

The U.S. Supreme Court has been asked to review a decision of Ohio Supreme Court which held that the Ohio Board of Tax Appeals (BTA) properly dismissed the taxpayer's petition for redetermination because of nonpayment of the assessment and the failure to file an amended Ohio tax return. Ohio requires that taxpayers file an amended return no later than 60 days after an Internal Revenue Service (IRS) adjustment had been agreed to or finally determined for federal income tax purposes. The taxpayer failed to show that the IRS had not increased the taxpayer's federal adjusted gross income and the taxpayer failed to file the requisite amended return. The taxpayer may not rely on the filing of the original return to pursue a petition for reassessment when the IRS increased the taxpayer's adjusted gross income. The payment of the assessment (tax and interest) became a condition precedent to the taxpayer's ability to have the assessment reviewed. The only legitimate jurisdictional issues in the case related to the taxpayer's obligation to file an amended return and the taxpayer's obligation to prepay tax under Ohio law. (Wagenknecht v. Levin, Ohio S. Ct. (2008) Slip Op No. 2008-Ohio-6812 , Dkt. No. 2008-0095, 12/31/2008 , cert filed, U.S. S. Ct., Dkt. No. 08-1491, 05/30/2009 .)