Supreme Court of the State of Ohio

George Martens,

Appellant

v

Findlay Municipal Court et al.:

Appellees.

On Appeal from the Ohio Third District Court of Appeals by Right

Ohio Supreme Court Case 2024–0122

==========

COVER PAGE

PROPOSITIONS OF LAW

APPENDIX

Appendix B - 3rd District Appeal Court decision - in 05-22-05

Appendix -

1. Findlay City Tax Ordinance 194 - link

https://codelibrary.amlegal.com/codes/findlay/latest/findlay_oh/0-0-0-44924#JD_194.02

2. C.O. 194.133

TABLE OF AUTHORITIES listed as cited sequentially

Sun Refining & Marketing Co. v. Brennan, 31 Ohio St. 3d 306

Crown Communication, Inc. v. Testa, 136 Ohio St.3d 209, 2013-Ohio-3126

Walker v. Toledo, 143 Ohio St. 3d 420, 2014 Ohio 5461, 39 N.E.3d 474 (2014).

Hughes v. Ohio Dept. of Commerce, 868 NE 2d 246 - Ohio: Supreme Court 2007

Simmons Real Estate Co. v. Riestenberg 200 N.E. 139 (Ohio Ct. App. 1935)

ER OMNI v. OHIO DEPT. NAT. RES., 173 NE 3d 1148 - Ohio: Supreme Court 2020

Gerhold v. Papathanasion, 130 Ohio St. 342,346, 199 N.E. 353 (1936)

State ex rel. The V Cos. v. Marshall, 81 Ohio St. 3d 467 - Ohio: Supreme Court 1998

STATE EX REL. SOLID ROCK MINISTRIES INTERNATL. v. City of Monroe, 2022 Ohio 431 (Ct. App. 2022)

State ex rel. Gen. Motors Corp. v. Indus. Comm., 117 Ohio St. 3d 480 - Ohio: Supreme Court 2008

GEN. MOTORS CORP v. CTY. BD. OF REVISION, 74 Ohio St. 3d 513 (1996)

State Kaylor v. Bruening 80 Ohio St. 3d 142 (Ohio 1997)

Elsass v. ST. MARYS CITY SCHOOL DIST. BD. OF EDN., 2011 Ohio 1870 (Ct. App. 2011)

Monroeville v. Ward 27 Ohio St. 2d 179 (Ohio 1971)

State ex rel. Andrews v. LAKE COUNTY COURT OF COMMON PLEAS, 2022 Ohio 4189, 212 N.E.3d 914 (2022)
Santomauro v. McLaughlin, 198 NE 3d 87 - Ohio: Supreme Court 2022

Ostanek v. Ostanek 2021 Ohio 2319 (Ohio 2021)

State ex rel. Goldberg v. Mahoning County Probate Court 93 Ohio St. 3d 160 (Ohio 2001)

State ex rel. Fraternal Order of Police, Ohio Labor Council, Inc. v. Court of Common Pleas 76 Ohio St. 3d 287 (Ohio 1996)

Conley v. Shearer 64 Ohio St. 3d 284 (Ohio 1992)

Corder v. Ohio Edison Co. 2020 Ohio 5220 (Ohio 2020)

Drees Co. v. Hamilton Twp., 970 N.E.2d 916, 132 Ohio St. 3d 186, 2012 Ohio 2370 (2012)

AMERICAN WATER MGT. v. DIV. OF OIL & GAS, 118 N.E.3d 385, 2018 Ohio 3028 (Ct. App. 2018)

Marchiano v. School Emps. Retirement Sys 2009 Ohio 307 (Ohio 2009)

State ex rel. Wright v. Ohio Adult Parole Auth. (1996)

Schaad v. Alder, 2024 Ohio 525 (2024).

Athens v. McClain 2020 Ohio 5146 (Ohio 2020)

Soltesiz v. Tracy 663 N.E.2d 1273 (Ohio 1996)

State ex rel. Reynolds v. Kirby, 2023 Ohio 782 - Ohio: Supreme Court 2023-

Eberly v. Irons 2007 Ohio 4240 (Ohio Ct. App. 2007)

Riley v. Parker 2021 Ohio 1726 (Ohio Ct. App. 2021)

Amick v. Sickles 2008 Ohio 3913 (Ohio Ct. App. 2008)

Chesapeake Exploration, L.L.C. v. Oil & Gas Comm'n 135 Ohio St. 3d 204 (Ohio 2013)

Wingo v. Nationwide Energy Partners 2020 Ohio 5583 (Ohio 2020)

Superior Hauling v. Allen Township Zoning Bd. 2007 Ohio 3109 (Ohio Ct. App. 2007)

Lawson v. Mahoning Cty. Mental Health Bd. 2010 Ohio 6389 (Ohio Ct. App. 2010)

State ex rel. Beck v. Casey, 51 Ohio St. 3d 79 - Ohio: Supreme Court 1990

Dilatush v. Bd. of Review 107 Ohio App. 551 (Ohio Ct. App. 1959)

State ex rel. Willis v. Sheboy, 6 Ohio St. 3d 167 - Ohio: Supreme Court 1983

Ordinances, Ohio Statutes and Acts

Findlay City Ordinance 194 et seq- link

https://codelibrary.amlegal.com/codes/findlay/latest/findlay_oh/0-0-0-44924#JD_194.02

ORC 718 as amended by HB5 operative 1/1/2016

HB5 Section 6 (attached in Appendix)

GREAT AND IMPORTANT- This case is of great and important Public Interest because millions of municipal taxpayers and 1000's in Findlay Ohio are brought before their Municipal/County Courts can "recover " tax debts per R.C. 718.12 These courts should be conducting "summary proceedings" and are not part of R.C. 718 assessment' procedures and hearings. These Respondents believe they are part of the tax agency's administrative ("agency's") proceedings and hearings and usurp the powers and jurisdiction of the ""agency" unlawfully. Thousands of dollars ($1000s) are exacted from taxpayers in these Respondent courts acting absent jurisdiction. The 3rd District Court has created precedent that said Respondents can do so, and absent this Court's reversing such a precedent, all municipal and common pleas courts in Ohio will be allowed, inter alia, to become a "tax review board", a tax agency and make, revise and investigate "assessments" when they have no such power or jurisdiction to do so. The Appellant asks this Court to take judicial Notice of the Appellees' Motion to Dismiss.

WHAT WE KNOW- 19 understandings

The Appellant below first establishes what we know and what the Appelees confirm and admit. After such the APPELLANT will build the propositions of law that incorporate **"WHAT WE KNOW", to avoid continued repetition in each Proposition.**

1. R.C. 718's MUNICIPAL TAXATION PROCEDURE PROVIDES EXCLUSIVE JURISDICTION

The Legislature vested with the Tax administrative agency ("agency") with the authority to, inter alia, hold hearings, conduct investigations, adopt rules and procedures, issue subpoenas, bring contempt proceedings, direct, conduct, and allow appeals, create boards to resolve taxable income disputes (ergo tax liability), establish procedures. In short, the jurisdiction conferred on the "agency" by the General Assembly's passage of R.C. 718 ("718") is so extensive, self contained and all-encompassing that the

Respondents can not claim the legislature ever granted them any Jurisdiction at all. The Legislature allows the “agency” to invoke the Respondents' jurisdiction as a remedy to collect upon the lawful assessment, if they wish. The “Agency” can commence a “civil action” which is a “summary proceeding”, as seen in 718.12 and R.C. 1925.04(B)(2) where “an authorized [tax] employee ..may commence” a small claims complaint to “recover” a tax debt. The Respondents intervention into the “agency’s” proceedings is never contemplated in R.C. 718. The Respondents are not even mentioned as having any role in 718. The “agency” has sole jurisdiction to establish an “assessment” ergo an indisputable tax debt. If the “agency” wishes to invoke the Respondents’ jurisdiction to “recover” a tax debt, it is purely their decision-period.The “agency” has no requirement to even involve the Respondents. When involved.the Respondents,in deciding their jurisdiction,attempt to morph the nature of the“civil action” to confer “agency” jurisdiction upon themselves. Such a naked attempt to usurp the “agency’s” jurisdiction and power is what this “Complaint” sub judice” is about, not a benign attempt to recover a tax debt.

2. THE RESPONDENTS' CLAIM OF JURISDICTION IS CIRCUMSCRIBED

When and if the “agency” files a tax complaint, the Respondents’ must then determine if they have jurisdiction, e.g. under 718.12(G)(1-2) no jurisdiction exists if the taxpayer still has 60 days to perfect their appeal or no jurisdiction exists while in an appeal.

3. COURTS EXAMINE THEMSELVES TO SEE IF THEY POSSESS JURISDICTION.

The Respondents always examine themselves to see if they have jurisdiction when a complaint is before them. The Respondent municipal Court does so in Forcible Entry and Detainer actions (*FE&D”) e.g. has a plaintiff performed the statutory duties in R.C.1923.04,i.e.posted a proper 3 day notice or filed a complaint after 3 day posting.

4. **IN THIS COMPLAINT THE RESPONDENTS' ACTIONS ARE COMPREHENSIVE**

The “Complaint” sub judice (the “Complaint”) is not about a “procedural error” by the Respondents regarding just the Appellant, but is about a daily comprehensive, usual, widespread, adopted “judicial posture” (a comprehensive “judicial posture”) of the Respondents, likened to where a court and its judges in **all** FE&D actions have decided to always allow Plaintiffs to disregard the three day notice requirements and issue widespread Writs of restitution. Even more than that, this case is likened to those courts rewriting R.C.1924.04 and always allowing alternate words contained in a 3 day notice. This Court would certainly issue a Writ if that were the case. The ability of a court to decide its own jurisdiction does not mean a court as a “judicial posture” can disregard a statute’s requirements to have jurisdiction and at the same time rewrite that law and more. Martens argues, inter alia, that the Respondents as a““comprehensive “judicial posture”never have jurisdiction and usurp the “agency’s” jurisdiction, morph the 718.12’s “civil action” into a self-created hearing that usurps the “agency’s” exclusive powers,

5. THE RESPONDENTS JURISDICTION IS LIMITED BY STATUTE

Under 718, no court has jurisdiction to make a judgment for a tax debt when the taxpayer is making an appeal or is in the 60 day window to make an appeal (718.12(G)(1-2). The issue is simple, e.g. would a court in a FE&D action never inquire, when perfected service was made on a non-appearing tenant, if a 3 day notice was posted and still issue a writ of restitution as a judicial posture? Should a Respondent (as a judicial posture) who confers many “thousands of dollars” in judgments against a like taxpayer never inquire if, inter alia, an appeal is pending? or if the “assessment” letter was lawfully sent, or what is the “assessment” letter’s form and substance is, when all

those are statutorily required? The "Complaint" alleges, inter alia, no inquiry is made by the Respondents in the 718.12's "civil action" as a "judicial posture", when the Legislature forbids any "civil action" when the 60 days clock has not started by 718 requirements which are as detailed as those in a FE&D action. The Respondents' "judicial posture" to "recover" a tax debt is, inter alia, to make no such inquiry before hearing the tax complaint to "recover" a tax debt. The fact is the Respondent municipal courts use the "civil action" to perform "agency" functions and when a defendant fails to appear, to summarily grants $1000's of dollars in a judgment, absent any inquiry of any the requirements that the Legislature has imposed upon the Respondents to hear a "civil action". Would this Court allow a Judge/Court, **as a "judicial posture",** to issue writs of restitution upon non-appearing tenants when the appearing landlords merely says (absent any oath or document) " I posted a R.C.1923.04 statutorily required 3 day Notice and did so 3 days before I filed this FE&D complaint" ? The Respondents' comprehensive "**judicial posture"** is, inter alia, to make $100's and $1000's judgments with court costs, interest and penalties absent establishing their jurisdiction per R.C. 718's requirements for such, e.g. the "agency" just says the taxpayers owes us $$$$$..

6. THE RESPONDENTS ADMIT THEY ACT OUTSIDE THEIR JURISDICTION IN THEIR MOTION TO DISMISS (MTD)

The Respondents, as the Appellant alleged, claim they take upon themselves the exclusive administrative agency jurisdiction in determining the tax liability of a taxpayer. The Respondents in their MTD, pg 8-10, rehearse such, i.e. pg 9, ln 18--pg 10

"At the **time of the hearing,** a representative from the Tax Department appears and speaks with the taxpayer **prior to the hearing** to discuss the case. Based on that conversation, the representative will do one of the following: 1) **request a continuance to file actual returns**; 2) **seek a non-contested judgment if the amount is accurate;**

3) if the **taxpayer contests the amount owed,** the case will be continued for a Contested \hearing, **in which the Law Director or Assistant Law Director appears to represent the tax department**. See R.C. 718.23(C)" (Emphasis added)

The point is, inter alia the Respondents claim they can hear a **"contested"** tax liability regarding **"the amount owed"**when a taxpayer contests such before theRespondents, which is not only exclusively an "agency" determination but was to be established before the hearing they are presiding over. The "agency's" lawful assessment of the "amount owed" was the basis for the Respondents presiding over the hearing. **The Respondents admit** they allow a " contested healing"" where the "amount owed", which was established by the "agency", is now a "contest[ed] amount". The Respondents believe, inter alia: 1) they have administrative agency powers; 2) the tax debt ("amount owed" is in question before their courts; 3) an actual or factual tax debt is not before them; 4) the taxpayer can now contest the "agency's" determination at their hearing; 5) they can now judicially control the new determination of what is owed in the contested hearing; 6) the can judicially determine the new tax debt on "actual returns" in a contested hearing, 7) they have powers to disregard the 60 day clock, they can act as a tax review appeal board etc etc..The Respondents have no jurisdiction to, inter alia, fact find or create a new tax debt. The "agency" has exclusive jurisdiction. At the least, the Respondents morph their "summary proceeding" into an "agency" proceeding. The Respondents also admit the "agency" seeks a "**non-contested judgment**" before them, e.g. when a defendant does not make an appearance, and in the Respondents' court they can decide if the tax debt is accurate, ("if the amount is accurate") -see MTD pg 9, ln 19). The Respondents have in fact not only no ability to determine if the amount is "accurate" because no documentary evidence exists before the Respondents BUT the

Respondents are in a “summary proceeding” to “recover” a tax debt which the accuracy of such is now again in question.The agency & the taxpayer should have exhausted all proceedings,hearings and appeals and the Respondents admit they may have an inaccurate tax debt before them. The sworn complaint (as seen in Exhibit A, 4th page-in the “Complaint”) the signatureswears the amount is “due”an“owing”. Is ‘If it is accurate” is now before the Respondents? Can it be inaccurate? Actually, the Respondents take no sworn testimony by the tax employee that the amount is accurate to obtain a judgment. At least, two reasons exist for that,1) the signature can not swear in open court that the sum is “accurate” because it is not and 2) the Respondents, as its “judicial posture” make judgments on fabricated “assessments”. The Respondents knowingly use speculated, non-existent, revisable and fabricated tax debts in the “civil action” as a “judicial posture believing they are an arm of the “agency”.

In the MTD (pg 9- 2 times), the Respondents admit they allow a “civil action” to commence and grant a continuance “to file actual returns”. “[A]ctual returns” are either a defendant’s state or federal tax returns or municipal income tax “returns” but ether is a damning admission, i.e.the Respondents are entertaining and continuing a “civil action” to allegedly “recover” a debt (already procedurally established by the “agency”) and are acting as the “agency”. i.e.now claiming “actual returns” are needed to determine a tax debt. The Respondents have styled themselves as the “agency” and the hearing is a post-facto tax appeal hearing and do so because the tax debt is a “proposed assessment” not based on actual fillings (MTD pg 9, ln11-12).The defendant and Respondents and the “agency are at the hearing to put into question,revise, establish, re-establish etc. the tax debt after the “agency’s” exhaustive proceedings allegedly

determined the “assessment” (tax debt),The Respondents do not have tax debt from the “agency” before tem because, inter alia, the hearing is not to recover a tax debt but to sort out. Revise, create, establish a tax debt. The nature of Respondents' proceedings is **not recovery but discovery of a tax debt.** The Respondents claim that they, inter alia, do/can judicially usurp the “agency’s” function and on their own establish a newly created tax debt & allow the defendants to get a second bite at the apple before the Respondents and make new appeals as to that amount. The Respondents in concert with the “agency” can now create a new:debt and new rights and even act as a new agency housed in the courtroom, all of which is patently and unambiguously absent jurisdiction. The Respondents also claim they never had before them an “assessment” but,at the least, a “proposed assessment”, which is a mere speculation and a fabrication created by the agency to get into the Respondents’ courts where they can sort out what is actually owed. The Appellant's allegations could not have been more supported.

After the continuance where “actual returns”(regardless of what the term means) were filed does the Defendant have a new “assessment”? was the sum before the Respondents in fact an “assessment' '? The Respondents’ continuation demonstrates the tax debt before them was not an “assessment”, “actual” or “factual but a speculation (fabrication). The Respondents write new law and claim under their law, their jurisdiction exists. The basis for a “continuance” (to get actual returns so an actual tax debt can be created) is, inter alia, an unlawful and unconstitutional act by the Respondents, i.e. granting the defendants new rights to recalculate their tax debt and is an admission that “estimates” (MTD pg 8,9 used 4 times) are not based on actual or factual taxable incomes (ergo tax liabilities) but as argued by the Appellant, fabricated

tax obligations to obtain entry into the Respondents' courts, so they can, inter alia, order tax defendants to file returns or to obtain their actual IRS tax returns, i.e. to be used to investigate what tax is due. That power is legislatively given in 718.23 to only the "agency" before the hearing. The Respondents actions and use of the word "estimate" and "estimated" tax liability before them exposes the true nature of the claim before them. The Respondents have morphed the hearing from a "summary proceeding" in to a fishing expedition coordinated with the "agency", inter alia, to obtain tax records.

The Respondents in their MTD(pg 9, line 10), call taxpayers "defendants", i.e. "Alternatively, **a defendant** may provide additional documentation so that the Tax Department can **revise its estimate** prior to a return being filed. (Emphasis added). THE POINT BEING- the Respondents agree they have a "**defendant" in the "civil action"** (the taxpayer already has been summoned to the Respondents' court) and the **"estimate"** is not even an actual or factual, indisputable amount and and can be "**revise[d]"**. The Respondents admit that they summons alleged taxpayers to their court upon an "estimate" and tell this Court the nature of the "estimate", i.e. reviseable. The implications, inter alia, are monumental: 1)the "estimate" was never factual or actual; 2) **the Respondents:** a) provide for an "on the fly" appeal by the taxpayer outside statutory law; b) create new law by allowing a revision right in their court proceedings; c) create new statutory law regarding the 60 days to dispute an "assessment" ; d) consider the "assessment" requirements under 718 to be discretionary upon their jurisdiction; e) consider the appeal requirements under 718 to be discretionary upon their jurisdiction; f) consider all the "finality" of an agency's judgment to be discretionary upon their jurisdiction; g) believe that there are no statutory restrictions upon them or their

jurisdiction, i.e.all such can be waived by a joint agreement with the administrative tax agency in their courts; h) believe a “tax debt” can be a “proposed assessments” or an “estimate” and even revised **while in the hearing; i)** know that an “estimated” tax liability has no statutory support as an “assessment”. The Respondents’ admissions are damning and manifestly demonstrate they, inter aliai, usurp jurisdiction and act absent any jurisdiction on speculative tax obligations, called estimates under 194.133(E) (see MTD pg 8, lines 12-16) when 194.133(E) could never be used to create a lawful “assessment” or allowed to be before them. (addressed below)

Let it be said, The “agency” knows it can not file a “civil action” except on an actual tax debt before the Respondents, so the “agency” fabricates such, the Respondents then knowingly allow the fabrication to be refined judicially and even grant continuances to refine the fabricated claim and sort out the veracity of it (if it exits at all), with a disregard of the sworn complaint (Exhibit A pg 4)evidencing a perjured claim of a sum “due” and “owing”.The Respondents,usurping the “agency’s” exclusive jurisdiction, attempt to collect $100s and $1000 absent any jurisdiction to do so.The Respondent municipal courts tell the defendant to get their records to the “agency” before the scheduled continuance. If the new tax debt is paid, the agency dismisses the tax complaint before the scheduled continued hearing. If the new tax debt is not paid to the “agency” before the date of scheduled continued hearing, the Respondents' municipal court’s continued jurisdiction is invoked upon an amended sum. If the defendant does not produce the records before the scheduled continuance hearing the Respondents allow the “fabricated” sum to be before them knowing the sum was never an “assessment” before them but nevertheless grants a judgment to the “agency”. The

Respondent municipal courts know the drill and that the “estimated” tax debt is being used, inter alia, to obtain tax records, have actual returns, establish a tax debt.The Respondents municipal courts know that the “estimate” is a “jumping off point” for the City’s tax scheme and what is owned can be sorted out upon in their courts under their claimed jurisdiction to do so. The Appellant in the “Complaint” detailed all of this in the allegations. The Respondents' use of 194.133(E) they claim is a basis for their jurisdiction is exposed next.

7. THE RESPONDENTS CLAIM THEY USE “ESTIMATES” OF TAX LIABILITIES ALLOWED UNDER C.O. 194.133(E), WHEN BY DEFINITION THE “ESTIMATE” OF TAX LIABILITY IN 194.133(E) COULD NOT BE USED TO MAKE AN ASSESSMENT

The Respondents are well versed in the 718 law and C.O. 194.133(E), since they quote it and use it and have been enforcing such for years. The Respondents in their MTD (pg 8-10) claim they have before them an “estimate” that grants them jurisdiction (even absent all the above lack thereof). The Respondents use the word “estimate” (used 4 times on pg 8 and 9 in the MTD) and on pg 10- 2 times, use 194.133(E) as the basis that allows them to have an “estimate” before them. As one reads the MTD, the Respondents know an “assessment” (the tax amount owed) must be before them and use an “estimated” assessment as a substitute, explaining that 194.133(E) is their “out”, i.e.“estimate of taxes owed”. The Respondents also know that C.O. 194.011(A) states “This Chapter is deemed to incorporate the provisions of Ohio Revised Code 718” and by such Chapter 718 is always controlling. The Respondents bastardize 194.133(E) by disregarding R.C.718.01(PP)(2). In 194.133(E)- “a **written statement** showing the amount of tax so determined or estimated” could never be an “assessment”. The Respondents being well versed in municipal tax law are fully aware that the Ohio

Legislature restricted municipalities from sending out written statements and calling them “assessments” if they do not comply with 718.01(PP)’s requirements. This is like the Legislature’s R.C.1923.04 requirement for the form and substance of a 3 day notice.The Respondents know that the “estimate of taxes owed” (above) set before them by the “agency” could never be a lawful assessment, and regardless they use 194.133(E) to claim jurisdiction to hear a tax debt tax base on a lawful assessment. Not only that, the Respondents know that the 60 days time clock has never started using 194.133(E) as a basis of a lawful assessment being sent to any taxpayer because the clock only starts on a “lawful assessment”, which they know does not exist. These are simple concepts for the Respondents who know 718 and 194.133(E) and who exercise powers to grant $1000s in dollars. The Respondnets know the word “ASSESSMENT” across the top of a correspondence must exist and that still does not make it lawful “assessment”. Other procedural requirements exist in 718 et seq to qualify as a lawful “assessment”, e.g. lawful mailings.

Sun Refining & Marketing Co. v. Brennan, 31 Ohio St. 3d 306 - Ohio: Supreme Court 1987 at 314-We hold that the fifteen-day appeal period in R.C. 119.12 does not commence to run until the agency whose order is being appealed fully complies with the **procedural requirements set forth** ..Were we to hold otherwise, it is conceivable that an affected party could lose its right to appeal before receiving notice of an agency's decision, **and thereby be deprived of its due process rights.** (Emphasis added)

The non-compliance of the procedural statutory requirements of 718 which controls C.O. 194.133(E) is a violation of all defendant's **“due process rights”** (supra *Brennan*)

The purpose of the exclusive jurisdiction of “agencies” is to obtain a “finality” not to allow the Respondents' discretion for repetitive, unallowed, and new appeals or on “estimates” of what is owed, but upon lawful “assessments” The Respondents are not rogue tax collectors, a tax review board etc, they are to stay in their lane under 718.

See- Crown Communication, Inc. v. Testa, 136 Ohio St.3d 209, 2013-Ohio-3126- {¶ 26}"... It is important not only for the taxpayer but the local taxing districts for tax assessments to attain finality: the taxpayer needs to know the extent of its obligation, and local taxing authorities need to know how much revenue they have."

The Respondents' **comprehensive judicial posture" violates due process and the finality**.The Respondents claim: they use an "estimate"under 194.23(E) when the 60 days appeal clock's is not even running, as they craft new tax debts in their courts from those "estimates" and/or "proposed assessments".

8. **PRECONDITIONS FOR A "CIVIL ACTION" ESTABLISHES JURISDICTION**

How does the "agency" establish a lawful due and owing tax debt to put before the Respondents. By an "assessment" in compliance with 718 requirements. Why must they do that? Because no court can claim it has jurisdiction in a "civil action" under 718.12 until, at the least, the Respondents have established a lawful tax debt by a lawful assessment. The Respondents know the "agency" is where appeals are had. If an appeal was requested by the defendant in the agency's proceedings and it is pending or that the 60 days are not expired for a defendant to appeal, the Respondents know they have no jurisdiction under 718.12 (G), The Respondents (like in a FE&D action) usually look for documents demonstrating a lawful "assessment" letter (detailed by the legislature as to form and substance (in 718.01(PP)) was sent by lawful mail servicing and that the taxable income (ergo tax liability) was supported by the Legislative procedures/requirements to arrive at such, etc to establish their jurisdiction. To ONLY "recover" the tax debt the agency has established by its proceedings/hearings.

This Court may argue that this "Complaint" is a case by case issue, but it is not here because the Respondents maintain a "comprehensive "judicial posture", i.e. in all cases. The Respondents do not dispute in their MTD, inter alia, that they usurp the

“agency’s” jurisdiction and exercise “agency” jurisdiction, use “proposed assessments”, use unlawfully “estimated” sums as an “assessment” under 194.133(E)-(which is no assessment at all), revise and use revised tax debts in the Respondents' courtrooms. The Respondents morph the “civil actions” under 718 from a “**recover[y]**” of a tax debt, to a **“discovery”**, in an all out administrative agency action as their comprehensive “judicial posture”. The Respondents massively grant default judgments and judgements with non-appearing defendants, who are ignorant but susceptible to the intimidation of courts apparent judicial setting, based on speculative, and/or fabricated and/or unknown and/or ‘“guestimated” (discussed next below) and/or revised tax debt. The appearing defendants allow the Respondents to compel them to file a tax return (as attested to by the “AC” above, i.e. ” **attempt to get taxpayers to file their actual returns**“) , which is not in their jurisdiction under 718.12 but is an “agency” function under 718.23. This Court would issue a writ instantly if it knew any court or its judges maintain a “judicial posture” to disregard 3 day Notices, its words and its posting and issue writs of restitution in FE&D actions summarily.The Respondents acts are even more egregious when they, inter alia, admit they usurp agency functions and act upon “an estimate of taxes owed” and more to come below.

9. THE APPEALS COURT IN ITS JUDGMENT (ACJ) ADDRESSES MARTENS’ CASE 05-22-05 WHICH MUST BE UNDERSTOOD IN ITS CONTENT

In the Appeals Court Judgment (ACJ) sub judice, the ”AC” introduced Martens case 05-22-05’s case and its decision, The “AC” decision in 05-22-05 case (in Appendix B) was broached by the Appeals Court sub judice, and should be considered as more evidence before this Court of the Respondents' lack of jurisdiction. The “AC” brought

the 05-22-05 case into its arguments and the Appeals Court's other words in that case should also be contextually before this Court by this Appellant, i.e **on page 21 Note 9** of that 05-22-05 Appeals Court decision (used by the Appeals Court in the "ACJ") states-

"Findlay employees took prior estimated tax returns and increased the income Martens purportedly received from $30-35,000 to $50,000. Findlay employees indicated that when they **estimated income they always increased the amount from prior taxable** years in an **attempt to get taxpayers to file their actual returns** so the true number could be determined. Because the $50,000 number was not tied to evidence other than the prior estimated returns and the employees assuming an increase, Martens contends that the number was "fraudulent"" (Emphasis added)

The Appeals Court's words are an alarming indictment that the Respondents know that the Municipality is invoking their jurisdiction upon **fabricated** tax debts that were made to get returns filed. The Appeals Court wanted this Court to believe the "Complaint" was a continuation of 05-22-05 but avoided their other words as quoted above. WHY? because- **NO ONE WOULD EVER BELIEVE THE LEGISLATURE EVER MEANT TO ALLOW AN OBVIOUSLY AND ADMITTEDLY FABRICATED TAX DEBT TO BE BEFORE A COURT OR THAT THE THE RESPONDENTS KNOW THE NATURE OF THE CLAIMS BEING BROUGHT FORWARD BEFORE THEM, WOULD THEY ALLOW JURISDICTION TO BE INVOKED OR WOULD THE RESPONDENTS ALLOW A SWORN COMPLAINT TO BE BEFORE IT UPON A PERJURED ATTESTATION THAT SAID SUM IS DUE AND OWING (See Exhibit A, pg 4).**

The "AC's" use of 05-22-05 selectively used arguments against Martens, i.e. "Martens complaint is just another iteration of 05-22-05 etc etc.." The fact is the same appeals court admitted what the "agency" does, and that was known by the Respondents, all or in part. The "AC" know what the Respondents call an "estimate"; and what they knowingly allow jurisdictionally before them, when the Legislative has defined what a

tax debt is by its statutory requirements. Once again, the Respondents believe they have jurisdictional discretion to allow such “estimates” and perjured complaints (Exhibit “A” pg 4). The same Appeals Court further confirmed in the same quote the nature of the “estimated” return and how bogus it is, i.e. . [an] **attempt to get taxpayers to file their actual returns so the true number could be determined… the $50,000 number was not tied to evidence other than the prior estimated returns and the employees assuming an increase”(supra)** The “AC” stated the **“estimated returns” was not tied to “evidence”** (Note:no other returns were ever filed by Martens) and used **“to get taxpayers to file actual returns so the true number could be determined**”. “The **“true number”** was not determined by the “agency”? The “ AC” also stated in 05-22-05, that “estimate” could be characterized as **“guestimate”** [that] **“may not have been accurate”**- i.e.

“{45} In our de novo review, we agree with the trial court. The depositions, which Martens cites extensively, establish how the **estimate, or guestimate,** of Martens rental income was made when he did not file taxes for 20 l3, 2014, and 2015. 9 While the **estimates may not have been accurate**, that does not make them fraudulent.

Does this Court wish to make it precedent that under R.C. 718.12 a court in Ohio has jurisdiction to “recover” a tax debt of that nature? Nevertheless, the Respondents argue they have jurisdiction on a **“guestimate”** or a tax debt that **“may not have been accurate”**, is not a **“true number”**, a “proposed assessment” , when the Legislature has limited their jurisdiction, i.e. to a “summary proceedings” to create a judgment against a taxpayer for an accurate sum, determined by the “agency’s” proceedings and hearings where it had exclusive, 100% jurisdiction to establish an actual and factual tax debt. under 718.12. The Respondents' are not involved in a “procedural” ireguality”, but in a “comprehensive “judicial posture” for all such cases. The “AC” & the Respondents,

all or in part, know that they make judgments in non-contested hearings on "**guestimates**" , a number that are not **"true numbers"** and that the "agency" fabricates taxable incomes and uses "perjured" complaints to obtain jurisdiction..

10. THE RESPONDENTS KNOW THE "CIVIL ACTION" OF 718.12 GROUNDS ITSELF ON A PERJURED DOCUMENT (COMPLAINT).

The Respondents know that the "civil action" filed (as seen in the Exhibit A, pg 4- referenced by the Respondents in their MTD) contain sworn attestation that is false (perjured) and/or was created by the "agency's" (suborning perjury). The Respondents know or should know that masses of "civil actions" for a tax debt before them are based on perjured tax debt complaints. The Respondents demonstrate that in their MTD, pg 8-10 (above) when a tax employee is before them the tax debt is a 194.133(E) "estimate", a "proposed assessment", not "accurate" , not a "true number" but revisable when they obtain "actual" tax records. The Respondents mimic the same understanding of the tax debt that the Appeals Court revealed in 05-22-05 above. The Appeals Court, sub judice, had the MTD, the 05-22-05 record, and an "agency"sworn affidavit but still claimed the Respondents have jurisdiction. The "AC" and the Respondents know the nature of the sworn complaint and it is not a truthful sworn complaint and still claim no lack of the Respondent municipal court jurisdiction, The sworn complaints (Exh A, pg 4) before the Respondent municipal courts are obviously perjured since the "agency" state the sum **is "**due" and "owing", when the MTD demonstrate the sums are not "due" and "owing" but "proposed assessments", "estimates", "guestimates", fabricated sums, bogus "assessments' under 194.133(E) to obtain "actual" tax records, to establish an actual tax debt etc etc.. The Respondents grant continuances in ongoing 718.12 "civil

actions" to let the taxpayer provide accurate records to the "agency" to then modify the tax complaint to make an assessment never before the Respondents (if one exists at all). Does a sworn complaint have any meaning when it states a sum to the penny, "is due" and "owing" and the fact is the amount is yet to be determined and sorted out if it exists at all? The Respondent municipal courts know the nature of the "civil action".For the Respondents to claim "perjury" is not in play is to eviscerate the meaning of that term and allow a most powerful agency, who can intimidate and exact huge sums of money $$$$$, to totally disregard the purpose of a sworn complaint and why such is required in a court of justice.The mere review of the Respondent municipal courts docket demonstrate the widespread nature of perjured complaints, e.g. tax complaints filed for intilal high dollar amounts resolved to tens or no dollars and dismissals. That's what perjury looks like and was alleged in the "Complaint" as was all of the above.

11. THIS COURT'S RULING IN WALKER V TOLEDO IMPACTS JURISDICTION

The Respondents dismiss *"Walker,* which denies the Respondents intervention before the "agency has exhausted all its proceedings and hearings, i.e.

Walker v. Toledo, 143 Ohio St. 3d 420, 2014 Ohio 5461, 39 N.E.3d 474 (2014).{¶ 29} … Ohio municipalities have.. authority to establish administrative proceedings, including administrative hearings, in furtherance of these ordinances, **that must be exhausted before offenders or the municipality can pursue judicial remedies** (Emphasis)

Obviously ***Walker*** speaks to the municipality's exhaustion of remedies, but no fair reading of such would not understand this Court's opinion addresses the Respondents' jurisdiction, as it did in the facts of the case (*Walker*). The Respondents by their knowing no "judicial remedy" can be sought while administrative remedies still exist (a concept not new to this Court or any court) know they have no jurisdiction when an "agency" wishes to invoke their jurisdiction before the municipal exhaustion.The

Respondents maintain that they have jurisdiction to “recover” a tax debt knowing that the tax debt could not be recovered if the “agency has not exhausted its proceedings and hearings. YET the Respondents’ actions patently show that they do not have before them a final determination of a tax debt OR do not know if the “tax debt” is at finality by the “agency” proceedings or hearings. The Respondents must know the municipality has exhausted their “agency” actions to obtain jurisdiction and make no effort to do so and in fact unlawfully become an extension of the “agency”. The disregard for *Walker* is a disregard of jurisdiction or any inquiry to see if they have jurisdiction.

12. THE LACK OF JURISDICTION CAN BE BASED ON “AGENCY” FAILURES

The Appellees claim that the Tax Department's failure to properly issue an assessment-would qualify as a "procedural irregularity" that does not affect the trial court's subject matter jurisdiction to hear the claim.” First, the Respondents are “maintaining a “comprehensive “judicial posture” in all their proceedings (this posture is not a ”one out”). Second, this Court has manifestly rejected that argument -

See-Hughes v. Ohio Dept. of Commerce, 868 NE 2d 246 - Ohio: Supreme Court 2007-¶ {18} **The common pleas court lacks jurisdiction over this administrative appea**l ..{¶ 19} ..**Here, since the agency failed to properly serve Hughes with a certified copy of the removal order,her appeal period never started to run”**(Emphasis added)

Know or unknown “Agency” failures strip the Respondents of jurisdiction. The Respondents, inter alia, do not care if the “agency” made a lawful assessment, they will create a new one if needed, as a judicial posture. The disregard of any inquiry at all of “agency” proceedings or hearings or appeals in their courtroom is a judicial posture that they believe they are an arm of the “agency”, such is not a “procedural irregularity”.

13. RESPONDENTS IN FACT MAKE ASSESSMENTS JUDICIALLY

The Respondents (inter alia): 1) make their own ““assessments” and in their courts; 2) create new “assessments”: 3) create new “appeal rights” to magistrates (.i.e. MTD pg 10, lns 3-10 in a contested hearing; 4) establish a new “tax liability"; 5) grant new appeal rights of a judge's determination of the “amount owed”; 6) grant appeals from an “appeal court” to this Court. EYE OPENING INDEED.The Respondents admit they act, at the least, as a “super tax board” (as alleged) and take upon themselves agency functions and believe they have jurisdiction to do so. It gets even worse as explained right below.

14. THE RESPONDENTS’ JURISDICTION EXCEEDS A “SUMMARY PROCEEDING”

The Respondents really do believe their comprehensive judicial posture is part and parcel of the “agency’s” procedures and are granted jurisdiction by the tax agency. They disregard that the 718.12 “civil action” is a “summary proceeding”, to “recover” a debt.

See- Simmons Real Estate Co. v. Riestenberg 200 N.E. 139 (Ohio Ct. App. 1935)
…General Code, provides for a **summary proceeding** in which a debtor of the judgment debtor may be examined concerning property, money, or credits in his hands or under his control. (Emphasis added0

The 718.12 summary proceeding does not provide for pleadings or the summoning of additional parties or witnesses. Under this summary procedure, the parties do not have a full opportunity to litigate or re-litigate the issues all over again- end stop- period. The Respondents believe that they can entertain “contest[ations]” of the tax debt, revise tax debts, establish tax debt, re-appeal tax debt and even (as they do) order alleged tax defendants to produce tax records (investigate) so a tax complaint can be “accurate”. The Appellant made all such allegations in the “Complaint”

A 718.12 “summary proceeding” by definition is post finality agency determination. The facts & conclusion of law have already been decided & there is no contestation of the “agency’s” undisputed tax debt e.g. ibid -*Simmons Real Estate Co. v. Riestenberg*

15. MUNICIPAL TAXATION IS STATUTORILY DEFINED

The procedure for MUNICIPAL TAXATION has been authorized and procedurally established by the Legislature under R.C. 718 and is fully incorporated in C.O.194. The Legislature has allowed an “agency” to be created, not unlike other municipal agencies. The tax agency is a quasi-judicial body that conducts all the procedures and hearing with exclusive jurisdiction till all parties have exhausted all their administrative procedures and appeals, as understood by this Court in *Walker (supra)* where no judicial remedies are allowed until all administrative proceedings including hearings are exhausted.

In the case of municipal taxation for an individual taxpayer, the alleged taxpayer either 1)files a municipal tax return on defined income, sends in payment or 2) has failed to send in a tax return. Then, if the tax return sent in is deemed to be deficient or no tax return was filed, the ”agency” can subpoena if needed tax records and make an “assessment” and send out an “assessment” by lawful mailings. If no records can be secured by the “agency” the “agency can file a contempt action to obtain said records. . The “agency also can start criminal actions if needed. In either of these cases, the taxpayer can pay the “assessment” or appeal the “assessment” to the tax review board. The taxpayer has 60 days from when the lawful “assessment” was lawfully mailed to file for an appeal. After 60 days and no appeal was requested,the lawful assessment becomes at tax debt. If a timely appeal is requested, the taxpayer appears before the “tax review board”(“board) and a quasi-judicial hearing takes place. If the taxpayer or the “agency”believes the “board’s finding is wrong, the parties can make further appeals, e.g. to the tax review board (BOR) or use R.C. 2506’s mechanism. When all

the parties' appeal procedures are exhausted, a tax obligation is final (an indisputable amount is determined). NOTE, the "agency" throughout has exclusive jurisdiction and the Respondents have had no role or part in the legislated quasi-judicial proceedings, and a actual and factual tax obligation will be established outside of the Respondents' presence or contribution. That fact is important since the Respondents unbelievably claim they can intervene post- quasi-judicial proceedings and have hearings as detailed above). The Respondents also believe "estimates" are jurisdictionally allowed. The Legislature only allows the Respondents to conduct a requested "civil action" to "**recover"**, not **discover,** the lawful tax debt. The Respondents have no role in agency proceedings or hearings. The Respondents deal only with an actual and factual tax debt which has been determined absent any summons to their courts for any matter. The Legislature.In R.C. 718.12(G)(1-2) forbids a "civil action" during any appeal or during the 60 days when a alleged taxpayer has a right to appeal. Obviously, as this Court ruled in *Hughes,* supra, the failure of the agency to mail a required document, tolls the appeal days (the clock never started). Hence, e.g., the "agency's" failure to send a lawful "assessment" by lawful mailing tolls the assessment, and in fact any agency neglected requirement Legislatured in "718" tolls the 60 days to appeal.The "agency" can not commence a "civil action" when an appeal is pending or 60 day clock has not started or ended. The Respondents' jurisdiction only begins after a lawful "assessment" exits. The "agency" may request the Respondents to accept their "civil action", or the Respondents may agree with the "agency" to allow their "civil action" but no such thing can confer jurisdiction. The Respondents have a duty to see if they have jurisdiction, as this Court does all the time and sua sponte dismisses appeals to this Court.

16. THE “AC” CLAIMED JURISDICTION DOES NOT LIE IN 718 (“ACJ” pg 5),

The Appeal Court claims-” [T]here is no indication that failure to comply with R.C. 718 or Findlay Ordinance 194.02 would deprive the trial court of jurisdiction over the matter." Failure by the municipality to comply with 718 does deprive the “trial court” of jurisdiction and the Respondent's failure to comply with 718 under 718.12(G) or to usurp the exclusive jurisdiction (as detailed above) of the “agency” denies them jurisdiction.

17. RESPONDENTS’ JURISDICTIONAL REQUIREMENTS

Under R.C. 718.12 or C.O.194 (which is controlled by 718 et seq) the Respondents do have jurisdictional requirements by any reasonable reading. The Legislature denied the Respondents jurisdiction when a taxpayer’s appeal is in process or during the time (a period) a taxpayer can appeal e.g. 718.12(G)(1-2)) or when no lawful assessment is before them. Why did the Legislature deny the Respondents jurisdiction during those periods? Answer = because the taxpayer is to be provided reasonable time to decide if they wish to appeal and/or if they feel the “assessment” is not factual and actual. The 60 days (see 718.11(7)(C), begins when the “agency” has made a lawful “assessment” as required by law, e.g. 718.01 (PP)(1-2)- which requires the words “ASSESSMENT” be in capital print on top of said document. If no lawful “assessment” letter has ever been sent, the taxpayer is not obligated to start an appeal regardless of what else was sent. Other conditions also toll the 60 day clock e.g. a “lawful assessment letter has not been sent by the lawful means. All those prerequisites are part of the “period” and can toll the 60 day clock to file an appeal. THUS, the legislature limits the jurisdiction of courts. A pretty simple equation is used and seen many times for agency's actions and court jurisdiction. The “agency” and taxpayer must “exhaust” their administrative

processes & administrative hearing before any Judicial intervention is allowed, also seen in this Court's rulings (See *Walker* above). To claim a 718 prerequisite for a "civil action" does not deny jurisdiction is to attempt to deny the obvious. A taxpayer's remedy for a "contested" assessment is in the "agency's" proceedings & hearings, **not in the proceedings of the Respondents. The Respondents claim, inter alia, they can remedy a taxpayer dispute as to tax debt but the Respondents' jurisdiction is predicated on the :"agency's" lawful assessment and on the 718.12(G)(1-2).**

The " agency's requesting a "civil action" to "recover" the debt does not remove the Respondents from' the responsibility to establish jurisdiction in a summary proceeding e.g. like in a FE&D complaint, a 3 day notice must be put forward and the words of the 3 day Notice tested if they comply with 1923.04 and evidence it was posted securely on the residence or personally delivered etc.. The "Complaint", sub judice, has made allegations that Respondents entertain judgments for a tax debt that is "estimated", fabricated, they act absent the Legislated requirements of 71812(G)(1-2) and that they act as a tax review board. The Respondents' must be stopped as acting, inter alia, as a "remedy" for a "defendant" to a contest a tax assessment or conduct any administrative proceeding or hearings or investigations of a tax obligation or allow/command further investigations to obtain tax records when the "agency" has been given exclusive authority to obtain tax records in 718.24 before a Respondents' hearing, which is also alleged in the "Complaint". The Respondents act on "proposed assessments" and "estimated" tax liabilities using 194.133(E) (above) and claim they can exercise jurisdiction over the "agency" , e.g. they can revise an "agency's" determination pg 9-10 , lns 10 et seq of MTD, i.e.

" If the **defendant** files additional information, such as a W-2, prior to the date of the hearing, the Tax Department will then amend the proposed assessment due based on the actual filings rather than the original estimate. … At **the time of the hearing**, a representative from the Tax Department appears and speaks with the taxpayer prior to the hearing to discuss the case. Based on that conversation, the representative will do one of the following: 1) request a continuance to file actual returns; 2) seek a non-contested judgment if the amount is accurate; or 3) i**f the taxpayer contests the amount owed,** the case will be continued for a Contested \hearing, in which the Law Director or Assistant Law Director appears to represent the tax department. See **R.C. 718.23(C)**." (Emphasis added) .

18. THE RESPONDENTS' MOST DAMNING WORDS

The Respondents state on pg 10 of MTD detail their role in the "contested" hearing i.e.

"In the small claims context, the contested hearings are conducted by a magistrate. See Findlay Municipal C-Ourt Local Rule 1.05. **After the magistrate makes a recommendation as to tax liability,** the parties have an opportunity to **file objections before the matte**r is sent to the judge. Civ. R. 53(D)(3).At that time, the judge would either reject or adopt the recommendation of the magistrate. Civ. R. 53(D)(4), et seq. **If the recommendation is adopted, the judge will issue a judgment for the amount owed.** Id.**Once a final judgment is issued, then the taxpayer has the right to file an appeal to the appropriate Court of Appeals pursuant to R.C. 2502.02**.(Emphasis added)

The Respondents claims to the "AC" what their "judicial posture" is for all "civil actions" under 718.12. **The RESPONDENTS claimed:**1) they can change to tax owed (tax liability); 2) objections can be filed by the taxpayer to the amount owed; 3) objections to the tax liability can be entertained by the magistrate; 4) objections to the tax liability can be entertained by the judge; 5) a magistrate can accept and/or amend the tax liability; 6) a Judge can accept and/or amend the magistrate's tax liability; 7) a taxpayer can appeal the tax liability in an Appeals court; 8) the tax liability is fluid, and the "agency's" determination and its judgment is up for question again; 9) another appeal outside of 718.11 can now be made to this Court; 10) the ability to appeal an assessment (tax liability) goes beyond the 60 days allowed and/or disregards the 60 days clock; 11) the Respondents can overrule the "agency" assessment; 12) the taxpayer has additional

rights before the Respondents; 13) the tax debt before them, when paired with the previous statements by the Respondents above, is an “estimate” of tax debt and still disputable not a “lawful assessment, i.e. inaccurate, a “proposed assessment”; 14) no 718 appeal request is even necessary, because the Respondents can determine a tax debt by its proceedings. More can be added but it is obvious in the totality of the Respondents’ comprehensive judicial posture is that they can and do assume “agency” functions and are interlopers upon the “agency’s” exclusive jurisdiction, and they rule on a tax debt known to have no basis as a lawful assessment of the “agency”. The Respondents and the Appeals Court (above in 05-22-05) recognized the amount before them has no actual or factual basis, and such is still open to revisions by the Respondents and higher court appeals. and the “assessment” is know to be a “guestimate” and may not even be a “true number” and “may not have been accurate” & “not tied to “evidence” .

19. THE RESPONDENTS’ EVEN MORE PREPOSTEROUS MISUSE OF 718.23(C)

On pg 9-10 of MTD the Respondents claim that **“718.23(C)”** creates the groundwork for their jurisdiction. The Respondents believe these investigative actions in 718.23(C) **are before them** and therefore the legislature has granted them jurisdiction In a contested “civil action”. The Respondents believe that in the “civil action”, a tax debt can determined **in their courtrooms** where the **“law director”** and a taxpayer (with an attorney if desired) can put forth arguments as to a “contested” tax debt . Not only is thus grasping at straws **it is preposterous.** 718.23(C) is not about the Respondents or a 718.12 “civil action” but about the exclusive ability for the “agency” to investigate administratively the basis of a taxable income, ergo tax liability. One merely needs to

read said section where the “agency’s” employees are making appearances and crossexaming taxpayers. 718.23(C) is the investigative tool of the “agency” not part of the Respondents’ a judicial proceeding or part of their jurisdiction. 718.23 et seq read in materia is unambiguously a agency function- See-

(C) **The tax administrator may examine under oath** any person that the tax administrator reasonably believes has knowledge concerning any income that was or would have been returned for taxation or any transaction tending to affect such income. The **tax administrator may, for this purpose, compel any such person to attend** a hearing or examination and to produce any books, papers, records, and federal income tax returns in such person's possession or control. The person may be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner at any such hearing or examination. **This division does not authorize the practice of law by a person who is not an attorney.** (Emphasis added)

718.23(C) is not allowing in the Respondents’ or their courtroom to be used as an investigational venue in the “recover[y]” of a tax debt under 718. 718.23 et seq is to inside the administrative agency’s exclusive jurisdiction, i.e. “(A)- to “[verify] the accuracy of any return made or, if no return was filed, to ascertain the tax due under this chapter.” Many administrative agencies are allowed in a quasi-judicial proceeding to examine under oath persons before it like 718.23 et seq does.This again demonstrates the Respondents’ “judicial posture” that in all “civil action” under 718.12. They maintain they have investigative power and jurisdiction to “revise” or establish a “tax liability” etc as stated above, per 718.23(C) and admit they do invade the jurisdiction of the “agency”, i.e. MTD pg 9 end to pg 10, ln 2

3) if the taxpayer contests the amount owed, the case will be continued for a Contested \hearing, in which the Law Director or Assistant Law Director appears to represent the tax department. See R.C. 718.23(C).

718.23(C) is not in the Respondents' courtroom at all, ergo not a 718.12 “civil action”,

718.23(C). It is embarrassing that this Appellant has to explain such to the Respondents before this high Court, i.e. how 718.23 et seq is jurisdictionally confined to the “agency”.. This bogus claim of 718.23(C)’s use and the claim an estimated assessment can be before them under 194.133(E) should end any claim they have jurisdiction.

NOTE: All of the following propositions of law incorporate the above

PROPOSITIONS OF LAW 1-STANDING EXISTS - EVEN IF NOT NEEDED UNDER PATENT AN UNAMBIGUOUS LACK OF JURISDICTION STANDARD

Martens’ Complaint alleged standing was found on the Public Right Doctrine and in his Response to the MTD (pg 28-29, pg 46-47) referenced that. Martens ``Complaint” clearly was an action for himself as one of the many taxpayers who are affected by the Respondent’s lack of jurisdiction. The Realtor has demonstrated more than an sufficient generalized public interest in the enforcement of R.C. 718 and the scope of the concrete injuries to him and 100s/1000s of taxpayers. .

ISSUE 1- THE APPEALS COURT MISSTATES FACTS IN THE “COMPLAINT”

The Third District Court (ACJ) wrongly states on page 4, line 3-4 that Martens failed to allege he is a taxpayer. In fact Martens does allege he is a taxpayer in the “Complaint” on page 2, in#2, #6, #7, #11; pg17, #9,in his attached affidavit (incorporated by reference), on page 3, #15-”as a Findlay Municipal taxpayer,on page 4, #17(a) and (b), The fact is the “AC” was wrong and Martens was acting as a taxpayer and as a representative taxpayer in this action. He has a continuing affirmative duty to file taxes every year prior to today and after today, and file amended returns under 718.41.

ISSUE 2- Martens made all claims for all taxpayers (e.g. captioned as a “taxpayer action”, (see pg 4- “Martens alleges: a. for all taxpayers”) under the public right doctrine; See-in First Amended Complaint, pg #2, 13, 13b, #17a, #17b, #21,#22, ; 25

times in the INTRODUCTION, e.g.. “alleged taxpayer”, “upon taxpayers”, “on taxpayers”’ in Count 1, #8, #9”- “All Findlay taxpayers (herein to also include Martens”), #10, #11, #12, #13, #14,#15, #16, #18b, #20, #22, #24, #24, #25; in the CONCLUSION- “that Findlay taxpayers are being burdened by the loss of court resources (which they pay for, their court costs and their personal losses in income, monies and time that an adequate remedy could only be by a Writ so requested herein.

The Mandamus action was brought as a “public right” as well in his name. The “Complaint” is rare and extraordinary because, inter alia,: the Respondents’ “judicial posture” for 1000’s of cases in exacting $1000s in unlawful tax debts, interest and penalties and court cost is absent jurisdiction, when all like Respondents in the 100’s of municipalities across Ohio use their jurisdiction to lawfully “recover” a tax debt It is extraordinary and rare judges, schooled in the law; **1)** would read 718 (like 718.23) and claim the Ohio Legislature granted the Respondents a jurisdictional role to establish a tax debt or **2)** to claim the expertise in municipal taxation was to be found in their courts or **3)** to exact such large amounts of money absent jurisdiction; **4)** to summon scores of taxpayers monthly and./or weekly who for the most part make no appearance before the Respondents and the Respondents grant judgments against them absent any Jurisdictional basis under 718; **5)** usurp the judicial power of the “agency” claiming they are in fact an arm of the agency, all as a judicial posture.No efficient, speedy, reasonable, or adequate remedy exists to stop the Respondents from acting with a “judicial posture”and to obtain injunctive relief.. An appeal of a single case, to the 3rd District Appeal Court is futile (having already 2 times done so - in 2022 and here) and said court has supported the judicial posture of the Respondents. What changes a

“judicial posture” is more than one person’s appeal, especially when the appeal is a vain act- ergo:

ER OMNI v. OHIO DEPT. NAT. RES., 173 NE 3d 1148 - Ohio: Supreme Court 2020- {¶ 20}“Because an action for a mandatory injunction to compel a public official to perform a duty is itself an extraordinary remedy, Omni does not have an adequate remedy in the ordinary course of the law.”

See- Gerhold v. Papathanasion, 130 Ohio St. 342,346, 199 N.E. 353 (1936)- “ a vain act”

PROPOSITION OF LAW 2- NO REASONABLE REMEDY EXISTS- EVEN IF NOT NEEDED UNDER PATENT AN UNAMBIGUOUS LACK OF JURISDICTION STANDARD

Issue 1- The claim that one can appeal a Respondent's judgment regarding jurisdiction is bogus because no reasonable, adequate ,speedy or effective remedy exists. (see last **part of Proposition #1.**. Any appeals to the Third District Court as to the jurisdiction of the Respondents is futile because the Third District Court has already stated (in 2022, case 05-22-05, pg 5- ("[T]here is no indication that failure to comply with R.C. 718 or Findlay Ordinance 194.02 would deprive the trial court of jurisdiction over the matter." (discussed above.) Any appeal to the Third District Court now or earlier would require a reversal of that 05-22-05 appeal where the “AC” concluded in their dicta and now cited again in the “ACJ” as a fact. This demonstrates the futility of an appeal to the 3rd District Court. The “AC” agreed, inter alia, the Respondents have discretion to set aside the “agency’s” rulings, create new appeal rights, create, revise or allow new “assessments in the Respondents' courts, and use “estimates” and “guestimates”. Futility in appeal.

Issue 2- The Appeal Court claimed Martens had a remedy that lies in a declaratory judgment action when they denied a declaratory judgment was denied (see 05-22-04-

now before this Court as well) and when they are aware a declaratory judgment does not change the “judicial posture” as detailed on the “Complaint”.

ISSUE 3- The claim- an appeal is an adequate remedy - is against this Court’s case law because an appeal by Martens does not create a comprehensive remedy for all taxpayers or an injunction. Even in a “one out” case an appeal is an inadequate, long and inefficient remedy and is not a “comprehensive” at all, i.e. 100’s and 1000s of taxpayers still sit out there with judgments against them or face judgments absent jurisdiction. There is an “underlying public duty” to all taxpayers by courts to act with jurisdiction and comply with the the Ohio Legislature’s requirements in 718, which grants a “civil action” only to “recover” tax in a “summary proceeding”. The Realtor is not being “solely” damaged by the Respondents, who have a clear legal duty to perform their official acts with jurisdiction for all taxpayers.

See- State ex rel. The V Cos. v. Marshall, 81 Ohio St. 3d 467 - Ohio: Supreme Court 1998- at 472- A breach of contract action is not a plain and adequate remedy in the ordinary course of law that precludes issuance of a writ of mandamus i**f relator is being damaged not solely by a breach of contract, but also by a failure of public officers to perform official acts that they are under a clear legal duty to perform.**
“(Emphasis added)

See- STATE EX REL. SOLID ROCK MINISTRIES INTERNATL. v. City of Monroe, 2022 Ohio 431 (Ct. App. 2022).- {¶ 57}... A trespass action is not a plain and adequate remedy in the ordinary course of law that precludes issuance of a writ of mandamus if the relator is being damaged not solely by the trespass, but also by a failure of public officers to perform official acts that they are under a clear legal duty to perform.

All taxpayers have that same expectation. See- Martens “Complaint” - see Pg 3, #13-13b, 21, Count 1, #4.#8 # 9-17 all expressing the duty of officials. The Respondents' quote of 718.23(C) and C.O 194.133(E), clearly demonstrate they have misinterpreted (at the least) law and a “writ of mandamus is an available remedy- i.e.

See- State ex rel. Gen. Motors Corp. v. Indus. Comm., 117 Ohio St. 3d 480 - Ohio: Supreme Court 2008- {¶ 9} …… A mandamus action is thus appropriate where there is a legal basis to compel a public entity to perform its duties under the law… In addition, **if the public entity has misinterpreted a statute, a writ of mandamus may be an available remedy. … (flagrant misinterpretation of statute by a county board of elections is reviewable through an action in mandamus**). (Emphasis Added)

ISSUE 4 -THE REALTOR'S COMPLAINT IS ABOUT THE RESPONDENTS' JUDICIAL POSTURE IN HANDLING "CIVIL ACTIONS" UNDER R.C.718.12

The Realtors exercise a continuing and ever present comprehensive judicial posture when it entertains "civil action" under R.C. 718.12. The "complaint" is not about a "one out" complaint, by the Respondnets but a comprej=hensive judicial posture for all "civil actions. The Respondents will not and have not abandoned its "judicial posture" regarding their determination to use their jurisdiction unlawfully and their belief, inter alia, they can act as under 194.133(E) and 718.23(C). An appeal by a taxpayer regarding a judgment lacking jurisdiction may reverse that one judgment, but will not correct their "judicial posture" for all taxpayers or result in a injunction.

PROPOSITION OF LAW 3- THE RESPONDENTS HAVE A PATENT AND UNAMBIGUOUSLY LACK OF JURISDICTION- NO STANDING OR ADEQUATE REMEDY IS NEEDED

This Court may decide they need not expressly rule on standing or an adequate remedy and limit its review to whether the Respondents "patently and unambiguously lack jurisdiction" which if shown, "standing" and/or an " adequate remedy" are moot.

ISSUE 1- The "AC" never understood, at the least, 718.23 and C.O. 194.133, which was before them. If the "AC" did not understand: 1) a 718.12 "summary proceeding" is to "recover" a tax debt after the "agency" made a lawful assessment; 2) 194 et seq has fully incorporated 718 into its provisions (see 194.011(A)- above as well); 3) that an "estimated" tax liability under 194.133 (E) could never be an "assessment"; 4) that 718.23(C) is

a “agency” function outside a “civil action”; 5) the Respondents jurisdiction to revise, establish, change a tax debt in the “civil action” is absent jurisdiction. Their reading of the MTD, which addresses all those understandings would have demonstrated to the “AC” that the “Complaint” could not be dismissed, but in fact was true.

ISSUE 2- This Court has numerous precedential opinions on a “patent and unambiguous lack of jurisdiction” , e.g. untimely Notice of appeal and in *Hughes,*

“{¶ 15}.. the agency failed to comply with R.C. 119.09” ; {¶ 18} The **common pleas court lacks jurisdiction over this administrative appeal** because a certified copy of the final order was never served on Hughes.; {¶ 19} We hold that an **administrative agency must strictly comply with the procedural requirements..**. the agency failed to properly serve Hughes with a certified copy of the removal order, her appeal period never started to run..{18} **The common pleas court lacks jurisdiction** “ (Emph added)

This Court recognized that a taxpayer's “appeal period” never starts until the “agency” performs its required duties, e.g. herein by sending a lawful assessment by the lawful mailings with a lawful form etc.. The Respondent's claim (as alleged in the “Complaint”) they “on the fly” change the 60 day clock, make new assessments in the “civil action proceedings and that they allow further appeals of the “agency’s” determination and they can adjust tax debts, revise tax debts, allow further appeals for tax debts, continue “civil actions to re-establish a tax debt on new accurate records above the“agency’s” procedures and hearings, usurp the agency’s” powers, add to a taxpayers’ appeal rights, toll the 60 days limitation to appeal, and in fact the Respondents act a “super tax review appeal board” unauthorized by the Legislature and they judicially legislated, repealed amd modified tax law - and the “AC” still dismissed the “Complaint” ! ! !

See- GEN. MOTORS CORP v. CTY. BD. OF REVISION, 74 Ohio St. 3d 513 (1996).”at 514 -”This court is not a `"super" Board of Tax Appeals.”

This Court, opposite the “AC”, should communicate to the “AC” the Respondents have no grounds for a dismissal when the Respondnets claim they have granted themselves absolute powers and discretion to do anything they want in a “civil action” before them to allegedly **“recover”** a tax, and use such to **“discover”** a tax debt.

ISSUE 3- RESPONDENTS CAN ONLY RECOVER (NOT DISCOVER) A TAX DEBT. Under 718.12 to “recover ‘ a tax debt is nothing more than making a judgment for the “agency” upon the “agency's” exhaustive proceedings so the “agency can then use the judgment to collect the debt.The “agency has done all the work and determined the “actual and factual, indisputable amount owed. No fact finding, appeals, revisions, adjustment, disputes of the “assessment etc. is normative under 718’s “civil action”. The Respondents jurisdiction is circumscribed by 718 and if the City commences a “civil action” under R.C. 1925.04(B) because the taxpayer refuses to pay what the “agency” has established by its proceedings and hearings, then what is “due” and “owing” can be recovered by the Respondents- PERIOD.j The Respondents have **no colorable jurisdiction** till an “agency” determined tax obligation is determined, a taxpayer refuses to pay in some manner (e.g. delay) and the “agency” commences a “civil action”upon its own discretion, to obtain a judgment for the established tax debt and seeks a collection..

See State Kaylor v. Bruening 80 Ohio St. 3d 142 (Ohio 1997) - at 147-**The court of appeals erred in determining that Judge Bruening "has colorable jurisdiction** to determine the issue of [the natural mother's] visitation rights,...[their jurisdiction] does not apply following an adoption.’ (Emphasis added)

ISSUE 4- *Walker* (undiscussed by the “AC”) is case law demonstrating a lack of jurisdiction exists when the respondents act before the ‘agency has exhausted its processes and hearings. The Respondents argued *Walker* speaks to the duties of the

municipality, not the court where such judicial remedies are pursued. *Yes Walker* does speak to the municipalities' requirements to exhaust their administrative proceedings and hearing before seeking "judicial remedies". *Walker* tells the Respondents that they have no jurisdictions if the municipality has not exhausted its administrative proceedings and hearings. When the Respondents examine their jurisdiction would they not at the least make some inquiry into the "agency's" exhaustion of its remedy, especially when making $1000s in judgments?. Such is never done (as alleged) but instead the Respondents, inter alia, usurp the "agency's" remedy under 194.133(E) and 718.23(C) as they claim in the MTD and is alleged in the "Complaint" all before the "AC's" eyes.

ISSUE 5- JURISDICTION IS PROVIDED BY STATUTORY LAW NOT OTHERWISE

The Respondents unlawfully believe they can irewrite the General assembly's statute (718) and create additional remedies in the "civil actions" they rule over.

See- Elsass v. ST. MARYS CITY SCHOOL DIST. BD. OF EDN., 2011 Ohio 1870 (Ct. App. 2011). {¶ 66} … The Ohio Supreme Court has stated that "[w]here the General Assembly by statute creates a new right and at the same time prescribes remedies or penalties for its violation, the courts may not intervene and create an additional remedy."...

The Respondents could never find it has subject matter jurisdiction to act as the" agency" or, inter alia, revise, edit, change or decide a tax liability("what is owed") or act under 194.133(E) orr 718.23(C) "estimate" amounts or investigate tax debt, respectively

See- Monroeville v. Ward 27 Ohio St. 2d 179 (Ohio 1971) -at 187- It has long been the law of this state that jurisdiction is the power to hear and determine a cause…. Before jurisdiction exists it must be found, inter alia, that the law has given the tribunal subject-matter jurisdiction, or the capacity to hear the controversy in question."

ISSUE 6-The Respondents claim they have jurisdiction to hear an "estimated" tax debt

Under 194.133(E), the Respondents must have an lawful “assessment” before they can entertain a “civil action”. If no lawful “assessment” in fact exists and the Respondents claim they hear “estimated” assessments, they lack jurisdiction. An “estimated” assessment” does not exist under 194.133(E), and the “AC’s ruling creates a lawful assessment from an unlawful assessment, which the Respondents unambiguously and patently lack jurisdiction to act upon-see 194.133(C) with 718.01(PP)- also above

“may determine or estimate the amount of tax due the Municipality from the taxpayer, and shall **send to the taxpayer a written statement** showing the amount of tax so determined or estimated, together with interest and penalties thereon” (Emphasis added)

A “written statement” per 718.01(PP)(2) is not an “assessment” i.e.,

(2) "Assessment" does not include ..**a billing statement** notifying a taxpayer of current or past-due balances owed to the municipal corporation,... or a **tax administrator's other written correspondence to a person or taxpayer that does not meet the criteria prescribed by division (PP)(1)** of this section.” (Emphasis added)

The “AC” and the Respondents know the laws that provide jurisdiction and know that an “estimated “ tax obligation can not jurisdictionally come before them because the “estimated” tax is not an “assessment”,yet the “AC” maintain that the Respondents have jurisdiction when the Respondents tell the “AC” they use “estimates” under 194.133(E).

ISSUE 7- A TAXPAYER LAWFUL ASSESSMENT IS A PREQUEST FOR JURISDICTION

If the Respondents make a judgment that a Tax Debt is due and owing, they must have before them as a lawful assessment established by the “agency”according to the statutory requirements of 718 The Respondents' jurisdiction to “recover” a tax debt is invoked only when they know a lawful assessment exists, like-

State ex rel. Andrews v. LAKE COUNTY COURT OF COMMON PLEAS, 2022 Ohio 4189, 212 N.E.3d 914 (2022) {¶ 28} **A common pleas court's jurisdiction to remove a person from public office is invoked only when** a sufficient number of qualified electors have signed a complaint and filed it in the court… {¶ 34} .. If Andrews is to be

removed from office, her removal must be **done according to the standard and procedure established by statute."** (Emphasis added) .

The "Complaint"was dismissed when no lawful assessment existed under 718.01(PP)

ISSUE 8- R.C. 718 PUTS FORTH WHAT MATTERS CAN BE BEFORE THE RESPONDENTS

The Respondents attempted to exercise control, e.g. to create a new "assessment" proceeding outside 718. The Respondents have no authority to conduct an alleged action to "recover" a tax debt and morph it into an "agency function of an "assessment", and an investigation if a debt exists or order tax records to be produced..

Santomauro v. McLaughlin, 198 NE 3d 87 - Ohio: Supreme Court 2022- {¶ 20} ..here, we conclude that the general division patently and unambiguously exceeded its jurisdiction when it **attempted to exercise control over the** coexecutors"...(Emphasis added)

Ostanek v. Ostanek 2021 Ohio 2319 (Ohio 2021) {¶ 31} ..that a court of general jurisdiction can nonetheless **patently and unambiguously lack jurisdiction "when the court seeks to take an action or provide a remedy that exceeds its statutory authority."** (Emphasis added)

R.C. 718 does not confer the Respondents subject matter jurisdiction to issue a judgment relating to the possible existence of a tax debt or to determine the amount of the tax debt or to grant a taxpayer or the agency the ability to make further findings, appeals,revisions regarding a tax debt or to provide a "remedy" when a taxpayer contests a tax debt or to use the Respondents' court to do other than "recover" a debt,

See- State ex rel. Goldberg v. Mahoning County Probate Court 93 Ohio St. 3d 160 (Ohio 2001) at 162- R.C. 2109.50 to 2109.56, however, **do not confer subject-matter jurisdiction on probate courts to issue prejudgment attachment orders relating to personal property. A proceeding for the discovery of concealed or embezzled assets of an e**state, brought under R.C. 2109.50, is a special proceeding of a summary, inquisitorial character whose purpose is to facilitate the administration of estates by summarily retrieving assets that rightfully belong there." (Emphasis added)

R.C. 718 specifically divest the Respondents from acting as an "agency", e.g.

See-Ibid 165- And R.C. 2715.01(A) and (D) **specifically divest probate courts of authority** to issue prejudgment attachment orders in concealment actions, which are special, quasi-criminal proceedings. (Emphasis added)

Even assuming the Respondents had jurisdiction to even summons a taxpayer into its court (knowing the summons was an unlawful act to establish a tax debt), they patently and unambiguously acted in excess of that jurisdiction when they failed to comply with either the statutory or constitutional (due process above) prerequisites for such an order. The Complaint's affidavit is perjured and known to be so by the Respondents as argued above.. R.C. 718 does not permit the Respondents to do any of their claimed actions, e.g. handle a contested hearing or make a judgment on an estimated tax liability, or entertain a "contested" tax liability regarding what is owed the "agency".

See ibid - 165- "Finally, even assuming that appellants had jurisdiction to issue a prejudgment attachment order against a defendant's personal property in a concealment action, **they patently and unambiguously acted in excess of that jurisdiction when they failed to comply with either the statutory or constitutional prerequisites for such an order.** See Corn, 90 Ohio St.3d at 554, 740 N.E.2d at 268 ("a writ of prohibition **prevents an inferior court from exceeding its jurisdiction"**).

The Respondents fail to comply with the statutory and constitutional prerequisites for any order and they have no jurisdiction to "improperly insert themself into the exclusive jurisdiction of the Tax Administrative agency or its tax review Board. (id 165-*Goldberg*)

Also See- State ex rel. Fraternal Order of Police, Ohio Labor Council, Inc. v. Court of Common Pleas 76 Ohio St. 3d 287 (Ohio 1996) at 289 "The State Employment Relations Board has exclusive jurisdiction to decide matters committed to it"

The Respondents never had original jurisdiction regarding a taxpayers' tax obligation and absent a finding that a lawful tax obligation exists by the 718's requirements by the "agency" the Respondents can nor proceed or usurp the tax agency's exclusive jurisdiction. The "AC" disregarded that patent and unambiguously lack of jurisdiction.

See Conley v. Shearer 64 Ohio St. 3d 284 (Ohio 1992) " Although R.C. 2305.01 gives common pleas courts original jurisdiction in civil matters generally, **R.C. 2743.02(F) patently and unambiguously takes it away from them in a specific class of civil cases. For the common pleas court to proceed would be to usurp the Court of Claims' jurisdiction**; in a case so plain, we will not consign relator to his appellate remedy.R.C. 2743.02(F) vests exclusive original jurisdiction in the Court of Claims to determine whether Sanquily is immune from suit. Until that court decides whether Sanquily is immune, the common pleas court is totally without jurisdiction over the litigation against him." (Emphasis added)

The Respondents' claim that they have the power to hear an tax appeal under 71823(C) should be enough for the "AC" to know the Respondents have a unambiguous and patent and lack of jurisdiction. More than that is claimed by the Respondents. The Respondents have cast 718's proceedings and hearings as theirs in concert with the "agency" and thus confers them jurisdiction. Any like attempt made by the Respondents in their Response demonstrates a recalcitrant belief in their "judicial posture' which is exercised weekly.The "AC's" dismissal furthers their attempt to self-confer jurisdiction

Corder v. Ohio Edison Co., 166 N.E.3d 1180, 162 Ohio St. 3d 639, 2020 Ohio 5220 (2020)..' {¶ 29}... **a claimant may not avoid the exclusive jurisdiction** .. **by disguising a service-related claim… through creative pleading…**(**"the mere fact that [the Respondents may] cast its allegations… is insufficient to confer jurisdiction upon the common pleas court"**). (Emphasis added) @@

STATE EX REL. INDEPENDENCE LOCAL SCH. DIST. BD. OF EDN. v. SERB, 62 Ohio St. 3d 134 (1991). [A] superior court will afford an inferior court the opportunity to decide its own jurisdiction before granting an extraordinary writ * * *, **but where the court, in deciding its own jurisdiction attempts to confer jurisdiction upon itself where in fact no jurisdiction whatsoever exists, such an improper assumption of jurisdiction is a usurpation of judicial power"**(Emphasis added)

PROPOSITION OF LAW 4- THE APPEAL COURT'S CLAIM MARTENS IS SEEKING OR SHOULD SEEK A DECLARATORY JUDGMENT AND SUCH IS A REMEDY

ISSUE 1- THE "AC" UNDERSTOOD THAT THE "COMPLAINT" WAS NOT A REQUEST FOR DECLARATORY JUDGMENT ACTION.

The “AC” used a hackneed reason to dismiss the “Complaint, when it was obvious that the Realtor was not asking for a Declaratory judgment, i.e.the Appellant was not asking fo his status or rights in the “Complaint”. The fact that the “AC” court had to determine what the law is does not make the “Complaint to a Declaratory judgment action.

PROPOSITION OF LAW 5- THE “AC” AND RESPONDENTS UNDERSTAND THAT THEIR ARE REQUIREMENTS FOR JURISDICTION

ISSUE 1- The recitation by the Respondents of requirements (MTD pg 10, “ a properly noticed assessment”), however otherwise misplaced or exposing what the Respondents do, does recognizes that there are in R.C. 718 requirements before jurisdiction can be had for a “civil actions”.The low bar that a “properly noticed “assessment” is all that is required is an effort to grant “carte blanche’ jurisdictional by making such a standard ambiguous, i.e. what is a “properly” noticed; what is a “notice”, what is an “assessment” does 718,12(G)1-2) define jurisdiction? What are the Respondents’ required to know to confer a judgment? The Respondents appear to want to allow anything to be brought forward as an “assessment”, as if the Respondents would allow anything they wish in a FE&D action for a 3 day Notice. Does this Court believe that the Respondents have jurisdiction to make $1000s judgment in a summary proceeding with nothing before them, but a perjured tax complaint and the “agency” claim- “John Doe owes tax. The “AC” know the Respondents must **establish their jurisdiction** not merely claim it.

ISSUE 2- The “AC”allowed the Respondents to call an “estimated” assessment a “prosperity noticed” assessment absent any reading of 194.133(E) with 718.01(PP) . The “AC” allowed the Respondents to establish their jurisdiction in the MTD, when the reading of such establishes they had no jurisdiction at all.

ISSUE 3 The Respondents know other requirements exist, i.e. no appeal pending or the 60 days are tolled or yet to expired for an appeal. The Legislature refused to tolerate the abuse of landlords to evict persons absent due process and passed R.C1925, especially 1925.04. No “carte blanche’ jurisdiction could be invoked in FE&D actions and none such in taxation. The Legislature passed R.C. 718, to stop the abuse by municipalities in exercising some of the most extreme powers, to exact monies from its taxpayers absent “agency” due process and statutory requirements of 718, followed by the invoking of the Respondents' jurisdiction to “recover” (not discover) to tax debt and provide the municipality then with jurisdiction in collection efforts (e.g. debtor exams). Taxation is an exceptionally onerous municipal actupon the taxpayers and must have all due process and jurisdiction elements to confer a judgment. When $1000’s and multiple af that are at stake, the “AC” denied that there any jurisdictional requirements to make a judgment.The Respondents affirmed the allegations contained in the Appellant’s Complaint, as the 3rd District Appeal Court should have seen. The “AC” disregarded the purpose of R.C. 718, i.e. to stop the abuse the “Complaint” detailed to the “AC” (as stated in Section 6 of HB5 in 2014, twice i.e.)

”SECTION 6… Ohio Constitution, grants the General Assembly authority to restrict the power of municipal corporations to levy taxes so as **to prevent the abuse of such power**. …, and **to prevent any abuse of power by municipal corporations**”

ISSUE 4- The “AC” were told by the Respondents that they exercise their jurisdiction on disputed amounts (in a contested hearing-above). Their claims belies their lack of jurisdiction and is unexplained by the “AC” when the administrative agency has exclusive jurisdiction on disputed tax assessments through its tax review board (R.C. 718.11) and not the Respondents. The Respondents claim they exercise jurisdiction on

"proposed assessments, "estimates" an not on "accurate" documents, and such was unexplained by the "AC" and in fact ignored.

ISSUE 5.- The Appeals Court never made any finding to dismiss the original action of mandamus decision on the factual allegations of the "Complaint" and abused its discretion. No matters of law or facts were in dispute. The Respondents affirmed Martens' "Complaint" and the "AC" regardless dismissed the "Complaint".

ISSUE 6- The "AC" never analyzed the substance of the Realtor's "Complaint" in relationship to the Respondnets' Motion to dismiss, where the Respondnets affirmed the allegations in the Realtor's Complaint.

Drees Co. v. Hamilton Twp., 970 N.E.2d 916, 132 Ohio St. 3d 186, 2012 Ohio 2370 (2012). {¶41} Having **analyzed the substance of the assessments**, and not merely their form, we conclude that the impact fees charged by Hamilton Township in this case constitute taxes. **Since those taxes were not authorized by general law, Hamilton Township was not authorized to impose them pursuant to** R.C. 504" (Emphasis added)

AMERICAN WATER MGT. v. DIV. OF OIL & GAS, 118 N.E.3d 385, 2018 Ohio 3028 (Ct. App. 2018).- {¶ 26} The Oil & Gas commission is created by statute. R.C. 1509.35(A). **Because of that, "its powers and duties extend only so far as the statutes grant authority, while being constrained by whatever limits the statutes impose."** Chesapeake Exploration, L.L.C. v. Oil & Gas Comm., 135 Ohio St.3d 204, 2013-Ohio-224, 985 N.E.2d 480, (Emphasis added)

The "AC" never even allowed limited discovery to establish what the Respondents are doing 60-80 times a month, if the allegations were construed a true, given all reasonable inferences in favor of the Appellant and knowing a set of facts do exist-ergo-

See- Marchiano v. School Emps. Retirement Sys 2009 Ohio 307 (Ohio 2009){¶ 24} the **court of appeals erred in denying her motion to conduct limited discovery in the mandamus case for the purpose of establishing that Dr. Hawkins is not a competent and disinterested physician as required by R.C. 3309.39(C). To be sure, discovery is generally permissible in mandamus actions.** (Emphasis added)

See State ex rel. Wright v. Ohio Adult Parole Auth. (1996), 75 Ohio St.3cl 82, 85, 661 N.E.2d 728, **("Issues of fact raised by the pleadings in mandamus actions `must be tried, and further proceedings thereon had"** (Emphasis added)

PROPOSITION OF LAW 6 - THE APPEALS COURT ('AC") VIEWED THE "COMPLAINT" PREJUDICIALLY UPON A PREVIOUS CASE BEFORE THEM- 05-22-05

The "AC" viewed the Complaint in light of what it believed was true when it stated:

See "ACJ pg 5-"Finally, the Court finds that this action is the latest iteration of Relator's quest to invalidate the procedure utilized by the City of Findlay to collect unpaid municipal taxes. Notably, this court has already rejected Relator's jurisdictional argument." See Findlay v. Martens, 3d Dist. Hancock No. 5-22-05, 2022-Ohio-4146, 1 20 fn. 6 ("[T]here is no indication that failure to comply with R.C. 718 or Findlay Ordinance 194.02 would deprive the trial court of jurisdiction over the matter.").

Obviously the "AC" was prejudiced by the previous case before them (05-22-05) and restates its Note 6 in that case. The "AC" is unwilling to take the "Complaint's'" allegations as true, with all reasonable inferences made in the Realtor's favor and admitting there is a set of facts that could support the "Complaint". The "AC comments regarding 05-22-05's Note 6, i.e " [T]here is no indication that failure to comply with R.C. 718 or Findlay Ordinance 194.02 would deprive the trial court of jurisdiction over the matter." was what it considered. The Legislature's preemptive power in statutory law for municipal taxation requires compliance (718.04(F). This Court in Athens v. McClain, 168 N.E.3d 411, 163 Ohio St. 3d 61, 2020 Ohio 5146 (2020).and Schaad v. Alder, 2024 Ohio 525 (2024) determined that the municipalities have a "gun to their head" (as expressed in the Chief Justice's dissent) to comply with 718 to even have an ability to tax at all and the Respondents have no jurisdiction to do anything but "recover" a tax. In 718, the legislature grants no statutory power for the Respondents to, inter alia, act as a tax review board, investigate tax records, rewrite their statutes, add to them or

subtract from them, or claim jurisdiction outside “recover[y]” Even if the Respondents or “AC” would have argued that 718 or 194 is ambiguous (which is not a stretch for me to believe they might do), this Court’s case law unambiguously mandates any such ambiguity (which does not even exist) be resolved in the taxpayer’s favor.

See- Soltesiz v. Tracy 663 N.E.2d 1273 (Ohio 1996) at 480. "Strict construction of taxing statutes is required, and any doubt must be resolved in favor of the citizen upon whom or the property upon which the burden is sought to be imposed."

The “AC” is simply wrong in stating, [T]here is no indication that failure to comply with R.C. 718 or Findlay Ordinance 194.02 would deprive the trial court of jurisdiction over the matter” . The “AC” may find it humbling to retract such a broad claim but people are human and make mistakes, even judges, as seen all the time in this Court’s opinions.

PROPOSITION OF LAW 7- THE APPEALS COURT MISAPPLIED AND/OR ERRONEOUSLY APPLIED THE STATUTORY CRITERIA OF R.C. 718. WHICH THE RESPONDENTS ARGUE IS THE BASIS FOR THEIR JURISDICTION

The issue is not of the constitutionality of R.C. 718. 718 is assumed to be constitutional. The mere claim that jurisdiction is afforded under 718 or the municipality claims or consents to the Respondents’ jurisdiction or the municipality and the Respondents mutually agree there is jurisdiction or even if in fact a tax debt exists does not confer jurisdiction. Common Pleas Courts have jurisdiction under the Constitution **“as provided by law”. The point being- “as provided by law”**

See- State ex rel. Reynolds v. Kirby, 2023 Ohio 782 - Ohio: Supreme Court 2023- {¶ 14} The Ohio Constitution provides, "The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters * * * as may be provided by law. Ohio Constitution, Article IV, Section 4(B). **The "provided by law" qualification means that there must be a statutory basis for jurisdiction.**" (Emphasis added)

Any basis the Respondents claim they have jurisdiction is conditioned upon “as may be provided by law”, e.g. a court’s has jurisdiction in a FE&D complaint “as provided by law”, e.g. a 3 day Notice containing the required words and in a certain form and posted as required by law, creates jurisdiction. A FE&D action filed before the expiration of the 3 day posting time denies the courts patently and unambiguously of jurisdcition

See- Eberly v. Irons 2007 Ohio 4240 (Ohio Ct. App. 2007){¶36} .. No action may be filed for forcible entry and detainer until expiration of the three day notice period.”

See-Riley v. Parker 2021 Ohio 1726 (Ohio Ct. App. 2021)" {'JI1 0} "Compliance with the notice provisions of **R.C. 1923.04 is a precondition to invoking a court's jurisdiction in an eviction action."** (Emphasis added)

See- Amick v. Sickles 2008 Ohio 3913 (Ohio Ct. App. 2008)-' {,f 20} **Compliance with the notice provisions of R.C. 1923.04 is a precondition to invoking a court's jurisdiction.**

Jurisdiction under 718 is established by the statutory requirements likewise. If a precondition exists to invoke the Respondents' jurisdiction, the Respondents can not invoke their own jurisdiction. The Court of Common Pleas is a court of general jurisdiction,but the exercise of subject matter jurisdiction must be found either expressly or by necessary implication in statutory enactments. Per the Ohio Constitution, Section 4, Article IV - also seen in:

Also See- Chesapeake Exploration, L.L.C. v. Oil & Gas Comm'n 135 Ohio St. 3d 204 (Ohio 2013) - “where jurisdiction is dependent upon a statutory grant, t**his court is without the authority to create jurisdiction when the statutory language does not**. That power resides in the General Assembly.” (Emphasis added)

Ohio case law establishes the courts have no jurisdiction in administrative actions until the “agency” has exhausted its procedural activities, See- R.C. 718.12 AND *Walker* supra. The “AC” judgment is an abuse of discretion when it ignored statutory law. .

The authority to claim jurisdiction by the Respondents when statutory law is in play, is determined by statute. (*Wingo* and *Superior- below)*. The agency has exclusive jurisdiction in 718 and the Respondents are not mentioned in municipal taxation procedurally. When an undisputable “assessment” exists, and the taxpayer in some manner refuses to pay such debt, the Respondents can in a summary proceedings confer (confess) a judgment for a tax debt that can then be collected upon in further proceedings. A very simple understanding of this “Complaint” is that the Respondents claim they have a “carte blanche” power and jurisdiction to act as and the tax agency and use unlawful tax assessments & rewrite tax statutes, all argued in the “Complaint”.

Wingo v. Nationwide Energy Partners 2020 Ohio 5583 (Ohio 2020) “ {¶ 19} No decision of this court can give the PUCO the authority to write its own jurisdictional rules. It is axiomatic that **"where jurisdiction is dependent upon a statutory grant, this court is without the authority to create jurisdiction when the statutory language does not. That power resides in the General Assembly."** (Emphasis added)

Superior Hauling v. Allen Township Zoning Bd. 2007 Ohio 3109 (Ohio Ct. App. 2007) {¶ 24} Subject-matter jurisdiction is the power of an administrative body over a type of case. Id. **Without such jurisdiction, the body lacks the authority to do anything but announce its lack of jurisdiction**. Id., ¶ 21, citing Steel Co. v. Citizens for a Better Environment (1998), 523 U.S. 83, 94, 118 S.Ct. 1003, 140 L.Ed.2d 210.” (Emphasis added)

PROPOSITION OF LAW 8 - CIVIL RULE !2(6)(B) WAS NOT FOLLOWED AND SHOULD HAVE ALLOWED AN IMMEDIATE INJUNCTION.

ISSUE 1- A dismissal was made under Civ. R. 12(B)(6), which can can only be had for failure to state a claim upon which relief can be granted if, after all factual allegations of the complaint are presumed true and all reasonable inferences are made in the relator's favor, it appears beyond doubt that he can prove no set of facts entitling him to the requested writ of mandamus.

ISSUE 2- The "AC" was to construe the allegations in the "Complaint" with all reasonable inferences most strongly in the Appellant's favor or considered that a set of facts do exist when construed in his favor, would entitle him to relief. The respondents do not dispute the basic facts in their memorandum in support of that motion to dismiss. The memorandum attacked B. standing, and C. No clear right to relief and no duty to provide it by the Judges; D. A remedy; E.Immunity, but never the factual allegations in the "Complaint". The "AC" acted upon the issues of jurisdiction Civ.R. 12(B(1) - but the "AC" claimed it was acting on a Civ. R 12(B)6) basis.

ISSUE 3- The "AC"used facts in a 2022 case (05-22-05) before it and never considered the Motion to Dismiss under the requirements in Issue 1 above, i.e allegations as factually true reasonable inference and that a set of facts do exist..

ISSUE 4- The Respondents state (MTD pg 2 of Reply) "Relator fails to effectively rebut the Respondents' arguments.". A Civ. R. 12(B) Motion is not a evidentiary hearing where one is to rebut the Respondents conclusory and baseless argument. The MTD was not a Summary Judgment Motion or Judgment on the Pleadings action, but tests on the sufficiency of the Complaint. The requirement to "rebut" is spurious.

See-Lawson v. Mahoning Cty. Mental Health Bd. 2010 Ohio 6389 (Ohio Ct. App. 2010) -¶ {17} . Civ. R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted is **procedural and tests the sufficiency of the complaint…**In order to dismiss a complaint for failure to state a claim upon which relief can be granted, **the court must find beyond doubt that appellant can prove no set of facts warranting relief after it presumes all factual allegations in the complaint are true, and construes all reasonable inferences in appellant's favor.**

ISSUE 5- The Respondents are at risk to make a MTD under Civ. R. 12(B)(6) when only the allegations in the Complaint are to be tested and all arguments by the Respondnets are of a C.R. 12(B)(1) nature. See *Beck* below. This Court should remand

the case back to the “AC” and order an injunction be issued upon the Respondnets’ failure to argue the “Complaint” fails to state a claim upon which relief can be had upon the sufficiency of the “Complaint’s” allegations (see id below *Beck*). The Appellant has a clear legal right to have all tax debt adjudications be found under the statutory requirements of 718 and all the Respondents acts are lawfully and jurisdictionally under 718. The Respondents have a clear legal duty to establish jurisdiction, to act within and not outside of 718’s statutory requirements, and to not act as a tax review board or use unlawful “assessments” to “recover a tax debt, all adequately plead in the “Complaint”

That being said and all allegations in the “Complaint” being true and all reasonable inferences made on behalf of the Appellant and a set of facts do exist that can provide relief, this Court is asked to order injunctive relief and discovery.

See-State ex rel. Beck v. Casey, 51 Ohio St. 3d 79 - Ohio: Supreme Court 1990- at 83
“We hold that a respondent who takes this procedural step does so at the risk of having the court accept the facts as stated in the complaint, particularly when no reason emerges from the argument to doubt the facts.(Emphasis added)

Id- “The correlative proposition to this holding is that relator has established a clear right to relief and a clear duty of respondents to grant such relief.”

PROPOSITION OF LAW 9 - NO CLEAR DUTY

“AC’s” judgment (ACJ pg 6) “nor has he identified a clear legal duty that is imposed upon Respondents.”The “AC” apparently believes such since it had decided the Respondents have jurisdiction and thus no duty exists that the Respondents are in default. The Respondents have always known it has a duty to obtain jurisdiction and not usurp the “agency’s jurisdiction.. Respondents have a clear legal duty to establish jurisdiction, to act within and not outside its jurisdiction and in accordance with law, i.e.

of 718's statutory requirements, and to not use unlawful "assessments" to "recover a tax debt.

See- Dilatush v. Bd. of Review 107 Ohio App. 551 (Ohio Ct. App. 1959)- at 552-553- "Jurisdiction is a basic and fundamental prerequisite to any action by the court. **When there is a lack of jurisdiction, a dismissal of the action is the only proper order**." (Emphasis added)

The "ACJ' argues that Martens' Complaint is about something anticipated or future, i.e.

Pg 4 last paragraph- "It is well-settled that "a writ of mandamus will not issue to compel the general observance of laws in the future."... Mandamus will not lie to remedy the anticipated nonperformance of a duty.. Here, Relator fails to identify in the amended complaint a presently existing duty as to which there is a default.".

The "AC" somehow argues Martens has commenced the "Complaint" to ask the Respondents to comply with an anticipated non performance of a duty or a future duty. Anticipated is something that is not yet real or actual but might occur or take place prospectively. Future may mean a speculative idea, =not entertained in the "Complaint"

The "Complaint" clearly aligns itself with this Court's case law, i.e.

See-State ex rel. Willis v. Sheboy, 6 Ohio St. 3d 167 - Ohio: Supreme Court 1983 - 168-169 " **The function of mandamus is to compel the performance of a present existing duty as to which there is a default**. It is not granted to take effect prospectively, and **it contemplates the performance of an act which is incumbent on the respondent when the application for a writ is made.** (Emphasis added).

The Respondents in their MTD affirm what is going on, not what is anticipated.

CONCLUSION- Incorporated in all the above Propositions of Law-

It must be obvious, at the least, that the "AC" does not understand municipal tax statutes and provisions and their application to 194.133(E) or that 718.23(C) is an agency function. The MTD considered by the "AC" supported what the Complaint said the Respondents were in fact doing, yet the "AC" appears to have been blinded by its 05-22-05 decision and a belief that the Respondents ought to have jurisdiction to make

a judgment for a tax agency to recover a tax debt, as simple as that sounds to this Court and to the “AC”. That is not what the “Complaint” addressed and must be obvious even now, i.e. the Respondents have **no jurisdiction except to “recover a tax debt.** The Respondents told the “AC” what they do and not one bell rang… ooops!

What is amazing is that no bells ever rung by the “AC” when it read the MTD, i.e. where the Respondents argued that they were in fact an extension of the agency’s, its proceedings and hearings, i.e. jurisdiction and the citation of 194.133(E) and 718.23(C) did not compute to the “AC” that such in fact denies jurisdiction. The “Complaint” alleged everything that the Respondents were doing, e.g. acting as a tax review board. The “AC” was so fixed on its case 05-22-05, it could not see the forest through their mindset. The basis to issue a writ is indisputable, i.e. the pertinent facts are undisputed by the Respondents as they state in the MTD.

The 12(B)(6) Motion to Dismiss is based on the allegations in the Complaint which were all affirmed by the Respondents and no dismissal should have been granted as argued above. The Appellant alleged and the Respondents established that the Respondents patently and unambiguously lack jurisdiction when they conduct an alleged “civil action” to recover tax debts under 718.12 and a Writ should be immediately issued. The Respondents would have to perform a Response brief gymnastic to deny what they in fact argued in their MTD. The Respondents' Civ. R. 12(B)(6) and the “AC’s” Civ. R. 12(B)(6) dismissal were both out of rule where the allegations were to be understood as true, all reasonable inferences in the Appellants favor and where a set of facts do exist that the Respondents do unambiguously and patently lack jurisdiction.

The “AC” merely adopted the Respondents' arguments that the Realtor lacks standing and has a remedy, both of which are irrelevant if the Respondents patently and unambiguously lack jurisdiction. The “AC”never considered a set of facts where the Respondents patently and unambiguously lack jurisdiction, where standing and remedy are moot. The “Complaint” should have been read under that set of facts and the “AC” prejudice expressed in its 05-22-05 citations is the set of facts that the “Complaint” was read under. The “AC” summarizes the dismissal is predicated under standing and a remedy (ACJ pg 6- 1st paragraph) and no duty exists (obviously because the “AC” believed that the Respondents do have jurisdiction and used their previous case as stated by them- 05-22-05.) This Court should at the least remand this case back to the Appeals court as being dismissed absent the requirements of Civ. R. 12(B)(6) when the claim that the Respondents patently and unambiguously lack jurisdiction was never addressed.

If this Court has any reservations to issue a writ or so order such, this Court should order the “Complaint” to be remanded back to the “AC” for discovery, which will disclose even more actions by the Respondents that are unlawful when they conduct an alleged “civil action” under 718 to “recover” a tax debt, which were discovered by the Appellant since the “complaint’s” filing.

Respectfully, George Martens

CERTIFICATION

A Copy of this has been sent by ordinary mail and or electronically to the Appellees this same day as it was filed in this Court to Cooper Bowen CBowen@mojolaw.com and Linda L. Woeber at Lwoeber@mojolaw.co