

IN THE SUPREME COURT OF OHIO

Appeal From the Ohio Board of Tax Appeals

CARROLL E. NEWMAN,
Adams County Auditor,

Appellant/Cross-Appellee,

v.

WILLIAM W. WILKINS [RICHARD
A. LEVIN] TAX COMMISSIONER
OF OHIO, et al.

Appellee/Cross-Appellee,

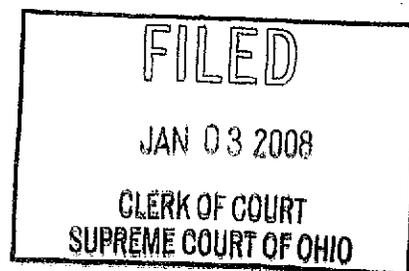
v.

CINCINNATI GAS & ELECTRIC
COMPANY;
COLUMBUS SOUTHERN POWER
COMPANY;
DAYTON POWER & LIGHT
COMPANY

Appellee/Cross-Appellant

Case No. 07-1054

Appeal from BTA Case
Nos. 2002-M-170
2002-M-171
2002-M-172



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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
Law and Argument.....	1
Conclusion.....	2

TABLE OF AUTHORITIES

CASES

Glidden Co. v. Lumbermens Mutual Casualty Co.,
112 Ohio St. 3d 470, 2006-Ohio-6553 at ¶ 32.....2

Newman v. Levin,
Slip Opinion No. 2007-Ohio-5507 1

United States v. American Ry. Express Co. (1924),
265 U.S. 4252

STATUTES

R.C. 5717.04 1

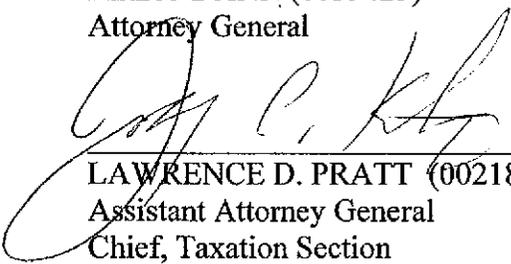
There is well-settled precedent forbidding an Appellee who does not file a notice of appeal from attacking “the decree with a view either to enlarging his own rights thereunder or of lessening the rights of his adversary.” *United States v. American Ry. Express Co.* (1924), 265 U.S. 425, 435; *Glidden Co. v. Lumbermens Mut. Cas. Co.*, 112 Ohio St.3d 470, 2006-Ohio-6553 at ¶ 32. This precedent suggests that even though the Tax Commissioner changed his position at the BTA, the Tax Commissioner, as an Appellee/Cross-Appellee, cannot present arguments against the BTA’s decision to this Court. However, given the facts presented at the BTA, the Tax Commissioner cannot present arguments in favor of the decision either. For that reason, the Tax Commissioner submits no arguments for or against the BTA’s decision but defers to the judgment of this Court.

Conclusion

For all the above reasons, the Tax Commissioner defers to the Ohio Supreme Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Appellee/Cross-Appellee was sent by regular U.S. mail to David C. DiMuzio, David C. DiMuzio, Inc., 1900 Kroger Building, 1014 Vine Street, Cincinnati, Ohio 45202, counsel for Appellant/Cross-Appellee and to Anthony L. Ehler, Vorys, Sater, Seymour & Pease LLP, 52 East Gay Street, P. O. Box 1008, Columbus, Ohio 43216-1008, counsel for Appellee/Cross-Appellant Electric Companies, on this 3rd day of January, 2008.



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