

## OHIO BOARD OF TAX APPEALS

Bradley Finnearty,	)	CASE NO. 2009-Z-136
	)	
Appellant,	)	(SALES TAX)
	)	
vs.	)	DECISION AND ORDER
	)	
Richard A. Levin, Tax Commissioner of Ohio,	)	
	)	
Appellee.	)	

APPEARANCES:

For the Appellant	-	Bradley Finnearty, pro se 825 Mohican Avenue Logan, Ohio 43138
For the Appellee	-	Richard Cordray Attorney General of Ohio Lawrence D. Pratt Assistant Attorney General 30 East Broad Street, 25 <sup>th</sup> Floor Columbus, Ohio 43215

Entered May 5, 2009

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

This appeal is now considered by the Board of Tax Appeals following the issuance of a show cause order on April 7, 2009 requiring the appellant to show cause as to why this board should not dismiss the appeal for lack of jurisdiction. The show cause order was issued upon this board's receipt of a certification from the Tax Commissioner indicating that the above-named appellant had not appealed from a final

determination or order of the Tax Commissioner. Neither the appellant, Bradley Finnearty, nor the appellee Tax Commissioner filed a response to the show cause order.

A review of the record reveals that the notice of appeal was filed with this board on January 14, 2009 wherein the appellant objected to a notice of assessment regarding sales tax for the period January 2, 2008 through June 30, 2008. However, based upon the Tax Commissioner's representations in his certification, this board must now determine whether it has jurisdiction to consider the instant appeal.

In making such determination, this board must be mindful of its powers and duties as set forth in R.C. 5703.02. Specifically, that section provides, in pertinent part, that:

“There is hereby created the board of tax appeals, which shall exercise the following powers and perform the following duties:

“(A) Exercise the authority provided by law to hear and determine all appeals of questions of law and fact arising under the tax laws of this state in appeals from decisions, orders, determinations, or actions of any tax administrative agency established by the law of this state, including but not limited to appeals from:

“(1) Actions of county budget commissions;

“(2) Decisions of county boards of revision;

“(3) Actions of any assessing officer or other public official under the tax laws of this state;

“(4) *Final determinations by the tax commissioner of any preliminary, amended, or final tax assessments,*

*reassessments, valuations, determinations, findings, computations, or orders made by him;*

“(5) Adoption and promulgation of rules of the tax commissioner.” (Emphasis added.)

The Board of Tax Appeals is a creature of statute. *Cleveland Gear Co. v. Limbach* (1988), 35 Ohio St.3d 229. As a creature of statute and as an administrative agency, we are limited to the powers vested in this board by statute. See *General Motors v. Limbach* (1993), 67 Ohio St.3d 90. Based on the existing record, it does not appear that appellant appealed from a final determination or order of the Tax Commissioner. Further, having given appellant an opportunity to clarify his intentions by responding to the show cause order, and, having received no such response, we are constrained to conclude that appellant’s filing does not constitute a notice of appeal from a final determination or other appealable order from the Tax Commissioner. Cf. *Rubber Assoc., Inc. v. Lawrence* (Apr. 6, 2001), BTA Nos. 1999-G-365, et seq., unreported; *Glastic Corp. v. Lawrence* (Mar. 31, 2000), BTA No. 1999-T-397, unreported.

Considering this board’s powers and duties, as dictated by the provisions of R.C. 5703.02, we find this board has no jurisdiction to make a determination regarding the issues raised by appellant; accordingly, we conclude that such notice of appeal is insufficient to invoke the jurisdiction of this board. Therefore, considering the record before us, it is the decision and order of the Board of Tax Appeals that the

instant matter be dismissed. See, generally, *Chef Italiano Corp. v. Kent State Univ.*  
(1989), 44 Ohio St.3d 86.

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