

## OHIO BOARD OF TAX APPEALS

|                           |   |                           |
|---------------------------|---|---------------------------|
| Neon Expressions, Inc.,   | ) |                           |
|                           | ) | CASE NO. 2004-G-1062      |
| Appellant,                | ) |                           |
|                           | ) | (CORPORATE FRANCHISE TAX) |
| vs.                       | ) |                           |
|                           | ) | DECISION AND ORDER        |
| William W. Wilkins,       | ) |                           |
| Tax Commissioner of Ohio, | ) |                           |
|                           | ) |                           |
| Appellee.                 | ) |                           |

### APPEARANCES:

|                                |   |
|--------------------------------|---|
| For the Appellant -            | Timothy J. Batchel<br>1184 Kenyon Road S.W.<br>Massillon, Ohio 44647  |
| Notice of Appeal -<br>Filed By | Kara L. Kelly, CPA, CMA<br>3925 Darrow Road, Suite 102<br>Stow, Ohio 44224  |
| For the Appellee -             | Jim Petro<br>Attorney General of Ohio<br>Richard C. Farrin<br>Assistant Attorney General<br>Taxation Section-16th Floor<br>30 East Broad Street<br>Columbus, Ohio 43215 |

Entered June 24, 2005

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

On January 14, 2005, this board issued an order requiring the appellant to show cause why this matter should not be dismissed for failure to comply with the requirements of R.C. 5717.02, thereby failing to invoke the jurisdiction of this board. The response to the show cause order does not address the jurisdictional issue raised in the show cause order; rather, it addresses the merits of the case.

On September 30, 2004, a representative for the appellant filed herein a letter with attachments. The letter states, “[p]lease use this letter as a Petition for Reassessment to the above mentioned assessment by my client, Neon Expressions (sic) Inc.” Attached to the letter is a notice of assessment and copies of tax returns. By letter dated October 5, 2004, the Tax Commissioner was notified of the filing. On November 10, 2004, the Tax Commissioner filed a certification with this board stating that no final order had been issued for this assessment. Therefore, the commissioner contends that “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.”

This matter is now considered by the Board of Tax Appeals upon appellant’s documentation docketed as a notice of appeal, the Tax Commissioner’s certification, the show cause order, and the answer filed by the appellant.

Our jurisdiction is limited to *final determinations* of the Tax Commissioner pursuant to R.C. 5717.02. See *French v. Limbach* (1991), 59 Ohio St.3d 153 (preliminary assessment certificate issued pursuant to R.C. 5711.24 is not a final determination of the Tax Commissioner from which an appeal can be taken to the Board of Tax Appeals pursuant to R.C. 5717.02); *Glastic Corp. v. Lawrence* (Mar. 31, 2000), BTA No. 1999-T-397, unreported; *Rubber Assoc., Inc. v. Lawrence* (Apr. 6, 2001), BTA Nos. 1999-G-365, et seq., unreported; *Toledo Blank, Inc. v. Zaino* (Aug. 24, 2001), BTA No. 1999-L-333, unreported; *Robinson v. Zaino* Feb. 12, 2002), BTA No. 2001-A-669, unreported. In the present case the appeal is from an *assessment* by the Tax Commissioner. This suggests that the appellant never filed a petition for

reassessment with the Tax Commissioner, which would have resulted in the issuance of a final determination.

The Board of Tax Appeals is an administrative agency, therefore strict compliance with R.C. 5717.02 is essential to vest this board with jurisdiction to consider the underlying merits of an appeal. *American 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. As the record reflects that no final determination was issued by the Tax Commissioner, the Board of Tax Appeals is without jurisdiction to consider this matter. Therefore, it is the order of this board that the above-styled appeal must be, and hereby is, dismissed.

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