

IN THE SUPREME COURT OF OHIO

CROWN CASTLE GT COMPANY, LLC, )  
AND CROWN COMMUNICATION, )  
INC. )

Appellants, )

vs. )

RICHARD A. LEVIN, (JOSEPH W. )  
TESTA), TAX COMMISSIONER OF )  
OHIO )

Appellee. )

CASE NO.: **12-0780**

Appeal from the Ohio Board of  
Tax Appeals

Board of Tax Appeals  
Case No. 2009-A-3187

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**NOTICE OF APPEAL OF APPELLANTS CROWN CASTLE GT COMPANY, LLC AND  
CROWN COMMUNICATION, INC.**

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**FILED**  
MAY 04 2012  
CLERK OF COURT  
SUPREME COURT OF OHIO

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Counsel for Appellee,  
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**RECEIVED**  
MAY 04 2012  
CLERK OF COURT  
SUPREME COURT OF OHIO

Notice of Appeal of Appellants, Crown Castle GT Company, LLC and  
Crown Communication, Inc.

Appellants, Crown Castle GT Company, LLC and Crown Communication, Inc. (the “Taxpayers”) hereby give notice of their appeal as of right, under R.C. 5717.04, to the Supreme Court of Ohio. They appeal from the April 5, 2012 Decision and Order of the Board of Tax Appeals (“Board”) in Case No. 2009-A-3187. This Decision and Order of the Board affirmed the “Final” Assessment Certificates of Valuation of the Tax Commissioner relating to the Taxpayers’ 2006 personal property tax returns and dismissed their personal property tax refund claims, filed as prescribed in R.C. 5711.26 on the theory that the Board lacked jurisdiction to consider the claims. A true copy of the Decision and Order of the Board is attached as Exhibit A.

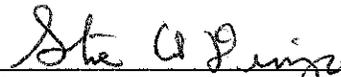
The Appellants complain of the following errors in the Decision and Order of the Board:

1. The Board improperly affirmed – rather than remanded to the Tax Commissioner – the Tax Commissioner’s decision that neither he nor the Board had jurisdiction to consider the Taxpayers’ objections even though the May 22, 2009 assessments declared to be “final” were not accompanied by the statutorily mandated R.C. 5703.51(D) instructions which would have directed the Taxpayers to appeal directly to the Board and not initially to the Tax Commissioner.
2. Rather than remanding to the Tax Commissioner, the Board erroneously affirmed the Tax Commissioner’s decision of May 22, 2009 that treated his certificates of assessment as “final” rather than preliminary - - even though his certificates were accompanied by instructions that directed the Taxpayers to appeal directly to him (rather than to the Board) which is the proper procedure to be used when an assessment is preliminary.

3. The Board's decision, affirming the Tax Commissioner's decision to dismiss on jurisdictional grounds the Taxpayers' refund request, must be reversed because when the Tax Commissioner provides to a taxpayer detailed written instructions on how to appeal that the taxpayer in good faith follows, the Tax Commissioner is estopped from resolving the dispute other than on the merits.

4. If the May 22, 2009 certificates are deemed to be final assessments and if estoppel does not apply then the due process clause of the Ohio and U.S. Constitutions requires that the Tax Commissioner allow the Taxpayers to have a hearing on the merits because they followed in good faith the written procedural instructions provided by the Tax Commissioner.

Respectfully submitted,



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Attorneys for Appellants

**CERTIFICATE OF FILING**

I certify that on the 2nd day of May, 2012 a Notice of Appeal has been filed with the Ohio Board of Tax Appeals.

  
\_\_\_\_\_  
Steven A. Dimengo (0037194) (Counsel of Record)  
David W. Hilkert (0023486)  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that copies of the foregoing Notice of Appeal of Appellants Crown Castle GT Company, LLC and Crown Communication, Inc. were filed by overnight delivery with the Supreme Court of Ohio, 65 South Front Street, 8<sup>th</sup> Floor, Columbus, Ohio 43215-3431 and sent by certified U.S. mail on May 3, 2012 to:

Michael DeWine, Attorney General of Ohio  
Attorney for Appellee, Joseph W. Testa, Ohio Tax Commissioner  
c/o Sophia Hussain, Assistant Attorney General  
State Office Tower  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43266

  
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Steven A. Dimengo (0037194) (Counsel of Record)  
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responded, indicating that the taxpayers were given the wrong instructions for appeal by the commissioner, and, as such, the commissioner is estopped from dismissing their appeals.

Specifically, pursuant to R.C. 5711.26, the commissioner issued final assessment certificates of valuation to the appellants on May 22, 2009. Pursuant to the provisions of R.C. 5711.26, “[a]n appeal may be taken from any assessment authorized by this section to the board of tax appeals as provided by section 5717.02 of the Revised Code.” In this instance, however, the appellants filed petitions for reassessment with the commissioner, apparently following instructions that they contend had been included with the assessment certificates, which incorrectly identified the “petition for reassessment” process as the appropriate means by which to appeal from the final assessment certificates. See R.C. 5711.31.

Appellants responded<sup>1</sup> to the commissioner’s motion to affirm claiming “[w]hen the Tax Commissioner has a longstanding policy of providing advice to taxpayers on the procedures to follow in perfecting an appeal, he must not affirmatively mislead taxpayers and if he does, he is estopped from treating an assessment as final, when it could be deemed preliminary.” Citing to *Ormet Corp. v. Lindley* (1982), 69 Ohio St.2d 263, appellants argue that the commissioner’s “long standing \*\*\* administrative practice” of “advising taxpayers how to appeal

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<sup>1</sup> Appellants also contend that the commissioner’s actions violate the taxpayers’ rights to procedural due process. While the Ohio Supreme Court has authorized this board to accept evidence on constitutional points, it has clearly stated that we have no jurisdiction to decide constitutional claims. *Cleveland Gear Co. v. Limbach* (1988), 35 Ohio St.3d 229; *MCI Telecommunications Corp. v. Limbach* (1994), 68 Ohio St.3d 195, 198. Therefore, we acknowledge appellants’ constitutional claim, but make no finding in relation thereto.

preliminary and final assessments through \*\*\* written instructions” somehow equates to a longstanding pronouncement or ruling of the commissioner on a taxability issue. Opp. Memo at 4-5. We disagree.

Although the commissioner routinely provides written instructions regarding the appeal process with personal property tax final assessments, there is nothing in the record to indicate that the commissioner has erroneously or incorrectly advised this taxpayer, on a *continuing* basis, for an *extended* period of time, thus creating an ongoing reliance upon a specific directive by the commissioner. In *Ormet*, supra, a taxpayer relied upon a direct pay permit granted by the commissioner, in writing, for over twenty years, even though it should have been cancelled earlier. The court found that the commissioner could not retroactively assess the taxpayer for the years during which the law had changed, prohibiting the use of the direct pay permit by the taxpayer; “where a long-established practice has been followed, such administrative practice does have much persuasive weight especially where the practice has gone on unchallenged for a quarter of a century.” *Ormet*, supra, at 266, quoting *Recording Devices v. Bowers* (1963), 174 Ohio St. 518, 520. “The doctrine of ‘administrative practice’ advanced in *Ormet* \*\*\* constitutes a very narrow exception to the rule that estoppel does not generally apply in tax cases. *Ormet* \*\*\* at 265 \*\*\*. The doctrine applies against the state when the state has interpreted the law in favor of a particular taxpayer in writing and has adhered to that interpretation over an extended period of time, but later corrects its interpretation and attempts to assess taxes retroactively in

accordance with the new interpretation. Id. at 266 \*\*\*.” *HealthSouth Corp. v. Levin*, 121 Ohio St.3d 282, 2009-Ohio-584, at ¶26. Herein, the insertion of incorrect instructions with the personal property final assessment certificates does not constitute a longstanding administrative practice by the commissioner with the instant taxpayer.

In *Sekerak v. Fairhill Mental Health Ctr.* (1986), 25 Ohio St. 3d 38, the Supreme Court held that “[i]t is well-settled that as a general rule ‘\*\*\* the principle of estoppel does not apply against a state or its agencies in the exercise of a governmental function.’ \*\*\*” Id. at 39. (Citations omitted.) Further, it has been routinely held that estoppel does not apply, even where the Tax Commissioner’s employees made misleading or confusing statements. *Loveland Park Baptist Church v. Kinney* (May 25, 1983), Warren App. No. 126, unreported. See, also, *Harper v. Tracy* (Apr. 29, 1994), BTA No. 1992-S-1446, unreported, at 4, fn. 2; *Hazelwood v. Tracy* (Dec. 13, 1996), BTA Nos. 1996-K-34, et seq., unreported, at 9-10. The assessment certificates in question were clearly identified as final assessment certificates, and, as such, the appropriate method by which to appeal such certificates is set forth in R.C. 5711.26.

Accordingly, based upon the foregoing, the commissioner’s motion is well taken and his final determination dismissing the taxpayer’s petitions for

reassessment for lack of jurisdiction must be, and hereby is, affirmed.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.

  
Sally F. Van Meter, Board Secretary