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APPENDIX

Judgment from the 5th District Court of Appeals (entered October 5, 2007)

~~Notice of Appeal filed with the 5th District Court of Appeals (filed July 20, 2007)~~

EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This case involves critical issues regarding the substantive rights of the pro se Appellant as well as the supremacy of the Ohio Constitution and its amendments over all other. In addition, this case also involves the wrongful procedures and the means of income tax assessments currently undertaken by the Tax Commissioner of Ohio.

In the appeal to the Court of Appeals, the Court regretfully decided on the lack of jurisdiction due to an honest clerical and harmless error made by the Appellant. Since the Appellant is pro se, the Court of Appeals could have given consideration to a pro se Appellant and could have given less weight to the harmless error.

The Appellant's plea and citation of an amendment to the Ohio Constitution, Article IV, §5(B) of the Ohio Constitution, was grossly ignored, and the Court of Appeals did not review the case for its merit. Thus, the Appeals Court denied the supremacy of the Ohio Constitution and its amendments over all other, which is a constitutional issue.

Also, at issue is that current rules and regulations are so superficial and complicated that it is very difficult for a pro se Appellant to maneuver through the various superficial requirements imposed in order to bring action against State administrative offices. State Citizens must be able to make complaints to the State offices to make sure that State actions are for the people of the State of Ohio, not against the people of the State of Ohio. For the future of the State of Ohio, we must at all cost avoid any situations where a pro se Appellant could not bring a suit against the State offices.

Additionally, prior to appealing to the 5th District Appeals Court, during the mediation period, the Appellant was treated with biased mediators in working with the Tax Commissioner as well as the Board of Tax Appeals. While the Appellant repeatedly raised several issues that proved that the Tax Commissioner's assessment on personal income taxes was incorrect, all points were ignored and were never responded to, and the mediating parties proceeded to concur with the Tax Commissioner's assessments.

Obviously, the current personal income tax assessment procedure appears to be flawed as the meaningful documentation does not exist to prove the Tax Commissioner's assessment. Even the IRS has IRS statutes to follow. Does the Tax Commissioner of Ohio lawfully perform meaningful assessments against State Citizens? Since the Tax Commissioner and the Board of Tax Appeals did not provide any valid and meaningful documentation regarding the income tax assessments, the assessments have no validity.

The above issues constitute the reasons why this is a case of public interest and involves a substantial Constitutional question.

STATEMENT OF CASE AND FACTS

The case arises from the wrongfully issued personal income tax assessment by the Tax Commissioner without verification of the source document by the Tax Commissioner, dated August 28, 2006.

The Appellant corresponded with a lawyer representing the Tax Commissioner, explaining that the source of information the Tax Commissioner used was not valid and incorrect, proving that the assessment was incorrect. The lawyer representing the Tax Commissioner did not respond to the issues raised during the correspondences and

without answering to the last correspondence sent by the Appellant, the decision was made that the Tax Commissioner's assessment was correct, dated February 13, 2007.

The Appellant then appealed to the Board of Tax Appeals, proving that the documents that the Tax Commissioner relied upon was not valid. However, the Board was again a biased mediator and did not answer the issues raised in the appeal, and the decision was issued on June 22, 2007.

The Appellant thus took the case to the Court of Appeals for review. However, the Appellant being a pro se and not fluent in the technical areas of the appeals procedure, made an honest and harmless mistake. The judgment was entered by the Court of Appeals on October 5, 2007, for lack of jurisdiction.

The Appellant argued the following to object to the motion to dismiss by the Appellee, however, the Appeals Court did not consider the supremacy of the Ohio Constitution nor the substantive rights of the Appellant. The Supreme Court of Ohio is the place where the supremacy of the Ohio Constitution and its amendments can be reviewed.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

In 1968, with the adoption of the modern courts, an amendment to the Ohio Constitution added a completely new dimension to the laws of Ohio. Article IV, §5(B) of the Ohio Constitution now provides that, "The supreme court shall prescribe the rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect." And the Supreme Court has exercised this authority by promulgating Rules of Civil Procedure, Rules of Criminal

Procedure, Rules of Appellate Procedure, Rules of Juvenile Procedure, and Rules of Evidence.

Appellate Rule 1(B), "Scope of Rules" states: "Procedure in appeals to courts of appeals from the board of tax appeals shall be as provided by law, except that App. R. 13 to 33 shall be applicable to those appeals."

Appellate Rule 13 is titled "Filing and Service."

Appellate Rule 13(B), "Service of all documents required" states: "Copies of all documents filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by a party or person acting for the party on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel."

Appellate Rule 13(C), "Manner of service" states: "Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing."

Appellate Rule 13(D), "Proof of service" states: "Documents presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Documents filed with the court shall not be considered until proof of service is endorsed on the documents or separately filed."

Appellant Rule 13 trumps ORC §5714.04 as Appellant Rule 1(B) and the Ohio Constitution makes clear. Appellant Rule 13 does not mandate service by certified mail. Nor does Appellant Rule 3 or 4 instruct how a Notice of Appeal is to be served on the

apposing party. That being the case, it's clear that Appellant Rule 13 controls the method of service.

The Appellee cites *Zuchy v. Zaino* (2003), 2003 Ohio 5270; 2003 Ohio App. LEXIS 4764 and *Olympic Steel, Inc. v. Cuy* (2006), 110 Ohio St. 3d 1242, 2006 Ohio 4091. *Zuchy* and *Olympic Steel Inc.* may have in fact ruled that ORC §5714.04 requires service by certified mail. But, if *Zuchy* and *Olympic Steel Inc.* were dismissed because service was not perfected by certified mail as ORC §5714.04 mandates, then the opinions of the Appeal Court in regards to *Zuchy* and *Olympic Steel Inc.* would be contrary to the Ohio Constitution and Appellate Rules, in effect, unconstitutional.

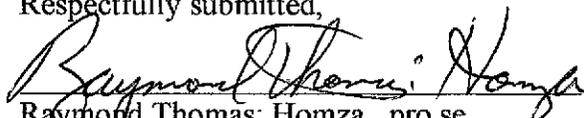
CONCLUSION

As explained above, the Ohio Constitution and its amendments have the supremacy over all other, and it is clear that lack of jurisdiction issue is without merit regarding the ORC 5714.04 in terms of the need for the certified mail. Thus, the Court of Appeals decision to dismiss the case for lack of jurisdiction is unconstitutional.

In addition, the Appellant humbly requests that the Honorable Supreme Court Justices show mercy and understand the pro se Appellant's honest and harmless mistake and moves forward to review the merit of the case, rather than the technicality surrounding the superficial and general statute.

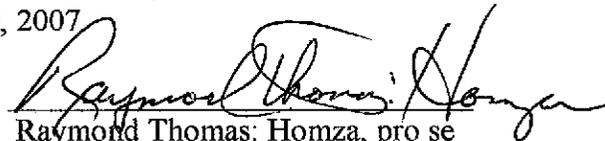
Denial of this Appeal would be a denial of due process for a pro se Appellant.

Respectfully submitted,


Raymond Thomas: Homza, pro se
Appellant

CERTIFICATE OF SERVICE

I certify that a copy of this Memorandum in Support of Jurisdiction was sent by certified U.S. mail to counsel for appellee, Marc Dann, Attorney General of Ohio, and Alan P. Schwepe, Assistant Attorney General, Taxation Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215 on November 19, 2007

A handwritten signature in cursive script that reads "Raymond Thomas: Homza". The signature is written in black ink and is positioned above the printed name.

Raymond Thomas: Homza, pro se
Appellant

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, OHIO

CASE NO: 07 CAH 07 0038

RAYMOND THOMAS HOMZA

VS

TAX COMMISSIONER OF OHIO
% RICHARD A LEVIN

CLERK'S CERTIFICATE OF MAILING BY ORDINARY MAIL
(RULE 4.6 (D), OHIO CIVIL RULES)

I hereby certify that, pursuant to written instructions received by this Office from the attorney for Plaintiff/Defendant, I complied with said written instructions and mailed the documents requested to be served to the following named person/persons at the address/addresses indicated, by ORDINARY UNITED STATES MAIL on this date: October 5, 2007

Document(s) mailed: **JUDGMENT ENTRY FROM THE 5TH DISTRICT APPEALS COURT**

ATTN: TOMOKO HOMZA
5631 KETCH STREET
LEWIS CENTER, OHIO 43035

MARC DANN ATTORNEY GENERAL
ALAN P SCHWEPE ASS'T ATTORNEY GENERAL
TAXATION SECTION
30 EAST BROAD STREET 25TH FLOOR
COLUMBUS, OHIO 43215

TAX COMMISSIONER OF OHIO
% RICHARD A LEVIN
STATE OFFICE TOWER
30 EAST BROAD STREET 16TH FLOOR
COLUMBUS, OHIO 43215

JAN ANTONOPLOS
CLERK

2007 OCT -5 AM 11:26

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FILED

JAN ANTONOPLOS
DELAWARE COUNTY CLERK

 DEPUTY

IN THE COURT OF APPEALS FOR DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

RAYMOND THOMAS HOMZA
Plaintiff-Appellant

Court of Appeals
Delaware Co., Ohio

I hereby certify the within be a true
copy of the original on file in this office.

CASE NO. CAH070038

Plaintiff-Appellant

Jan Antonoplos, Clerk of Courts

By M. J. Line Deputy

-vs-

JUDGMENT ENTRY

RICHARD A. LEVIN
TAX COMMISSIONER OF OHIO

Defendant-Appellee

This matter came before the Court upon Appellee's motion to dismiss and reply, as well as Appellant's response to the motion to dismiss.

The decision of the Board of Tax Appeals was made on June 22, 2007. R.C. 5717.04 requires an appeal to be taken within thirty days from the decision of the Board of Tax Appeals. The thirtieth day in this case was on a weekend, therefore, Appellant had until Monday, July 23, 2007 to file its appeal. Appellant filed its Notice of Appeal with this Court on July 20, 2007. The Certificate of Service contained in this Notice of Appeal indicates the Notice was sent to Appellee by certified mail on the same date. Appellee received the Notice of Appeal on July 23, 2007, however, the Notice was sent by regular mail rather than certified mail. Appellee filed the motion to dismiss alerting Appellant to the defect in service. Appellant re-served Appellee by certified mail.

Appellee suggests the type of service is jurisdictional; therefore, the appeal must be dismissed. Appellee also suggests the service itself must be perfected within thirty days.

R.C. 5717.04 reads in part,

2007 OCT -5 AM 10:17
JAN ANTONOPLOS
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COURT OF APPEALS
DELAWARE COUNTY, OHIO
FILED

Such appeals shall be taken within thirty days after the date of the entry of the decision of the board on the journal of its proceedings, as provided by such section, by the filing by appellant of a notice of appeal with the court to which the appeal is taken and the board. . . Proof of the filing of such notice with the board shall be filed with the court to which the appeal is being taken. The court in which notice of appeal is first filed shall have exclusive jurisdiction of the appeal. . . Unless waived, notice of the appeal shall be served upon all appellees by certified mail.

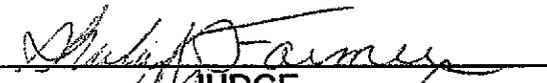
The Supreme Court held in *Olympic Steel, Inc. v. Cuyahoga Co. Bd. of Rev.* (2006), 110 Ohio St.3d 1242, “[A]ppellant’s failure in this case to comply with its statutory obligation to serve the notice of appeal on the Tax Commissioner in the prescribed manner deprives this court of jurisdiction to consider the appeal.” (emphasis added) *Id.* at 1242. Although Appellee acknowledges receipt of the notice in a timely fashion, the notice was not sent by certified mail as required under the statute. The Supreme Court has held the method of service is jurisdictional, therefore, this Court lacks jurisdiction to hear this appeal.

MOTION GRANTED.

APPEAL DISMISSED.

COSTS TAXED TO APPELLANT.

IT IS SO ORDERED.



JUDGE



JUDGE



JUDGE