

OHIO BOARD OF TAX APPEALS

Ronnie C. and Laurie A. Rector,)
)
 Appellants,) (PERSONAL INCOME TAX)
)
 vs.) DECISION AND ORDER
)
 William W. Wilkins,)
 Tax Commissioner of Ohio,)
)
 Appellee.)

APPEARANCES:

For the Appellants - No Appearance
Ronnie C. and Laurie A. Rector, pro se
3110 Osage Way
Broadview Heights, OH 44147

Appeal Filed by - Jerry Arthur Jewett¹
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For the Appellee - Jim Petro
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Entered September 9, 2005

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

This cause and matter comes to be considered upon a notice of appeal filed with the Board of Tax Appeals on June 2, 2004. The notice of appeal is from a

final determination of the Tax Commissioner dated April 2, 2004, wherein that official affirmed an income tax assessment against appellants for tax year 2001.

It appears from the record that appellants filed an Ohio income tax return for 2001 indicating that they had no adjusted gross income and seeking a refund of \$2,769.00. S.T. at 35. This information is contradicted by "wage and tax statements" (Forms W-2) attached to appellants' return, indicating appellants had earned wages in the amount of \$111,387.37 for tax year 2001. S.T. at 37.

Appellants' return was reviewed, and it was determined, based upon the information available, that taxes were due the state. The appellants had state income tax withheld at the income source, but the withheld amounts did not fully satisfy the tax due after application of the "frivolous return" penalty imposed pursuant to R.C. 5747(A)(5).

The appellants have made a number of challenges to the assessment. However, after this appeal was filed, the Ohio Supreme Court issued *Buckley v. Wilkins*, 105 Ohio St.3d 350, 2005-Ohio-2166. The *Buckley* case, which was actually a consolidation of three cases filed by Ohio residents who earned income in the state but reported no income on Ohio income tax returns, rejected the arguments made by appellants in the present matter, including (1) the claim that wages and salaries are not "income" for tax purposes; (2) the claim that the state has no authority to collect taxes

¹ After the filing of this appeal, Mr. Jewett was suspended from the practice of law in Ohio. *Disciplinary Counsel v. Jewett*, 103 Ohio St.3d 74, 2004-Ohio-4440.

and penalties; and (3) the claim that the state income tax statutes violate various state and federal constitutional guarantees.

The court also specifically considered the Tax Commissioner's ability to impose a frivolous-filing fee, concluding that such fee is discretionary, and the challenger bears the burden of showing the Tax Commissioner abused his discretion when he imposed such a fee. As appellants did not attend the board's hearing, no evidence of abuse is contained in the record.

Considering the foregoing, the Board of Tax Appeals finds that the final determination of the Tax Commissioner is correct and is affirmed.

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