lack of jurisdiction. Further, the Tax Commissioner is ordered to certify a statutory transcript for the underlying petition for reassessment.

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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<sup>1</sup> It appears appellant's notice of appeal (of the commissioner's January 21, 2009 final determination) was filed with this board on April 2, 2009, seventy-one (71) days after the commissioner's final determination. Depending upon when the date of service was effectuated upon appellant, the instant appeal may be beyond the sixty-day timeframe provided by R.C. 5717.02.