

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.: 2012-0780

Appeal from the Ohio Board of
Tax Appeals

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

MERIT BRIEF OF APPELLANTS
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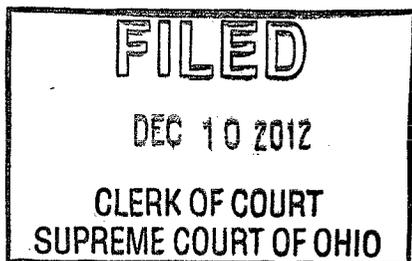


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STATEMENT OF THE FACTS

Crown Castle GT Company, LLC and Crown Communications, Inc. (collectively, “Crown”) are leading independent owners and operators of wireless infrastructure, including an extensive network of towers.¹ Crown acquired the existing towers at issue in bulk transactions over seven (7) years from major players in the telecommunication industry like Bell Atlantic.² Further, the purchase price always included an intangible component because there were anchor tenants for each tower.³ Thus, a depreciated replacement cost new model was used to compute value for accounting and tax purposes.⁴

Crown timely filed 2006 personal property tax returns (Form 945) in May of 2006.⁵ On August 14, 2006, the Ohio Department of Taxation (“Department”) filed its preliminary assessment (the bill) based upon the values declared by Crown. But later in August of 2006, Crown received notice of an audit. In April of 2008 (almost two years later), the auditor prepared tax form #807(c) – Audit Remarks.⁶ In the audit remarks, the Department acknowledged that Crown had relied upon a Marshall and Swift valuation to place an acquisition cost on each used tower purchased and that they had also, more recently, provided an updated model from the American Tower Company.⁷ Further, the Department requested and received these industry approved guides for valuing Crowns’ towers. But after receiving the reports, the Department did not seek advice from anyone with experience in the tower industry. Rather, the

1. Reply To Appellants’ Memorandum In Opposition To Appellee’s Motion to Affirm filed March 28, 2008 with the BTA at Exhibit A et seq. (Certification of Joseph Testa) and Exhibit C (Affidavit of Deborah C. Pearson).

2. Id. at Exhibit A8.

3. Id. at Exhibit A10.

4. Id. at Exhibit A31.

5. Id. at A3-A6.

6. Id. at A7 to A13.

7. Id. at A11.

Department rejected Crown's explanation because it "was still unable to determine how the true value retained [sic] was calculated."⁸ Thus, according to the Department, Crown had not rebutted the prima facie valuation from the composite annual allowance procedure.⁹

On May 15, 2008, the Department informed Crown's representative, Carmen Lopez,¹⁰ by mail of its decision and also stated in writing that Crown would have thirty days to provide additional information and *if* no information "is received within 30 days, Amended Preliminary Assessment Certificates of Valuation will be used."¹¹

But the Department had no intention of objectively reviewing any new information. Indeed, the very same day it mailed the letter, it also prepared the amended assessments and decided to mail them directly to the companies, rather than Crown's representative.¹² Further, contrary to the Department's promise to wait thirty days, the Department mailed the amended assessments on May 29, 2008.¹³

In early August of 2008, Crown's representative, although disagreeing with the "composite allowance" value for their personal property, paid the amended assessments for the 2006 tax year and filed applications for final assessments (petitions for refund).¹⁴ Crown also received and paid revised assessments for the 2007 and 2008 tax years and sought refunds on those overpayments.

8. Id. at A11.

9. Id. at A11-12.

10. Carmen has since married and now uses her husband's surname, Ospina.

11. Id. at A14.

12. Id. at A16.

13. According to the Tax Commissioner and BTA, this broken promise (which the Department obviously did not intend to keep even when provided) is of no consequence because we are dealing with a governmental function and, therefore, estoppel only applies *if* the Tax Commissioner has incorrectly advised this taxpayer on the same matter on a *continuing* basis, for an extended period of time – BTA Opinion at p. 3.

14. Statutory Transcript (ST) 90-91.

In May and June of 2009, the Department issued personal property assessments for the 2006, 2007 and 2008 tax years.¹⁵ The 2006 assessment stated “Final Assessment Certificate of Valuation,” and the assessments for 2007 and 2008 stated “Amended Preliminary Assessment Certificate of Valuation.”¹⁶ The face of all three assessment certificates plainly state that important appeal instructions are enclosed, and all three contain identical appeal instructions directing an appeal to the Tax Commissioner.¹⁷ The pertinent parts of the cover page of the Crown Castle GT 2006 assessment provides:

Ohio Department of
TAXATION

State of Ohio
Department of Taxation
Tangible Personal Property
**Final Assessment Certificate of
Valuation**

Tax Form 947 F
Rev 10-03

Inter County

Taxpayer	Account Number	FEIN	Date	Return Year
CROWN CASTLE GT, LLC PMB 353 4017 WASHINGTON RD. McMurray PA 15317	10637500	76- 0627250	05/22/2009	2006
THIS IS NOT A TAX BILL. The County Treasurer’s bill will show the amount of taxes now charged against you for the year indicated. This is to certify that the Tax Commissioner has, pursuant to R.C. Section 5711.26, fixed the final assessed value of tangible personal property of this taxpayer and apportioned it to your company as set forth below. In the event you wish to object to the assessment or penalty, if any, please see instructions included.				

APPEAL INSTRUCTIONS ARE DETAILED IN THE ENCLOSED “NOTICE TO TAXPAYER”

Crown’s representative carefully followed the instructions. But unbeknownst to Crown’s representative, the Department provided the wrong instructions if it actually meant to issue a

15. Memorandum of Appellants in Opposition to Appellee’s Motion to Affirm filed with the BTA on March 21, 2012 at Affidavit of Carmen Ospina.

16. Id.

17. Id.

“Final Assessment” for the 2006 tax year. So, consistent with the Department’s specific mandate to follow its appeal instructions, on July 10, 2009, Crown’s representative complied and mailed the appeal to the Tax Commissioner—well within the “instructed” sixty days after the mailing of the assessment notice.¹⁸ The Tax Commissioner’s representative received the appeal on July 14, 2009 and calculated that it was filed on day 49.¹⁹

At least part of what happened next and why can be gleaned from the Tax Commissioner’s own records. The Tax Commissioner’s representative quickly noted that the “Tax Rep appealed final assessment to the Tax Commissioner – should appeal to BTA.”²⁰ What did not happen is also clear. In spite of the fact that the Department recognized the error sometime between day 49 and day 52, it took no action to inform Crown.²¹

What happened after July 17, 2009 is also clear—the Department decided to “lay in the weeds.” The plan—to ambush a company that had voluntarily filed its form 945—was implemented with precision. The Department “per Jan. 7/17/09” (day 52) would stay silent about the error and would “docket to dismiss” sometime after August 25, 2009.²² On July 20, 2009 (day 55), the Department, pretending as though it had not recognized any filing error, acknowledged receipt of the appeal “contesting” the assessment and informed Crown of a case number.²³ The Department’s communication to Crown served to further mislead Crown by acknowledging the assessment was contested, which implied the Department believed

18. The Tax Commissioner’s legal argument is that the wrong instructions could have been intentionally sent and he would still prevail.

19. ST 20.

20. ST 11-12, 14.

21. Id.

22. ST 12.

23. ST 6-7.

jurisdiction had been invoked consistent with the instructions it had provided to Crown.²⁴ In spite of the Department's plan to file a motion to dismiss for lack of jurisdiction, it never once suggested to Crown that it believed a defect in the appeal existed.²⁵ On September 8, 2009, well after the sixty-day appeal period expired, the Tax Commissioner dismissed the petition because he believed it was improperly filed with him rather than the Board.²⁶

Upon receipt of the September 8, 2009 order from the Tax Commissioner dismissing the refund claim, the surprised Crown representative emailed a representative of the Department to explain she had filed the appeal consistent with the Department's written instructions.²⁷ Rather than agreeing to withdraw the alleged "final" assessment, the impenitent response from the Department was "I assume your appeal filed with the BTA for TY 2006 will address the Tax Commissioner's final determination as well as any valuation issues if the BTA assumes jurisdiction."²⁸ Crown timely appealed the Tax Commissioner's decision to BTA, and the BTA affirmed the Tax Commissioner's dismissal for lack of jurisdiction.²⁹

Although the Department trumpets Ohio's business friendly tax environment, Crown can only dare to wonder if the Tax Commissioner ever remotely intended to consider the merits of its refund claim.

24. ST 5-8.

25. ST 11-12, 14.

26. ST 1-2.

27. ST 3.

28. Id.

29. BTA Decision and Order dated April 5, 2012.

LAW AND ARGUMENT

Proposition of Law No. 1: Until Correct Written Instructions Explaining The Procedure To Perfect A Tax Appeal Are Provided Or The Taxpayer Waives His Right To Receive The Instructions, Any Personal Property Assessment Remains Preliminary. R.C. 5703.51(D) (Applied And Followed).

The Ohio Taxpayer's Bill of Rights imposes specific duties on the Tax Commissioner to provide *accurate* written descriptions to Crown during all phases of the audit and assessment process. R.C. 5703.51(D) states:

With or before the issuance of a final determination of the tax commissioner, the commissioner or county auditor shall provide to the taxpayer a written description of the steps required to perfect an appeal to the board of tax appeals.

And, of course, when the General Assembly directs that certain instructions be provided before or with a final assessment, the Tax Commissioner has a duty to provide them or, alternatively, submit proof that the taxpayers waived their right to receive the instructions. Here, the Tax Commissioner did neither, and yet he declared his assessment "final" and thus incorrectly appealed under R.C. 5717.02. This was an error since the Tax Commissioner must fully comply with R.C. 5703.51(D) or obtain a waiver through a trial on the merits before he insists that his determination be final. *Colonial Vill. Ltd. v. Wash. County Bd. of Revision*, 114 Ohio St.3d 493, 2007-Ohio-4641, 873 N.E. 2d 298.

In *Sun Refining and Marketing Company v. Brennan*, 31 Ohio St.3d 306, 511 N.E. 2d 112 (1987), the State, through an assistant attorney general, misled Sun Refining about the necessary procedural steps to appeal an order shutting down Sun's unfired pressure vessel. But this Court reinstated Sun's appeal because the agency that wanted to "live by the sword" had not followed a mandated procedural step in issuing its "final" order. This Court's holding was as follows:

We hold that the fifteen-day appeal period in R.C. 119.12 does not commence to run until the agency whose order is being appealed fully complies with the procedural requirements set forth in R.C. 119.09. Were we to hold otherwise, it is conceivable that an affected party could lose its right to appeal before receiving notice of an agency's decision, and thereby be deprived of its due process rights.

Accordingly, the decision of the court of appeals is reversed and the cause is dismissed.²

[FN2] When the board complies with R.C. 119.09 and sends Sun a certified copy of its decision by certified mail, return receipt requested, Sun may file a new notice of appeal within fifteen days after the date of mailing of the board's decision pursuant to R.C. 119.12.

Id. at 309. See, also, *French, Auditor v. Limbach, Tax Commr.*, 59 Ohio St.3d 153, 571 N.E. 2d 717 (1991); *Donofrio, County Treasurer, v. B.G.R. Investment Corp.*, 10 Ohio Misc. 2d 25, 462 N.E.2d 193 (M.C.1983).

Similarly, in *Cleveland Elec. Illum. Co. v. Lake County Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033, 772 N.E. 2d 1160, the Board of Revision served CEI with its order but failed to serve its order on a non-party to the appeal, the Ohio Tax Commissioner. Consequently, the taxpayer waited until *after* service had been completed on the Tax Commissioner to appeal. But the Board of Revision moved to dismiss and argued that CEI's appeal was not timely because it was not filed within thirty days after the notice of the decision had been received by CEI. The BTA dismissed CEI's appeal as untimely. In reversing, this Court stated:

In *Mentor*, we recognized our inference in *Cleveland City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1973), 34 Ohio St.2d 231, 63 Ohio Op.2d 380, 298 N.E.2d 125, overruled on other grounds in *Renner v. Tuscarawas Cty. Bd. of Revision* (1991), 59 Ohio St.3d 142, 572 N.E.2d 56, that "the provision in R.C. 5717.01, that an appeal be taken 30 days after notice of the decision of the board of revision is mailed, as provided in R.C. 5717.20, made compliance with the filing requirements of R.C. 5715.20 (which now include filing with the Commissioner of Tax Equalization) a mandatory prerequisite to the right of appeal given by R.C. 5717.01." *Mentor*, 61 Ohio St.2d at 334, 15 Ohio Op.3d

398, 401 N.E.2d 435. We reaffirm that conclusions and hold that the 30-day appeal period set forth in R.C. 5717.01 does not start to run until the required notices are mailed by certified mail to all the persons listed in R.C. 5715.20, including the Tax Commissioner.

Id. at 168.

Here, by incorporating preliminary assessment appellate instructions into its “final” assessment, the Tax Commissioner never properly issued a final order. Thus, Crown’s appeal was properly filed with the Tax Commissioner because it must be construed as an amended preliminary assessment due to the incorporation of the wrong appellate instructions which Crown followed in good faith. Like *Cleveland Elec. Illum. Co.*, supra, the BTA’s decision should be reversed, with the case remanded to the Tax Commissioner with orders to issue a Final Assessment Certificate of Valuation that contains proper appellate instructions, at which time Crown’s appeal time to the BTA will begin to run.

Proposition of Law No. 2: If The Tax Commissioner Mails An Assessment Labeled As “Final” But Incorporates The Wrong Appellate Instructions, He Has Created An Ambiguity, And The Taxpayer May Treat The Assessment As Either Preliminary Or Final.

The Tax Commissioner instructed Crown, in writing, twice on the front of the 2006 “Final Assessment Certificate of Valuation” to closely follow the enclosed, detailed instructions, stating: (1) “In the event you wish to object to the assessment or penalty, if any, please see instructions included.”; and (2) “APPEAL INSTRUCTIONS ARE DETAILED IN THE ENCLOSED ‘NOTICE TO TAXPAYER’.” However, the instructions the Tax Commissioner incorporated with the assessment indicated Crown must file its appeal with the Tax Commissioner. The Tax Commissioner’s instructions provided:

Notice to Taxpayer

* * *

Objection to Increase in Taxable Value or Denial of a Claim for Deduction from Book Value: You may request a review of the increased assessment or denial of a claim for deduction from book value by filing a Petition for Reassessment with the Tax Commissioner within 60 days after the mailing of the assessment notice to you. The petition should include, and refer to, a true copy of this assessment certificate and must indicate your objections. Subsequently, additional objections may be submitted if done in writing before the issuance by the Tax Commissioner of the final determination on the petition. You may pay all or the undisputed portion of the tax to avoid interest charges (O.R.C. Section 5711.31).

* * *

Crown carefully followed these instructions. Unfortunately, the instructions were erroneous if the document was intended to be, as labeled, a “final” assessment. In short, the Tax Commissioner instructed Crown to appeal the assessment consistent with it being preliminary, while at the same time he labeled the assessment “final.” Consequently, it must be conceded that either the first page of the notice should have been labeled “Amended Preliminary Assessment” or, alternatively, different appeal instructions should have been incorporated by the Tax Commissioner in the assessment mailed to Crown.

As a result of the ambiguity created by the Tax Commissioner, Crown, an innocent taxpayer who reasonably relied on the written instructions is entitled to treat this valuation assessment as an amended preliminary assessment.³⁰ See, *Davis v. Willoughby*, 173 Ohio St. 338, syllabus, 182 N.E.2d 552 (1962) (strict construction of taxing statutes is required, and any doubt must be resolved in favor of the citizen).

30. Affidavit of Carmen Ospina, supra; ST 17.

Proposition of Law No. 3: When The Tax Commissioner Provides Advice To Taxpayers, He Must Not Affirmatively Mislead Taxpayers And, If He Does, He Is Estopped From Relying On Any Error That He Induced.

The doctrine of estoppel against the Tax Commissioner has been accepted. *Ormet Corp. v. Lindley*, 69 Ohio St.2d 263, 431 N.E. 2d 686 (1982). But, it is a doctrine that requires that the government's agent be authorized to make the representation upon which the taxpayer relies. *Ormet* was decided in the factual setting of a long-standing Tax Commissioner policy, conduct that by definition is authorized. Thus, "authority" was not truly an issue.

In *Ormet*, a sales and use tax assessment for 1973-1975 was voided by estoppel because, the Tax Commissioner had acknowledged that the taxpayer's purchases were exempt. Indeed, the Tax Commissioner had issued a direct pay permit in 1965 excepting the disputed purchases from taxation and only cancelled it in 1977.

The Board of Tax Appeals however placed a judicial gloss on *Ormet Corp. v. Lindley, supra*, that severely restricts its use as equitable tool. According to the BTA, the Tax Commissioner had to have "erroneously or incorrectly advised these Taxpayers, on a *continuing* basis for an extended period of time" before the doctrine of estoppel is applicable. (Emphasis in original text.)³¹

This restrictive test means that estoppel does not apply, even though the Tax Commissioner's employee, acting within the scope of her authority, has made misleading or confusing statements.³² The Board's test allows the Tax Commissioner to engage in intentionally misleading conduct, provided he only does so occasionally rather than on a

31. BTA Decision and Order p. 3.

32. *Id.* at p. 4.

continuing basis. In this case, per the BTA, the Tax Commissioner would be estopped only if it had consistently incorrectly advised Crown how to appeal an assessment on an annual basis.

Like other citizens, the Tax Commissioner must be held accountable when he gives the wrong advice on a one time or occasional basis and should not receive a free pass because the misfeasance allegedly relates to what is described as a “governmental function.”³³ Indeed, the use of the term “governmental function” in the BTA’s decision confirms that the argument, that estoppel should not apply against the State, is derived from the doctrine of sovereign immunity. But sovereign immunity, particularly for the State, has now been largely statutorily abolished. See, R.C. Chapter 2743 et seq.

Relief against tax authorities through estoppel—like recognition of a citizen’s rights to compensatory damage when injured by the State—has also followed a path of slow recognition. Initially, there were broad rules that, irrespective of egregious affirmative misconduct by the government, taxpayers were not entitled to relief based upon equitable estoppel. One reason for such a restrictive policy was a fear that an unauthorized act of a field auditor might limit the sovereign’s *right* to tax. But, the question here does not concern the State’s right to tax; that is admitted. Rather, the question is Crown’s right to rely on written instructions provided by the Tax Commissioner on *how* to appeal. In this case, the Tax Commissioner expressly mandated, as part of its assessment mailed to Crown, that the instructions be followed. Then, within the sixty-day appeal period, the Tax Commissioner acknowledged that Crown had “contested” the assessments.

Most states that have addressed the issue of estoppel now agree with the holding in *Ormet*. The leading case, which cites *Ormet* with approval, is *Blocker Drilling Canada, Ltd. v.*

33. Affidavit of Deborah Pearson ¶3, *supra*.

Conrad, 354 N.W.2d 912 (N.D. 1984). In *Blocker Drilling*, a state agent was involved in an assessment of tangible personal property. The agent agreed upon the values for the property and even sent the taxpayer's representative a letter confirming the agreement. However, the economy underwent a change and drilling became more profitable. So, the taxing authority decided to pursue the drilling industry and conduct audits. It audited Blocker and determined that it should have used book value rather than the previously agreed upon fair market value for the personal property on its tax return. Further, the taxing authority even imposed penalties upon Blocker for paying tax based upon fair market value. In determining that the State was bound by the letters sent by the agent to Blocker's representative, the North Dakota Supreme Court first analyzed the law dealing with estoppel against the government and the competing concerns of fairness and the State's legitimate interest in preserving its power to tax. In resolving the competing public policy concerns, the Court found particularly persuasive the following passage from *Wisconsin Department of Revenue v. Moebius Printing Co.*, 89 Wis.2d 610, 279 N.W.2d 213 (1979):

“Revenues to support state services are gathered primarily as a result of the conscientious voluntary compliance of taxpayers with the tax law and department procedures. It is important that taxpayers receive fair play from tax officials.”
Moebius, 279 N.W.2d at 226.

Id. at 918).

The North Dakota Supreme Court in *Blocker Drilling* then, after citing *Moebius*, concluded as follows:

“We hold today that estoppel against the government is not absolutely barred as a matter of law, even in matters concerning taxation. In so holding, we join the increasing number of jurisdictions that have narrowed the scope of government protection. We emphasize that the doctrine is not one which should be applied freely against the government, but likewise is not one which should never be available. *It is a doctrine which must be applied on a case-by-case basis with careful weighing of the inequities that would result if the doctrine is not applied*

versus the public interest at stake and the resulting harm to that interest if the doctrine is applied.”

Id. at 918.

Applying the *Blocker* case-by-case rationale to the instant fact pattern, it is clear that estoppel should apply to the case *sub judice*. The Tax Commissioner not only provided the wrong instructions, he mandated that they be followed. These actions, which Crown relied upon to its detriment, were compounded by the fact that the Tax Commissioner acknowledged receipt of Crown’s appeal “contesting” the assessment well before the time to appeal expired. It is simply fair play to allow Crown to proceed with the merits of their refund, and the Tax Commissioner should be estopped from arguing that Crown’s claim is procedurally barred. Moreover, the heavy burden of proving that the Tax Commissioner’s conduct was misleading and that Crown reasonably and detrimentally relied are safeguards to insure that the doctrine is not misused by taxpayers.³⁴

Proposition of Law No. 4: If A Taxpayer Pays A Disputed Assessment Based Upon His Right to Prosecute A Refund Claim, The State May Not, Without Violating The Taxpayer’s Right To Due Process Of Law, Eliminate The Taxpayer’s Ability To Prosecute The Claim By Providing Erroneous Appellate Instructions.

The enactment of a tax constitutes deprivation of property. *McKesson v. Division of Alcoholic Beverages and Tobacco*, 496 U.S. 18, 110 S.Ct. 2238, 110 L.Ed.2d 17 (1990). It thus follows that due process of law for this taking, under the Ohio Constitution, Article I, Section 2 and under Section 1 of the Fourteenth Amendment of the United States Constitution, requires

34. Reliance may not be reasonable when the advice is only an oral statement by a co-worker or supervisor and where the oral statement is contradicted by the written instructions provided by the agency. See, e.g., *Sekerak v. Fairhill Mental Health Center*, 25 Ohio St.3d 38, 495 N.E. 2d 14 (1986) 14 (1986) and *Griffith v. J.C. Penney Co.*, 24 Ohio St.3d 112, 493 N.E. 2d 959 (1986).

that a citizen be reasonably allowed to challenge the tax under clear procedures. As the United States Supreme Court succinctly stated:

... “To satisfy the requirements of the Due Process Clause... the State must provide taxpayers with, not only a fair opportunity to challenge the accuracy and legal validity of their tax obligation, but also a “clear and certain remedy” for any erroneous or unlawful tax collection to ensure that the opportunity to test the tax is a meaningful one.”

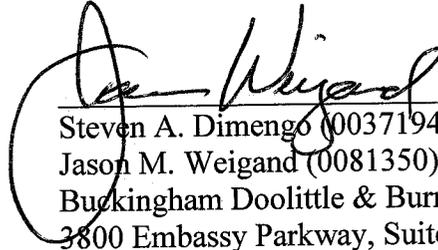
Id. at 39. See, also, *Memphis Light, Gas & Water Div. v. Craft* 436 U.S. 1, 18, 98 S. Ct. 1554; 56 L. Ed.2d (1978).

Here, when improper written instructions about where to file an appeal are provided, the State cannot benefit from its own mistakes because, if it does, then it has robbed the taxpayer of a “fair opportunity” to pursue a “clear and certain [refund] remedy.” *McKesson, supra*.

CONCLUSION

Inequitable conduct regardless of the status of the actor should not be beyond reproach. Here, through appropriate statutory interpretation or through the application of the time honored principle of equitable estoppel a remedy should be available, and this Court should not have to address Crown’s constitutional argument. But if this Court addresses Crown’s due process proposition of law, it is clear that due process of law requires a modicum of fair play. Moreover, fair play at a most basic level does not permit a State to foreclose a right to pursue a refund claim by providing misleading instructions on the procedural steps necessary to prosecute the refund claim.

Respectfully submitted,



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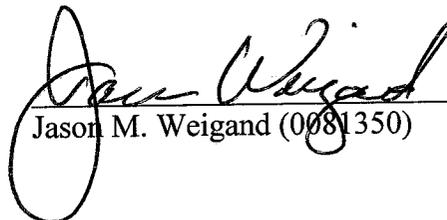
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 10, 2012 a copy of the foregoing Merit Brief of Appellants Crown Castle GT Company, LLC and Crown Communication, Inc. was served electronically upon sophia.hussain@ohioattorneygeneral.gov and by certified U.S.

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APPENDIX

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vs.

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

Appellee.

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

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Crown Castle GT Company, LLC and
Crown Communication, Inc.

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Sophia Hussain, Assistant Attorney General
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Columbus, Ohio 43215-3428

Counsel for Appellee,
Joseph W. Testa,
Tax Commissioner of Ohio

FILED
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.

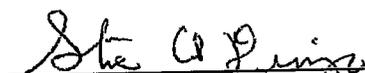
The Appellants complain of the following errors in the Decision and Order of the Board:

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,



Steven A. Dimengo (0057194) (Counsel of Record)

David W. Hilkert (0023486)

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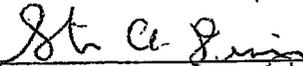
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RFry@bdblaw.com

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.

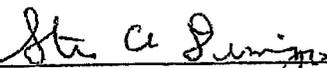


Steven A. Dimengo (0037194) (Counsel of Record)
David W. Hilkert (0023486)
Richard B. Fry, III (0084221)

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, 8th 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, 25th Floor
Columbus, Ohio 43266



Steven A. Dimengo (0037194) (Counsel of Record)
David W. Hilkert (0023486)
Richard B. Fry, III (0084221)

OHIO BOARD OF TAX APPEALS

Crown Communication, Inc./Crown
Castle GT Company, LLC,

Appellants,

vs.

Richard A. Levin, Tax Commissioner
of Ohio,

Appellee.

CASE NO. 2009-A-3187

(PERSONAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellants

- Buckingham, Doolittle & Burroughs, LLP
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Akron, Ohio 44333

For the Appellee
Tax Commissioner

- Michael DeWine
Attorney General of Ohio
Sophia Hussain
Assistant Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215

Entered

APR - 5 2012

Ms. Margulies, Mr. Johrendt, and Mr. Williamson concur.

This matter is before the Board of Tax Appeals upon a motion to affirm the Tax Commissioner's final determinations dismissing appellants' petitions for reassessment relating to personal property tax final assessment certificates for tax year 2006; the commissioner determined that the appellants had improperly filed their appeals from the final assessment certificates with the commissioner, instead of the Board of Tax Appeals, as required by R.C. 5711.26. The appellants



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 responded¹ 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

¹ 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

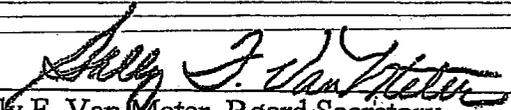
accordance with the new interpretation. Id. at 266 ***.” *HealthSouth Corp. v. Levin*, 121 Ohio St.3d 282, 2009-Ohio-584, at ¶26. Herein, the insertion of incorrect instructions with the personal property final assessment certificates does not constitute a longstanding administrative practice by the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



0000000399

FINAL DETERMINATION

Date: SEP 08 2009

Crown Communication, Inc.
PMB 353
4017 Washington Rd.
McMurray, PA 15317

Re: Case No. 10-01531
Personal Property Tax
Various Ohio Counties
Tax Year: 2006

This is the final determination of the Tax Commissioner on a petition for reassessment pursuant to R.C. 5711.31.

R.C. 5711.31 provides that a taxpayer may file with the Tax Commissioner, in person or by certified mail, a petition for reassessment within sixty days after the mailing of the notice of the assessment. The petition shall have attached to it a copy of the notice of assessment and shall indicate the taxpayer's objections.

The petitioner filed a petition for reassessment on July 10, 2009. The petitioner provided a copy of the final assessment certificate dated May 22, 2009. It is from this final assessment certificate that the petitioner filed with the Tax Commissioner a petition for reassessment. However, the petition for reassessment is not the proper procedure. Pursuant to R.C. 5717.02, an appeal of a final assessment must be to the Board of Tax Appeals (BTA).

R.C. 5717.02 provides that a taxpayer may file an appeal to the BTA within 60 days of the issuance of a final assessment certificate.

In the instant matter, the taxpayer erred by filing its appeal of the final assessment certificate with the Tax Commissioner and not with the Board of Tax Appeals, as required by law.

Accordingly, the subject petition for reassessment is dismissed.

THIS REFLECTS THE TAX COMMISSIONER'S FINAL DETERMINATION WITH REGARD TO THE SUBJECT MATTER.

I CERTIFY THAT THIS IS A TRUE AND ACCURATE COPY OF THE FINAL DETERMINATION RECORDED IN THE TAX COMMISSIONER'S JOURNAL

Richard A. Levin
RICHARD A. LEVIN
TAX COMMISSIONER

/s/ Richard A. Levin

Richard A. Levin
Tax Commissioner

000001



**Ohio Department of
TAXATION**
Office of the Tax Commissioner
30 E. Broad St., 22nd Floor • Columbus, OH 43215

0000000398

**FINAL
DETERMINATION**

Date: SEP 08 2009

Crown Castle GT Company, LLC
PMB 353
4017 Washington Rd.
McMurray, PA 15317

Re: Case No. 10-01561
Personal Property Tax
Various Ohio Counties
Tax Year: 2006

This is the final determination of the Tax Commissioner on a petition for reassessment pursuant to R.C. 5711.31.

R.C. 5711.31 provides that a taxpayer may file with the Tax Commissioner, in person or by certified mail, a petition for reassessment within sixty days after the mailing of the notice of the assessment. The petition shall have attached to it a copy of the notice of assessment and shall indicate the taxpayer's objections.

The petitioner filed a petition for reassessment on July 10, 2009. The petitioner provided a copy of the final assessment certificate dated May 22, 2009. It is from this final assessment certificate that the petitioner filed with the Tax Commissioner a petition for reassessment. However, the petition for reassessment is not the proper procedure. Pursuant to R.C. 5717.02, an appeal of a final assessment must be to the Board of Tax Appeals (BTA).

R.C. 5717.02 provides that a taxpayer may file an appeal to the BTA within 60 days of the issuance of a final assessment certificate.

In the instant matter, the taxpayer erred by filing its appeal of the final assessment certificate with the Tax Commissioner and not with the Board of Tax Appeals, as required by law.

Accordingly, the subject petition for reassessment is dismissed.

THIS REFLECTS THE TAX COMMISSIONER'S FINAL DETERMINATION WITH REGARD TO THE SUBJECT MATTER.

I CERTIFY THAT THIS IS A TRUE AND ACCURATE COPY OF THE FINAL DETERMINATION RECORDED IN THE TAX COMMISSIONER'S JOURNAL

Richard A. Levin

RICHARD A. LEVIN
TAX COMMISSIONER

/s/ Richard A. Levin

Richard A. Levin
Tax Commissioner

00002

5703.51 Written information and instructions for taxpayers.

(A) The tax commissioner shall include in the instruction booklet for filing the annual return of personal property taxes a general description of the method by which the tax is assessed and collected and the rights and responsibilities of taxpayers in that process.

(B) At or before the commencement of an audit, the tax commissioner shall provide to the taxpayer a written description of the roles of the department of taxation and of the taxpayer during an audit and a statement of the taxpayer's rights, including any right to obtain a refund of an overpayment of a tax. At or before the commencement of an audit, the commissioner shall inform the taxpayer when the audit is considered to have commenced.

(C) With or before the issuance of an assessment, the tax commissioner or county auditor shall provide to the taxpayer:

(1) A written description of the basis for the assessment and any penalty required to be imposed with the assessment;

(2) A written description of the taxpayer's right to appeal the assessment and an explanation of the steps required to request administrative review by the tax commissioner;

(3) A written description of the collection remedies available to the state, including a statement that if the taxpayer fails to pay an assessment within sixty days after it is due, the tax commissioner will certify the amount to the attorney general for collection, and a summary of the provisions contained in section 131.02 of the Revised Code.

(D) With or before the issuance of a final determination of the tax commissioner, the commissioner or county auditor shall provide to the taxpayer a written description of the steps required to perfect an appeal to the board of tax appeals.

(E) Except in cases involving suspected criminal violations of the tax law or other criminal activity, the tax commissioner shall conduct an audit of a taxpayer during regular business hours and after providing reasonable notice to the taxpayer. A taxpayer who is unable to comply with a proposed time for an audit on the grounds that the proposed audit would cause inconvenience or hardship must offer reasonable alternative dates for the audit.

(F) At all stages of an audit or the administrative review of the audit by the tax commissioner or county auditor, a taxpayer is entitled to be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner. The tax commissioner shall prescribe a form by which a taxpayer may designate such a person to assist or represent the taxpayer in the conduct of any proceedings resulting from actions by the tax commissioner or county auditor. In the absence of this form, the commissioner or auditor may accept such other evidence as the commissioner considers appropriate that a person is the authorized representative of a taxpayer.

A taxpayer may refuse to answer any questions asked by the person conducting the audit until the taxpayer has an opportunity to consult with the taxpayer's attorney, accountant, bookkeeper, or other tax practitioner. This division does not authorize the practice of law by a person who is not an attorney.

(G) A taxpayer may record, electronically or otherwise, the audit examination.

(H) The failure of the tax commissioner or county auditor to comply with a provision of this section shall neither excuse a taxpayer from payment of any taxes shown to be owed by the taxpayer nor cure any procedural defect in a taxpayer's case.

(I) If the tax commissioner or county auditor fails to substantially comply with the provisions of this section, the commissioner, on application by the taxpayer, shall excuse the taxpayer from penalties and interest arising from the audit or assessment.

A taxpayer shall make application to the commissioner under this division within one year of the date the taxpayer knows of or should have known that the commissioner or county auditor failed to substantially comply with the provisions of this section.

Effective Date: 09-06-2002

5711.26 Commissioner may make certain final assessments.

Except for taxable property concerning the assessment of which an appeal has been filed under section 5717.02 of the Revised Code, the tax commissioner may, within the time limitation in section 5711.25 of the Revised Code, and shall, upon application filed within such time limitation in accordance with the requirements of this section, finally assess the taxable property required to be returned by any taxpayer, financial institution, dealer in intangibles, or domestic insurance company as to which a preliminary or amended assessment has been made by or certified to a county treasurer or certified to the auditor of state or as to which the preliminary assessment is evidenced by a return filed with a county auditor for any prior year; and the commissioner may finally assess the taxable property of a taxpayer, financial institution, dealer in intangibles, or domestic insurance company who has failed to make a return to a county auditor or to the department of taxation in any such year. Application for final assessment shall be filed with the tax commissioner in person or by certified mail. If the application is filed by certified mail, the date of the United States postmark placed on the sender's receipt by the postal employee to whom the application is presented shall be treated as the date of filing. The application shall have attached thereto and incorporated therein by reference a true copy of the most recent preliminary or amended assessment, whether evidenced by certificate or return, to which correction is sought through the issuance of a final assessment certificate. The application shall also have attached thereto and incorporated therein by reference evidence establishing that the taxes, and any penalties and interest thereon, due on such preliminary or amended assessment have been paid. By filing such application within the time prescribed by section 5711.25 of the Revised Code, the taxpayer has waived such time limitation and consented to the issuance of his assessment certificate after the expiration of such time limitation.

For the purpose of issuing a final assessment the commissioner may utilize all facts or information he possesses, and shall certify in the manner prescribed by law a final assessment certificate in such form as the case may require, giving notice thereof by mail to the taxpayer, financial institution, dealer in intangibles, or domestic insurance company. Such final assessment certificate shall set forth, as to each year covered, the amount of the final assessment as to each class of property and the amount of the corresponding preliminary or last amended assessment. If no preliminary or amended assessment was made, the amount listed in the taxpayer's return for each such class of property shall be shown. If the amount of any final assessment of any such class for any year exceeds the amount of the preliminary or amended assessment of such class for such year, the difference shall be designated a "deficiency," and if no preliminary or amended assessment has been made, each item in the final assessment certificate shall be so designated. If the final assessment of any such class for any such year is less in amount than the preliminary or amended assessment thereof for such year, the difference shall be designated an "excess." The commissioner shall add to each such deficiency assessment the penalty provided by law, computed on the amount of such deficiency.

A copy of the final assessment certificate shall be transmitted to the treasurer of state or the proper county auditor, who shall make any corrections to his records and tax lists and duplicates required in accordance therewith and proceed as prescribed by section 5711.32 or 5725.22 of the Revised Code.

An 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. When such an appeal is filed and the notice of appeal filed with the commissioner has attached thereto and incorporated therein by reference a true copy of any assessment authorized by this section as required by section 5717.02 of the Revised Code, the commissioner shall notify the treasurer of state or the auditor and treasurer of each county

having any part of such assessment entered on the tax list or duplicate.

Upon the final determination of an appeal which may be taken from an assessment authorized by this section, the commissioner shall notify the treasurer of state or the proper county auditor of such final determination. The notification may be in the form of a corrected assessment certificate. Upon receipt of the notification, the treasurer of state or the county auditor shall make any corrections to his records and tax lists and duplicates required in accordance therewith and proceed as prescribed by section 5711.32 or 5725.22 of the Revised Code.

The assessment certificates mentioned in this section, and the copies thereof, shall not be open to public inspection.

Effective Date: 07-01-1985

5711.31 Notice of assessment - petition for reassessment - final determination.

Whenever the assessor assesses any property not listed in or omitted from a return, or whenever the assessor assesses any item or class of taxable property listed in a return by the taxpayer in excess of the value or amount thereof as so listed, or without allowing a claim duly made for deduction from the net book value of accounts receivable, or depreciated book value of personal property used in business, so listed, the assessor shall give notice of such assessment to the taxpayer by mail. The mailing of the notice of assessment shall be prima-facie evidence of the receipt of the same by the person to whom such notice is addressed. With the notice, the assessor shall provide instructions on how to petition for reassessment and request a hearing on the petition.

Within sixty days after the mailing of the notice of assessment prescribed in this section, the party assessed may file with the tax commissioner, in person or by certified mail, a written petition for reassessment, signed by the party assessed, or by that party's authorized agent having knowledge of the facts. If the petition is filed by certified mail, the date of the United States postmark placed on the sender's receipt by the postal employee to whom the petition is presented shall be treated as the date of filing. The petition shall have attached thereto and incorporated therein by reference a true copy of the notice of assessment complained of, but the failure to attach a copy of such notice and incorporate it by reference does not invalidate the petition. The petition also shall indicate the objections of the party assessed, but additional objections may be raised in writing if received prior to the date shown on the final determination by the commissioner.

Upon receipt of a properly filed petition, the commissioner shall notify the treasurer of state or the auditor and treasurer of each county having any part of the assessment entered on the tax list or duplicate.

If the petitioner requests a hearing on the petition, the commissioner shall assign a time and place for the hearing and notify the petitioner of such time and place, but the commissioner may continue the hearing from time to time as necessary.

The commissioner may make corrections to the assessment, as the commissioner finds proper. The commissioner shall serve a copy of the commissioner's final determination on the petitioner in the manner provided in section 5703.37 of the Revised Code. The commissioner's decision in the matter is final, subject to appeal under section 5717.02 of the Revised Code. The commissioner also shall transmit a copy of the commissioner's final determination to the treasurer of state or applicable county auditor. In the absence of any further appeal, or when a decision of the board of tax appeals or of any court to which the decision has been appealed becomes final, the commissioner shall notify the treasurer of state or the proper county auditor of such final determination. If the final determination orders correction of the assessment, the notification may be in the form of a corrected assessment certificate. Upon receipt of the notification, the treasurer of state or the proper county auditor shall make any corrections to the treasurer's or auditor's records and tax lists and duplicates required in accordance therewith and proceed as prescribed by section 5711.32 or 5725.22 of the Revised Code.

The decision of the commissioner upon such petition for reassessment shall be final with respect to the assessment of all taxable property listed in the return of the taxpayer and shall constitute to that extent the final determination of the commissioner with respect to such assessment. Neither this

section nor a final judgment of the board of tax appeals or any court to which such final determination may be appealed shall preclude the subsequent assessment in the manner authorized by law of any taxable property which such taxpayer failed to list in such return, or which the assessor has not theretofore assessed.

As used in this section, "taxpayer" includes financial institutions, dealers in intangibles, and domestic insurance companies as defined in section 5725.01 of the Revised Code.

Effective Date: 09-06-2002

5717.02 Appeal from final determination by tax commissioner or county auditor - procedure - hearing.

(A) Except as otherwise provided by law, 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 taken to the board of tax appeals by the taxpayer, by the person to whom notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner is required by law to be given, by the director of budget and management if the revenues affected by that decision would accrue primarily to the state treasury, or by the county auditors of the counties to the undivided general tax funds of which the revenues affected by that decision would primarily accrue. Appeals from the redetermination by the director of development under division (B) of section 5709.64 or division (A) of section 5709.66 of the Revised Code may be taken to the board of tax appeals by the enterprise to which notice of the redetermination is required by law to be given. Appeals from a decision of the tax commissioner or county auditor concerning an application for a property tax exemption may be taken to the board of tax appeals by the applicant or by a school district that filed a statement concerning that application under division (C) of section 5715.27 of the Revised Code. Appeals from a redetermination by the director of job and family services under section 5733.42 of the Revised Code may be taken by the person to which the notice of the redetermination is required by law to be given under that section.

(B) The appeals shall be taken by the filing of a notice of appeal with the board, and with the tax commissioner if the tax commissioner's action is the subject of the appeal, with the county auditor if the county auditor's action is the subject of the appeal, with the director of development if that director's action is the subject of the appeal, or with the director of job and family services if that director's action is the subject of the appeal. The notice of appeal shall be filed within sixty days after service of the notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner, property tax exemption determination by the commissioner or the county auditor, or redetermination by the director has been given as provided in section 5703.37, 5709.64, 5709.66, or 5733.42 of the Revised Code. The notice of appeal may be filed in person or by certified mail, express mail, or authorized delivery service. 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 to it and incorporated in it by reference a true copy of the notice sent by the commissioner, county auditor, or director to the taxpayer, enterprise, or other person of the final determination or redetermination complained of, and shall also specify the errors therein complained of, but failure to attach a copy of that notice and to incorporate it by reference in the notice of appeal does not invalidate the appeal.

(C) Upon the filing of a notice of appeal, the tax commissioner, county auditor, or the director, as appropriate, shall certify to the board a transcript of the record of the proceedings before the commissioner, auditor, or director, together with all evidence considered by the commissioner, auditor, or director in connection with the proceedings. Those appeals or applications 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 the hearings and to report to it their findings for affirmation or rejection.

(D) The board may order the appeal to be heard upon the record and the evidence certified to it by

the commissioner, county auditor, or director, but upon the application of any interested party the board shall order the hearing of additional evidence, and it may make an investigation concerning the appeal that it considers proper.

Amended by 129th General Assembly File No. 64, HB 225, § 1, eff. 3/22/2012.

Effective Date: 09-06-2002

See 129th General Assembly File No. 64, HB 225, §4.



1 of 1 DOCUMENT

Page's Ohio Revised Code Annotated:
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Current through Legislation passed by the 129th Ohio General Assembly
 and filed with the Secretary of State through File 149
 *** Annotations current through September 28, 2012 ***

CONSTITUTION OF THE STATE OF OHIO
 ARTICLE I. BILL OF RIGHTS

Go to the Ohio Code Archive Directory

Oh. Const. Art. I, § 2 (2012)

§ 2. Right to alter, reform, or abolish government, and repeal special privileges

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.

NOTES:

Related Statutes & Rules

Ohio Constitution

- Election and term of legislators, Ohio Const. art II, § 2.
- Impeachments, Ohio Const. art II, § 23.
- Ineligibility for certain offices, Ohio Const. art II, § 4.
- Organization of Senate, Ohio Const. art II, § 7.
- Residence, Ohio Const. art II, § 3.
- Vacancies, Ohio Const. art II, § 11.

Comparative Legislation

PRIVILEGE AND IMMUNITIES, *USCS CONST. AMEND. IX; USCS CONST. AMEND. XIV, § 1*

ALR

Constitutionality, construction, and application of *18 USCS sec 610*, prohibiting national banks, corporations, and labor organizations from making contributions or expenditures in connection with federal elections. *24 ALRFed 162*.

Diluting effect of minorities' votes by adoption of particular election plan, or gerrymandering of election district, as violation of equal protection clause of Federal Constitution. *27 ALRFed 29*.