

IN THE SUPREME COURT OF OHIO

07-1718

KEITH A. BROWN AND)	Appeal From The Ohio Board of
NOEL P. BROWN (deceased))	Tax Appeals
)	
Appellants,)	
)	
WILLIAM W. WILKINS,)	Board of Tax Appeals
Tax Commissioner)	Case No. 2006-R-1041
)	
Appellee.)	
)	

NOTICE OF APPEAL OF APPELLANTS KEITH A. BROWN AND NOEL P. BROWN

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FILED
 SEP 17 2007
 CLERK OF COURT
 SUPREME COURT OF OHIO

Notice of Appeal of Appellants Keith A. Brown and Noel P. Brown

Appellants Keith A. Brown and Noel P. Brown, hereby give notice of their appeal as of right, pursuant to R.C. §5717.04, to the Supreme Court of Ohio, from a Decision and Order of the Board of Tax Appeals, journalized in Case No. 2006-R-1041 on August 17, 2007. A true and accurate copy of the Decision and Order of the Board being appealed is attached hereto and incorporated herein by reference.

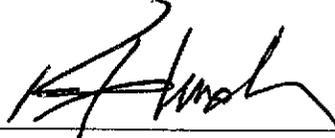
The Appellants complain of the following errors in the Decision and Order of the Board of Tax Appeals:

1. The Board of Tax Appeals erred by failing to compel the Tax Commissioner (Appellee) to respond to Appellants' discovery requests, and/or to enforce its Order to Compel, thus depriving the Taxpayers (Appellants) of any discovery whatsoever in the case.
2. The Board of Tax Appeals erred by denying Taxpayers (Appellants) the right to a hearing before the Board.
3. The Board of Tax Appeals erred by affirming a final determination by the Tax Commissioner that was based upon taxing the grantor on the income earned by an ESBT whose tax year ended on December 28, 2000 because the action taken by the Tax Commissioner was beyond his constitutional and statutory authority and it was taken because of the Tax Commissioner's repeated inability to convince the Ohio General Assembly to change the law.
4. The Board of Tax Appeal erred by relying on this Court's decision in *Knust v. Wilkins* to affirm the Tax Commissioner's final determination against

Appellants when important material facts of Appellants' case are distinguishable from the facts in the *Knust* case, and the *Knust* decision is not controlling.

Respectfully submitted,

CAVITCH, FAMILO, DURKIN & FRUTKIN

By:  _____

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CERTIFICATE OF SERVICE

On the 14th day of September, 2007, one copy of the foregoing Appellants Keith A. Brown's and Noel P. Brown's Notice of Appeal was served via certified mail upon the following counsel of record:

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Attorneys for Appellee

By: 
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One of the Attorneys for Appellants Keith A. Brown and Noel P. Brown.

OHIO BOARD OF TAX APPEALS

Keith A. and Noel P. Brown,)	CASE NO. 2006-R-1041
)	
Appellants,)	(PERSONAL INCOME TAX)
)	
vs.)	DECISION AND ORDER
)	
William W. Wilkins,)	
Tax Commissioner of Ohio,)	
)	
Appellee.)	

APPEARANCES:

- | | | |
|--------------------|---|---|
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Entered **AUG 17 2007**

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

This appeal is now considered by the Board of Tax Appeals following the issuance of an order requiring appellants to show cause why this board should not affirm the Tax Commissioner's determination herein based on the Supreme Court's holding in *Knust v. Wilkins*, 111 Ohio St.3d 331, 2006-Ohio-5791. In that decision, the court determined income earned by a grantor trust is taxable to the grantor rather than to the trust itself, even if the trust is an "electing small business trust," or ESBT.

Appellants filed a brief in response to the show cause order, disputing the application of the *Knust* decision to the instant facts. Appellants contend that the facts in this matter are factually distinguishable from the facts in *Knust*, and that *Knust* was wrongly decided. Appellants' claims were fully considered in an order issued in *Vestfall v. Wilkins* (March 2, 2007), BTA No. 2006-T-1054, unreported, appeal pending Sup. Ct., No. 2007-0584. Through that order, the board considered and rejected legal arguments involving the termination of the ESBT prior to the effective date of the relevant treasury regulations and whether the commissioner is without the authority to interpret the applicable federal statutes. The board concluded that these arguments lacked merit.

The board finds the same to be true in the present appeal. Even though appellants' ESBT terminated prior to December 29, 2000, that fact does not distinguish this case from the majority's decision in *Knust*. See, also, *Busa v. Levin*, BTA No. 2007-H-268, unreported, issued this same date.

Thus, based on the preponderance of the evidence in the record before us, it is the decision and order of the Board of Tax Appeals that the final determination of the Tax Commissioner must be, and hereby is, affirmed.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.


Sally Van Meter, Board Secretary