

In the Supreme Court of Ohio

Newegg, Inc.,	:	
	:	Case No. 2015-0483
	:	
Appellant,	:	
	:	Appeal from the Ohio
v.	:	Board of Tax Appeals
	:	
Joseph W. Testa,	:	
Tax Commissioner of Ohio,	:	
	:	BTA Case No. 2012-234
Appellee.	:	

JOINT MOTION FOR THE SUPREME COURT TO HEAR ORAL ARGUMENT

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I. MOTION FOR THE SUPREME COURT TO HEAR ORAL ARGUMENT

Pursuant to Rule 17.07(A) of the Rules of Practice of the Supreme Court of Ohio, Newegg, Inc. (“Appellant”) and Joseph W. Testa, Commissioner of Ohio (“Appellee”) respectfully move the Court to hear oral argument itself, in lieu of argument before a master commissioner, in this appeal from the Ohio Board of Tax Appeals. The basis for this motion is set forth in the attached memorandum in support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF MOTION FOR THE SUPREME COURT TO HEARD ORAL ARGUMENT

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I. MEMORANDUM IN SUPPORT OF MOTION FOR THE SUPREME COURT TO HEAR ORAL ARGUMENT

The Ohio Tax Commissioner issued commercial activity tax assessments against the Appellant on the basis that Appellant had at least \$500,000 per year in Ohio taxable gross receipts for the periods assessed. This case raises concerns about the constitutionality of the “bright-line presence” standard of the commercial activity tax, as found in R.C. 5751.01(H)(3); R.C. 5751.01(I)(3); R.C. 5751.033(E) (as such section were numbered in July 2005). Appellant challenges the assessments asserting that it did not have sufficient nexus with the state to permit imposition of the commercial activity tax under the Commerce Clause of the U.S. Constitution on the basis of insufficient nexus to impose the tax. This case raises concerns about the constitutionality of the commercial activity tax “bright-line presence” provision of the commercial activity tax.

This appeal and two companion appeals¹ present the first opportunity for the Court to consider the “bright-line presence” standard for determining commercial activity tax nexus. The three appeals have attracted attention from interested persons in and outside Ohio and amicus curiae briefs from Ohio and national organizations.

¹*Crutchfield Corp., v. Joseph W. Testa, Case No. 15-0386*
Mason Companies, Inc., v. Joseph W. Testa, Case No. 15-0794

CONCLUSION

The decisions in this and the companion appeals will benefit from the full court hearing these appeals. Appellant and Appellee join in requesting oral argument before the full court and not before the Court's master commissioner.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Joint Motion and Memorandum in Support for the Supreme Court to Hear Oral Argument was sent via e-mail and by U.S. mail on this 9th day of November, 2015:

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