

OHIO BOARD OF TAX APPEALS

Shelley Poole,)	CASE NO. 2005-K-712
)	
Appellant,)	(SALES TAX)
)	
vs.)	DECISION AND ORDER
)	
William W. Wilkins, Tax Commissioner of Ohio,)	
)	
Appellee.)	

APPEARANCES:

For the Appellant	- Shelley Poole, pro se 2456 Cedarville Road Goshen, Ohio 45122-9425
For the Appellee	- Jim Petro Attorney General of Ohio Richard C. Farrin Assistant Attorney General Rhodes State Office Tower, 16th Floor 30 East Broad Street Columbus, Ohio 43215

Entered September 9, 2005

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

On August 9, 2005, this board issued an order requiring Ms. Poole to show cause why this matter should not be dismissed. In our order, we indicated that Ms. Poole's correspondence, which had initially been treated as a notice of appeal, instead appeared to be a petition for reassessment intended to be filed with the Tax Commissioner. This interpretation was premised upon a copy of a June 17, 2005 notice of assessment which was attached to her letter.

Although Ms. Poole has not responded to our earlier order, the Tax Commissioner has submitted the following written certification:

“The Tax Commissioner received a letter from the Board of Tax Appeals stating that it had received and docketed a notice of appeal filed by the Appellant.

“A diligent search of all of the records of the Department of Taxation failed to disclose any record of a Final Determination entered by the Tax Commissioner in the matter of Delivery Vendor Sales, Assessment No. 605168-4228, issued prior to July 8, 2005, to Shelley Poole, DBA Pridea, 2456 Cedarville Road, Goshen, Ohio, 45122-9425. 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.”

As the Supreme Court noted in paragraph one of its syllabus in *Steward v. Evatt* (1944), 143 Ohio St. 547, “[t]he Board of Tax Appeals is a creature of statute and is limited to the powers with which it is thereby invested.” Pursuant to R.C. 5703.02 and R.C. 5717.02, this board may only consider appeals from final determinations issued by the Tax Commissioner. In *French v. Limbach* (1991), 59 Ohio St.3d 153, the court resolved any ambiguity which may exist in R.C. 5717.02, as follows:

“Jurisdiction over appeals from actions of the Tax Commissioner is conferred upon the BTA by R.C. 5717.02, which in pertinent part states as follows:

“*** [A]ppeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be taken to the board of tax appeals by the taxpayer *** or by the county auditors of the counties to the undivided general tax funds of which the revenues affected by such decision would primarily accrue.’

“As this provision states, the BTA has jurisdiction to hear appeals only from *final determinations* of the Tax Commissioner. Some confusion is presented by the language of this statute in that it also refers to final determinations ‘of any preliminary *** assessments ***.’ However, we hold that the intent and meaning of this enactment are that final determinations of the Tax Commissioner are the only determinations that are appealable to the BTA.” *Id.* at 156. (Emphasis sic.)

See, also, *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. 15, 2002), BTA No. 2001-A-669, unreported; *Neon Expressions, Inc. v. Wilkins* (June 24, 2005), BTA No. 2004-G-1062, unreported.

Based upon our review of the existing record, we find that Ms. Poole has failed to invoke this board’s jurisdiction. Accordingly, it is the order of this board that this matter must be, and hereby is, dismissed.

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