

ORIGINAL

# In the Supreme Court of Ohio

Teddy L. Wheeler,  
In his Capacity of Pike County Auditor,

Appellee/  
Cross Appellant,

v.

Joseph W. Testa,  
Tax Commissioner of Ohio,

Appellee,

And

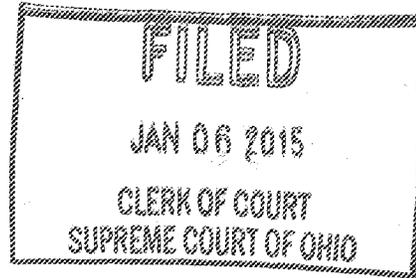
Martin Marietta Energy Systems, Inc.,  
a/k/a Lockheed Martin Energy Systems, Inc.

Appellant/  
Cross Appellee

Case No. 14-1362

Appeal from the Ohio  
Board of Tax Appeals

BTA Case No. 2012-2043



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**JOINT RESPONSE OF APPELLANT/CROSS-APPELLEE LOCKHEED MARTIN ENERGY SYSTEMS, INC., AND CROSS-APPELLEE TAX COMMISSIONER OF OHIO TO APPELLEE/CROSS-APPELLANT TEDDY L. WHEELER'S MOTION FOR ORAL ARGUMENT AND TO ENLARGE TIME FOR ORAL ARGUMENT**

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Ohio Tax Commissioner*

Appellee/Cross-Appellant Teddy L. Wheeler ("Wheeler") has filed a Motion requesting an expanded oral argument in this case. While neither Lockheed Martin Energy Systems, Inc. ("LMES") nor the Tax Commissioner of Ohio ("Commissioner") objects to this Court scheduling the matter for oral argument *per se*, as both the Commissioner and Board of Tax Appeals "(BTA)" have recognized in their decisions below, the operative facts and law in this case are clear, and should not require any additional time to present to the Court.

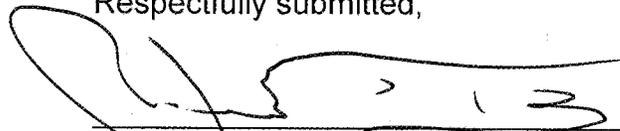
In December, 2010, Wheeler, as Pike County Auditor, issued a Twenty-Three Million Dollar (\$23,000,000) personal property tax assessment against LMES purportedly for Tax Year 1993. This assessment – which was immediately followed by 44 additional assessments in which Pike County absurdly claimed that it was entitled to over *1.3 Billion Dollars* in past taxes from the entitles who operated the Portsmouth Gaseous Diffusion Plant -- not only violated the specific terms of a 1998 agreement between the County and the U.S. Department of Energy, but was in direct conflict with a long-standing directive from the Ohio Department of Taxation, and otherwise contrary to Ohio law. Citing these undeniable facts, both the Commissioner and the BTA summarily cancelled the assessment. Thus, there is nothing particularly complicated or complex about the case.

Moreover, while the BTA did not specifically address all of the myriad reasons why the subject assessment was improper, the law prohibiting the taxation of federally-owned property – as outlined in the briefs -- is straightforward and undisputed. The only issue that may require some discussion is whether the bad faith nature of Mr. Wheeler's action justifies awarding LMES the fees and expenses that have been required to

contest this, and the other 44 similarly unwarranted claims that Wheeler and Pike County have pursued against the Portsmouth contractors. With regard to the 1993 assessment alone, those costs to date exceed one million dollars.

Finally, if this Court chooses to grant oral argument in this case, LMES and the Commissioner request that each be permitted up to 15 minutes to present their respective positions. While the Cross-Appellees are totally aligned with regard to the illegal and improper nature of Mr. Wheeler's tax assessment in this case, one of the primary reasons for LMES's appeal to this Court was the failure of the BTA to find that Wheeler's actions in pursuing the assessment were vexatious and otherwise done in bad faith. The State of Ohio takes no position on this issue. Accordingly, if there is to be oral argument, LMES additionally requests that it be afforded sufficient opportunity to separately argue this issue to the Court.

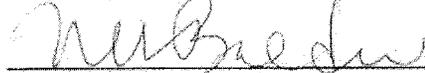
Respectfully submitted,



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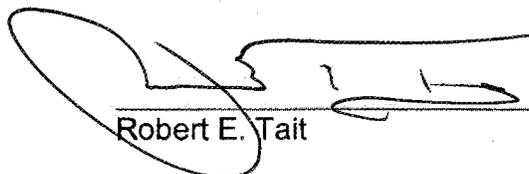
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### CERTIFICATE OF SERVICE

This is to certify that on this 6<sup>th</sup> day of January, 2015 a true copy of the foregoing was sent by U.S. mail, postage prepaid, to Special Counsel to Robert Junk, Pike County Prosecuting Attorney, and Counsel for Appellee/Cross-Appellant, Teddy Wheeler In his Capacity as Pike County Auditor for the Pike County Auditor: Kevin L. Shoemaker, 8226 Inistork Court, Dublin, Ohio 43017; William Posey, Keating, Muething & Klekamp, PLL, One East Fourth St., Suite 1400, Cincinnati, Ohio 45202; and Sean A. McCarter, Law Office of Sean A. McCarter, 88 North Fifth St., Columbus, Ohio 43215



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