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I. THIS CASE DOES NOT INVOLVE AN ISSUE OF PUBLIC OR GREAT GENERAL INTEREST NOR A SUBSTANTIAL CONSTITUTIONAL ISSUE

R.C. 5717.04 requires a notice of appeal from a decision of the Board of Tax Appeals to be served upon the other parties by certified mail. The failure to do so is a jurisdictional defect that requires the dismissal of the appeal. *Olympic Steel, Inc. v. Cuyahoga County Board of Revision* (2006), 110 Ohio St. 3d 1242, 2006 Ohio 4091. The Fifth District Court of Appeals properly applied *Olympic Steel* to this matter.

There is no matter of public or great general interest in this matter. Likewise, there are no substantial constitutional issues. Any legal issue was resolved by this Court in *Olympic Steel*.

II. STATEMENT OF CASE AND FACTS

On June 22, 2007 the Ohio Board of Tax Appeals entered its Decision and Order concerning the appeal of Raymond Homza regarding a reassessment of his Ohio personal income tax obligation for tax years 2001 and 2002. On July 23, 2007 Mr. Homza appealed to the Fifth District Court of Appeals. The notice of appeal was filed on July 20, 2007 with the Fifth District Court of Appeals. The Tax Commissioner received a copy of the notice of appeal by regular U.S. Mail on July 23, 2007. The certificate of service attached to the notice of appeal incorrectly indicated that it was served by certified mail as required by R.C. 5717.04.

On August 30, 2007, the Tax Commissioner filed a motion to dismiss for the failure to comply with the service requirements of R.C. 5717.04. On October 5, 2007, the Fifth District Court of Appeals issued its Judgment Entry granting the motion to dismiss based this Court's decision in *Olympic Steel*.

On November 19, 2007, Mr. Homza filed his notice of appeal and memorandum in support of jurisdiction with this Court. The Tax Commissioner files this memorandum in opposition.

III. ARGUMENT

R.C. 5717.04 states in pertinent part:

The proceeding to obtain a reversal, vacation, or modification of a decision of the board of tax appeals shall be by appeal to the supreme court or the court of appeals for the county in which the property taxed is situated or in which the taxpayer resides.

In all such appeals the tax commissioner or all persons to whom the decision other board appealed from is required by such section to be certified, other than the appellant, shall be made appellees. Unless waived, notice of the appeal shall be served upon all appellees by certified mail.

In *Olympic Steel, Inc. v. Cuyahoga County Board of Revision* (2006), 110 Ohio St. 3d 1242, 2006 Ohio 4091, the Ohio Supreme Court held that the failure to serve the notice of appeal upon the Tax Commissioner of Ohio by certified mail deprives a court of jurisdiction to consider the appeal. The Ohio Supreme Court stated on page 1242:

In any appeal from a decision of a county board of revision, *R.C. 5717.03(B)* requires the BTA to send a copy of its decision by certified mail to the Tax Commissioner, and *R.C. 5717.04* requires that an appellant who wishes to challenge the BTA's decision must serve the Tax Commissioner, who by statute must be made an appellee, with a copy of the notice of appeal by certified mail. In construing the substantially similar language of *R.C. 5717.05*, we held that the requirement of joinder and service is "mandatory and jurisdictional." *Huber Hts. Circuit Courts, Ltd. v. Carne* (1996), 74 Ohio St.3d 306, 308, 1996 Ohio 157, 658 N.E.2d 744. Likewise, appellant'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. See *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147, 34 O.O. 8, 70 N.E.2d 93, paragraph one of the syllabus ("Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred").

If an appellant fails to serve a copy of the notice of appeal upon the appellee by certified mail, there is no jurisdiction to entertain the appeal. In its Judgment Entry of October 5, 2007, the Fifth District Court of Appeals determined that Mr. Homza served his notice of appeal upon the Tax Commissioner by regular U.S. mail instead of certified mail. Relying upon the *Olympic Steel*, the Fifth District Court of Appeals dismissed the appeal for lack of jurisdiction due to the failure to properly perfect the appeal.

The Fifth District Court of Appeals properly applied *Olympic Steel* to the facts of this case. There is no issue of public or great general interest as this Court decided *Olympic Steel* in 2006. There are no substantial constitutional issues as well.

III. CONCLUSION

The Fifth District Court of Appeals properly applied *Olympic Steel* to the facts of this case. Thus, there is no issue of public or great general interest, nor are there any substantial constitutional issues. Accordingly, the Court should not grant this discretionary appeal.

Respectfully submitted,

ATTORNEY GENERAL
MARC DANN (0039425)

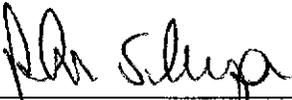


ALAN P. SCHWEPE (0012676)
Assistant Attorney General
Taxation Section
30 East Broad Street, 25th Fl.
Columbus, Ohio 43215-3428
(614) 466-5967
(614) 466-8226 (Fax)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Memorandum in Opposition to Jurisdiction was sent by regular U.S. Mail this 2nd day of December, 2007 to Raymond Homza, 5631 Ketch Street, Lewis Center, Ohio 43035.

ATTORNEY GENERAL
MARC DANN (0039425)


ALAN P. SCHWEPE (0012676)