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MOTION

Pursuant to S.Ct. Prac. R. 14.4(A), appellee Joseph W. Testa, Tax Commissioner of Ohio, respectfully requests this Court direct its Clerk to correct the Tax Commissioner's party designation in this case. The Tax Commissioner currently appears on this Court's docket as an appellee. However, for the reasons explained below, this designation should be changed. The Tax Commissioner respectfully requests that the Court direct the Clerk to remove the Tax Commissioner from the list of appellees and designate the State of Ohio as amicus curiae in support of appellant, the Board of Education of the Cleveland Municipal School District ("the Board of Education").

MEMORANDUM IN SUPPORT

The Tax Commissioner was designated on appellant Board of Education's notice of appeal as an appellee. Accordingly, this Court's Clerk entered the Tax Commissioner on the docket of this case as an appellee. However, this designation is inappropriate.

The reason for this misdesignation may be attributable to the fact that the Tax Commissioner is a necessary party by statute to appeals from decisions of the Board of Tax Appeals to this Court. See, R.C. 5717.04 ("In all such appeals [from the BTA] 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."). So, if the property owner had appealed its case to the Board of Tax Appeals after losing in the Board of Revision, the Tax Commissioner would be an appellee by statute in any subsequent appeal from the BTA to this Court. See R.C. 5717.01; R.C. 5717.04.

But this case followed a different procedural history. After losing in the Board of Revision, the property owner in this case appealed to the Court of Common Pleas of Cuyahoga County, not the Board of Tax Appeals. See R.C. 5717.05 ("As an alternative to the [BTA] appeal provided

for in section 5717.01 of the Revised Code, an appeal from the decision of a county board of revision may be taken directly to the court of common pleas of the county by the person in whose name the property is listed or sought to be listed for taxation.”). In appeals from court of common pleas, there is no corresponding statute to R.C. 5717.04 that requires joinder of the Tax Commissioner. Instead, as explained by R.C. 5717.05, when a property owner appeals a decision of the Board of Revision to the court of common pleas, subsequent appeals proceed “as in other cases.” The statute specifies that any “party” may appeal, but no statute requires joinder of the Tax Commissioner as an appellee. The Tax Commissioner was not a party to the Board of Revision case, nor a party to the appeals in the court of common pleas or the court of appeals. Accordingly, the Tax Commissioner should not have been designated an appellee in this case.

Still, the State of Ohio, through the office of the Tax Commissioner, has an interest in this case because it concerns the administrative process for resolving complaints against the value of real property stated on the tax rolls of all counties in Ohio. As Ohio’s Tax Commissioner, Joseph Testa is statutorily charged to “direct and supervise the assessment for taxation of all real property” in Ohio. R.C. 5715.01. In statewide tax matters, the Tax Commissioner is an expert and acts to ensure that tax laws are administered uniformly across the state. Further, pursuant to R.C. 5715.37, “to protect the public interest,” the Tax Commissioner “may appear and upon his application be heard in any court or tribunal in any proceeding involving the appraisal, valuation, or equalization of real property for the purpose of taxation, or the assessment or collection of taxes.”

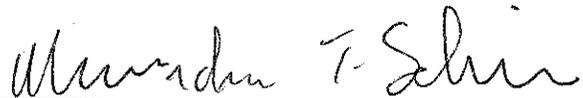
The State of Ohio has a strong interest in the outcome of this case, as it will affect the rights of all persons with a stake in the revaluation of real property for tax purposes. In order to ensure that property owners, political subdivisions, and all others with a stake in the valuation of

real property get a full and fair opportunity to present their case before the Boards of Revision and are not arbitrarily foreclosed from pursuing their rights, the State of Ohio will file a brief as amicus curiae, urging the Court to reverse the decision of the Eighth District Court of Appeals.

Accordingly, the Tax Commissioner respectfully requests that this Court direct the Clerk to correct the designation of the Tax Commissioner as appellee, and designate the State of Ohio as amicus in support of appellant.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion was served by U.S. mail this 14th day of May,

2012, upon the following counsel:

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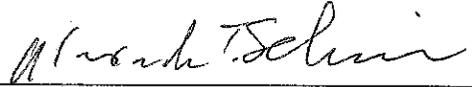
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