

ORIGINAL

In the  
**Supreme Court of Ohio**

KENT W. & SUE E. CUNNINGHAM,

Appellees,

v.

JOSEPH W. TESTA,  
TAX COMMISSIONER OF OHIO,

Appellant.

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:  
: Case No. 2014-0532  
:  
: On Appeal from the  
: Board of Tax Appeals  
:  
: Board of Tax Appeals  
: Case No. 2011-4641  
:  
:  
:

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**NOTICE OF APPELLANT**  
**JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO**

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Ohio Attorney General

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*Counsel for Appellant*  
*Joseph W. Testa,*  
*Tax Commissioner of Ohio*

FILED  
SEP 28 2014  
CLERK OF COURT  
SUPREME COURT OF OHIO

**NOTICE**

On July 21, 2014, the Appellee Tax Commissioner filed his Merit Brief and Supplement in connection with the above captioned appeal. In preparing the Reply Brief, the Tax Commissioner became aware that page 9 of the Supplement, the Affidavit of Non-Ohio Domicile for Taxable Year 2008-Nonmilitary, and page 47 of the Statutory Transcript, have personally identifying information of the Appellant. This information was not redacted, and with this Notice, the Tax Commissioner submits a redacted copy of pages 9 (Supplement) and 47 (Statutory Transcript) for substitution.

Respectfully submitted,

MICHAEL DEWINE  
Attorney General of Ohio



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MELISSA W. BALDWIN (0066681)

*\*Counsel of Record*

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

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Appellant Joseph W. Testa, Tax Commissioner of Ohio has been sent by regular U.S. mail this 26<sup>th</sup> day of September, 2014, to J. Donald Mottley, Taft, Stettinius & Hollis LLP, 65 E. State Street, Suite 1000, Columbus, OH 43215-4221.



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Melissa Baldwin

The Supplement  
insert

IT DA-994  
Rev. 7/08

**Ohio** | Department of  
Taxation

### Affidavit of Non-Ohio Domicile for Taxable Year 2008 – Nonmilitary

This form is for use only by each nonmilitary individual who is claiming to be a full-year nondomiciliary under Ohio Revised Code section 5747.24.

**Due date:** June 1, 2009 (Ohio law does not provide for any additional time to file). See Ohio Revised Code sections 5747.24, 5703.35 and 1.14.

**Who must file:** Please see instructions.

Filing this affidavit may impact the ability for you and/or your family members to obtain in-state tuition at an Ohio university, to vote in Ohio, and to obtain or keep an Ohio driver's license, etc. Filing this affidavit does not exempt you from timely filing your Ohio income tax return for 2008 and paying any tax due.

First name	M.I.	Last name	County
Kent	W.	Cunningham	Hamilton
Address			County
4975 Councilrock La			Hamilton
City, state, ZIP code			
Cincinnati OH 45243			

Under penalties of perjury, I declare all the following to be true:

- I was not domiciled in Ohio at any time during taxable year 2008. I was domiciled in TN (name of state(s) where domiciled).
- I had at least one abode (place where I lived) outside of Ohio for the entire taxable year. Name of city (or cities), state(s) (if within the USA) and country (if not within the USA) where I lived if different from statement 1, above.
- I had fewer than 183 contact periods\* in Ohio during the taxable year.
- I  shall  shall not be filing a year 2008 Ohio individual income tax return.

Under penalties of perjury, I declare that to the best of my knowledge and belief the statements on this affidavit are true, correct and complete.

Your signature Kent Cunningham Date 3-13-09

\*Ohio Revised Code section 5747.24(A)(1) states that an individual "has one contact period in this state" if the individual is away overnight from his/her abode located outside this state and, while away overnight from that abode, spends at least some portion, however minimal, of each of two consecutive days in this state.

#### Federal Privacy Act Notice

Because we require you to provide us with a Social Security number, the Federal Privacy Act of 1974 requires us to inform you that providing us with your Social Security number is mandatory. Ohio Revised Code sections 5703.05, 5703.057 and 5747.08 authorize us to request this information. We need your Social Security number in order to administer this tax. Your failure to supply any information requested on this affidavit will result in our inability to process this document.

Please do not attach to, or enclose with, your Ohio income tax return.

Mail to:  
Ohio Department of Taxation  
Attn: Tax Technical  
4485 Northland Ridge Blvd.  
Columbus, OH 43229-5404.

Questions? Call us toll-free at 1-800-282-1780.

The Statutory  
Transcript insert

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First name	M.I.	Last name	Social Security number
Kent	W.	Cunningham	[REDACTED]
Address			County
4975 Councilrock La			Hamilton
City, state, ZIP code			
Cincinnati OH 45243			

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Your signature [Signature] Date 3-13-09

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