

SUPREME COURT OF OHIO

ORIGINAL

SUSAN C. CRUZ

Appellant

JOSEPH W. TESTA

Tax Commissioner of Ohio

Appellee

CASE NO. 2014-0513

APPEAL FROM BOARD OF TAX APPEALS

DECISION AND ORDER

Case No. 2013-1010

APPELLANT'S RESPONSE TO APPELLEE'S MOTION TO DISMISS

Filed on Behalf of Susan C. Cruz, Appellant

John Wood, Esq. 0059129
281 Corning Drive
Bratenahl, Ohio 44108
216-707-0474
kayakmanjd@hotmail.com
Counsel to Appellant Susan Cruz

Michael DeWine
Attorney General of Ohio
David D. Ebersole
Assistant Attorney General

30 East Broad Street, 25th Floor
Columbus, Ohio 43215-4328
dave.ebersole@ohioattorneygeneral.gov
Counsel for Appellee

RECEIVED
OCT 06 2014
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
OCT 06 2014
CLERK OF COURT
SUPREME COURT OF OHIO

RESPONSE

Appellee incorrectly alleges that the Notice of Appeal in this case failed to set forth an issue on appeal that would warrant the reversal of the Decision and Order, attached to Appellee's Motion. The Notice of Appeal attached to Appellee's Motion states "The issue on appeal is whether Appellant, charged with responsible party liability on a sales tax determination against a corporation of which she was president and principal shareholder, can challenge the assessment against the corporation on the sole ground of failure of the Tax Commissioner to notice the corporation at any point." This addresses the following finding of the Decision and Order on appeal: "the Commissioner rejected the argument as not being properly raised; instead, he asserted that such argument should've been made in a proceeding challenging the underlying assessments themselves. We agree. *Rowland v. Collins* (1976), 48 Ohio St.2nd 311. Moreover, we find that service on Mr. Sampson was sufficient as it was "reasonably calculated to give notice of the assessment and allow the taxpayer to present his objections." *Castallano v. Kosydar* (1975), 42 Ohio St.2d 107, 110." Page 2, fn 1.

Therefore, the Appellee's Motion must be dismissed for error in fact.

Appellee also argues that if failure of service on the corporation were determined in Appellant's favor, this would not affect the personal liability of Appellant. No legal argument is offered in the Motion for Appellee's conclusion. It is an uncontested issue of law that personal liability on a corporate sales tax debt is a derivative liability. Appellant's Merit Brief argues the Issue at pages 2 through 6, and Appellee's Merit Brief argues the Issue at pages 11 through 18. The law whether a derivative liability can be imposed where the initial liability is null and void, and the manner of bringing that issue before the Court, is the substance of the Appeal and cannot be determined by Motion.

Respectfully submitted,



John Wood, Esq.0059129

281 Corning Drive
Bratenahl, Ohio 44108
216-707-0474
kayakmanjd@hotmail.com

CERTIFICATE OF SERVICE

I certify that a copy of this Response was served upon Appellee through his counsel of record, David D. Ebersole at 30 East Broad Street, 25th Floor, Columbus Ohio, 43215, by United States certified mail this 4th day of October, 2014, and by e-mail at their e-address of record.

A handwritten signature in cursive script that reads "John Wood".

John Wood, Esq.0059129
281 Corning Drive
Bratenahl, Ohio 44108
216-707-0474
kayakmanjd@hotmail.com