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BOARD OF TAX APPEALS
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In the
Supreme Court of Ohio

Patton R. Corrigan, Appellant, vs. Joseph. W. Testa, Tax Commissioner of Ohio Appellee.	:	Case No. 14-1836 On Appeal from the Ohio Board of Tax Appeals BTA Case No. 2012-3244

NOTICE OF APPEAL OF PATTON R. CORRIGAN

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OCT 23 2014
CLERK OF COURT
SUPREME COURT OF OHIO

Appellant, Patton R. Corrigan, hereby gives notice of his appeal as of right, pursuant to R.C. 5717.04, from a Decision and Order of the Ohio Board of Tax Appeals (the "Board"), journalized and entered on September 24, 2014, which affirmed a Final

Determination of the Ohio Tax Commissioner denying an income tax refund claimed by Appellant for tax year 2014. A true and accurate copy of the Board's Decision and Order is attached as Exhibit A.

Appellant complains of the following errors:

1. The decision of the Board of Tax Appeals is unreasonable and unlawful.

2. The Board of Tax Appeals failed to make findings of fact that could assist this Court in making determinations regarding Appellant's challenges to the constitutionality as applied to him of R.C. 5747.212, and specifically did not find, contrary to the evidence in the record before the Board, that Appellant was not engaged in a unitary business with a limited liability company in which he owned an interest and that other similarly situated taxpayers were not subject to Ohio income tax on the sale of their interests in the same limited liability company.

3. The Board of Tax Appeals erred in denying Appellant's refund because R.C. 5747.212 is unconstitutional both facially and as applied to Appellant and, but for income that the Tax Commissioner seeks to make taxable by Ohio pursuant to that unconstitutional statute, Appellant would have no taxable income and no Ohio tax liability for the tax year for which the refund is claimed.

4. The Board of Tax Appeals erred as a matter of law in denying Appellant's refund based on a statute (R.C. 5747.212) that is unconstitutional, both facially and as applied to Appellant, because it violates the Due Process, Commerce, and Equal Protection Clauses of the United State Constitution and the Equal Protection Clause of the Ohio Constitution.

5. The Board of Tax Appeals erred as a matter of law in denying Appellant's refund based on R.C. 5747.212, which violates Appellant's rights under the Due Process and Commerce Clauses of the United State Constitution because it attempts to apportion to Ohio income from a non-Ohio resident's sale of intangible property that the non-resident held for investment purposes and that was not used operationally in a trade or business in Ohio.

6. The Board of Tax Appeals erred as a matter of law in denying Appellant's refund based on R.C. 5747.212, which violates Appellant's rights under the Due Process and Commerce Clauses of the United State Constitution because it attempts to apportion to Ohio income earned by a non-resident that was not earned in Ohio.

7. The Board of Tax Appeals erred as a matter of law in denying Appellant's refund based on R.C. 5747.212, which violates Appellant's rights under the Due Process and Commerce Clauses of the United State Constitution because it attempts to apportion to Ohio income from the sale of intangible property (a membership interest in a limited liability company) owned by a non-resident of Ohio who was not engaged in a unitary business with that limited liability company.

8. The Board of Tax Appeals erred as a matter of law in denying Appellant's refund based on R.C. 5747.212, which violates Appellant's rights under the Due Process and Commerce Clauses of the United State Constitution because it attempts to tax a non-resident on income that is not subject to Ohio's taxing jurisdiction.

9. The Board of Tax Appeals erred as a matter of law in denying Appellant's refund based on R.C. 5747.212, which violates Appellant's rights under the Due Process and Commerce Clauses of the United State Constitution because Ohio does

not have sufficient nexus with the taxpayer and the income that Ohio attempts to tax under that section to make that taxpayer income subject to Ohio income tax.

11. The Board of Tax Appeals erred as a matter of law in denying Appellant's refund based on R.C. 5747.212, which violates Appellant's rights under the Equal Protection Clauses of the United State Constitution because that statute creates two classes of taxpayers only one of which is subject to taxation under that section, without a rational basis for taxing one class but not the other.

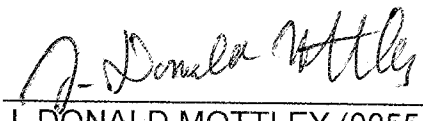
12. The Board of Tax Appeals erred as a matter of law in denying Appellant's refund based on R.C. 5747.212, which violates Appellant's rights under the Equal Protection Clauses of the United State Constitution because that statute as applied to Appellant results in his being subject to tax on his sale of a membership interest in a limited liability company, while other owners of the same entity were not taxed on the sale of their interests, without a rational basis for taxing Appellant but not the other former owners of a membership interest in the same limited liability company.

13. The Board of Tax Appeals erred as a matter of law in denying Appellant's refund based on R.C. 5747.212, which violates Appellant's rights under the Equal Protection Clauses of the United State Constitution because that statute facially and as applied to Appellant results in his being subject to taxation by the State of Ohio in a situation where an Ohio resident would not be subject to additional tax liability.

Because of the above errors by the Board of Tax Appeals, Appellants ask that the Decision and Order of the Board of Tax Appeals be reversed, and that the Tax

Commissioner of Ohio be directed to grant Appellant a full refund of his Ohio income tax payment for tax year 2004, with interest.

Respectfully submitted,



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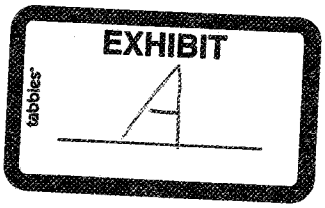

OHIO BOARD OF TAX APPEALS

PATTON R. CORRIGAN, (et. al.),	)	CASE NO(S). 2012-3244
Appellant(s),	)	
vs.	)	(PERSONAL INCOME TAX)
JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s)

- PATTON R. CORRIGAN
  Represented by:
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  TAFT STETTINIUS & HOLLISTER LLP
  65 E. STATE STREET, SUITE 1000
  COLUMBUS, OH 43215

For the Appellee(s)

- JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO
  Represented by:
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  ASSISTANT ATTORNEY GENERAL
  OFFICE OF OHIO ATTORNEY GENERAL
  30 EAST BROAD STREET, 25TH FL
  COLUMBUS, OH 43215

Entered Wednesday, September 24, 2014

Mr. Williamson, Mr. Johrendt, and Mr. Harbarger concur.

Appellant appeals a final determination of the Tax Commissioner wherein he denied appellant's claim for refund of individual income tax assessed for tax year 2004. We proceed to consider the matter upon the notice of appeal, the statutory transcript certified by the commissioner, the record of the hearing before this board, and the parties' written argument.

The commissioner explained the pertinent facts of this matter in the final determination as follows:

> "The claimant, a nonresident of Ohio, purchased an interest in Mansfield Plumbing Products LLC (hereinafter 'Mansfield'), a pass-through entity doing business in Ohio, in April, 2000. As indicated by information provided with the claim for refund, the claimant was a member of the LLC, a majority interest holder and a manager. The claimant would 'travel with other LLC members to the company's headquarters in Perrysville, Ohio for board meetings and management presentations regarding operations, labor, finance, strategic positioning and other matters important to the goal of growing the Mansfield's market share.' In tax year 2004, the claimant sold his interest in Mansfield, resulting in a federal capital gain of $27,563,977. The Department asserts that this gain is properly apportioned to Ohio under R.C. 5747.212 ***."

Appellant argued in the underlying refund application that imposition of Ohio income tax on a portion of the above-mentioned gain violates the Due Process and Commerce Clauses of the U.S. Constitution and the Equal Protection Clauses of the U.S. and Ohio constitutions. The commissioner determined that he was without jurisdiction to consider the constitutional issues raised, and the refund claim was denied.

On appeal, appellant again raises the constitutional challenges argued in the underlying application for refund. In his brief, appellant also raises, for the first time, an argument that, even if R.C. 5747.212 is constitutional, the commissioner improperly calculated appellant's gain on the sale by overstating his basis in his interest in Mansfield Plumbing Products LLC.

In our review of this matter, we are mindful that the findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. Consequently, it is incumbent upon a taxpayer challenging a determination of the commissioner to rebut the presumption and to establish a clear right to the requested relief. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. In this regard, the taxpayer is assigned the burden of showing in what manner and to what extent the commissioner's determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213.

We are also mindful that it is well established that this board is without jurisdiction to declare a given statute to be unconstitutional. *S. S. Kresge Co. v. Bowers* (1960), 170 Ohio St. 405, paragraph one of the syllabus; *Herrick v. Kosydar* (1975), 44 Ohio St.2d 128, 130; *Roosevelt Properties Co. v. Kinney* (1984), 12 Ohio St.3d 7, 8; *Cleveland Gear Co. v. Limbach* (1988), 35 Ohio St.3d 229, paragraph one of the syllabus; *MCI Telecommunications Corp. v. Limbach* (1994), 68 Ohio St.3d 195, 198. This board is merely authorized to accept evidence on constitutional points. Therefore, we acknowledge appellant's constitutional claims on appeal, but make no findings in relation thereto.

Appellant also raises a claim of statutory interpretation in its post-hearing brief. The appellee commissioner argues that this board is without jurisdiction to consider appellant's argument, as it was not previously raised in the underlying application for refund or otherwise in the proceedings before the commissioner, nor was it raised in appellant's notice of appeal. Upon review of the record in this matter, we find that appellant failed to raise as error the commissioner's interpretation of R.C. 5747.212 in his notice of appeal. We therefore find we are without jurisdiction to consider appellant's arguments regarding the computation of the gain taxed in this matter pursuant to R.C. 5747.212. See *NBC-USA Hous., Inc.-Five v. Levin*, 125 Ohio St.3d 394, 2010-Ohio-1553, at ¶¶ 10-11.

Based upon the foregoing, it is the decision of the Board of Tax Appeals that the final determination of the Tax Commissioner must be, and hereby is, affirmed.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Mr. Johrendt		
Mr. Harbarger		

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.

A.J. Groeber, Board Secretary

In the
Supreme Court of Ohio

Patton R. Corrigan, Appellant, vs. Joseph. W. Testa, Tax Commissioner of Ohio Appellee.	:	Case No._____ On Appeal from the Ohio Board of Tax Appeals BTA Case No. 2012-3244

PRAECIPE

TO THE SECRETARY OF THE OHIO BOARD OF TAX APPEALS;

Pursuant to R.C. 5717.04, Appellant, Patton R. Corrigan, hereby requests that the Ohio Board of Tax Appeals ("Board") file with the Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, a certified transcript of the record of the Board's proceedings in the above-captioned matter, including any evidence considered by the Board in rendering its decision in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of October, 2014, a true copy of the foregoing Notice of Appeal was served by certified mail, return receipt requested upon the following: MICHAEL DEWINE, Attorney General of Ohio, c/o Barton A. Hubbard, Assistant Attorney General, Rhodes State Office Tower, 30 East Broad Street, 25th Floor, Columbus, OH 43215, Counsel for Appellee, Joseph W. Testa, Tax Commissioner of Ohio; Joseph W. Testa, Tax Commissioner, Appeals Management, 30 E. Broad St., 21st Floor, P.O. Box 530, Columbus, Ohio 43216-0530.

J. Donald Mottley, Attorney for Appellant

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