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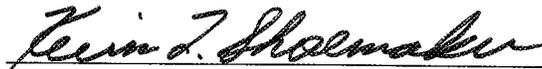
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a/k/a Lockheed Martin Energy Systems,
Inc.

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Pursuant to S. Ct. Prac. R. 4.01, Appellee, Teddy L. Wheeler moves this court to dismiss the Notice of Appeal of Appellant Martin Marietta Energy Systems, Inc. a/k/a Lockheed Martin Energy Systems, Inc. for the reason that Appellant lacks standing to bring this appeal, because it was not aggrieved by the Ohio Board of Tax Appeals' decision that it is appealing. The basis for this motion is set forth in the attached memorandum in support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

For purposes of this Motion the relevant background can be succinctly stated.¹ Appellee, Teddy L. Wheeler, in his Capacity as the Pike County Auditor (the "Auditor") issued a personal property tax preliminary assessment (the "Assessment") against Appellant Martin Marietta Energy Systems, Inc. a/k/a Lockheed Martin Energy Systems, Inc. ("LMES"). LMES filed an appeal of the Assessment with the Ohio Tax Commissioner (the "Tax Commissioner"). The Tax Commissioner reviewed the matter and issued a final determination cancelling the Assessment. The Auditor appealed the final determination to the Ohio Board of Tax Appeals (the "BTA"). On August 7, 2014, the BTA issued its Decision and Order (the "Decision") in Case No. 2012-2043, in which it concluded:

Thus, based upon the foregoing, we have determined that the appellant auditor improperly assessed personal property tax against MM{LMES}; MM did not own the personal property in question, nor was MM a manufacturer. Further, pursuant to the terms of a PILOT agreement, the county was precluded from assessing personal property tax against MM for the year in question. **As such, we have determined that the commissioner appropriately cancelled the assessment in question. Accordingly, based upon our conclusions, we need not address any other contentions raised by the parties hereto.** The final determination of the commissioner is hereby affirmed.

Decision, pg.4 (emphasis added).

The day after the Decision was issued, on August 8, 2014, LMES filed its Notice of Appeal of Appellant Martin Marietta Energy Systems, Inc. a/k/a Lockheed Martin Energy Systems, Inc. (the "Notice of Appeal") with this Court (a copy of the Decision was attached to the Notice of Appeal). The Notice of Appeal, set forth on page 3 that it is an appeal of the August 7, 2014 Decision. The

¹ The relevant facts for this Motion are set forth in more detail in the Ohio Board of Tax Appeals' Decision and Order that is the subject of this appeal. A copy is attached to Notice of Appeal of Appellant Martin Marietta Energy Systems, Inc. a/k/a Lockheed Martin Energy Systems, Inc. that has been filed in this case.

Notice of Appeal states that it was being filed as a matter of right pursuant to R. C. 5717.04.

Curiously on page 4 of the Notice of Appeal it states:

Although MMES/LMES does not contest the BTA's decision with respect to any of its stated reasons for affirming the Commissioner, MMES/LMES raised before the BTA numerous dispositive legal and jurisdictional issues that should have been part of the BTA's Decision.

This statement leaves one wondering why LMES is appealing the Decision, if it does not contest any of the reasons stated for affirming the Tax Commissioner's cancellation of the Assessment. The BTA's affirming the Tax Commissioner's cancellation of the assessment is a total victory for LMES. The assessment at issue was cancelled. From this cancellation there is no liability whatsoever to LMES. No greater relief from a tax assessment could be granted by the BTA.

For the reasons set forth in this Motion, the Auditor believed that LMES was not aggrieved by the Decision and did not have standing to file its appeal in this Court. The Auditor asserts that the filing of the LMES appeal did not vest jurisdiction in this Court. Accordingly, the Auditor filed a motion to dismiss, in this case, on September 4, 2014. This motion to dismiss was stricken because the case had been set for mediation. The mediation order has now been lifted.

Following the filing of the original motion to dismiss, on the next day, the Auditor first filed a notice of appeal of the Decision in the Fourth District Court of Appeals which has been assigned case number 2014 CA 000853. The Auditor then filed a Notice of Appeal in this Court, which was docketed under the case number in this appeal. The notice of appeal filed in this Court, was filed in case jurisdiction was found to exist for the LMES appeal before this Court.² As more fully explained

² R.C. 5717.04, the statute that provides for appeals from BTA decisions, sets forth in pertinent part:

The proceeding to obtain a reversal, vacation, or modification of a decision of the board of tax appeals shall be by appeal to the supreme court or the court of

below, the Auditor, was the only party who had the right to appeal the Decision. Jurisdiction for the appeal of the Decision is properly vested with the Fourth District Court of Appeals.

While LMES does not dispute the Decision, it wants more. It is appealing to this Court to ask it to make more findings in this case regarding the Assessment. Apparently LMES is not satisfied with prevailing and obtaining a cancellation of the Assessment, but it wants a decision that cancels the assessment for many more reasons than the BTA chose to set forth. However, LMES does not have standing to pursue such an advisory opinion. This Court specifically addressed this situation where an appellant filing an appeal to a BTA decision pursuant to R.C. 5717.04 was not aggrieved by a BTA decision. In *Newman v. Levin*, 2007 Ohio 5507, 116 Ohio St.3d 1205:

The Tax Commissioner predicates his standing to appeal on the third paragraph of R.C. 5717.04. While it is true that R.C. 5717.04 creates statutory authorization to appeal, **none of the persons named by the statute has standing to appeal unless that person has been aggrieved by the decision of the BTA from which appeal is taken.** See *Dayton–Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948, 865 N.E.2d 22, ¶ 33. We hold that when the Tax Commissioner has issued a certificate or determination granting a tax reduction or exemption, he is not aggrieved by a decision of the BTA to the extent that that decision affirms the grant of the tax reduction or exemption. It follows, then, that the Tax Commissioner lacks standing to pursue the appeal that he has filed in this case.

Accordingly, the motion to dismiss the Tax Commissioner's notice of appeal is granted, and that appeal is dismissed.

Id. at ¶3 (emphasis added).

This Court on June 11, 2014, reaffirmed the requirement that a party appealing a BTA decision must be aggrieved by the decision of the BTA. In *Richman Properties, LLC v. Medina County Board of Revision*, 2014 Ohio 2439, 139 Ohio St.3d 549, this Court again held:

appeals for the county in which the property taxed is situate or in which the taxpayer resides.

Normally, an appellant must be aggrieved by an error below in order to obtain relief on appeal. See *Dayton–Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948, 865 N.E.2d 22, ¶ 32–33; accord *Newman v. Levin*, 116 Ohio St.3d 1205, 2007 Ohio 5507, 876 N.E.2d 960, ¶3.

Id. at ¶28.

This Court has recognized that standing is a jurisdictional requirement. *Federal Home Loan Mortgage Corporation v. Schwartzwald*, 134 Ohio St. 3d 13, 2012 Ohio 5017, ¶¶22-23, *Kincaid v. Erie Ins. Co.*, 128 Ohio St. 3d 322, 2010 Ohio 6036, ¶9, *New Boston Coke Corporation v. Tyler* (1987), 32 Ohio St. 3d 216, Syllabus ¶2, *State ex rel. Dallman v. Court Common Pleas of Franklin County* (1973), 35 Ohio St.2d 176. If a party lacks standing a court is required to dismiss the case. In the case of an appeal from the BTA this court has unequivocally applied this principle. *Newman, Richman Properties, supra*.

The Decision cancelled the Assessment and relieved LMES of any and all tax liability associated with the Assessment. Based upon this result, it is impossible to conclude that LMES was aggrieved by the Decision. LMES was not aggrieved by the Decision and has no standing to pursue this appeal pursuant to R.C. 5717.04. *Newman, Richman Properties, supra*. Therefore, in accordance with this Court's recent holdings, LMES's Notice of Appeal must be dismissed for lack of standing.

Respectfully submitted,

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Certificate of Service

A copy of the foregoing was served by regular U.S. Mail upon the persons listed below on this 23rd day of September, 2014.

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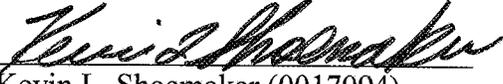
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