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I. INTRODUCTION/SUMMARY

In this appeal as of right pursuant to R.C. 5717.04, the appellants, Crown Castle GT Company, LLC, and Crown Communication, Inc. (“Crown Castle” or “appellants”), contest the Ohio Board of Tax Appeals’ (“BTA’s”) affirmance of the appellee Tax Commissioner’s dismissal of the appellants’ purported “petitions for reassessment” for the 2006 tax year.

The BTA affirmed the Commissioner’s final determination, holding that the Commissioner properly dismissed Crown Castle’s purported “petitions for reassessment” because Crown Castle had attempted to contest the Commissioner’s Final Assessment Certificates of Valuation for the 2006 tax year by filing petitions for reassessment with the Commissioner, rather than correctly filing a notice of appeal to the BTA. See the *BTA Decision and Order* at 1-2.

In so holding, the BTA held that the Ohio personal property tax statute relating to personal property tax final assessments, R.C. 5711.26, expressly requires taxpayers to file a notice of appeal to the BTA pursuant to R.C. 5717.02 in order to contest the Commissioner’s final assessment certificates of valuation. *Id.*

Instead of contesting R.C. 5711.26’s directive, the Crown Castle appellants assert that R.C. 5711.26’s directive should not apply on three legal grounds. As we detail in the Law and Argument Section, *infra*, however, all three of Crown Castle’s challenges fail jurisdictionally, factually, and legally.

Jurisdictionally, Crown Castle did not specify in its notice of appeal *to the BTA* any of the three legal challenges that they raised in their notice of appeal *to this Court*. Crown Castle’s BTA notice of appeal did not identify any statutory, constitutional, or case law doctrine for challenging the Commissioner’s dismissal of the purported petitions for reassessment. Instead of specifying any legal grounds for challenging the Commissioner’s final determination, Crown Castle’s BTA notice

of appeal merely stated that the Commissioner's dismissal of the purported petitions for reassessment was not "just." See the statutory transcript of evidence certified by the Commissioner to the BTA ("St. __") at St. 90. (Crown Castle's entire BTA notice of appeal, with all attachments thereto, is reproduced at St. 90-107.)

By the failure of Crown Castle's BTA notice of appeal to "specify" any legal grounds to challenge the Commissioner's final determination, the Crown Castle appellants failed to confer jurisdiction on the BTA, and consequently on this Court, to consider any of Crown Castle's three later-raised legal challenges, namely: (1) a challenge under R.C. 5703.51(D) (which imposes on a duty on the Commissioner to provide Ohio personal property taxpayers with information as to how to appeal from the Commissioner's final determinations); (2) an "equitable estoppel" challenge; and (3) a procedural due process challenge. This Court long and uniformly has held that R.C. 5717.02's "specification of error" requirement is mandatory and jurisdictional. As applied here, this Court should dismiss all three of Crown Castle's challenges to the BTA's affirmance of the Commissioner's final determination.

Factually, each of Crown Castle's challenges hinge on a key allegation of asserted fact: that when mailing the Final Assessment Certificates of Valuation for the 2006 tax year, the Commissioner's personnel enclosed the "wrong instructions." Far from establishing that the Commissioner's personnel enclosed the wrong instructions, however, the evidentiary record reflects that the Commissioner (through his Ohio personal property tax personnel) likely enclosed the correct instructions.

But more to the point, the evidentiary record does *not* contain any *probative* evidence that the Commissioner's personnel failed to perform their duties regarding the mailing of the Final Assessment Certificates of Valuation (including enclosing the proper instructions) in anything but a

regular and lawful manner. In fact, the Affidavit of Deborah Pearson, the Commissioner's word processing specialist charged with the responsibility of preparing and mailing the Final Assessment Certificates, expressly established that the Ohio Department of Taxation's long-standing practice was to provide the correct instructions. This probative evidence is buttressed by the "presumption of regularity" that attaches to the Commissioner's performance of his duties. Accordingly, even if Crown Castle had conferred jurisdiction on this Court to consider its three legal challenges, those challenges fail on factual grounds.

Legally, each of Crown Castle's challenges fails. *First*, the appellants' challenge under R.C. 5703.51(D) is refuted by the express language of R.C. 5703.51(H). To be sure, under R.C. 5703.51(D), whenever the Commissioner issues final assessment certificates of valuation, the Commissioner is charged with the duty of providing to Ohio personal property taxpayers a written description of the steps required to perfect an appeal to the Board of Tax Appeals. But, under R.C. 5703.51(H), the General Assembly has expressly provided that the Commissioner's non-compliance with R.C. 5703.51(D) "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." Even if the Commissioner failed to comply with R.C. 5703.51(D), as Crown Castle alleges but did not prove, such non-compliance cannot "cure" Crown Castle's procedural failure to have timely appealed the Final Assessment Certificates of Valuation by filing a notice of appeal to the BTA.

Second, Crown Castle's "equitable estoppel" challenge is refuted by a long line of this Court's precedent, as correctly held by the BTA in its decision below. Under this substantial and uniform body of this Court's decisions, "equitable estoppel" does not apply against the Tax Commissioner in the exercise of his taxing power or other governmental functions, except in the

limited situation where the Commissioner has applied a longstanding practice (generally for several decades) to a particular taxpayer and the taxpayer has relief on that longstanding practice.

Additionally, even assuming that the Commissioner's employee enclosed the wrong instructions (an unproved assumption), Crown Castle's own lack of diligence and ignorance of the law (and that of its then-tax representative, a property tax service) should not be ignored, providing further grounds for this Court to follow its prior "equitable estoppel" precedent. Such lack of diligence on Crown Castle's part includes failing to read R.C. 5711.26 (the statute that expressly provides taxpayer's with the right of an appeal to the BTA from the Commissioner's personal property tax final assessment certificates), even though the Final Assessment Certificates of Valuation refer *on their face* to R.C. 5711.26.

And finally, Crown Castle's cursory two-paragraph "procedural due process" argument, as set out in their merit brief filed with this Court, rests on a general assertion that Ohio failed to provide Crown Castle with "clear guidelines" for contesting the Commissioner's Final Assessment Certificates of Valuation. Not only was this challenge not timely raised jurisdictionally, it presents no independent grounds for reversing the BTA. Instead, it is hinged both factually and legally on the same meritless assertions raised by Crown Castle's R.C. 5703.51(D) and "equitable estoppel" challenges.

II. STATEMENT OF CASE AND FACTS

In this Ohio personal property tax case for the 2006 tax year, the course of the proceedings generally followed those of a typical Ohio personal property tax audit. For the Court's reference, the "timeline" that the Commissioner attached as Exhibit B to his Motion to Affirm at the BTA provides a succinct summary of the course of proceedings up to the point of Crown Castle's filing of its BTA notice of appeal in this case. (For purposes of this brief, unless

otherwise stated, all references to “Exhibits” or to “Ex.” will be to the Exhibits attached by the Commissioner to his Reply to Memorandum in Opposition to Motion to Affirm filed with the BTA.) We set forth a detailed timeline of the previous procedural history of this case given the nature of the controversy, pursuant to which the Crown Castle appellants contest the BTA’s affirmation of the Commissioner’s dismissal of Crown Castle’s purported petitions for reassessment for the 2006 tax year.

First, on May 1, 2006, as required by R.C. 5711.05 through R.C. 5711.131, the Crown Castle appellants each filed annual Forms 945 (“Inter-County Return of Taxable Business Property”) for the 2006 tax year. Ex. A3-4. Next, based on the appellants’ own, self-reported taxable values, on August 14, 2006, the Commissioner timely issued “preliminary assessment certificates” for the appellants’ taxable personal property. Ex. A5-6.

Following the Commissioner’s Ohio personal property tax auditor’s initial review of Crown Castle’s 2006 returns, those personnel determined that an audit of Crown Castle’s 2006 returns was necessary in order to compare and verify the actual acquisition costs paid by Crown Castle with the amounts self-reported by Crown Castle in its 2006 Ohio personal property tax returns. Ex. A7-13. Accordingly, the Commissioner’s agents commenced an audit of Crown Castle’s 2006 Ohio returns in October 2006.

Because Crown Castle’s 2006 Ohio personal property tax returns did not comply with the Commissioner’s directive to report depreciable fixed asset property using the Commissioner’s “true value computation” methodology, as required to be reported on Tax Commissioner Forms 937, the auditing agents affirmatively examined Crown Castle’s accounting records for that purpose and prepared the Forms 937 from scratch. Ex. A9-12. To complete the Forms 937 for each taxing district in each county in which the Crown Castle entities owned taxable personal

property, the Commissioner's agents used Crown Castle's own fixed asset listings to ascertain the acquisition costs and then applied "Class Life III" composite annual allowances to determine true value. Id.

On May 15, 2008, after completing the "true value computation" Forms 937, the Commissioner's auditing agents sent Crown Castle, through its then-tax representative, Carmen Lopez (now Carmen Ospina), "final proposed audit results." Ex. A14-15 (two-sided letter). Approximately two weeks thereafter, on May 23, 2008 the Commissioner sent appellants "amended preliminary assessment certificates of valuation," pursuant to R.C. 5711.31. Ex. A16-18; Ex. C (Pearson Affidavit) at ¶6, and Ex 3 to Ex.C.

As part of the mailing of the amended preliminary assessment certificates of valuation, the Ohio Department of Taxation's long-standing, established administrative practice and policy, in accordance with R.C. 5711.31, is to send instructions on how to petition for reassessment with the notice of amended preliminary assessment. Ex. C (Pearson Affidavit) at ¶ 6, and Ex. 4 to Ex. C.

Under R.C. 5711.31, the appellants then had sixty-days after the mailing of the amended preliminary assessment certificates to file with the Commissioner, in person or by certified mail, a written "petition for reassessment." The Commissioner received appellants' petition for reassessment letter dated June 20, 2008, delivered ten days later by ordinary mail on July 30, 2008. Ex. A19-20. The appellants failed to file their petition for reassessments within R.C. 5711.31's sixty-day appeal period for timely filing petitions for reassessment, being over a week late.

Because appellants failed to timely file their petition for reassessment, their amended preliminary assessments were due to become final and unappealable on August 11, 2008, the

second Monday of the year following the year in which Crown Castle's 2006 tax year return was due. R.C. 5711.25. Assessments that become final by lapse of time under R.C. 5711.25 are not subject to additional review by the Commissioner, nor can the assessments be appealed to the Board of Tax Appeals. *Michelin Tire Corp. v. Kosydar*, 38 Ohio St.2d 254 (1974).

For this reason, on August 7, 2008 (four days before Crown Castle's assessed personal property tax liability for the 2006 tax year was to become final under R.C. 5711.25), Crown Castle made an application for final assessment pursuant to R.C. 5711.26. Ex.A21-22; Ex. C (Pearson Affidavit) at ¶5; Ex. 2 of Ex. C. Following the Commissioner's administrative review of Crown Castle's applications for final assessment, on May 14, 2009, the Commissioner sent Crown Castle correction notices for the 2006 tax year, reflecting affirmance of the Commissioner's preliminary amended assessment certificates. Ex. A25-26. Then, on May 22, 2009, the Commissioner issued his final assessment certificates of valuation to Crown Castle affirming the valuations set forth in Crown Castle's amended preliminary assessment certificates of valuation. Ex. A27-28, Ex. C (Pearson Affidavit) at ¶4; St.¹ at 17-89.

Specifically, on May 22, 2009, Deborah Pearson, who was then (and remains) employed as a Tax Commissioner word processing specialist, performed her duties of preparing, printing, and sending by certified mail Final Assessment Certificates of Valuation to Crown Castle's mailing address. Ex. A27-28; Ex. C (Pearson Affidavit) at ¶2; St. 17-89. As Ms. Pearson's Affidavit avers, it has been Ms. Pearson's practice -- and the Ohio Department of Taxation's long-standing, established administrative practice -- to include detailed instructions with

¹ For purposes of this brief, the statutory transcript of evidence certified by the Commissioner to the BTA will be referred to as "St. ____").

statutory references for how to appeal final assessments to the Board of Tax Appeals. Pearson Aff. ¶¶2-3, Ex. 1.

In order to further contest these assessments, the Crown Castle appellants were required to file notices of appeal with the Board of Tax Appeals with sixty days after the Commissioner's mailing of the Final Assessment Certificates of Valuation, pursuant to R.C. 5711.26 and R.C. 5717.02. However, appellants instead erroneously filed petitions for reassessment with the Commissioner on July 10, 2009. Ex. A29. Because this was not the proper procedure for appealing final assessment certificates of valuation, the Commissioner properly issued his final determinations dismissing appellants' petitions. Ex. A30; St 1-2.

Following the Commissioner's issuance of his final determinations, the Crown Castle appellants timely filed a notice of appeal to the BTA. See St. 90-107 (BTA notice of appeal with all attachments thereto). The Crown Castle appellant's BTA notice of appeal devoted only the first paragraph of the notice of appeal to any kind of challenge to the Commissioners' dismissal of the purported petitions for reassessment. Specifically, that first paragraph of Crown Castle's BTA notice of appeal, signed by Carmen Lopez as "Manager," reads as follows:

A final determination letter for tax year 2006 was issued for Crown Castle GT Company LLC and Crown Communication Inc. for the reason that the appeals were mailed to the Commissioner's office and should have been mailed to the Board of Tax Appeals. The instructions received with the Final Assessment Certificate of Valuations [sic] stated to mail the appeal to the Tax Commissioner's office and **we do not feel the final determination decision issued was just.**

(Emphasis added.)

The remainder of Crown Castle's BTA notice of appeal was directed toward contesting the valuations reflected in the Final Assessment Certificates of Valuation, rather than to challenge the Commissioner's dismissal of Crown Castle's purported petitions for reassessment.

Crown Castle's BTA notice of appeal failed to raise any statutory law, constitutional law, or case law doctrine in support of its challenge to the Commissioner's dismissal of the purported petitions for reassessment.

Thereafter, on February 29, 2012, the Commissioner filed a Motion to Affirm, to which the Crown Castle appellants filed a Memorandum in Opposition on March 21, 2012, attaching an Affidavit of Carmen Ospina (formerly known as Carmen Lopez). Ms. Ospina's affidavit contained several representations that were not from her own personal knowledge, including representations made in numbered paragraphs three and four, as follows:

3. On May 22, 2009, the Companies [Crown Castle T Company, LLC and Crown Communication, Inc.] received from the Ohio Department of Taxation the Final Assessment Certificates of Valuation attached hereto as Exhibit A, each of which related to ongoing personal property valuation disputes between the Companies and the Ohio Department of Taxation.
4. Each of the assessments set forth in Exhibit A included an identical attachment titled "Notice to Taxpayer," a copy of which is attached hereto as Exhibit B.

The documentation attached to Ms. Ospina's Affidavit as Exhibit B was a true and accurate copy of the instructions that the Commissioner's personnel encloses with amended preliminary assessment certificates, rather than with final assessment certificates of valuation. See the Affidavit of Deborah Pearson, Ex. C to the Commissioner's Reply to the Appellant's Memorandum in Opposition to the Commissioner's Motion to Affirm. In response to Crown Castle's Memorandum in Opposition the Commissioner filed a Reply Memorandum that included the Affidavit of Deborah Pearson, as well as several other documents in a collective Exhibit A, many of which have been previously discussed, as well as the "timeline," previously referenced as Exhibit B.

The BTA then issued its Decision and Order in this case affirming the Commissioner's final determination, followed by the Crown Castle appellants' filing of their notice of appeal to this Court as of right pursuant to R.C. 5717.04. Any further facts set forth in the following Law and Argument section will be referenced directly to the evidentiary record.

III. LAW AND ARGUMENT

PROPOSITION OF LAW NO. 1:

Under R.C. 5711.26, Ohio personal property taxpayers must file a BTA notice of appeal in order to contest the Commissioner's final assessment certificates of valuation, rather than file a "petition for reassessment" with the Commissioner.

The Ohio Board of Tax Appeals ("BTA") affirmed the appellee Tax Commissioner's dismissal of the appellants' (Crown Castle's) purported "petitions for reassessment" which sought *the Commissioner* to reassess the appellants' taxable personal property for purposes of the 2006 tax year. These purported "petitions for reassessment" were filed with the Commissioner by the Crown Castle taxpayers' then-tax representative, Thomson Property Tax Services. See St. 9-10. The BTA and the Commissioner held that the purported petitions for reassessment failed to confer jurisdiction on the Commissioner because they attempted to appeal from the Commissioner's issuance of "*final assessment certificates of valuation*" for that same tax 2006 tax year -- which must be appealed to the *BTA* pursuant to a timely filed "notice of appeal." See the BTA's *Decision and Order* at 1-2; and the Commissioner's *Final Determinations* at St. 1-2.

In so holding, the BTA and the Commissioner applied the plain meaning of the jurisdictional statute relevant to the Ohio personal property tax whenever, as here, a taxpayer has filed an application for final assessment, namely, R.C. 5711.26 (the "final assessment" statute). As even a very cursory examination of that statute would have revealed to the appellants' then-tax representative, in order to contest the Commissioner's *final* assessment certificates of valuation, the assessed taxpayers must file their appeals to the BTA pursuant to R.C. 5717.02. The "final

assessment” statute in the Ohio Personal Property Tax Chapter -- R.C. 5711.26 -- expressly so provides, as follows:

An appeal may be taken from any assessment authorized by this section [R.C. 5711.26] **to the board of tax appeals as provided by section 5717.02 of the Revised Code.**

(Emphasis added.)

Further, the Ohio General Assembly’s directive providing that appeals from the Commissioner’s *final* assessment certificates of valuation may be appealed to the BTA pursuant to a timely filed notice of appeal recognizes that the Commissioner has issued his “final” decision in the matter. If, instead, dissatisfied taxpayers could simply petition for reassessment from such final assessment certificates, there would be no definitive end to the Tax Commissioner’s administrative review of personal property tax assessments. Persistent taxpayers could force the Commissioner to repeat his review and consideration of the same personal property tax matter over and over again.

In sum, this Court should affirm the BTA’s affirmance of the Commissioner’s dismissal of Crown Castle’s purported petitions for reassessment. This Court’s affirmance follows directly from the plain meaning of the applicable Ohio personal property tax statute -- which provides that those seeking to challenge the Commissioner’s final assessment certificates of valuation may do so by filing a notice of appeal to the BTA, not by filing petitions for reassessment with the Commissioner.

PROPOSITION OF LAW NO. 2:

A notice of appeal that asserts that the Commissioner’s dismissal of the petitions for reassessment was not “just” -- but which omits to state on what legal ground(s) such alleged injustice is premised -- fails to specify any legally cognizable claim, and thus fails to satisfy the “specification of error” requirement of R.C. 5717.02.

Crown Castle’s merit brief filed with this Court challenges the Commissioner’s dismissal of Crown Castle’s purported petitions for reassessment on various legal grounds that the Crown Castle

appellants *failed to specify as error in their notice of appeal to the BTA*, as jurisdictionally required under R.C. 5717.02. For this threshold jurisdictional reason, the appellants have failed to confer jurisdiction on the BTA and, consequently, on this Court to consider any of those untimely raised issues.

In their Supreme Court merit brief, Crown Castle appellants advance a total of three legal grounds for challenging the Commissioners' dismissal of the purported petitions for reassessment -- all of which hinge on the factual allegation that when the Commissioners' personnel mailed the final assessment certificates to the appellants, the Commissioner's personnel included the wrong instructions for contesting final assessment certificates of valuation.²

First, Crown Castle's Supreme Court merit brief raises a challenge that the appellants raised for the first time in their notice of appeal to this Court from the BTA's *Decision and Order* -- and accordingly regarding which the BTA's decision never did (or could) address. Specifically, only now, in this Court, has Crown Castle asserted that R.C. 5703.51(D) statutorily requires the

² As noted in the Statement of Case and Facts, *supra*, the Crown Castle appellants allege that when the Commissioner's personnel mailed the final assessment certificates of valuation for the 2006 tax year to the appellants, the Commissioners' personnel erroneously enclosed the instructions for contesting the Commissioners' issuance of *preliminary* or *amended preliminary* assessment certificates of valuation, rather than instructions for contesting the Commissioner's issuance of *final* assessment certificates of valuation.

As provided in these respective instructions: (1) to contest an increase in assessed value (from the self-reported amounts set forth by the Ohio personal property taxpayer) arising from the Commissioner's issuance of a *preliminary* or *amended preliminary* assessment certificate of valuation, the taxpayer may file a "*petition for reassessment*" pursuant to R.C. 5711.31, and (2) to contest the Commissioner's final assessment certificates of valuation, the Ohio personal property taxpayer may file a *notice of appeal* to the BTA.

A true and accurate copies of the instructions for appealing from final assessment certificates of valuation was attached as Exhibit 1 and 4 to the Affidavit of Deborah C. Pearson (Ex. C to the Commissioner's Motion to Affirm and Memorandum in Support filed at the BTA), the Commissioner's employee responsible for preparing and mailing final assessment certificates of valuation and the instructions thereto.

certificates, and that the Commissioner's alleged failure to have done so means that R.C. 5717.02's 60-day limitation period for Crown Castle to have timely filed a notice of appeal to the BTA never began to run. See Crown Castle's S.Ct. Merit Brief ("CC Br.") at 8.

On this asserted legal ground under R.C. 5703.51(D), Crown Castle requests that the Court order the case remanded to the Commissioner for the Commissioner to re-issue his final assessment certificates of valuation enclosing the proper instructions, after which the 60-day limitations period for Crown Castle to file a notice of appeal to the BTA shall begin to run. See CC Br. at 6-9 (under Crown Castle's Propositions of Law Nos. 1 and 2) and the first two numbered paragraphs of Crown Castle's Supreme Court notice of appeal, CC. Br. Appx. at 2. As an alternative to that relief, the Crown Castle appellants assert that they should be able to treat the Commissioner's "final assessment certificates of valuation" as "amended preliminary assessment certificates of valuation," which may be contested by filing petitions for reassessment. See CC Br. at 9.

Second, Crown Castle's Supreme Court merit brief reiterates an "equitable estoppel" challenge that Crown Castle first raised in briefing at the BTA (long after the expiration of R.C. 5717.02's 60-day limitation for timely filing notices of appeal to the BTA), in response to the Commissioner's filing of a Motion to Affirm, asserting at the BTA as follows:

When 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.

BTA Decision and Order at 2 (quoting from Crown Castle's Memorandum in Opposition to the Appellee Tax Commissioner's Motion to Affirm); see also CC Br. at 10-13 (under Crown Castle's Proposition of Law No. 3).

Third and finally, Crown Castle's Supreme Court merit brief reiterates an as applied "due process claim," under Article I, Section 2 of the Ohio Constitution, that Crown Castle raised for the first time in its Memorandum in Opposition to the Commissioner's Motion to Affirm. See CC Br. at See *BTA Decision and Order* at 2, fn.1 (acknowledging Crown Castle's raising of a procedural due process challenge, but declining to make any findings regarding that challenge or to resolve that issue, citing to *Cleveland Gear Co. v. Limbach*, 35 Ohio St.3d 229 (1988); and *MCI Telecommunications Corp. v. Limbach*, 68 Ohio St.3d 195, 198 (1994)).

In sharp contrast to their notice of appeal *to this Court*, Crown Castle's notice of appeal *to the BTA* identified no statute(s), constitutional provision(s), or case law doctrine(s) as the legal basis for this general claim of "injustice." Yet, asserted "injustice" is not, in itself, a legal basis for challenging the Commissioner's actions; at best, it may be an element or component of a legally valid claim. In fact, the allegation of "injustice," may not even be limited to legal claims, but may extend to purely moral ones as well. Just *how* was the Commissioner's dismissal of the purported petitions allegedly not "just"? Did the Commissioner's action violate statutory law, constitutional law, or common law, or some combination of those kinds of laws? And, if so, which such laws? The BTA notice of appeal is silent on those critical elements of a sufficient "specification of error."

Crown Castle's assertion that the Commissioner's actions are not "just" is the kind of general allegation that could be made in virtually any tax case. See *Queen City Valves, Inc. v. Peck* (1954), 161 Ohio St. 579, 583 (dismissing a notice of appeal for failure to specify error when "the errors set out are such as may be advanced in nearly any case"). Therefore, such generalized assertions of error in the Commissioner's final determinations fail to meet the "specification of error" requirement of R.C. 5717.02.

Under *Queen City Valves* and its progeny, a notice of appeal that asserts that the Commissioner's dismissal of the petitions for reassessment was not "just" -- but which omits to state on what legal ground(s) such alleged injustice is premised -- fails to specify any legally cognizable claim, and thus fails to satisfy the "specification of error" requirement of R.C. 5717.02.

Instead, to sufficiently "specify" error, an appellant's notice of appeal must identify its legal challenges to the Commissioner's final determination explicitly and precisely. *Id.* For a specification of error to be "explicit and precise," it must "tie the facts of the case" to both *the law and the alleged error* by explaining precisely *how* the Commissioner erred. *Ohio Bell Tel. Co. v. Levin*, 124 Ohio St.3d 211, 2009-Ohio-6189 at ¶ 28 (citing *Castle Aviation v. Wilkins*, 109 Ohio St.3d 290, 2006-Ohio-2420, at ¶ 41).

As part of the requisite explication of "how" the Commissioner's actions were legally erroneous, an appellant taxpayer's notice of appeal must identify the statutory (or other law) upon which the appellant contests the Commissioner's actions, in order to meet R.C. 5717.02's "specification of error" requirement. This principle is a long-established and well-settled one, most recently reiterated in *WCI Steel, Inc. v. Testa*, 129 Ohio St.3d 256, 2011-Ohio-3280, ¶28, citing with approval, *Gen. Motors Corp. v. Wilkins*, 102 Ohio St.3d 33, 2004-Ohio-1869, ¶¶75-76.

General Motors is particularly instructive here. In that case, the appellant taxpayer's notices of appeal to the BTA from the Commissioner's final determinations raised several challenges to the Commissioner's assessment of use tax on General Motors' purchases of repair parts and services. General Motors' BTA notices of appeal raised several statutory grounds for contesting the tax assessments, but failed to specify any claim under the "purchase for resale" exception set forth in R.C. 5739.01(E). Under these procedural facts, the *General Motors* Court agreed with the Commissioner that General Motors failed to confer jurisdiction on the BTA (and, consequently, on

the Court) to consider General Motors' "purchase for resale" claim because that claim had not been specified as error in General Motors' BTA notice of appeal, holding as follows:

*****[I]n GM's notices of appeal to the BTA, it did not question the Tax Commissioner's finding that the purchase-for-resale exemption was not applicable, nor did it cite the statutory provision relating to the purchase-for-resale exception. Therefore, the notices of appeal did not meet the specificity required by R.C. 5717.02. Since GM's notices of appeal did not specify the purchase-for-resale issue, the BTA had not jurisdiction to determine it. Consequently, this court has no jurisdiction to review the purchase-for-resale issue raised by GM. *Osborne Bros. Welding Supply, Inc. v. Limbach*, 40 Ohio St.3d 175, 178 (1988).**

(Emphasis added.) *Gen. Motors* at ¶ 76.

As applied here, General Motors compels the conclusion that Crown Castle has failed to confer jurisdiction on this Court to consider any of the three challenges to the BTA's affirmance of the Commissioner's dismissal of the purported petitions for reassessment raised by Crown Castle in its merit brief. None of these challenges were specified in Crown Castle's notice of appeal to the BTA. Consequently, this Court has no jurisdiction to review them. *Gen. Motors* at ¶ 76; *Osborne Bros. Welding Supply, Inc. v. Limbach*, 40 Ohio St.3d 175, 178 (1988); see also, *Castle Aviation* at ¶¶ 42-44³.

³ In *Castle Aviation*, the appellant taxpayer's notice of appeal to the BTA had raised a general "equal protection" clause claim, but had failed to state how the Commissioner's actions had resulted in the alleged discriminatory treatment, including failing to identify the class of taxpayer's favorably treated, as compared to any similarly situated class to which the taxpayer was allegedly a member. Here, the Crown Castle appellants did not even get that far -- their notice of appeal to the BTA makes no reference to a procedural due process challenge at all.

PROPOSITION OF LAW NO. 3:

When an affiant lacks personal knowledge of a fact asserted in an affidavit, the lack of personal knowledge renders the affiant's assertion non-probative and without evidentiary weight. By contrast, the Commissioner's agent's averments from personal knowledge as to her performance of her duties constitutes probative evidence and is further supported by a "presumption of regularity" that properly attaches to the performance of her duties on behalf of the Commissioner.

As noted above, all of Crown Castle's three challenges to the BTA's affirmance of the Commissioner's dismissal of the purported "petitions for reassessment" hinge on one, key allegation of asserted fact. Namely, all of Crown Castle's challenges hinge on the assertion that when the Commissioner's personnel mailed Crown Castle's "final assessment certificates of valuation," they did not enclose instructions concerning how to contest those final assessment certificates of valuation. Crown Castle asserts that, instead, the Commissioner's personnel enclosed instructions concerning how to appeal from preliminary or amended preliminary assessment certificates (by filing petitions for reassessment) rather than instructions on how to appeal from final assessment certificates (by filing a notice of appeal to the BTA). See, CC Br. at 3-4, 6, 8-14.

In support of this allegation of "wrong instructions," Crown Castle presented no testimony at a BTA hearing or other proceeding under which any witness on its behalf was subject to cross-examination. Instead, Crown Castle has relied solely on one item: an "Affidavit of Carmen Ospina," dated March 20, 2012. Crown Castle attached this Affidavit of Carmen Ospina to its Memorandum in Opposition to Appellee's Motion to Affirm at the BTA.

Yet, the Affidavit of Carmen Ospina fails to provide probative evidence in support of the allegation that the Commissioner's personnel attached the wrong instructions. The Affidavit first avers that Ms. Ospina was a "Manager" employed by ONESOURCE Property Tax, and that ONESOURCE was the authorized tax representative of the Crown Castle appellants for purposes of Ohio personal property taxation. See numbered paragraphs one and two of the Affidavit. To this

extent, Ms. Ospina's averments are apparently from personal knowledge, but they do not establish that the Commissioner sent the wrong instructions, and the remaining averments plainly could not be from Ms. Ospina's personal knowledge, as explained below.

Next, the Affidavit avers that on May 22, 2009, the "Final Assessment Certificates of Valuation" were received *by the appellants* (Crown Castle GT Company, LLC, and Crown Communications, Inc.) directly, rather than by Ms. Ospina or someone else at ONESOURCE Property Tax. See numbered paragraph three of the Affidavit. But, from *personal* knowledge, Ms. Ospina could aver only that *she* did *not* receive the Final Assessment Certificates of Valuation from the Commissioner.

Ms. Ospina could not aver from personal knowledge when and whether any person(s) at Crown Castle GT Company, LLC and Crown Communications, Inc. received the Final Assessment Certificates. Rather, as to those factual matters, Ms. Ospina could have been informed only by other (unidentified) person(s) that such receipt occurred on May 22, 2009 at the Crown Castle appellants' mailing address. To be probative, any averment as to the Crown Castle appellants' receipt of the Final Assessment Certificates would need to be made by those person or persons having personal knowledge of the situation -- presumably personnel responsible for receiving, entering, and/or reviewing mail at the mailing address of Crown Castle GT Company, LLC and Crown Communications, Inc.

Just as lacking in personal knowledge is Ms. Ospina's next averment in her Affidavit -- that the Final Assessment Certificates for both appellants were accompanied by an "identical attachment titled 'Notice to Taxpayer,' a copy of which is attached as Exhibit B." See numbered paragraph four of the Affidavit. Because the Final Assessment Certificates and attachments thereto were

mailed by the Commissioner to the Crown Castle entities *directly*, Ms. Ospina lacked any personal knowledge of whether such averment is true or not.

Noticeably absent from the evidentiary record is any testimony or affidavits from the personnel of Crown Castle appellants themselves, or even any “ordinary course of business” records from the Crown Castle appellants, such as mail logs or correspondence. In fact, notably, the Affidavit does not explain how a copy of the purported instructions (attached as Exhibit B to Ms. Ospina’s Affidavit) came into the possession of Ms. Ospina (or in the possession of the person(s) who prepared Ms. Ospina’s Affidavit). Such copy could have been obtained in any number of ways other than by having been enclosed with the Final Assessment Certificates of Valuation that the Commissioner’s personnel mailed to the Crown Castle appellant’s mailing address.

For example, a copy of the instructions attached as Exhibit B to Ms. Ospina’s Affidavit could have been obtained by the Crown Castle appellants from an earlier mailing by the Commissioner -- when his personnel mailed the preliminary amended assessment certificates on or about May 23, 2006. (See R.C. 5711.31, which requires the Commissioner to enclose instructions for filing petitions for reassessment with the issuance of amended preliminary assessment certificates that increase taxable value.)

In sum, Ms. Ospina’s Affidavit provides no probative evidence regarding whether the Commissioner’s personnel enclosed the wrong instructions in mailing the Final Assessment Certificates of Valuation to the Crown Castle appellants. The Crown Castle appellants have not presented any probative evidence in support of their allegation that the Commissioner enclosed the wrong instructions with the Final Assessment Certificates of Valuation.

By contrast to the absence of any probative evidence supporting the appellants’ “wrong instructions” allegation, the Commissioner provided probative evidence in the form of an Affidavit

of Deborah C. Pearson (the Commissioner's agent/word processor specialist who prepared and mailed the Final Assessment Certificates of Valuation to the Crown Castle appellants at their mailing address). See Exhibit C to the Commissioner's Reply to Appellant's Memorandum in Opposition to the Commissioner's Motion to Affirm filed with the BTA. Ms. Pearson averred that it was her personal practice -- and the Ohio Department of Taxation's long-standing, established practice-- to send information in writing of the steps necessary to appeal final assessments to the BTA. See numbered paragraphs two and three of the Affidavit. She attached the instructions that she sends with Final Assessment Certificates of Valuation as Exhibit 1 to her Affidavit.

Finally, as a public official, the Commissioner is entitled to a presumption of regularity in his "performing the function that the law calls upon him to perform." *Toledo v. Levin*, 117 Ohio St.3d 373, 2008-Ohio-1119, ¶ 28, citing *State ex rel. Shafer v. Ohio Turnpike Comm.* 159 Ohio St. 581, 590(1953) ("in the absence of evidence to the contrary, public officers, administrative officers and public boards, within the limits of the jurisdiction conferred by law, will be presumed to have properly performed their duties and not to have acted illegally but regularly and in a lawful manner[.]").

For all these reasons, even if the appellants had conferred jurisdiction on this Court to consider their various challenges to the BTA's affirmance of the Commissioner's dismissal of the purported petitions for reassessment, those challenges fail factually -- even without consideration of the legal merits of those challenges. Far from establishing that the Commissioner's personnel enclosed the wrong instructions, the evidentiary record reflects that the Commissioner (through Ms. Pearson) likely enclosed the correct instructions. But more to the point, the evidentiary record does not contain any probative evidence that the Commissioner's personnel failed to perform their duties

regarding the mailing of the Final Assessment Certificates of Valuation (including enclosing the proper instructions) in anything but a regular and lawful manner.

PROPOSITION OF LAW NO. 4:

As R.C. 5703.51(H) expressly provides, if the Commissioner or a county auditor fails to comply with a provision of that Section, including (D) thereof, such non-compliance “shall neither excuse a taxpayer from payment of any taxes shown to be owned by the taxpayer nor cure any procedural defect in a taxpayer’s case.”

Accordingly, if the Commissioner, when issuing final assessment certificates of valuation, fails to provide a taxpayer with the correct instructions for contesting final assessment certificates of valuation in non-compliance with R.C. 5703.51(D), such non-compliance does not cure the taxpayer’s failure to contest the final assessment certificate of valuation by filing a timely notice of appeal to the BTA.

Crown Castle’s newly raised challenge under R.C. 5703.51(D) should fail, even assuming that this Court has jurisdiction to consider that untimely raised challenge⁴, and further assuming that Crown Castle, in the BTA proceedings below, had established, by probative evidence, that the Commissioner’s personnel had, in fact, mailed the wrong instructions to the Crown Castle appellants.⁵ The conclusion that the Crown Castle appellants’ R.C. 5703.51(D) challenge should fail follows from the procedural relief that the Crown Castle appellants have sought in this matter -- relief that the Ohio General Assembly has precluded by the express language of R.C. 5703.51(H).

R.C. 5703.51(D) and R.C. 5703.51(H) provide, respectively, as follows:

- (D) With or before the issuance of a final determination of the tax commissioner, the commissioner or county auditor shall

⁴ As we set forth under Proposition of Law No. 2, supra, the Crown Castle appellants have not conferred jurisdiction on this Court to consider the R.C. 5703.51(D) claim, because of the failure of the Crown Castle appellants to have specified that challenge in their BTA notice of appeal.

⁵ As we set forth under Proposition of Law No. 3, supra, the Crown Castle appellants did not adduce any probative evidence to establish that the Commissioner had, in fact, provided the Crown Castle appellants with the wrong instructions for contesting final assessment certificates of valuation.

provide to the taxpayer a written description of the steps required to perfect an appeal to the board of tax appeals.

- (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 the taxpayer's case.**

(Emphasis added.)

The “shall not cure any procedural defect in the taxpayer’s case” language of R.C. 5703.51(H) directly and unambiguously applies here. As noted, under the Crown Castle appellants’ R.C. 5703.51(D) claim, they contend that this Court should reverse the BTA’s affirmance of the Commissioner’s dismissal of the purported “petitions for reassessments.” In other words, under the purported authority of R.C. 5703.51(D), the appellants seek to cure their failure to follow the jurisdictional requirements of R.C. 5711.26 (mandating that taxpayer’s seeking to contest the Commissioner’s final assessment certificates of valuation must timely file an appeal to the BTA) and R.C. 5717.02 (requiring that a valid notice of appeal to the BTA must be filed within a 60-day limitation period running from the Commissioner’s mailing of the final assessment certificates of valuation).

To attempt to cure their own “procedural defects,” the Crown Castle appellants ask the Court either to: (a) remand this case to the Commissioner with an order for the Commissioner to re-issue his final assessment certificates of valuation and enclose the proper instructions, after which the sixty-day limitations period within which the Crown Castle appellants may timely file an appeal to the BTA shall begin to run; or (b) allow Crown Castle to treat the Commissioners’ previously issued final assessment certificates of valuation as amended preliminary certificates of valuation, so

that Crown Castle's purported petitions for reassessment would then be a proper means to contest the Commissioners' assessments. See, e.g., CC Br. at 6-9.

Both of Crown Castle's proposed remedies attempt to "cure" Crown Castle's "procedural defects" and to reverse the BTA's affirmance of the Commissioners' dismissal of the purported petitions for reassessment. Thus, in order for the Court to grant either form of relief and reverse the BTA, the Court would have to expressly disregard the General Assembly's directive in R.C. 5703.51(H). Granting such relief would require the Court, by "judicial fiat," to impermissibly contravene the express legislative will of the General Assembly. See, e.g., *R.W. Sidley v. Limbach*, 66 Ohio St.3d 256, 257 (1993).

Confirmation that the General Assembly has precluded the relief sought by the Crown Castle appellants under R.C. 5703.51(D) comes from the General Assembly's further directive in R.C. 5703.51(I) -- which prescribes the remedy available to taxpayers when the Commissioner or a county auditor fails to "substantially comply" with the provisions of that Section, as follows:

(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.

(Emphasis added.)

As applied here, R.C. 5703.51(I) sets forth the means by which the Ohio General Assembly directed that the Crown Castle appellants could seek redress for the Commissioner's alleged non-compliance with R.C. 5703.51(D). Namely, they would be required, within one year from the Commissioner's mailing of the final assessment certificates of valuation, to apply to the

Commissioner for relief from any penalties and interest arising from the Commissioner's assessments, and then the Crown Castle appellants would have to show that the Commissioner's personnel did not "substantially comply with" R.C. 5703.51(D). Upon such a showing, the Crown Castle appellants would be entitled only to limited monetary relief -- cancellation of the penalties and interest arising from the assessments.

In the present case, the Crown Castle appellants have sought entirely different relief than the relief provided in R.C. 5703.51(I). In this additional way, the appellants' reliance on R.C. 5703.51 is refuted by the plain, unambiguous language of that statute. Not only would acceptance of the Crown Castle appellants' R.C. 5703.51(D)-based challenge require the Court to contravene the General Assembly's directive in R.C. 5703.51(H), it likewise would require the Court to contravene the General Assembly's directive in R.C. 5703.51(I), because Crown Castle seeks far different and greater relief from the limited monetary relief from penalties and interest prescribed in that Division.

Finally, the Crown Castle appellants' reliance on *Sun Ref. & Mktg. Co. v. Brennan*, 31 Ohio St.3d 306 (1987) is misplaced, as that case is easily distinguished from the present one. In that case, at issue was a statutory requirement providing that the State agency (the Division of Boiler Inspectors of the Ohio Industrial Commission) shall "serve by certified mail, return receipt requested upon the party affected thereby, a certified copy of the order." *Id.* at 308. *In the absence of any directive by the General Assembly to the contrary*, the Court held that this statutory requirement constituted a "condition precedent" to the running of a fifteen-day appeal period. By contrast to the present case, in which the General Assembly has expressly declared that the Commissioner's failure to comply with R.C. 5703.51(D) does not "cure any procedural defect in the taxpayer's case," no such legislative directive was provided to the Court concerning the statute at issue in *Sun Refining*. Thus, that case is simply inapposite here.

For the foregoing reasons, the Crown Castle appellants' challenge under R.C. 5703.51(D) is not only jurisdictionally untimely and factually unsupported, it is refuted under the plain, unambiguous language of R.C. 5703.51(H) and (I).

PROPOSITION OF LAW NO. 5:

Equitable estoppel does not apply to the State of Ohio as to a taxing statute or other exercise of its governmental functions, except in limited instances where the taxpayer has relied on a long-standing, but erroneous, administrative practice of the Commissioner as applied to that taxpayer.

Consequently, a one-time, inadvertent mailing by the Commissioner's personnel of the wrong instructions for contesting final assessment certificates of valuation does not excuse, on equitable estoppel grounds, an Ohio personal property taxpayer's failure to timely appeal from the final assessment certificates to the BTA, particularly where the final assessment certificates themselves referenced R.C. 5711.26, which expressly informs taxpayers of their right to appeal to the BTA from the Commissioners' issuance of final assessment certificates of valuation.

For the jurisdictional and factual reasons that we have previously discussed under Propositions of Law Nos. 2 and 3, supra, the Crown Castle appellants' "equitable estoppel"-based challenge should be rejected. But, even if the appellants' estoppel challenge were not properly rejected for either or both of these dispositive grounds, it would be properly rejected for lack of legal merit.

Perhaps because this Court's precedent is so well-settled that "equitable estoppel" principles do not apply to situations like those alleged by the appellants to be presented in this case, the BTA granted the Commissioners' motion to affirm on that basis alone. In other words, the BTA did not undertake any consideration of whether, in fact, Crown Castle had conferred jurisdiction on the BTA to consider the "equitable estoppel" issue (by having timely specified that issue in their BTA notice of appeal). Nor did the BTA undertake any consideration of whether the Crown Castle appellants met their factual burden of establishing that the Commissioner's personnel enclosed the "wrong instructions" with the Final Assessment Certificates of Valuation. Thus, the BTA's

affirmance of the Commissioner's final determination dismissing the Crown Castle appellants' purported "petitions for reassessment" against the "equitable estoppel" challenge may be affirmed on the grounds set forth in the BTA's decision, or on the alternative grounds we have set forth under Propositions of Law Nos. 2 and 3, *supra*, or on all of these grounds separately or together.

On its legal merits, the BTA affirmatively rejected the Crown Castle appellants' assertion that "equitable estoppel" principles should apply to their alleged situation, such that they should be excused from following the jurisdictional requirements of R.C. 5711.26 and R.C. 5717.02. See *BTA Decision and Order* at 2-4. The BTA applied this Court's established precedent holding that, as a general rule, "equitable estoppel" principles do *not* apply against the State in its exercise of taxing power and other governmental functions, except where the Commissioner has applied a "*long-standing administrative practice to the taxpayer in question* regarding which that taxpayer has relied on for considerable time (*usually for decades*). See *BTA Decision and Order* at 4 ("[t]he 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* [.]") (emphasis added).

Numerous of this Court's decisions may be appropriately cited and discussed in support of the foregoing established principles rejecting all but a very limited application of "equitable estoppel" principles against the State. Three of this Court's decisions, however, are particularly instructive as applied here: *Sun Ref. & Mktg. Co.*, 31 Ohio St.3d at 307; *Weiss v. Limbach*, 64 Ohio St.3d 79, 80-81 (1992); *GM Corp. v. Limbach*, 67 Ohio St.3d 90, 92-93 (1993).

We cite and discuss *Sun Refining* not only because of its guidance but also because it is one of less than a handful of Ohio decisions cited by the Crown Castle appellants in their own merit brief. See CC Br. at 6-7. In *Sun Refining*, the Court rejected the application of "equitable estoppel"

principles as applied to a communication of “wrong instructions” for filing appeals as allegedly made by an Ohio government employee (an assistant attorney general) as follows:

Sun argues that the state should be estopped from claiming that Sun failed to timely file its notice of appeal with the board, *because Sun’s attorney relied on the erroneous advice of an assistant attorney general that service by mail would suffice in the place of hand-delivery on that day. This argument is without merit. Principles of equitable estoppel generally may not be applied against the state or its agencies when the act or omission relied on involves the exercise of a governmental function.* See *Sekerak v. Fairhill Mental Health Ctr.* (1986), 25 Ohio St.3d 38, 39; *Griffith v. J.C. Penney Co.* (1986), 24 Ohio St.3d 112, 113; *Chevalier v. Brown* (1985), 17 Ohio St.3d 61, 63; *Besl Corp. v. Pub. Util. Comm.* (1976), 45 Ohio St. 2d 146, 150.

(Emphasis added.)

The foregoing holding of *Sun Refining* directly applies here. Just in the present appeal, in that case, the person asserting that “equitable estoppel” should apply did so on the basis of receiving an alleged communication from a State agency of “erroneous instructions” as to how to file an appeal to an administrative board. And, just as the *Sun Refining* Court applied an established body of its prior case law in holding that “equitable estoppel” did not apply there, the Court should likewise follow an even more substantial body of its decisions and hold that equitable estoppel does not apply here.

The *Weiss* Court’s holding and rationale, which rejected an equitable estoppel-based challenge to the Tax Commissioner’s alleged erroneous actions, is likewise directly on point, as follows:

Appellant contends that the BTA erroneously construed the doctrine of estoppel and erroneously concluded that the state was not bound by equitable principles in its dealings with appellant. We disagree.

In the first paragraph of the syllabus of *Recording Devices, Inc. v. Bowers* (1963), 174 Ohio St. 518, we stated: “Estoppel does not

apply against the state of Ohio as to a taxing statute.” However, we qualified this pronouncement at 520: “* * * yet 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.”

In *Recording Devices*, supra, and in *Ormet Corp. v. Lindley* (1982), 69 Ohio St.2d 263, 266, 23 O.O.3d 257, 259, 431 N.E.2d 686, 689, we acknowledged the commissioner’s grant of an exemption. In both of those cases, “* * * an exemption was granted, in writing, by the commissioner. Further, the error continued for an extended period of time.” (In *Recording Devices*, it continued for *twenty-five years*; in *Ormet*, over *twenty years*.)

Here, we have no evidence of any longstanding administrative practice to exempt appellant from liability. Accordingly, the decision of the BTA is affirmed.

Weiss, 64 Ohio St.3d at 80-81 (emphasis added.).

As applied here, *Weiss* is controlling because the alleged erroneous communication made by the Commissioner’s personnel to the Crown Castle appellants is the very antithesis of a “longstanding administrative practice.” Rather, assuming that the alleged “wrong instructions” were mailed by the Commissioner’s personnel (and that assumption is not established in the evidentiary record), such communication was a *one-time* error that did not reflect the Commissioner’s actual administrative practice of mailing the *correct* instructions with final assessment certificates. See the Affidavit of Deborah Pearson (the Commissioner’s personnel who performed the mailing of the Final Assessment Certificates to the Crown Castle appellants) at numbered paragraph two. Ex C.1 to the Motion to Affirm filed at the BTA.

Regarding the Crown Castle appellants, the Commissioner’s personnel did not repeat that error for any other tax year than the 2006 tax year at issue here, so that the error’s duration was limited to just that one taxable annual period. A one-time error, applicable to only one tax year, hardly equates to a long-standing administrative practice of the kind for which this Court has

created a very limited exception to the general rule that equitable estoppel does not apply against the State in the exercise of its governmental functions.

Third, in *General Motors*, this Court cited with approval to *Weiss* and once again rejected a taxpayer's reliance on "equitable estoppel" principles, as applied to State taxation matters, as follows:

"[The equitable principle of] estoppel does not apply to the State of Ohio as to a taxing statute." In *State ex rel. Donsante v. Pethtel* (1952), 158 Ohio St. 35, paragraph one of the syllabus, we held:

"Where taxes are legally assessed, the taxing authority is without power to compromise, release or abate them except as specifically authorized by statute." Accord, *Interstate Motor Freight Sys. v. Donahue* (1966), 8 Ohio St.2d 19; *Weiss v. Limbach* (1992), 64 Ohio St.3d 79.

As demonstrated by *Sun Refining*; *Weiss*; and *General Motors*, as well as a large body of additional Ohio precedent, the BTA's rationale and holding in its decision below rests on the solid bedrock of Ohio Supreme Court decisions. This bedrock law has been firmly embedded in Ohio and the appellants have provided no basis for departing from it. Moreover, even if the appellants were to have urged that the Court suddenly depart from this established law, the circumstances of the present case would make it a uniquely poor candidate to apply equitable estoppel principles.

For several reasons, the causal connection between the alleged error by the Commissioner's personnel (in allegedly enclosing the wrong instructions) and the failure of the Crown Castle appellants to have timely filed an appeal to the BTA is questionable under the facts of this case. *First*, the Crown Castle appellants (or their tax representative) could have avoided their failure to have filed an appeal to the BTA by simply having read the applicable statutes, namely, R.C. 5711.26 and R.C. 5717.02.

In fact, taxpayers are generally charged with knowing the law, including the applicable appeal statutes. Phrases such as *ignorantia legis neinem excusat* (ignorance of the law excuses no one) and *ignorare legis est lata culpa* (to be ignorant of the law is gross neglect) appropriately address the appellants' assertions. This serves to bring all persons within the circumspection of the law -- not just those who can be proved to have received actual notice thereof. A long line of this Court's decisional law has applied these legal maxims. See, e.g., *Einhorn v. Ford Motor Company*, 48 Ohio St.3d 27, 30 (1990) (applying the "common law maxim that ignorance of the law is no excuse"); *Sommers v. Doersam*, 115 Ohio St. 139 (1926) (testator presumed to have knowledge of the designated heir statute); *Krueger v. Krueger* 111 Ohio St. 369 (1924) (testator presumed to have knowledge of statutory limitations upon the power to make a will); *Cleveland v. Legal News Publishing Company*, 110 Ohio St. 360 (1924) (parties to contract presumed to know statutory rate for advertising fees); *Rindskopf Bros. & Co. v. Doman and Werley*, 28 Ohio St. 516, 520 (1876) (holding that "[w]here a party is so situated that he might, by using ordinary diligence, have become acquainted with his legal rights, and he neglects to do so, his ignorance is voluntary").

Second, the Final Assessment Certificates of Valuation issued by the Commissioner and received by the Crown Castle appellants, **on their face**, referenced R.C. 5711.26 (see, e.g. St. 17-89), so that the Crown Castle appellants (and their tax representative) were apprised by the Commissioner's personnel of the applicable appeal statute -- given that R.C. 5711.26 expressly references R.C. 5717.02 as the appeal statute pursuant to which taxpayers may appeal from final assessment certificates of valuation. *Third*, the evidentiary record does not reflect whether and to what extent the Crown Castle appellants (or their then-tax representative), made any efforts to inquire of the Commissioner's Ohio personal property tax personnel (or any other knowledgeable

persons) concerning the proper procedure for appealing from the Final Assessment Certificates of Valuation.

In the final analysis, the Crown Castle appellants' reliance on "equitable estoppel" fails on several levels. The appellants failed to raise any such challenge in their notice of appeal to the BTA, so that the appellants did not confer jurisdiction on the BTA, and consequently on this Court, to consider that challenge. Nor did the appellants establish, by probative evidence, that they received the "wrong instructions" for contesting the Commissioners Final Assessment Certificates of Valuation. Thus, their "equitable estoppel" claim fails factually. Next, the appellants' reliance on "equitable estoppel" is refuted by a uniform body of this Court's case law, which restricts equitable estoppel against the State to a very limited situation not presented here: where the Commissioner has applied a longstanding administrative practice to a particular taxpayer, *usually several decades in duration*.

Finally, the evidentiary record reflects the Crown Castle appellants' own lack of diligence and ignorance of the law, including their failure to read R.C. 5711.26 (which was directly referenced on the face of each of the Final Assessment Certificates of Valuation). Thus, the particular facts of the present case would make it an inappropriate vehicle for this Court to suddenly depart from its settled "equitable estoppel" precedent.

PROPOSITION OF LAW NO. 6:

In order to confer jurisdiction on the BTA and, consequently, on this Court, an "as applied" procedural due process challenge based on alleged actions of the Ohio Tax Commissioner must be raised by an appellant in its notice of appeal to the BTA.

As noted under Proposition of Law No. 2, *supra*, the Crown Castle appellants failed to raise any due process challenge in their BTA notice of appeal and thus did not confer jurisdiction on the

BTA, or consequently on this Court, to consider that untimely raised issue (raised for the first time in briefing at the BTA, well after the expiration of R.C. 5717.02's 60-day limitations period). Additionally, even in their Ohio Supreme Court merit brief, Crown Castle's "procedural due process" challenge is premised on a broad allegation that the Commissioner's dismissal of the Crown Castle appellants' purported "petitions for reassessment" somehow did not provide them with a "fair opportunity" to contest the Final Assessment Certificates.

The appellants claim that Ohio did not provide the appellants with "clear procedures" for contesting their Ohio personal property tax liabilities, but that statement is refuted by the clear, express provisions of R.C. 5711.26 and R.C. 5717.02. In essence, the appellants' "due process" challenge does not assert any independent grounds for reversal of the BTA from the grounds stated in its R.C. 5703.51(D) and "equitable estoppel" challenges. Thus, to the extent that those challenges fail, so must its procedural due process challenge.

IV. CONCLUSION

For all the above reasons, the Court should uphold the Commissioner's final determinations dismissing the Crown Castle appellants' purported "petitions for reassessment," as the BTA affirmed in its Decision and Order below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the forgoing Merit Brief of Appellee Tax Commissioner was Ohio was served upon the following by regular U.S. Mail on this 29th day of January, 2013:

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A handwritten signature in black ink, appearing to read 'B.A. Hubbard', is written over a horizontal line.

Barton A. Hubbard
Assistant Attorney General