

**IN THE SUPREME COURT OF OHIO**

JAMES B. & TINA D. RENACCI	)	CASE NO. 2014-1893
	)	
Appellants,	)	
	)	
v.	)	APPEAL FROM OHIO BOARD OF
	)	TAX APPEALS CASE NO. 2012-1850
	)	
JOSEPH W. TESTA,	)	
TAX COMMISSIONER OF OHIO	)	
	)	
Appellee.	)	

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**MOTION OF APPELLANTS, JAMES B. & TINA D. RENACCI  
FOR CLARIFICATION OF JUDGMENT**

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Appellants, James B. & Tina D. Renacci (the “Renaccis”) hereby move, pursuant to S.Ct.Prac.R. 18.02(B), for an Order clarifying the Court’s refund instructions in its June 15, 2016 Judgment entered in this case (the “Judgment”). The final paragraph of this Court’s Judgment states:

For the foregoing reasons, we reverse the decision of the BTA and remand the cause to the tax commissioner with instructions that the double-interest penalty be refunded, along with any interest paid that was associated with that penalty.<sup>1</sup>

The Renaccis seek clarification of this paragraph to determine whether the Tax Commissioner is being ordered to refund only the Renaccis’ July 15, 2008 payment of penalty and then-accrued interest in the total amount of \$359,822, or whether the Court is ordering the Tax Commissioner to

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<sup>1</sup> Slip Opinion No. 2016-Ohio-3394 at ¶ 45.

also refund interest accrued on those paid funds from July 15, 2008 to the present. In their appeal, the Renaccis had requested a refund in the amount of \$359,822 and accompanying interest.<sup>2</sup>

For the years at issue, in pertinent part R.C. 5747.11(C)(2) provides that “Interest shall be allowed and paid at the rate per annum prescribed by section 5703.47 of the Revised Code on amounts refunded with respect to the tax imposed under section 5747.02 or Chapter 5748 of the Revised Code from the date of the overpayment until the date of the refund of the overpayment....”<sup>3</sup> Here, the Renaccis paid an assessed penalty of \$293,876, as well as accrued interest as of July 15, 2008 in the amount of \$65,946, totaling \$359,822. Additionally, interest from the date of overpayment (July 15, 2008) until the pending date of the refund of the overpayment, as provided by R.C. 5747.11(C)(2), equals approximately \$111,000 through the end of June 2016. There is, therefore, a significant difference between a refund of the penalty and then-accrued interest paid by the Renaccis (\$359,822) and a refund of the Renaccis’ payment of the penalty and then-accrued interest, plus interest that has accrued since that time (approximately \$470,822).

Given this Court’s determination that “...the tax commissioner’s decisions to impose and retain the double-interest penalty were arbitrary and unconscionable,”<sup>4</sup> the Renaccis should receive a refund of the amount of penalty and interest they paid, plus interest from the date of their payment. The Renaccis have been denied access to their funds in the amount of \$359,822 for nearly eight (8) years and should be compensated for statutory interest accruing during that time both on statutory and quite clear equitable grounds. Accordingly, the Renaccis move this Court for an order clarifying that the Tax Commissioner is being ordered to refund the Renaccis’ July 15, 2008 payment of penalties and then-accrued interest in the total amount of \$359,822, as well as

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<sup>2</sup> Merit Brief of Appellants James B. and Tina D. Renacci at p.35, ¶ 3.

<sup>3</sup> R.C. 5747.11(C)(1).

<sup>4</sup> Slip Opinion No. 2016-Ohio-3394 at ¶ 4.

interest accrued on those paid funds from July 15, 2008 to the present, which equals approximately \$111,000 through the end of June 2016.

/s/ Matthew R. Duncan

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James B. & Tina D. Renacci*

### **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Motion of Appellants, James B. & Tina D. Renacci for Clarification of Judgment was served by electronic mail to [barton.hubbard@ohioattorneygeneral.gov](mailto:barton.hubbard@ohioattorneygeneral.gov) on the 27th day of June, 2016 and by Ordinary U.S. Mail, postage prepaid, on the 27th day of June, 2016 upon Barton Hubbard, Assistant Attorney General, Attorney General of Ohio (Taxation Section), 30 E. Broad Street, 25th Floor Columbus, OH 43215.

/s/ Matthew R. Duncan

*One of the Attorneys for Appellants,  
James B. & Tina D. Renacci*