

OHIO BOARD OF TAX APPEALS

Sopchak Natural Health & Wellness Center,)	CASE NO. 2009-Z-20
)	
Appellant,)	(CORPORATION
)	FRANCHISE TAX)
vs.)	
)	ORDER
Richard A. Levin, Tax Commissioner of Ohio,)	(Requiring Appellant to Show Cause)
)	
Appellee.)	

APPEARANCES:

- For the Appellant - Sopchak Natural Health & Wellness Center
1859 North Ridge Road
Painesville, Ohio 44077

- Copy to - Neece & Malec
Certified Public Accountants
Shawn Neece, CPA
121 South Street, Suite 201
Chardon, Ohio 44024

- 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 7, 2009

This appeal is now considered by the Board of Tax Appeals following the receipt of a certification from the Tax Commissioner indicating that the above-named appellant has not appealed from a final determination or order of the Tax Commissioner. The notice of appeal was filed with this board on January 7, 2009 apparently objecting to a notice of assessment regarding a corporation franchise tax for

the period January 1, 2006 through December 31, 2006. However, based upon the commissioner's representations, this board must now determine whether it has jurisdiction to consider the instant appeal.

The powers and duties of the Board of Tax Appeals are 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 administrative agency, the board is limited to the powers vested in it by statute. See *Gen. Motors Corp. v. Limbach* (1993), 67 Ohio St.3d 90.

Upon review of the foregoing, it does not appear that appellant has appealed from a final determination or other appealable assessment, valuation, finding, or order of the Tax Commissioner. Therefore, it is the order of this board that the appellant show cause as to why this board should not dismiss the instant appeal for lack of jurisdiction. All parties who wish to be heard upon the question of the legal sufficiency of the appellant's notice of appeal to establish jurisdiction with this board shall file a written response to this order *within fourteen days of its issuance*.

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