

ORIGINAL

IN THE SUPREME COURT OF OHIO

AT&T COMMUNICATIONS OF OHIO, INC.,

Appellee,

vs.

NASSIM M. LYNCH,

Appellant.

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Case No. 2011-0337

On Appeal from the Cuyahoga County Court of Appeals, Eighth Appellate District

Court of Appeals
Case No. CA-09-094320

MERIT BRIEF OF APPELLEE AT&T COMMUNICATIONS OF OHIO, INC.

Robert J. Triozzi (001653)
Director of Law
Linda L. Bickerstaff (0052101)
(Counsel of Record)
Assistant Director of Law
City of Cleveland Department of Law
205 W. St. Clair Avenue
Cleveland, OH 44113
(216) 664-4406
(216) 420-8299 (Facsimile)
lbickerstaff@city.cleveland.oh.us

COUNSEL FOR APPELLANT
NASSIM M. LYNCH

Richard C. Farrin (0022850)
(Counsel of Record)
Thomas M. Zaino (0041945)
McDonald Hopkins LLC
41 S. High Street, Suite 3550
Columbus, OH 43215
(614) 458-0035
(614) 458-0028 (Facsimile)
rfarrin@mcdonaldhopkins.com

COUNSEL FOR APPELLEE
AT&T COMMUNICATIONS
OF OHIO, INC.

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STATEMENT OF FACTS

This case arises out of municipal income tax refund claims filed by Appellee AT&T Communications of Ohio (“AT&T”) with the City of Cleveland (“City”) for the 1999 through 2002 tax years. The refunds were claimed on the tax returns filed for the respective tax years. The refund claims for the 1999 through 2001 tax years were based on the fact that AT&T’s estimated quarterly payments exceeded the amounts of tax shown due on the returns. After sending AT&T two letters indicating that its refund claims for 1999-2002 were being allowed, with adjustments for the disallowance of AT&T’s deduction of interest income in computing its net profits subject to the City’s income tax and an offset for an alleged withholding tax liability of AT&T’s parent company, the City income tax division retreated from that position and sent AT&T a letter stating that its 1999 refund claim was being denied as untimely. The letter stated that the 2000-2002 refund claims were being allowed, with the above-noted adjustments.

AT&T requested a final decision by the Appellant Tax Administrator regarding AT&T’s refund claims for 1999 through 2002. In its request, AT&T contested the City’s position that the 1999 refund claim was untimely and the adjustments to its 2000-2002 refund claims. In his final decision, the Tax Administrator denied the overpayment claim for the 1999 tax year in full and denied a portion of the overpayment claims for the 2000 through 2002 tax years. The partial denial of the 2000 through 2002 claims was based on the Tax Administrator’s disallowance of AT&T’s deduction of interest income in computing its net profits subject to the City’s income tax for each of those tax years and his finding that \$57,344.97 of the refund allowed for the 2000 through 2002 tax years was properly applied to an alleged withholding tax liability of AT&T’s parent company.

AT&T appealed the Tax Administrator's decision to the Cleveland Income Tax Board of Review ("Board of Review") pursuant to R.C. 718.11. In its appeal, AT&T asserted that the Tax Administrator erroneously found that AT&T's 1999 refund claim was untimely. AT&T also asserted that the Tax Administrator's disallowance of its deduction of interest income received from its parent company in computing its net profits subject to Cleveland municipal income tax violated R.C. 718.01(F)(3), which prohibits municipalities from taxing intangible income. Finally, AT&T argued that the Tax Administrator erred in offsetting its refund by an alleged withholding tax liability of its parent corporation. AT&T asserted that the Tax Administrator had failed to establish the existence of a valid assessment, and that even if a valid assessment against its parent corporation had been established, it could not be properly offset against the refund due AT&T, a separate legal entity.

In its decision, the Board of Review addressed and decided these three distinct issues. First, it decided that AT&T's 1999 municipal income tax refund claim had been properly dismissed and that it had not been refiled within the statute of limitations for filing such claims. AT&T filed a notice of appeal with the common pleas court contesting the Board's decision on this issue. (Supp. 1).

Second, the Board of Review determined that the Tax Administrator's attempt to tax interest income deducted by AT&T on its tax returns for the years at issue violated R.C. 718.01(F)(3), which prohibits cities from taxing intangible income. Third, the Board of Review reversed the decision of the Tax Administrator offsetting AT&T's refund for the 2000-2002 tax years for an alleged unpaid withholding tax liability of

AT&T's parent corporation. The Tax Administrator did not file a notice of appeal contesting these determinations made by the Board of Review.

However, in his brief in response to the brief filed by AT&T with the common pleas court in AT&T's appeal of the ruling by the Board of Review that AT&T's 1999 refund claim was properly denied as being untimely, the Tax Administrator asserted cross-assignments of error seeking a reversal of the holdings of the Board of Review on the interest income and withholding tax issues. AT&T filed a motion to strike the Tax Administrator's cross-assignments of error, which motion was denied by the court by entry dated April 3, 2007. The common pleas court affirmed the ruling of the Board regarding AT&T's 1999 refund claim, but reversed the Board's holding that the Tax Administrator's attempt to tax interest income deducted by AT&T on its tax returns for the years at issue violated R.C. 718.01(F)(3) and the Board's holding regarding the withholding tax offset.

AT&T appealed the judgment of the common pleas court to the Court of Appeals, challenging the ruling of the common pleas court on all three issues. The Court of Appeals upheld the lower court's ruling on the 1999 refund claim, but reversed the court on the interest income and withholding tax offset issues, holding that the lower court lacked jurisdiction to consider those issues because the Tax Administrator had not filed an appeal from the Board of Review. The Tax Administrator filed a motion for reconsideration of the holding of the Court of Appeals on the jurisdictional issue. The Court of Appeals granted the motion, noted that it had relied on a statute that was not applicable to the year in issue, but held that under the applicable statutory appeals provisions the court of common pleas lacked jurisdiction to consider the Tax

Administrator's cross-assignments of error regarding the interest income and withholding tax offset issues because the Tax Administrator had failed to file a notice of appeal.

The Tax Administrator filed a notice of appeal with Court and AT&T filed a notice of cross-appeal. The Court accepted the Tax Administrator's appeal and dismissed AT&T's cross-appeal.

ARGUMENT

Proposition of Law:

In an Appeal from a Decision of an Administrative Board Pursuant to R.C. Chapter 2506, a Court of Common Pleas Lacks Jurisdiction to Consider Cross-Assignments of Error by a Party that Seek Reversal of Any Portion of the Decision of the Administrative Board Where that Party has not Filed a Timely Notice of Appeal from the Decision.

The issue before the Court in this appeal is whether a party that has not filed an appeal from an administrative board's decision can seek a reversal of any portion of the decision by asserting cross-assignments of error in an appeal to the court of common pleas filed by the other party pursuant to R.C. Chapter 2506. The Court of Appeals held that a reviewing court of common pleas lacks jurisdiction to consider such cross-assignments of error of a party that did not file its own notice of appeal. The Court of Appeals found that there was no authority to support the position advanced by the Tax Administrator that once one party filed an appeal from a decision of an administrative board to a court of common pleas pursuant to R.C. Chapter 2506, the other party could challenge rulings by the administrative adverse to that other party without filing its own notice of appeal. This holding by the Court of Appeals simply applied the plain language

of R.C. Chapters 2505 and 2506, which control appeals from administrative agencies, and fundamental principles of appellate review.

The Tax Administrator's attack on the Court of Appeal's holding is based on nothing more than bare propositions unsupported by any cited authority and untenable statements regarding the review function of courts of common pleas over decisions of administrative boards. Among those untenable statements are that in such proceedings courts of common pleas exercise original, not appellate jurisdiction (merit brief of Tax Administrator at 12, 25), and that the proceeding before the court "is but a continuation of the action tried and determined in the administrative body below." *Id.* at 4. These statements are not only untenable, but also are inconsistent with other statements the Tax Administrator makes throughout his brief regarding the review function of the courts of common pleas. For example, the Tax Administrator states that where one party perfects an administrative appeal, the other party can challenge the administrative decision without the need to file its own appeal. *Id.* The Tax Administrator also discusses at length the operation of R.C. Chapter 2506 appeals and how such appeals are perfected. *Id.* at 5-10.

In his brief, the Tax Administrator repeatedly states variations of the proposition that where one party files an appeal from an administrative decision to the common pleas court pursuant to R.C. Chapter 2506, the entire decision is open to review, including challenges by a non-appealing party to rulings in the decision that were adverse to that party. However, the Tax Administrator fails to cite a single authority to support that proposition. The reason for this failure is simple. There is no such authority.

In one of his variations of this proposition, the Tax Administrator states that where one party perfects an appeal from the administrative decision, “the right of the other party to challenge the decision immediately attaches[.]” and that the filing of an appeal by one party relieves the other party of having to file its own appeal. Merit brief of Tax Administrator at 4. This is the case, the Tax Administrator asserts, even as to rulings in the administrative decision that were in favor of the appealing party and adverse to the non-appealing party. *Id.* No authority is cited by the Tax Administrator to support these statements. The Tax Administrator’s proposition cannot withstand a review of the applicable statutes conferring jurisdiction on the courts of common pleas to review administrative decisions.

A. The Jurisdiction of Courts of Common Pleas to Consider Appeals from Administrative Decisions is as Provided in R.C. 2506.01.

The jurisdictional foundation of courts of common pleas is contained in section 4(B), Article IV of the Ohio Constitution. That constitutional provision distinguishes between the original jurisdiction of courts of common pleas and their revisory or appellate jurisdiction. Under their revisory jurisdiction, courts of common pleas have “such powers of review of proceedings of administrative officers and agencies as may be provided by law.” Both the original jurisdiction and the revisory jurisdiction of the courts of common pleas “is limited to whatever the legislature may choose to bestow.” *Cent. Ohio Transit Auth. v. Transport Workers Union of Am., Local 208* (1988), 37 Ohio St.3d 56, 60. The constitution provides for courts of common pleas and their capacity to receive jurisdiction, “but it can exercise none, until ‘fixed by law.’” *Seventh Urban, Inc. v. University Circle Property Development, Inc.* (1981), 67 Ohio St.2d 19, 22. Section

4(B), Article IV limits the jurisdiction of the courts of common pleas to only that expressly conferred by the General Assembly. *Cent. Ohio Transit Auth.*, at 60.

For the taxable years at issue in this matter, the jurisdiction of courts of common pleas to review decisions of municipal income tax boards of review was conferred by R.C. 2506.01.¹ Pursuant to the express language of R.C. 2506.01, administrative appeals authorized under that provision are perfected and proceed as provided in R.C. Chapter 2505. *Thomas v. Webber* (1968), 15 Ohio St.2d 177, paragraph one of the syllabus (“Sections 2505.04 and 2505.05, Revised Code [Administrative Appellate Procedure Act], apply to the perfection of an appeal and the form of a notice of appeal, pursuant to Chapter 2506, from the decision of an agency of a political subdivision.”); *Welsh Dev. Co., Inc. v. Warren Cty. Regional Planning Comm.*, 128 Ohio St.3d 471, 2011-Ohio-1604, ¶15 (“R.C. 2505.04 governs the manner in which an administrative appeal is perfected.”). R.C. 2505.04 sets forth what actions are required to perfect an appeal from an administrative agency to a court of common pleas; the appeal is perfected when a written notice of appeal is filed with the administrative body. R.C. 2505.07 prescribes the time within which such an appeal must be perfected; the time period prescribed is thirty days.

R.C. 2505.03 provides that unless R.C. Chapter 119 or another section of the Revised Code applies, administrative appeals are governed by R.C. Chapter 2505 and, to

¹As a result of the enactment of R.C. 5717.011 and the amendment of R.C. 718.11 by Am. Sub. H.B. No. 95, 150 Ohio Laws, Part I, 396, 642-643, Part II, 1894-1895, effective June 26, 2003, appeals from decisions of municipal income tax boards of review may now be taken to either the court of common pleas or the Ohio Board of Tax Appeals. This change first applies to appeals relating to taxable years beginning on or after January 1, 2004.

the extent Chapter 2505 does not contain a relevant provision, the Rules of Appellate Procedure. R.C. 2505.03 also provides that if it is necessary in applying the appellate rules to an administrative appeal, the administrative body shall be treated as if it were a trial court whose final order is on appeal to a court of appeals.

Absent in these or any other provisions of R.C. Chapters 2506 and 2505, or the Rules of Appellate Procedure, is language stating or even suggesting that an appeal filed by one party from an administrative decision allows the other party to challenge rulings in the decision adverse to that party without the necessity of filing its own appeal. Nor is there case law supporting any such proposition. The Court of Appeals noted this absence of authority and held that the common pleas court lacked jurisdiction to consider the Tax Administrator's cross-assignments of error attacking adverse rulings by the Board of Review because the Tax Administrator did not file a notice of appeal from the Board's decision.

The holding by the Court of Appeals is in full accord with the fundamental rule of appellate review of administrative decisions that the failure by a party to file an appeal within the time prescribed results in a lack of jurisdiction by the common pleas court to consider a challenge by that party to the decision of the administrative agency. *Helms v. Akron Health Dept.*, 9th Dist. No. 21735, 2004-Ohio-3408, ¶11-13; See, also, *Nibert v. Ohio Dept. of Rehab. & Corr.* (1998), 84 Ohio St. 3d 100, 103 (failure to file notice of appeal within time mandated by R.C. 119.12 results in lack of jurisdiction of common pleas court to consider administrative appeal; *Zier v. Bureau of Unemp. Comp.* (1949), 151 Ohio St. 123, 125 (“[i]t is elementary that an appeal, the right to which is conferred by statute, can be perfected only in the mode prescribed by statute.”). It is a fundamental

rule that when the right to appeal is conferred by statute, an appeal can be perfected only in the manner prescribed by statute. *Welsh Dev. Co., Inc.*, at ¶14; *Proctor v. Giles* (1980), 61 Ohio St. 2d 211, 214; *Zier*, paragraph one of the syllabus.

B. In an Appeal from an Administrative Decision Pursuant to R.C. Chapter 2506, a Court of Common Pleas Exercises Appellate Jurisdiction.

The Tax Administrator bases much of his argument on the manifestly erroneous premise that the review by a common pleas court of an administrative decision under R.C. Chapters 2506 and 2505 is not appellate jurisdiction. This argument ignores the fundamental distinction in Section 4(B), Article IV of the Ohio Constitution between original and appellate jurisdiction of courts of common pleas. Courts of common pleas are given such appellate jurisdiction to review decisions of administrative bodies as is provided by the General Assembly. The function of reviewing administrative decisions is an appellate function. The constitutional provisions establishing the jurisdiction of this Court and the courts of appeals confirms this point. Revisory jurisdiction over administrative decisions that is conferred upon this Court by the General Assembly is listed under Section 2(B)(2), Article IV, which provision sets forth the Court's appellate jurisdiction. The jurisdiction conferred upon courts of appeals by Section 3(B)(2), Article IV to review administrative decisions is referred to in that provision as "appellate jurisdiction."

The suggestion by the Tax Administrator that because the revisory jurisdiction of the courts common pleas over administrative decisions is fixed by statute, the courts do not exercise appellate jurisdiction in performing that review function (merit brief of Tax Administrator at 5) is plainly wrong. Clearly, jurisdiction conferred by statute can include appellate jurisdiction. In fact, under Section 4(B), Article IV, the only appellate

jurisdiction that can be conferred upon courts of common pleas is that provided by statute. This is also evident by the fact that the appellate jurisdiction of courts of appeals to review final orders of inferior courts and administrative officers and agencies is “as may be provided by law.” Section 3(B)(2), Article IV, Ohio Constitution.

The Tax Administrator’s assertion that the review by a common pleas court of an administrative decision under R.C. Chapter 2506 is not appellate jurisdiction is also rebutted by the express language throughout R.C. Chapters 2506 and 2505 referring to the review as an “appeal.” R.C. 2506.01(B) states that “[t]he appeal provided in this section is in addition to any other remedy of appeal provided by law.” R.C. 2506.02, 2506.03, and 2506.04 all refer to the proceeding as taking an appeal from an administrative body. R.C. 2506.04 states that “if an appeal is taken” under R.C. 2506.01, the common pleas court may affirm, reverse, vacate, or modify the adjudication of the administrative tribunal; that is the exercise of an appellate function. R.C. 2505.03 provides that “the final order of any administrative * * * board * * * may be reviewed on appeal by a court of common pleas.” R.C. 2505.04 and 2505.07 specify how an administrative appeal under R.C. Chapter 2506 is perfected. R.C. 2505.05 prescribes the content of a notice of appeal from an administrative decision to a court of common pleas.

This Court has expressly recognized the function of courts of common pleas in reviewing administrative decisions pursuant to R.C. Chapter 2506 as an appellate function. In *Dvorak v. Athens Mun. Civ. Serv. Comm.* (1976), 46 Ohio St.2d 99, 103, the Court stated that in an R.C. Chapter 2506 appeal, the court of common pleas “performs an appellate function.” In *Smith v. Granville Twp. Bd. of Trustees* (1998), 81 Ohio St.3d 608, 612, the Court noted that “[a]n administrative order is initially appealed to the court

of common pleas.” See also, *Sudan, Inc. v. Village of Chagrin Falls* (1989), 63 Ohio App.3d 83, 89 (“in an appeal under R.C. Chapter 2506, the court sits in appellate review of the board’s decision.”).

While the scope of review in an administrative appeal to a court of common pleas under R.C. Chapter 2506 is broader than in an appeal to an appellate court from a trial court, or an appeal of the common pleas court decision in an R.C. Chapter 2506 appeal to a court of appeals, it is nevertheless an appellate review by the court of common pleas. This Court distinguished between the different standards of review in *Henley v. Youngstown Bd. of Zoning Appeals* (2000), 90 Ohio St.3d 142, 147, but clearly recognized the review by the court of common pleas as an appellate review. The Tax Administrator’s argument appears to confuse the broad scope of review of a court of common pleas in an R.C. Chapter 2506 appeal, which involves determining whether the administrative decision is supported by a preponderance of substantial, reliable, and probative evidence (*id.*), with that court’s exercise of original jurisdiction.

C. An Appeal by One Party from an Administrative Decision Pursuant to R.C. Chapter 2506 does not Open the Entire Decision to Review by the Court of Common Pleas.

The Tax Administrator argues that once an appeal from an administrative decision is filed pursuant to R.C. Chapter 2506 by one party, the common pleas court has jurisdiction to consider all issues, including challenges by a non-appealing party to rulings in favor of the appealing party. That argument is not supported by a single authority. Recognizing that the sections in R.C. Chapter 2505 specifying how administrative appeals are perfected conclusively rebut his argument, the Tax Administrator advances a convoluted argument seeking to avoid the application of those

sections. That argument ultimately fails because of the language in R.C. 2506.01(A) that expressly states that the review of decisions of administrative tribunals by the courts of common pleas is “as provided in Chapter 2505.”

While it is correct that R.C. Chapter 2506 applies to appeals from administrative decisions, it is also correct that R.C. 2506.01(A) provides that R.C. Chapter 2505 applies to such appeals, except as modified by R.C. Chapter 2506. Essentially, unless a provision in R.C. Chapter 2506 states otherwise, the provisions of R.C. Chapter 2505 that apply to appeals to the courts of appeals also apply to administrative appeals to the courts of common pleas. As the Tax Administrator concedes, no provision in R.C. Chapter 2506 prescribes how an appeal under that chapter is perfected. Merit brief of Tax Administrator at 7. Therefore, as this Court held in *Thomas v. Webber*, at paragraph one of the syllabus, the sections in R.C. Chapter 2505 that provide the manner in which appeals are perfected are applicable.

Even though the Tax Administrator recognizes that the provisions in R.C. Chapter 2505 for perfecting appeals are applicable to R.C. Chapter 2506 appeals and that the filing of a notice of appeal within the time prescribed by R.C. 2505.07 is a jurisdictional requirement, the Tax Administrator nevertheless argues that he may appeal the rulings in the decision of the Board of Review that were adverse to him without filing a notice of appeal. Without citation to a single authority that supports his argument, the Tax Administrator simply asserts that if one party files a notice of appeal from an administrative decision, the decision is open to challenge by non-appealing parties. That argument ignores the express provisions in R.C. Chapter 2505 for perfecting an appeal.

The Tax Administrator's reliance on language in *Zier* stating that the timely filing of the notice of appeal is the only act "essential to vesting the common pleas court with jurisdiction over the administrative appeal" (merit brief of Tax Administrator at 8, quoting from *Zier*, paragraph one of the syllabus), is misplaced. What the Tax Administrator ignores is that the administrative appeal over which the court has jurisdiction is the appeal by the party that filed the notice of appeal. *Zier* does not remotely support the Tax Administrator's argument that an administrative appeal perfected by one party invokes the jurisdiction of the common pleas court to consider a challenge by a party who did not perfect an appeal seeking a reversal of the administrative decision. To the contrary, *Zier* holds that a party seeking to appeal under a statute conferring a right of appeal must perfect his appeal in the manner prescribed by statute. *Zier*, 151 Ohio St. at 125. The Tax Administrator did not perfect an appeal from the decision of the Board of Review. Therefore, he did not invoke the jurisdiction of the common pleas court to consider his challenges to the adverse rulings by the Board of Review.

The question is not whether an appealing party can limit its appeal of an administrative decision. The question is whether a non-appealing party can seek reversal of rulings in the administrative decision that were adverse to that party. The answer is no. If a party wishes to have such adverse rulings reviewed and reversed, that party must perfect an appeal under R.C. Chapters 2506 and 2505. As discussed above in detail, R.C. 2506.01(A) states that administrative decisions may be reviewed by the court of common pleas "as is provided in R.C. Chapter 2505." Pursuant to R.C. 2505.03, 2505.04, and 2505.07, an appeal is perfected by the timely filing of a notice of appeal.

The Tax Administrator's contention that he could challenge the decision of the Board of Review without filing an appeal because no provision in R.C. Chapter 2506 authorizes a party to file a "limited" appeal should be rejected for two reasons. First, because administrative appeals under R.C. Chapter 2506 are governed by R.C. Chapter 2505, the common pleas court only has jurisdiction over an appeal perfected by a party under R.C. Chapter 2505. Second, the question is not whether R.C. Chapter 2506 authorizes a "limited" appeal. The question is whether R.C. Chapters 2506 and 2505 authorize courts of common pleas to consider assignments of error by a party who has not filed an appeal from the administrative decision. The answer to that question is no.

No language in R.C. Chapters 2506 and 2505 supports the Tax Administrator's assertion that once one party files a notice of appeal from an administrative decision, the common pleas court has jurisdiction "to review the final decision * * * and all its component parts." Merit brief of Tax Administrator at 9. The fact that R.C. 2506.01(A) says that every final decision of an administrative body "may be reviewed" by the court of common pleas does not support the Tax Administrator's assertion. Initially, as detailed above, R.C. 2506.01(A) states that administrative decisions may be reviewed "as provided in Chapter 2505." Additionally, the language in R.C. 2506.01(A) referenced by the Tax Administrator is essentially the same as the language in R.C. 2501.02 and 2505.03(A), which provide for the appellate jurisdiction of the courts of appeals from final orders of inferior courts and administrative bodies. Both of those sections confer jurisdiction on courts of appeals to review final orders. In fact, R.C. 2505.03 is virtually identical to R.C. 2506.01(A). It states that "[e]very final order * * * of a court and, when provided by law, the final order of any administrative officer * * * may be reviewed on

appeal by a court of common pleas, a court of appeals, or the supreme court, whichever has jurisdiction.”

Under the Tax Administrator’s argument, the courts of appeals would have jurisdiction to review the entire decision of the trial court or administrative body, including rulings adverse to a party that did not file its own appeal, because nothing in R.C. 2501.02 and 2505.03(A) authorizes a “limited appeal.” This Court rejected that precise argument in *Kaplysh v. Takeddine* (1988), 35 Ohio St.3d 170. In *Kaplysh*, an appellee to the appeal to the court of appeals had attempted to file a cross-appeal but had done so untimely. That party argued that the court of appeals nonetheless had jurisdiction to consider its appeal from the trial court’s decision, asserting the proposition that once the original appeal is timely filed, the court of appeals has jurisdiction over any cross-appeal. *Id.* at 175. In paragraph two of the syllabus, the Court held that “[a] court of appeals does not acquire jurisdiction over belated cross-appeals merely because an appeal by an opposing party has been properly perfected.”

The Court explained that an appellee who does not file a cross-appeal cannot attack the final judgment to enlarge its own rights, but can only urge grounds in support of the judgment in its favor that were overlooked or ignored by the lower court. *Id.* at 175. This latter statement by the Court follows the well-established principle of appellate review that a reviewing court can consider assignments of error of an appellee who has not filed a timely appeal only when necessary to prevent a reversal of the decision under review. *Parton v. Weilnau* (1959), 169 Ohio St. 145, paragraph seven of the syllabus; *Duracote Corp. v. Goodyear Tire & Rubber Co.* (1993), 2 Ohio St.2d 160, 163. In what is perhaps the most well-known reiteration of the rule, *Parton* held that an assignment of

error by an appellee who has not filed a notice of appeal “may be used by the appellee as a shield to protect the judgment of the lower court but may not be used by the appellee as a sword to destroy or modify that judgment.” 169 Ohio St. at 171.

A review of apposite federal cases reveals that the proposition that a party can attack a judgment without filing a notice of appeal if the judgment has been appealed by the other party has been uniformly rejected. See, e.g., *Montgomery v. City of Ardmore* (10th Cir. 2004), 365 F.3d 926, 944; *Burgo v. Gen. Dynamics Corp.* (2d Cir. 1997), 122 F.3d 140, 145; *Richland Knox Mut. Ins. Co. v. Kallen* (6th Cir. 1967), 376 F.2d 360, 364. Each of these cases hold that a party who has not filed an appeal may assert alternative grounds for affirmance of the judgment but may not seek to reverse any portion of the judgment that is adverse to that party.

The Tax Administrator attempts to escape these controlling holdings by distinguishing appeals from administrative tribunals pursuant to R.C. Chapter 2506 from a “traditional error proceeding” (merit brief of Tax Administrator at 9), whatever that means.² This attempt ignores the fact that both R.C. Chapter 2506 appeals and appeals to courts of appeals are governed by R.C. Chapter 2505. The fact that there is no provision for cross-appeals in R.C. Chapter 2506 or 2505 does not support the proposition advanced by the Tax Administrator. It simply means that a party in an administrative proceeding that desires to obtain a reversal of any part of a judgment of the administrative tribunal must file an appeal within the thirty-day period prescribed by R.C. 2505.07.

² Certainly, the Tax Administrator is arguing that the Board erred in its decision regarding the interest income and withholding tax issues.

An appeal by one party invokes the jurisdiction of the court to consider that party's appeal. That party is obviously only appealing rulings by the administrative body that were adverse to it, not those rulings that were favorable to the party. In *Mims v. Lennox-Haldeman Co.* (1964), 8 Ohio App.2d 226, the court noted that this was the only logical position. The administrative appeal in that case was from an order of the Industrial Commission. The Administrator of Workmen's Compensation argued that he could raise an issue on appeal even though it had not filed an appeal, based on the assertion that the administrative appeal statute did not authorize an appeal from only part of the Commission's decision. The court rejected that argument, stating that "[w]hen a claimant appeals from an order of the Industrial Commission under Section 4123.519, Revised Code, it must be presupposed that the issue decided adversely to the claimant before the Industrial Commission is the only issue before the Court of Common Pleas. To say one is appealing the portion of an order that is favorable to him defies reason." *Id.* at 228-229.

D. R.C. 2506.03 does not Confer Jurisdiction on Courts of Common Pleas to Consider Cross-Assignments of Error of a Non-appealing Party.

The Tax Administrator apparently construes R.C. 2506.03, which gives the common pleas court limited discretion to allow the introduction of additional evidence, as granting the court jurisdiction to consider all issues determined by the administrative tribunal, including issues decided adversely to a non-appealing party. That purported construction is unsupported by the language of the statute. R.C. 2506.03 states that "[t]he hearing of such appeal shall proceed as in the trial of a civil action[,]" and only if numerous conditions are met. While the hearing of additional evidence permitted by R.C. 2506.03 is to be conducted as in a trial of a civil action, the proceeding under R.C.

Chapter 2506 is an appeal, not a trial de novo. As this Court ruled in *Andrews v. Bd. of Liquor Control* (1955), 164 Ohio St. 275, 279, where the court of common pleas can hear additional evidence only under limited conditions, the proceeding cannot be a trial de novo.

Although *Cincinnati Bell, Inc. v. Village of Glendale* (1975), 42 Ohio St.2d 368, states that the hearing before the court of common pleas in an R.C. Chapter 2506 appeal often resembles a de novo proceeding, the Court clearly stated that such hearing is not de novo. *Id.* at 270. In fact, the Tax Administrator, after discussing the nature of a de novo hearing and suggesting that the common pleas court was therefore authorized to consider the administrative decision as if it were a trial court conducting a new trial, then concedes that an R.C. Chapter 2506 appeal is not actually de novo because the court is limited to determining whether the administrative decision was unconstitutional, illegal, arbitrary, capricious, unreasonable, or supported by the preponderance of substantial, reliable, and probative evidence on the whole record. Merit brief of Tax Administrator at 10-12.

In any event, it is irrelevant whether the hearing under R.C. 2506.03 is a de novo hearing. Neither R.C. 2506.03 nor any other section in R.C. Chapter 2506 deals with how an appeal is perfected or the jurisdiction of the common pleas court is invoked. Those matters are governed by R.C. Chapter 2505 and, as provided in R.C. 2505.03(B), by the Rules of Appellate Procedure. What is relevant is that the review under R.C. Chapter 2506 is an appellate review to which the provisions of R.C. Chapter 2505 are expressly made applicable. Under those provisions, a party that has not filed an appeal from the administrative decision has not invoked the jurisdiction of the common pleas court to consider that non-appealing party's challenges to any portion of that decision.

To the extent that the Tax Administrator is relying on the language in *Cincinnati Bell*, at 370, noting that the hearing of an appeal under R.C. Chapter 2506 shall proceed as in the trial of a civil action and that such an appeal “differs substantially from that of appellate courts in other contexts” as supporting his contention that the filing of an appeal by AT&T conferred jurisdiction on the court of common pleas to consider his cross-assignments of error seeking reversal of portions of the decision of the Board of Review, that reliance is misplaced. The Court of Appeals correctly observed that what *Cincinnati Bell* was referring to as “differing substantially” from other appeals is the fact that an administrative appeal may involve an additional evidentiary hearing at the common pleas court. That language was also noting that the scope of review performed by courts of common pleas in such appeals is broader than that performed by appellate courts in other contexts. As the Court of Appeals properly discerned, that has no bearing on a common pleas court’s jurisdiction. *Cincinnati Bell* does not hold or even suggest that when an appeal is filed by one party the common pleas court has jurisdiction over not only that appeal but also cross-assignments of error filed by a non-appealing party. Nor is there any other authority supporting that proposition.

E. Courts of Common Pleas have Appellate Jurisdiction and Hear Administrative Appeals under that Appellate Jurisdiction, not under their Original Jurisdiction.

The Tax Administrator’s statement that common pleas courts do not have appellate jurisdiction and that they hear administrative appeals not as appellate courts but as courts of original jurisdiction (merit brief of Tax Administrator at 12) is patently wrong. That statement ignores Section 4(B), Article IV of the Ohio Constitution. Pursuant to that constitutional provision, the jurisdiction of common pleas courts to

consider decisions of administrative tribunals is revisory. Section 4(B), Article IV authorizes the General Assembly to confer upon courts of common pleas original jurisdiction “over all justiciable matters,” and appellate jurisdiction over administrative decisions. R.C. 2506.01 grants jurisdiction to common pleas courts to hear appeals from administrative decisions. R.C. Chapter 2506 consistently refers to the proceeding as an appeal. The review by common pleas courts authorized by R.C. 2506.01 is “as provided in Chapter 2505,” the chapter that provides the procedure for appeals. This Court has consistently viewed R.C. Chapter 2506 proceedings as appeals from administrative orders. See, e.g., *Tuber v. Perkins* (1966), 6 Ohio St.2d 155, 156 (“This section [R.C. 2506.01], relates to appeals from administrative orders of such [administrative] bodies.”).³

The statement by the Tax Administrator that the Ohio Rules of Appellate Procedure are clearly not applicable to R.C. Chapter 2506 appeals (merit brief of Tax Administrator at 12) is rebutted by the express statement in R.C. 2505.03(B) that such appeals are “governed by this chapter and, to the extent this chapter does not contain a relevant provision, the Rules of Appellate Procedure.” That section continues, stating that “if it is necessary in applying the Rules of Appellate Procedure to such an appeal, the administrative * * * board * * * shall be treated as if it were a trial court whose final order, judgment, or decree is the subject of an appeal to a court of appeals * * *.”

Contrary to the assertion of the Tax Administrator (*id.*), neither R.C. Chapter 2506 or 2505 contains any provision stating that the Ohio Rules of Civil Procedure are

³ The argument that courts of common pleas exercise an appellate function in reviewing administrative decisions under R.C. Chapter 2506 is set forth in more detail under Part B., *infra*.

applicable. While the statement in R.C. 2506.03(A) that the “hearing of an appeal [under R.C. Chapter 2506] shall proceed as in the trial of a civil matter” may be sufficient to make the Rules of Civil Procedure applicable to the hearing of additional evidence permitted under that section, it lends no support to the statement by the Tax Administrator that the civil rules are generally applicable to R.C. Chapter 2506 appeals. Id. In any event, the Tax Administrator’s suggestion that he can rely on Ohio Civ. R. 13 authorizing counterclaims is unavailing because that rule is plainly inapplicable to appeals from administrative tribunals under R.C. 2506.01. As the Ohio Supreme Court held in *Thomas v. Webber*, paragraph one of the syllabus, “Sections 2505.04 and 2505.05, Revised Code (Administrative Appellate Procedure Act), apply to the perfection of an appeal and the form of a notice of appeal, pursuant to Chapter 2506, from the decision of an agency of a political subdivision.”

The Tax Administrator states that if the General Assembly had intended that R.C. Chapter 2506 appeals proceed as in the case of appeals of civil actions it could have so stated. Merit brief of Tax Administrator at 12-13. The General Assembly did so state in R.C. 2506.01(A), which provides that such appeals may be reviewed “as provided in Chapter 2505,” the chapter that also applies to appeals of civil actions.

The statement that an R.C. Chapter 2506 appeal is a civil action (id. at 13) is indefensible. Civil actions invoke the original jurisdiction of the courts of appeals and are commenced by the filing of a complaint. R.C. 2305.01 confers original jurisdiction upon the courts of common pleas over civil actions. An R.C. Chapter 2506 proceeding is an appeal from an administrative body that is perfected by filing a notice of appeal with

the administrative body. Courts of common pleas consider such appeals pursuant to the appellate jurisdiction conferred upon those courts by R.C. 2506.01.

F. To Perfect an R.C. Chapter 2506 Appeal, a Party Must File a Notice of Appeal Within the Time Prescribed by R.C. 2505.07.

The Tax Administrator's statement that an R.C. Chapter 2506 appeal only requires a hearing is erroneous. To invoke the jurisdiction of the common pleas court to consider an appeal from an administrative decision under R.C. Chapter 2506, a party must perfect an appeal by filing a notice of appeal with the administrative body within thirty days after the entry of the final order. R.C. 2505.04, 2505.07.

It is unclear what point the Tax Administrator seeks to make by his statement that there is no requirement in R.C. Chapter 2506 or 2505 that assignments of error be made or briefs be filed. What is required to perfect an R.C. Chapter 2506 appeal is the filing of a notice of appeal by a party that desires to challenge the administrative decision. And although such appeals do differ from appeals to courts of appeals or this Court in the scope of review and the procedure, the court of common pleas is still required to review the administrative decision and enter a judgment on the appeal affirming, reversing, vacating, or modifying the decision. R.C. 2506.04.

G. A Local Rule of Court Cannot Expand the Revisory Jurisdiction of Courts of Common Pleas Beyond that Conferred by Statute.

The Tax Administrator argues that Loc. R. 28 of the Court of Common Pleas of Cuyahoga County authorizes a non-appealing party to attack the administrative decision by asserting cross-assignments of error. The Tax Administrator's reliance on Loc. R. 28 is misplaced. Loc. R. 28 provides, in pertinent part:

(B) Within fifteen (15) days after filing of appellant's brief, appellee shall file his brief in opposition, and may file assignments of error on his own behalf.

As the Court of Appeals correctly noted, this provision regarding the filing of assignments of error by an appellee refers to those assignments of error authorized by R.C. 2505.22, i.e., assignments of error by an appellee used to protect the judgment under review from reversal. Loc. R. 28(B) simply prescribes the time period for filing assignments of error authorized by R.C. 2505.22 to be filed by an appellee. The Court of Appeals properly rejected the Tax Administrator's argument that the rule authorized the common pleas court to consider cross-assignments of error by a non-appealing party that seek to reverse the administrative decision.

In any event, the jurisdiction of the courts to review decisions of administrative bodies is a matter within the exclusive province of the Ohio General Assembly. *Cent. Ohio Transit Auth.*, 37 Ohio St.3d, at 60. The jurisdiction conferred upon the courts of common pleas by statute cannot be abridged or enlarged by a rule of court. *Ramsdell v. Ohio Civil Rights Comm.* (1990), 56 Ohio St.3d 24, 27 ("where the time for filing an appeal is dictated by the statute which confers the right of appeal, Civ.R. 6(E) cannot be applied to extend the time for filing."); *Akron v. Gay* (1976), 47 Ohio St.2d 164, paragraph one of the syllabus, 165-166 (a jurisdictional statute is a substantive law of the state, and cannot be abridged, enlarged, or modified by the Civil Rules; statute restricting extension of answer date is jurisdictional and cannot be abridged by the Ohio Rules of Civil Procedure). A rule in conflict with a substantive jurisdictional appeal statute is invalid. *State v. Hughes* (1975), 41 Ohio St.2d 208, 211 (rule providing an appeal of right in conflict with statute providing a limited appeal right must yield to the statute).

While courts unquestionably have the power to adopt rules regarding the administration of the court and the procedures to be followed, it is also beyond question that a local rule of court is invalid if it conflicts with a statute. In *State ex rel. Mothers Against Drunk Drivers v. Gosser* (1985), 20 Ohio St.3d 30, paragraph three of the syllabus, this Court held that “[a] local rule of court cannot prevail when it is inconsistent with the express requirements of a statute.” Accord *Kimble v. Troyan* (1997), 124 Ohio App.3d 599, 602-603 (local court rule requiring election to purchase real estate at appraised value be filed with the court before a hearing on appraisal is inconsistent with R.C. 5307.09, which did not impose such a requirement, and is therefore invalid); *In re Estate of Duffy*, 148 Ohio App.3d 574, 2002-Ohio-3844, ¶ 19-20 (local court rule that requires a fiduciary who wishes to be compensated for professional services to an estate to have his contract for services pre-approved by the probate court places additional restraints on payment of attorney fees beyond those imposed by R.C. 2113.36 and is therefore invalid); *Krupansky v. Pascual* (1985), 27 Ohio App.3d 90, 92 (local court rule requiring that final judgment be entered if a party does not “appeal” from an arbitrator’s award cannot be applied to medical claims because it would conflict with R.C. 2711.21, which does not require an appeal or authorize entering judgment without further proceedings).

The Ohio Rules of Civil Procedure affirmatively recognize that they cannot expand the jurisdiction of the courts. Ohio Civ. R. 82 provides that the Civil Rules “shall not be construed to extend or limit the jurisdiction of the courts of this state.” And Ohio Civ. R. 83 states that a court may adopt local rules of practice that are not inconsistent

with the Civil Rules. A local rule that attempted to extend the jurisdiction of the court would be inconsistent with Ohio Civ. R. 82. *Ramsdell*, at 27.

Construing Loc. R. 28(B) as conferring jurisdiction upon common pleas courts to consider assignments of error filed by an appellee that has not filed a timely notice of appeal, which the appellee attempts to use as a sword to reverse or modify the administrative decision under review, would expand the court's jurisdiction beyond that conferred by statute. Pursuant to R.C. Chapters 2506 and 2505, common pleas courts have jurisdiction to consider appeals of administrative decisions by parties who have perfected appeals under R.C. 2505.04 by filing a notice of appeal within the time prescribed by R.C. 2505.07. The Tax Administrator's construction of Loc. R. 28(B) would allow the courts to consider appeals by parties who did not timely file an appeal from the administrative decision. This construction would render Loc. R. 28(B) invalid. For this reason, the Tax Administrator's construction of Loc. R. 28(B) must be rejected or the rule must be held to be invalid to the extent it is read as authorizing the court to consider assignments of error by an appellee that seek to reverse a part of an administrative decision under review.

H. The Wisdom of the Statutory Requirement that a Party in an Administrative Proceeding File a Notice of Appeal from an Adverse Ruling by the Administrative Tribunal and not Providing for Cross-Appeals is not a Justiciable Matter.

The Tax Administrator complains that requiring parties to administrative proceedings to file appeals from an adverse ruling by the administrative tribunal within the time prescribed by R.C. 2505.07, rather than waiting to see if the other party files an appeal and then assert its challenge to the adverse ruling through a cross-appeal or cross-assignment of error, will cause problems. That complaint does not present a justiciable

issue. Although providing for cross-appeals or cross-assignments of error may be preferable to a particular party, the wisdom of allowing cross-appeals or cross-assignments of error in administrative appeals is a matter within the province of the General Assembly.

The Tax Administrator correctly states that neither R.C. Chapter 2506 nor 2505 provides for cross-appeals. The result, as the Tax Administrator also correctly notes, is that a party to an administrative proceeding that desires to challenge an adverse ruling in the decision entered in that proceeding must file a notice of appeal pursuant to R.C. 2505.04 within the time prescribed by R.C. 2505.07. There is clearly no right to a provision allowing a cross-appeal to be filed after an initial appeal is filed. Prior to its amendment in 1977, former S.Ct. Prac. R. I.1 did not provide additional time after the filing of a notice of appeal by an adverse party for filing cross-appeals. A conditional notice of cross-appeal could be deposited by a party with the Ohio Supreme Court only if that party had filed a notice of appeal with the court of appeals within the initial appeal period. Former S.Ct. Prac. R. I.4.

While this Court decided it would be better to allow additional time after the filing of the initial notice of appeal for the filing of cross-appeals, the General Assembly has not seen fit to add such a cross-appeal provision to R.C. Chapter 2506 or 2505 for administrative appeals. Whether such a provision should be added is a matter that needs to be presented to the General Assembly. It is that body upon which the Ohio Constitution confers the authority to provide for the jurisdiction of courts of common pleas to review administrative decisions.

Where the General Assembly has intended to allow cross-appeals in administrative appeals it has expressly so provided. For example, R.C. 5717.04, which provides for appeals from the Board of Tax Appeals, expressly allows for the filing of a notice of appeal by any other party within ten days after the timely filing of a notice of appeal by a party. In contrast, R.C. 5717.011, which provides for appeals to the Board of Tax Appeals or the court of common pleas from decisions of municipal income tax boards of review,⁴ does not provide any additional time for filing a notice of appeal after an initial notice of appeal is filed by another party. If the General Assembly intended to allow cross-appeals or cross-assignments of error to be made after the time prescribed by R.C. 2505.07 for filing an administrative appeal, it would have so stated. See *Wheeling Steel Corp. v. Porterfield* (1970), 24 Ohio St.2d 24, 28

I. Allowing Non-appealing Parties in Administrative Appeals to Raise Challenges to Adverse Rulings in an Administrative Decision Appealed by Another Party would Give Those Non-appealing Parties More Rights than a Non-appealing Party has in an Appeal to the Court of Appeals from a Trial Court.

The Tax Administrator complains that if a party to an R.C. Chapter 2506 appeal who does not file an appeal from the administrative decision cannot challenge adverse rulings in that decision, that party will have fewer rights than an appellee in an appeal from a trial court to the court of appeals. Initially, this is based on the assumption that a non-appealing party in an R.C. Chapter 2506 appeal cannot assert cross-assignments of error presented to prevent the reversal of the administrative decision. That is not an issue

⁴ As detailed in n. 1, supra, administrative appeals from municipal boards of income tax review are now governed by R.C. 5717.011. The fact that the General Assembly did not include any provision for cross-appeals or cross-assignments of error in this statute discounts the Tax Administrator's assertion that the General Assembly did not intend to preclude non-appealing parties from challenging the decisions of the Board.

that has been clearly decided. Moreover, that is not the right that the Tax Administrator seeks; he was not denied the right to assert cross-assignments of error presented to prevent the reversal of the administrative decision. In any event, whether a party in an R.C. Chapter 2506 appeal has such a right is irrelevant. Again, the manner in which a party invokes the jurisdiction of the court of common pleas to review an administrative decision is the exclusive prerogative of the General Assembly.

Interestingly, what the Tax Administrator actually seeks are more rights than parties to an appeal from a trial court to the court of appeals. The Tax Administrator did not assert cross-assignments of error for the purpose of preventing a reversal of the decision of the Board of Review. He seeks the right to use cross-assignments of error as a sword to reverse rulings in the administrative decision that were adverse to him. A non-appealing party in an appeal from a trial court to the court of appeals cannot use cross-assignments of error to that end; such a party can assert cross-assignments of error only as a shield to prevent the reversal of the administrative decision.

J. Requiring a Party to an Administrative Proceeding to File an Appeal from the Decision in that Proceeding within the Time Prescribed by Statute in Order to Invoke the Jurisdiction of the Court of Common Pleas to Consider the Party's Challenges to the Decision does not Offend the Due Course of Law or Access to the Courts Provisions of the Ohio Constitution.

The Tax Administrator argues that he has been deprived of a judicial review of the two rulings by the Board of Review regarding the interest income and withholding tax offset issues, in violation of the due course of law and equal access to the courts provisions of Section 16, Article I of the Ohio Constitution. But the Tax Administrator's own admission establishes that there was no such deprivation. As the Tax Administrator

concedes, he could have simply appealed the decision of the Board. Merit brief of Tax Administrator at 22.

Any party to an administrative proceeding has a full opportunity to obtain a judicial review of any holding of the administrative body by filing a notice of appeal from the decision in the manner provided in R.C. Chapter 2505 and within the period prescribed by R.C. 2505.07. This right to appeal rejects the Tax Administrator's bare due course of law and open courts claims. The Tax Administrator simply failed to file a notice of appeal, which resulted in a lack of jurisdiction by the common pleas court to consider his challenge to the decision of the Board of Review. The Court of Appeals holding that the court of common pleas lacked jurisdiction over the Tax Administrator's cross-assignments was based on this failure by the Tax Administrator to file a notice of appeal. A failure by a party to exercise his appeal rights in the manner prescribed in the statute conferring the right to appeal does not implicate the due course of law and equal access to the courts provisions of Section 16, Article I of the Ohio Constitution.

The Tax Administrator is apparently arguing that these constitutional provisions entitle a party to a right of appeal in the manner that party prefers. Clearly, they do not. As this Court has uniformly held, a party seeking to appeal pursuant to a statute conferring a right to appeal must perfect his appeal in the manner prescribed in the statute. See, e.g., *Zier*, 151 Ohio St., at 125.

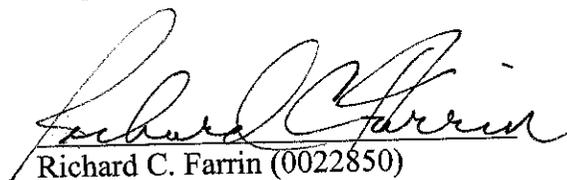
The Tax Administrator's Section 16, Article I challenge fails for another, more fundamental reason. Political subdivisions of the state, which include municipal corporations, receive no protection under that provision as against the state. *Avon Lake City School Dist. v. Limbach* (1988), 35 Ohio St.3d 118, 120-122. In *Avon Lake*, the

school district argued that if the statutory provision authorizing appeals did not entitle it to appeal a final determination of the state tax commissioner valuing public utility property, it was denied its right to due course of law. The Court held that a school district, as a public subdivision of the state, is a creature of the state and could not invoke that constitutional protection against the state. *Id.* Accord *Delaney v. Testa*, 128 Ohio St.3d 248, 2011-Ohio-550, ¶21 (county auditor may not use due process provision to escape the statutory requirement in R.C. 5717.02 that a notice of appeal to the Board of Tax Appeals specify the errors complained of).

CONCLUSION

For the reasons set forth in the foregoing merit brief of appellee, the Court should affirm the holding of the Court of Appeals that the common pleas court lacked jurisdiction to consider the Tax Administrator's cross-assignments of error challenging the rulings by the Board of Review on the interest income and withholding tax offset issues.

Respectfully submitted,

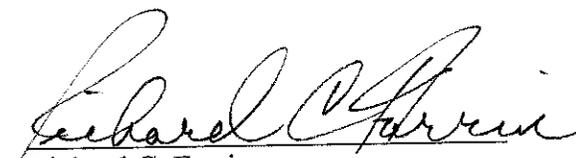


Richard C. Farrin (0022850)
(Counsel of Record)
Thomas M. Zaino (0041945)
McDonald Hopkins LLC
41 S. High Street, Suite 3550
Columbus, OH 43215
(614) 458-0035
(614) 458-0028 (Facsimile)
rfarrin@mcdonalddhopkins.com

COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Merit Brief of Appellee AT&T Communications of Ohio, Inc. was served upon Linda L. Bickerstaff, Assistant Director of Law, City of Cleveland Department of Law, 205 W. St. Clair Avenue, Cleveland, Ohio 44113, Counsel of Record for Appellant, by regular U.S. Mail, postage prepaid, this 20th day of October, 2011.


Richard C. Farrin

ARTICLE IV: JUDICIAL

ARTICLE IV: JUDICIAL

JUDICIAL POWER VESTED IN COURT.

§1 The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the Supreme Court as may from time to time be established by law.

(1851, am. 1883, 1912, 1968, 1973)

ORGANIZATION AND JURISDICTION OF SUPREME COURT.

§2 (A) The Supreme Court shall, until otherwise provided by law, consist of seven judges, who shall be known as the chief justice and justices. In case of the absence or disability of the chief justice, the judge having the period of longest total service upon the court shall be the acting chief justice. If any member of the court shall be unable, by reason of illness, disability or disqualification, to hear, consider and decide a cause or causes, the chief justice or the acting chief justice may direct any judge of any court of appeals to sit with the judges of the Supreme Court in the place and stead of the absent judge. A majority of the Supreme Court shall be necessary to constitute a quorum or to render a judgment.

(B)(1) The Supreme Court shall have original jurisdiction in the following:

- (a) Quo warranto;
- (b) Mandamus;
- (c) Habeas corpus;
- (d) Prohibition;
- (e) Procedendo;
- (f) In any cause on review as may be necessary to its complete determination;
- (g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

(2) The Supreme Court shall have appellate jurisdiction as follows:

- (a) In appeals from the courts of appeals as a matter of right in the following:
 - (i) Cases originating in the courts of appeals;
 - (ii) ~~Cases in which the death penalty has been affirmed;~~
 - (iii) Cases involving questions arising under the constitution of the United States or of this state.
- (b) In appeals from the courts of appeals in cases of

felony on leave first obtained.

- (c) In direct appeals from the courts of common pleas or other courts of record inferior to the court of appeals as a matter of right in cases in which the death penalty has been imposed.
- (d) Such revisory jurisdiction of the proceedings of administrative officers or agencies as may be conferred by law;
- (e) In cases of public or great general interest, the Supreme Court may direct any court of appeals to certify its record to the Supreme Court, and may review and affirm, modify, or reverse the judgment of the court of appeals;
- (f) The Supreme Court shall review and affirm, modify, or reverse the judgment in any case certified by any court of appeals pursuant to section 3(B)(4) of this article.

(3) No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the Supreme Court.

(C) The decisions in all cases in the Supreme Court shall be reported together with the reasons therefor.

(1851, am. 1883, 1912, 1944, 1968, 1994)

ORGANIZATION AND JURISDICTION OF COURT OF APPEALS.

§3 (A) The state shall be divided by law into compact appellate districts in each of which there shall be a court of appeals consisting of three judges. Laws may be passed increasing the number of judges in any district wherein the volume of business may require such additional judge or judges. In districts having additional judges, three judges shall participate in the hearing and disposition of each case. The court shall hold sessions in each county of the district as the necessity arises. The county commissioners of each county shall provide a proper and convenient place for the court of appeals to hold court.

(B)(1) The courts of appeals shall have original jurisdiction in the following:

- (a) Quo warranto;
- (b) Mandamus;
- (c) Habeas corpus;
- (d) Prohibition;
- (e) Procedendo

(f) In any cause on review as may be necessary to its complete determination.

(2) Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify,

ARTICLE IV: JUDICIAL

or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district, except that courts of appeals shall not have jurisdiction to review on direct appeal a judgment that imposes a sentence of death. Courts of appeals shall have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

(3) A majority of the judges hearing the cause shall be necessary to render a judgment. Judgments of the courts of appeals are final except as provided in section 2(B)(2) of the article. No judgment resulting from a trial by jury shall be reversed on the weight of the evidence except by the concurrence of all three judges hearing the cause.

(4) Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the Supreme Court for review and final determination.

(C) Laws may be passed providing for the reporting of cases in the courts of appeals.

(1968, am. 1994)

ORGANIZATION AND JURISDICTION OF COMMON PLEAS COURT.

§4 (A) There shall be a court of common pleas and such divisions thereof as may be established by law serving each county of the state. Any judge of a court of common pleas or a division thereof may temporarily hold court in any county. In the interests of the fair, impartial, speedy, and sure administration of justice, each county shall have one or more resident judges, or two or more counties may be combined into districts having one or more judges resident in the district and serving the common pleas court of all counties in the district, as may be provided by law. Judges serving a district shall sit in each county in the district as the business of the court requires. In counties or districts having more than one judge of the court of common pleas, the judges shall select one of their number to act as presiding judge, to serve at their pleasure. If the judges are unable because of equal division of the vote to make such selection, the judge having the longest total service on the court of common pleas shall serve as presiding judge until selection is made by vote. The presiding judge shall have such duties and exercise

such powers as are prescribed by rule of the Supreme Court.

(B) The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law.

(C) Unless otherwise provided by law, there shall be probate division and such other divisions of the courts of common pleas as may be provided by law. Judges shall be elected specifically to such probate division and to such other divisions. The judges of the probate division shall be empowered to employ and control the clerks, employees, deputies, and referees of such probate division of the common pleas courts.

(1968, am. 1973)

POWERS AND DUTIES OF SUPREME COURT; RULES.

§5 (A)(1) In addition to all other powers vested by this article in the Supreme Court, the Supreme Court shall have general superintendence over all courts in the state. Such general superintending power shall be exercised by the chief justice in accordance with rules promulgated by the Supreme Court

(2) The Supreme Court shall appoint an administrative director who shall assist the chief justice and who shall serve at the pleasure of the court. The compensation and duties of the administrative director shall be determined by the court.

(3) The chief justice or acting chief justice, as necessity arises, shall assign any judge of a court of common pleas or a division thereof temporarily to sit or hold court on any other court of common pleas or division thereof or any court of appeals or shall assign any judge of a court of appeals temporarily to sit or hold court on any other court of appeals or any court of common pleas or division thereof and upon such assignment said judge shall serve in such assigned capacity until the termination of the assignment. Rules may be adopted to provide for the temporary assignment of judges to sit and hold court in any court established by law.

(B) The Supreme Court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. Proposed rules shall be filed by the court, not later than the fifteenth day of January, with

718.11 Board of tax appeals.

The legislative authority of each municipal corporation that imposes a tax on income shall maintain a board to hear appeals as provided in this section. The legislative authority of any municipal corporation that does not impose a tax on income on the effective date of this amendment, but that imposes such a tax after that date, shall establish such a board by ordinance not later than one hundred eighty days after the tax takes effect.

Whenever a tax administrator issues a decision regarding a municipal income tax obligation that is subject to appeal as provided in this section or in an ordinance or regulation of the municipal corporation, the tax administrator shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the decision and of the manner in which the taxpayer may appeal the decision.

Any person who is aggrieved by a decision by the tax administrator and who has filed with the municipal corporation the required returns or other documents pertaining to the municipal income tax obligation at issue in the decision may appeal the decision to the board created pursuant to this section by filing a request with the board. The request shall be in writing, shall state why the decision should be deemed incorrect or unlawful, and shall be filed within thirty days after the tax administrator issues the decision complained of.

The board shall schedule a hearing within forty-five days after receiving the request, unless the taxpayer waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the board and may be represented by an attorney at law, certified public accountant, or other representative.

The board may affirm, reverse, or modify the tax administrator's decision or any part of that decision. The board shall issue a final decision on the appeal within ninety days after the board's final hearing on the appeal, and send a copy of its final decision by ordinary mail to all of the parties to the appeal within fifteen days after issuing the decision. The taxpayer or the tax administrator may appeal the board's decision as provided in section 5717.011 of the Revised Code.

Each board of appeal created pursuant to this section shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under section 149.43 of the Revised Code. Hearings requested by a taxpayer before a board of appeal created pursuant to this section are not meetings of a public body subject to section 121.22 of the Revised Code.

Effective Date: 09-26-2003

2305.01 Jurisdiction in civil cases - trial transfer.

Except as otherwise provided by this section or section 2305.03 of the Revised Code, the court of common pleas has original jurisdiction in all civil cases in which the sum or matter in dispute exceeds the exclusive original jurisdiction of county courts and appellate jurisdiction from the decisions of boards of county commissioners. The court of common pleas shall not have jurisdiction, in any tort action to which the amounts apply, to award punitive or exemplary damages that exceed the amounts set forth in section 2315.21 of the Revised Code. The court of common pleas shall not have jurisdiction in any tort action to which the limits apply to enter judgment on an award of compensatory damages for noneconomic loss in excess of the limits set forth in section 2315.18 of the Revised Code.

The court of common pleas may on its own motion transfer for trial any action in the court to any municipal court in the county having concurrent jurisdiction of the subject matter of, and the parties to, the action, if the amount sought by the plaintiff does not exceed one thousand dollars and if the judge or presiding judge of the municipal court concurs in the proposed transfer. Upon the issuance of an order of transfer, the clerk of courts shall remove to the designated municipal court the entire case file. Any untaxed portion of the common pleas deposit for court costs shall be remitted to the municipal court by the clerk of courts to be applied in accordance with section 1901.26 of the Revised Code, and the costs taxed by the municipal court shall be added to any costs taxed in the common pleas court.

The court of common pleas has jurisdiction in any action brought pursuant to division (I) of section 3733.11 of the Revised Code if the residential premises that are the subject of the action are located within the territorial jurisdiction of the court.

The courts of common pleas of Adams, Athens, Belmont, Brown, Clermont, Columbiana, Gallia, Hamilton, Jefferson, Lawrence, Meigs, Monroe, Scioto, and Washington counties have jurisdiction beyond the north or northwest shore of the Ohio river extending to the opposite shore line, between the extended boundary lines of any adjacent counties or adjacent state. Each of those courts of common pleas has concurrent jurisdiction on the Ohio river with any adjacent court of common pleas that borders on that river and with any court of Kentucky or of West Virginia that borders on the Ohio river and that has jurisdiction on the Ohio river under the law of Kentucky or the law of West Virginia, whichever is applicable, or under federal law.

Effective Date: 07-06-2001; 04-07-2005

2501.02 Qualification, term and jurisdiction of appellate judges.

Each judge of a court of appeals shall have been admitted to practice as an attorney at law in this state and have, for a total of six years preceding the judge's appointment or commencement of the judge's term, engaged in the practice of law or served as a judge of a court of record in any jurisdiction in the United States, or both. At least two of the years of practice or service that qualify a judge shall have been in this state. One judge shall be chosen in each court of appeals district every two years, and shall hold office for six years, beginning on the ninth day of February next after the judge's election.

In addition to the original jurisdiction conferred by Section 3 of Article IV, Ohio Constitution, the court shall have jurisdiction upon an appeal upon questions of law to review, affirm, modify, set aside, or reverse judgments or final orders of courts of record inferior to the court of appeals within the district, including the finding, order, or judgment of a juvenile court that a child is delinquent, neglected, abused, or dependent, for prejudicial error committed by such lower court.

The court, on good cause shown, may issue writs of supersedeas in any case, and all other writs, not specially provided for or prohibited by statute, necessary to enforce the administration of justice.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Effective Date: 07-06-2001

2505.03 Appeal of final order, judgment, or decree.

(A) Every final order, judgment, or decree of a court and, when provided by law, the final order of any administrative officer, agency, board, department, tribunal, commission, or other instrumentality may be reviewed on appeal by a court of common pleas, a court of appeals, or the supreme court, whichever has jurisdiction.

(B) Unless, in the case of an administrative-related appeal, Chapter 119. or other sections of the Revised Code apply, such an appeal is governed by this chapter and, to the extent this chapter does not contain a relevant provision, the Rules of Appellate Procedure. When an administrative-related appeal is so governed, if it is necessary in applying the Rules of Appellate Procedure to such an appeal, the administrative officer, agency, board, department, tribunal, commission, or other instrumentality shall be treated as if it were a trial court whose final order, judgment, or decree is the subject of an appeal to a court of appeals or as if it were a clerk of such a trial court.

(C) An appeal of a final order, judgment, or decree of a court shall be governed by the Rules of Appellate Procedure or by the Rules of Practice of the Supreme Court, whichever are applicable, and, to the extent not in conflict with those rules, this chapter.

Effective Date: 03-17-1987

2505.05 Notice of appeal.

The notice of appeal described in section 2505.04 of the Revised Code shall conform, in the case of an appeal of a final order, judgment, or decree of a court, with the Rules of Appellate Procedure or the Rules of Practice of the Supreme Court and shall designate, in the case of an administrative-related appeal, the final order appealed from and whether the appeal is on questions of law or questions of law and fact. In the notice, the party appealing shall be designated the appellant, and the adverse party, the appellee. In the case of an administrative-related appeal, the failure to designate the type of hearing upon appeal is not jurisdictional, and the notice of appeal may be amended with the approval of the appellate court for good cause shown.

Effective Date: 03-17-1987

5717.011 Filing of notice of appeal.

(A) As used in this chapter, "tax administrator" has the same meaning as in section 718.01 of the Revised Code.

(B) Appeals from a municipal board of appeal created under section 718.11 of the Revised Code may be taken by the taxpayer or the tax administrator to the board of tax appeals or may be taken by the taxpayer or the tax administrator to a court of common pleas as otherwise provided by law. If the taxpayer or the tax administrator elects to make an appeal to the board of tax appeals or court of common pleas, the appeal shall be taken by the filing of a notice of appeal with the board of tax appeals or court of common pleas, the municipal board of appeal, and the opposing party. The notice of appeal shall be filed within sixty days after the day the appellant receives notice of the decision issued under section 718.11 of the Revised Code. The notice of appeal may be filed in person or by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code. If the notice of appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. The notice of appeal shall have attached thereto and incorporated therein by reference a true copy of the decision issued under section 718.11 of the Revised Code and shall specify the errors therein complained of, but failure to attach a copy of such notice and incorporate it by reference in the notice of appeal does not invalidate the appeal.

(C) Upon the filing of a notice of appeal with the board of tax appeals, the municipal board of appeal shall certify to the board of tax appeals a transcript of the record of the proceedings before it, together with all evidence considered by it in connection therewith. Such appeals may be heard by the board at its office in Columbus or in the county where the appellant resides, or it may cause its examiners to conduct such hearings and to report to it their findings for affirmation or rejection. The board may order the appeal to be heard upon the record and the evidence certified to it by the administrator, but upon the application of any interested party the board shall order the hearing of additional evidence, and the board may make such investigation concerning the appeal as it considers proper.

(D) If an issue being appealed under this section is addressed in a municipal corporation's ordinance or regulation, the tax administrator, upon the request of the board of tax appeals, shall provide a copy of the ordinance or regulation to the board of tax appeals.

Effective Date: 09-26-2003

5717.04 Appeal from decision of board of tax appeals to supreme court - parties who may appeal - certification.

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 situate or in which the taxpayer resides. If the taxpayer is a corporation, then the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the supreme court or to the court of appeals for the county in which the property taxed is situate, or the county of residence of the agent for service of process, tax notices, or demands, or the county in which the corporation has its principal place of business. In all other instances, the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the court of appeals for Franklin county.

Appeals from decisions of the board determining appeals from decisions of county boards of revision may be instituted by any of the persons who were parties to the appeal before the board of tax appeals, by the person in whose name the property involved in the appeal is listed or sought to be listed, if such person was not a party to the appeal before the board of tax appeals, or by the county auditor of the county in which the property involved in the appeal is located.

Appeals from decisions of the board of tax appeals determining appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be instituted by any of the persons who were parties to the appeal or application before the board, by the person in whose name the property is listed or sought to be listed, if the decision appealed from determines the valuation or liability of property for taxation and if any such person was not a party to the appeal or application before the board, by the taxpayer or any other person to whom the decision of the board appealed from was by law required to be sent, by the director of budget and management if the revenue affected by the decision of the board appealed from would accrue primarily to the state treasury, by the county auditor of the county to the undivided general tax funds of which the revenues affected by the decision of the board appealed from would primarily accrue, or by the tax commissioner.

Appeals from decisions of the board upon all other appeals or applications filed with and determined by the board may be instituted by any of the persons who were parties to such appeal or application before the board, by any persons to whom the decision of the board appealed from was by law required to be sent, or by any other person to whom the board sent the decision appealed from, as authorized by section 5717.03 of the Revised Code.

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. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten days of the date on which the first notice of appeal was filed or within the time otherwise prescribed in this section, whichever is later. A notice of appeal shall set forth the decision of the board appealed from and the errors therein complained of. 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.

In all such appeals the tax commissioner or all persons to whom the decision of the board appealed from is required by such section to be sent, other than the appellant, shall be made appellees. Unless waived, notice of the appeal shall be served upon all appellees by certified mail. The prosecuting attorney shall represent the county auditor in any such appeal in which the auditor is a party.

The board, upon written demand filed by an appellant, shall within thirty days after the filing of such demand file with the court to which the appeal is being taken a certified transcript of the record of the proceedings of the board pertaining to the decision complained of and the evidence considered by the board in making such decision.

If upon hearing and consideration of such record and evidence the court decides that the decision of the board appealed from is reasonable and lawful it shall affirm the same, but if the court decides that such decision of the board is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter final judgment in accordance with such modification.

The clerk of the court shall certify the judgment of the court to the board, which shall certify such judgment to such public officials or take such other action in connection therewith as is required to give effect to the decision. The "taxpayer" includes any person required to return any property for taxation.

Any party to the appeal shall have the right to appeal from the judgment of the court of appeals on questions of law, as in other cases.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 10-05-1987

RULE 82. Jurisdiction Unaffected

These rules shall not be construed to extend or limit the jurisdiction of the courts of this state.
[Effective: July 1, 1970.]

RULE 83. Rule of Court

(A) A court may adopt local rules of practice which shall not be inconsistent with these rules or with other rules promulgated by the Supreme Court and shall file its local rules of practice with the Clerk of the Supreme Court.

(B) Local rules of practice shall be adopted only after the court gives appropriate notice and an opportunity for comment. If a court determines that there is an immediate need for a rule, it may adopt the rule without prior notice and opportunity for comment, but promptly shall afford notice and opportunity for comment.

[Effective: July 1, 1970; amended effective July 1, 1994; July 1, 2000.]

Rule 1

NOTICE OF APPEAL

Section 1. From Court of Appeals

(A) The notice of appeal from a Court of Appeals must be filed in the court from which the case is appealed within thirty days from the entry of the judgment or final order appealed from and shall state:

(a) The name of the court and date of the order or judgment appealed from, and

(b) If applicable, that the case originated in the Court of Appeals, and

(c) If applicable, that the case involves a substantial constitutional question.

(B) A copy of that notice of appeal must be filed or offered for filing in the Supreme Court not later than thirty days after the filing of such notice in the Court of Appeals. The copy of the notice of appeal shall show the date of filing in the Court of Appeals.

Section 2. From the Board of Tax Appeals

The notice of appeal from the Board of Tax Appeals must be filed with the Supreme Court and with that board within thirty days from the date of the entry of the decision of the board and shall set forth or have attached thereto a copy of the decision appealed from and the errors complained of therein. (R.C. 5717.04.)

Section 3. From the Public Utilities Commission

The notice of appeal from the Public Utilities Commission must be filed with that commission and with the Supreme Court within the time specified in R.C. 4903.11.

The word "forthwith" as used in R.C. 4903.21, providing that upon service or waiver of notice of appeal the commission shall forthwith transmit to the Clerk of the Supreme Court a complete transcript of the proceedings, is declared by this Court to mean a period of 30 days and if at the expiration of 30 days such transcript has not been filed or a writ of mandamus requested to compel the commission to file such transcript, the appeal shall be dismissed.

Section 4. Conditional Filing of Notice of Cross-Appeal

A party who has filed a valid notice of appeal with a Court of Appeals, the Board of Tax Appeals or the Public Utilities Commission may deposit a copy of that notice of appeal with the Clerk of the Supreme Court with instructions to file his copy of that notice of appeal as a notice of cross-appeal in the Supreme Court only and immediately upon the filing of a notice of appeal in the Supreme Court by an adverse party, and such notice of cross-appeal shall be filed and considered as filed in the Supreme Court only in accordance with those instructions.

Section 5. Filing Fee

A notice of appeal or of cross-appeal or copy thereof filed in the Supreme Court must be accompanied by a fee of twenty dollars.