

IN THE SUPREME COURT OF OHIO

A. SCHULMAN, INC.

Appellant,

v.

WILLIAM W. WILKINS  
TAX COMMISSIONER OF OHIO

Appellee.

Case No. 06-1944

Appeal from BTA Case  
No. 2004-B-370

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**APPELLANT/CROSS-APPELLEE'S MEMORANDUM CONTRA APPELLEE/CROSS-  
APPELLANT'S MOTION TO DIMISS APPELLANT/CROSS-APPELLEE'S NOTICE  
OF APPEAL**

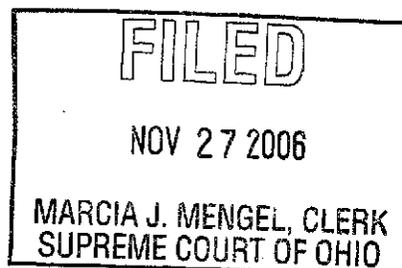
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**IN THE SUPREME COURT OF OHIO**

A. SCHULMAN, INC.	:	
Appellant,	:	
v.	:	Case No. 06-1944
WILLIAM W. WILKINS	:	
TAX COMMISSIONER OF OHIO	:	
Appellee.	:	Appeal from BTA Case No. 2004-B-370
	:	

**APPELLANT/CROSS-APPELLEE'S MEMORANDUM CONTRA  
APPELLEE/CROSS-APPELLANT'S MOTION TO DISMISS  
APPELLANT/CROSS-APPELLEE'S NOTICE OF APPEAL**

This matter is before this Court upon an appeal filed by A. Schulman, Inc. ("Schulman") and a cross-appeal filed by William W. Wilkins, Tax Commissioner of the State of Ohio, from a decision and order of the Board of Tax Appeals ("BTA") journalized on September 22, 2006, in Case No. 2004-B-370. Schulman filed its notice of appeal with this Court on October 19, 2006. The Tax Commissioner then filed his cross-appeal with the Court on October 23, 2006. On November 13, 2006 the Tax Commissioner filed a Motion to Dismiss Schulman's appeal. See this Court's on-line case management docket, Appx. 1-2, which was received by Counsel for Appellant Schulman on November 15, 2006.

In his Motion to Dismiss the Tax Commissioner stated that the BTA filed a certification of the Record in the case and stated that no notice of appeal had been filed by Schulman with the BTA (See Certification of Julia M. Snow, Secretary/Executive Director of the BTA, Appx. 3). Notwithstanding the statement in that Certification that

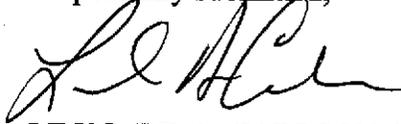
the BTA did not receive a copy of Schulman's Notice of Appeal, along with a copy of its Notice of Corrected Service as filed with the Court on November 2, 2006 (Appx. 4), Appellant Schulman filed with the BTA a copy of its Notice of Appeal, (See copy attached with BTA date stamp dated November 2, 2006 at 11:00 a.m., Appx. 6).

In Ohio, remedial laws "shall be liberally construed to promote their object and assist the parties in obtaining justice" as set forth in R.C. 1.11. In *The County of Miami, et al. v. The City of Dayton, et al.* (1915) 92 Ohio St. 215, this Court stated in the first branch of its syllabus "1. A statute that provides a rule of practice, a course of procedure or a method of review, is remedial in its nature and should be broadly and liberally construed to accomplish the purposes of its enactment." R.C. 5714.04 is just such a statute. The function of a Notice of Appeal under R.C. 5714.04 is to inform appropriate parties, agencies and courts of actions taken by parties in a case. That was accomplished in this case. The parties in this case, the Court and the BTA all have been served with a copy of the Notice of Appeal of Schulman. The BTA filed its record in this case and the docket before the Supreme Court reflects that the case is moving forward on the schedule as dictated by the Supreme Court Rules of Practice (See attached letters from the Supreme Court Clerk's Office regarding the record and filing of merit briefs, Appx. 32, 33). In order to "assist the parties in obtaining justice" in this case the Appeal of Schulman should move forward, merit briefs should be filed with respect to the issues raised, argument should be heard and the case be decided on its merits.

## CONCLUSION

Based on the forgoing, Appellee/Cross Appellant Tax Commissioner of Ohio's Motion to Dismiss should be denied and the Appeal of Schulman along with the Cross Appeal of the Tax Commissioner should continue through to a merit decision on the matters before the Court.

Respectfully submitted,



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**IN THE SUPREME COURT OF OHIO**

A. SCHULMAN, INC.

:

Appellant,

:

v.

:

Case No. 06-1944

WILLIAM W. WILKINS  
TAX COMMISSIONER OF OHIO

:

Appellee.

:

Appeal from BTA Case  
No. 2004-B-370

:

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**APPENDIX**

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## The Supreme Court of Ohio

Clerk's Office  
65 South Front Street, 8th Floor  
Columbus, Ohio 43215-3431  
614.387.9000  
614.387.9530

Marcia J. Mengel  
Clerk of Court

Search Results: Case Number 2006-1944

# The Supreme Court of Ohio

## CASE INFORMATION

### GENERAL INFORMATION

Case: 2006-1944 Appeal from Board of Tax Appeals

Filed: 10/19/06 Cross-appeal has been filed

Status: Case Is Open

**A. Schulman, Inc. v. William W. Wilkins, Tax Commissioner of Ohio**

### PARTIES and ATTORNEYS

<p>A. Schulman, Inc. (Appellant/Cross-Appellee)</p> <p>Represented by:</p> <p>Carlson, Leonard (10403) , Counsel of Record</p>
<p>Wilkins, William W. (Appellee/Cross-Appellant)</p> <p>Represented by:</p> <p>Hubbard, Barton (23141) , Counsel of Record</p> <p>Katz, Janyce (42425)</p> <p>Petro, James (22096)</p>

### PRIOR JURISDICTION

Jurisdiction Information	Prior Decision Date	Case Number(s)
Board of Tax Appeals	09/22/2006	2004B370

### DOCKET ITEMS

Date Filed	Description
10/19/06	Notice of appeal of A. Schulman, Inc. <i>Filed by:</i> A. Schulman, Inc.

Appx.1

10/19/06	Case information statement <i>Filed by: A. Schulman, Inc.</i>
10/23/06	Notice of cross-appeal of William W. Wilkins, Tax Commissioner of Ohio <i>Filed by: Wilkins, William</i>
10/23/06	Copy of demand for certified transcript <i>Filed by: Wilkins, William</i>
10/23/06	Case information statement <i>Filed by: Wilkins, William</i>
11/02/06	Notice of corrected service <i>Filed by: A. Schulman, Inc.</i>
11/02/06	Record
11/02/06	Clerk's notice of filing of record
11/03/06	Supplemental record
11/13/06	Motion to dismiss notice of appeal <i>Filed by: Wilkins, William</i>

[Back](#)

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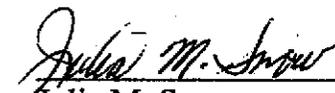
Appx. 2

## OHIO BOARD OF TAX APPEALS

### CERTIFICATION

I, Julia M. Snow, do hereby certify that I am the duly appointed Secretary/Executive Director of the Ohio Board of Tax Appeals and as such have custody of all of the board's official records. I further certify that: (1) attached as Exhibit A is a true and complete copy of the Decision and Order of the Ohio Board of Tax Appeals journalized in *A. Schulman, Inc. v. Wilkins*, BTA No. 2004-B-370; (2) a review of the docket of the Ohio Board of Tax Appeals discloses that no notice of appeal was filed with the board on behalf of A. Schulman, Inc. with regard to this matter; and (3) attached as Exhibit B is a true and complete copy of the Notice of Cross-Appeal and Praecipe filed with the board on October 23, 2006 on behalf of the Tax Commissioner of Ohio.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Ohio Board of Tax Appeals this 2ND day of November, 2006.

  
\_\_\_\_\_  
Julia M. Snow  
Secretary/Executive Director  
Ohio Board of Tax Appeals

**IN THE SUPREME COURT OF OHIO**

RECEIVED  
TAX APPL.

2006 NOV -2 AM 10: 59

A. SCHULMAN, INC.	:	
Appellant,	:	
v.	:	Case No. 06-1944
WILLIAM W. WILKINS	:	
TAX COMMISSIONER OF OHIO	:	
Appellee.	:	Appeal from BTA Case No. 2004-B-370

**NOTICE OF CORRECTED SERVICE**

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 Attorney General of Ohio  
 Barton A. Hubbard (0023141) (COUNSEL OF RECORD)  
 Senior Deputy Attorney General  
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COUNSEL FOR APPELLEE WILLIAM W. WILKINS  
TAX COMMISSIONER OF OHIO

NOV 2 2006

**FILED**  
 NOV 02 2006  
 MARCIA J. MENGEL, CLERK  
 SUPREME COURT OF OHIO

Notice of Corrected Service

Now comes Appellant, A. Schulman, Inc. through its undersigned Counsel of Record and gives Notice of Corrected Service in the above captioned case. On November 1, 2006 Appellant's Counsel of Record was notified by the Ohio Board of Tax Appeals that the Board could not locate a copy of the Notice of Appeal filed in the instant case by Appellant in its records. Counsel of Record hand delivered a copy of the same on November 2, 2006 to the Ohio Board of Tax Appeals along with a copy of this Notice of Corrected Service. A copy of the foregoing Notice of Corrected Service was also delivered to the counsel for the Tax Commissioner, Attorney General Jim Petro, by Barton A. Hubbard, Assistant Attorney General, on November 2, 2006.

Respectfully submitted,



Leonard A. Carlson, Counsel of Record

COUNSEL FOR APPELLANT  
A. SCHULMAN, INC.

Appx. 5

**IN THE SUPREME COURT OF OHIO**

RECEIVED  
OCT 19 2006  
Attorney General's Office  
Taxation Section

A. SCHULMAN, INC.

Appellant,

v.

WILLIAM W. WILKINS  
TAX COMMISSIONER OF OHIO

Appellee.

Appeal from the Ohio  
Board of Tax Appeals

**06-1944**

Board of Tax Appeals  
Case No. 2004-B-370

**NOTICE OF APPEAL OF APPELLANT A. SCHULMAN, INC.**

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Barton A. Hubbard (0023141) (COUNSEL OF RECORD)  
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COUNSEL FOR APPELLEE WILLIAM W. WILKINS  
TAX COMMISSIONER OF OHIO

2006 NOV -2 AM 11:00

FILED  
OCT 19 2006  
MARCIA J. MENGEL, CLERK  
SUPREME COURT OF OHIO

APPX. 6

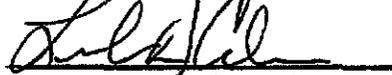
Notice of Appeal of Appellant A. Schulman, Inc.

Appellant, A. Schulman, Inc., hereby gives its notice of appeal as of right pursuant to R.C. 5717.04 to the Supreme Court of Ohio, from a Decision and Order of the Board of Tax Appeals, journalized in Case No. 2004-B-370 on September 22, 2006. A true copy of the Decision and Order of the board being appealed is attached hereto and incorporated herein by reference.

The appellant complains of the following errors in the Decision and Order of the Board of Tax Appeals:

1. The Board of Tax Appeals erred in failing to find that certain inventory of the Appellant held in a Foreign Trade Zone as of December 31, 1998 and January 1, 1999 was exempt from taxation for tax year 1999 pursuant to R. C. 5709.44.
2. The Board of Tax Appeals further erred in failing to find that the true value of certain property in Appellant's Akron facility pursuant to R.C. 5711.18, against which Ohio personal property tax was levied for tax year 2001 should have been greatly reduced given its in-utility and the fact that it was taken out of production and held for disposal only shortly after the Appellant's listing date for tax year 2001 which reflects a true value significantly lower than the true value found by the Tax Commissioner.
3. The Board of Tax Appeals further erred in failing to find that Appellant is engaged in manufacture of plastics and that all of its taxable tangible personal property should have been classified as fall under prescribed Life Class IV for purposes of determining its true value for Ohio personal property tax purposes pursuant to R.C. 5711.18.

Respectfully submitted,

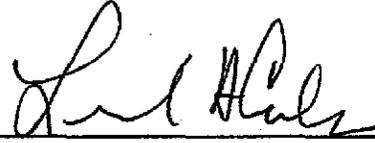


Leonard A. Carlson, Counsel of Record

COUNSEL FOR APPELLANT  
A. SCHULMAN, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Notice of Appeal was hand delivered to the Office of the Attorney General of Ohio, Taxation Section, Attn: Barton A. Hubbard, Assistant Attorney General, State Office Tower, 30 East Broad Street, 16<sup>th</sup> Floor, Columbus, Ohio 43215 this <sup>10<sup>th</sup></sup> day of October, 2006.



Leonard A. Carlson, Counsel of Record

**OHIO BOARD OF TAX APPEALS**

A. Schulman, Inc.,	)	CASE NO. 2004-B-370
	)	
Appellant,	)	(PERSONAL PROPERTY TAX)
	)	
vs.	)	DECISION AND ORDER
	)	
William W. Wilkins,	)	
Tax Commissioner of Ohio,	)	
	)	
Appellee.	)	

**APPEARANCES:**

For the Appellant	- Leonard A. Carlson Attorney at Law 2700 East Main Street Suite 111 Columbus, Ohio 43209
-------------------	-------------------------------------------------------------------------------------------------------

For the Appellee	- Jim Petro Attorney General of Ohio John K. McManus Assistant Attorney General State Office Tower 30 East Broad Street 16 <sup>th</sup> Floor Columbus, Ohio 43215
------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Entered **SEP 22 2006**

Mr. Eberhart and Mr. Dunlap concur; Ms. Margulies recused.

On April 21, 2004, appellant, A. Schulman, Inc. ("A. Schulman"), filed the present appeal with this board seeking reversal of a final determination issued by the Tax Commissioner. Through his determination, the commissioner denied appellant's petition for reassessment in which appellant had challenged previously issued personal property tax assessments for tax years 1999, 2000 and 2001.

Appellant's notice of appeal states in pertinent part, as follows:

*Appx. 9*

"1. The Tax Commissioner erred in failing to find that certain inventory of the Appellant held in a Foreign Trade Zone as of December 31, 1998 and January 1, 1999 was exempt from taxation for tax year 1999 pursuant to R.C. Sec. 5709.44.

"2. The Tax Commissioner further erred in failing to find that certain items for tax years 1999, 2000, and 2001 described by Appellant as extruder screws, extruder barrels, discharge dies, pelletizers and gauges are properly classified as jigs and dies and pursuant to R.C. Sec. 5701.03 are excluded from the definition of personal property and are therefore not subject to Ohio personal property tax.

"3. The Tax Commissioner further erred in failing to find that certain items for tax years 1999, 2000, and 2001 described by Appellant as drawings held for use and not for sale in the ordinary course of business and pursuant to R.C. Sec. 5701.03 are excluded from the definition of personal property and are therefore not subject to Ohio personal property tax.

"4. The Tax Commissioner further erred in failing to find that certain property against which Ohio personal property tax was levied for tax years 1999, 2000, and 2001 did not exist and therefore was not taxable property pursuant to R.C. Sec. 5709.01 and R.C. Sec. 5711.01, was not owned or controlled by Appellant and pursuant to R.C. Sec. 5711.03 did not have to be listed for taxation, and was not used in business by Appellant pursuant to R.C. Sec. 5701.08.

"5. The Tax Commissioner further erred in failing to find that the true value of certain property against which Ohio personal property tax was levied for tax year 1999 should have been greatly reduced given its in-utility and the fact that is (sic) was taken out of production and held for disposal only shortly after the Appellant's listing date which reflects a true value significantly lower than the true value found by the Tax Commissioner.

"6. The Tax Commissioner further erred in failing to find that certain property against which Ohio personal property

tax was levied for tax years 1999, 2000, and 2001 was computer application software which is intangible property rather than tangible personal property and therefore should not have been subject to tax.

“7. The Tax Commissioner further erred in failing to find that Appellant is engaged in manufacture of plastics and that its taxable tangible personal property used in the manufacture of plastics should have been classified as fall under prescribed Life Class IV for purposes of determining its true value for Ohio personal property tax purposes pursuant to R.C. Sec. 5711.18.

“8. The Tax Commissioner further erred in failing to find that with respect to Appellant’s Akron manufacturing facility for tax years 1999, 2000, and 2001 there were special facts and circumstances which demonstrate that the normal prescribed ‘302’ method of determining true value pursuant to R.C. Sec. 5711.18 was inappropriate and the true value as asserted by the Appellant should have been found to be the true value of such tangible personal property.

“9. The Tax Commissioner further erred in failing to find that certain property first included as taxable tangible personal property on the Appellant’s Ohio personal property tax returns for 1999, 2000, and 2001 was real property under R.C. Sec. 5701.02 and not personal property described under R.C. Sec. 5701.03 and therefore should not have been subjected to tax and further that the Tax Commissioner erred in finding that certain property classified on the books and records of the Appellant as real property was personal property which was then erroneously added to the total assessment for personal property tax purposes.”

Subsequently, specifications of error numbers 3, 4, 6 and 9 were dropped by appellant through its brief. Appellant also noted therein that specification of error enumerated as “5” should read tax year “2001” and not “1999.”

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the Tax Commissioner, the record of the hearing before this board, and the briefs filed by the parties.<sup>1</sup>

In reviewing appellant's appeal, we recognize the presumption that the findings of the Tax Commissioner are valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. It is therefore incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut the presumption and establish a right to the relief requested. *Hatchadorian v. Lindley* (1986), 21 Ohio St.3d 66; *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the Tax Commissioner's determination is in error. *Kern v. Tracy* (1995), 72 Ohio St.3d 347; *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213. Where no competent and probative evidence is developed to this board by the appellant to show that the Tax Commissioner's findings are incorrect, then the Board of Tax Appeals must affirm the Tax Commissioner's findings. *Kern, supra*; *Kroger Co. v. Limbach* (1990), 53 Ohio St.3d 245; *Alcan Aluminum Corp., supra*.

A. Schulman is an international supplier of plastic compounds and resins. Appellant's headquarters is located in Akron, Ohio and it has several manufacturing and technology centers in various locations in Ohio.

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<sup>1</sup> On October 21, 2005, appellant moved to strike the Tax Commissioner's brief as it was filed well beyond the deadline and subsequent extensions. We overrule the motion.

The matter before us concerns personal property tax returns filed for tax years 1999, 2000 and 2001. A. Schulman's fiscal year ends on August 31. Appellant filed personal property tax returns for each of the aforesaid years and subsequently filed three applications for final assessment seeking a reduction and a refund of personal property taxes.

Appellant first argues that certain inventory held in a foreign trade zone as of December 31, 1998 and January 1, 1999 was exempt from taxation for tax year 1999 pursuant to R.C. 5709.44.

R.C. 5709.44 provides in pertinent part as follows:

“(A) As used in this section:

“(1) ‘Tangible personal property’ means the personal property of a merchant that is required to be returned on the average basis as provided in section 5711.15 of the Revised Code, and the average value of all articles purchased, received, or otherwise held by a manufacturer for the purpose of being used in manufacturing, combining, rectifying, or refining, and the average value of all articles that were at any time manufactured or changed in any way by the taxpayer, either by combining, rectifying, or refining, or adding thereto;

“(2) ‘Foreign trade zone’ means a general purpose foreign trade zone or a special purpose subzone for which, pursuant to the ‘Act of June 18, 1934,’ 48 Stat. 998, 19 U.S.C.A. 81a, as amended, a permit for foreign trade zone status was granted before January 1, 1992, including expansions of and additions to such a zone that are adjacent to the zone as it existed on January 1, 1992, but excluding special purpose subzones for which a permit is granted on or after such date.

“(B) Tangible personal property, including such property when used solely for display or demonstration purposes, shall be considered to be in the stream of foreign

commerce and shall be exempt from personal property taxation while held in a foreign trade zone.”

It appears that “[o]n or before December 16, 1998, the thirteen acres on which the Gilchrist Center<sup>2</sup> is located became part of the general purpose Foreign Trade Zone #181 that was created in 1991.” S.T. at 266.

A. Schulman contends that its inventory held in a foreign trade zone as of December 31, 1998 and January 1, 1999 was exempt from personal property taxation. We disagree.

R.C. 5711.03 provides as follows:

“Except as provided in sections 5711.01 to 5711.36 of the Revised Code, all taxable property shall be listed as to ownership or control, valuation, and taxing districts as of the beginning of the first day of January, annually, except that taxable personal property and credits used in business shall be listed as of the close of business of the last day of December, annually, and deposits not taxed at the source shall be listed as of the day fixed by the tax commissioner for the listing of deposits taxed at the source pursuant to Section 5725.05 of the Revised Code.”

However, R.C. 5711.101 provides:

“The tax commissioner may require that with every return listing personal property used in business or credits, the taxpayer shall file a financial statement or balance sheet of such business as of the close of business on the day next preceding the date of listing.

“A taxpayer who is required to file a financial statement or balance sheet of his business pursuant to this section *may be authorized or required by the commissioner to list his taxable property as of the close of business at the end of his fiscal year, instead of as of the day otherwise prescribed by section 5711.03 of the Revised Code.* The

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<sup>2</sup> Subject property in question belonging to A. Schulman.

APPY. 14

commissioner may adopt regulations to govern the use of the basis of listing authorized by this section, but a taxpayer who is authorized or permitted to list taxable property as of a day other than that prescribed by section 5711.03 of the Revised code, shall thereafter use the same basis unless the commissioner, for good cause shown, authorizes the substitution of another fiscal year, or, unless the commissioner requires or, upon application of the taxpayer, authorizes, the substitution of another listing date to insure that property subject to taxation under the provisions of section 5709.01 or 5709.02 of the Revised Code, and acquired by means of purchase, merger, or reorganization, involving an entire plant, a facility, or a division, shall not be excluded from taxation for a year or taxed more than once in a year. In the case of such acquisition the commissioner shall require or authorize a substitute listing date only for such acquired property and only for one year." (Emphasis added.)

Ohio Adm. Code 5703-3-04(B) provides as follows:

"Any taxpayer required to file an income tax return with the United States internal revenue service on a fiscal year basis shall employ the same fiscal year end for listing his personal property used in business. *For the purpose of listing such personal property, such fiscal year end shall be that for the fiscal year ending in the calendar year preceding the calendar year in which the property tax return is required to be filed.* If a taxpayer has not been engaged in business in Ohio for a full twelve months immediately preceding such fiscal year end, he shall list all taxable personal property as of the close of business on the last day of December." (Emphasis added.)

Such is the case before us today. The appellant's tax listing date of August 31, 1998 governs the taxability of the subject personal property. There is no evidence before us that the foreign trade zone was in effect on that date. Therefore, we deny appellant's first specification of error.

A. Schulman's second contention entails the taxability of personal property it claims is properly classified as jigs and dies and is excludable from taxation by reason of R.C. 5701.03.

Jigs and dies are exempt from taxation because they are excluded from the definition of "personal property" found in R.C. 5701.03:

"As used in Title LVII [57] of the Revised Code:

"(A) 'Personal property' includes every tangible thing that is the subject of ownership, whether animate or inanimate, including a business fixture, and that does not constitute real property as defined in section 5701.02 of the Revised Code. \*\*\* 'Personal property' does not include \*\*\* for purposes of any tax levied on personal property, patterns, jigs, dies, or drawings that are held for use and not for sale in the ordinary course of business, except to the extent that the value of the electricity, patterns, jigs, dies, or drawings is included in the valuation of inventory produced for sale."

In *Gen. Motors Corp. v. Kosydar* (1974), 37 Ohio St.2d 138, the court defined a die as "a piece of equipment or tooling that is capable of forming or creating a part, either by pressure or molding techniques." The court defined a jig as "a holding device that is used with a single part to further machine it, or with more than one part in order to position the parts for further operations." Later, in *Timken Co. v. Lindley* (1985), 17 Ohio St.3d 85, the court explained that it made little difference whether a jig held the machining tools or the item itself. Thus, the court agreed with the Board of Tax Appeal's definition of jigs as "devices which perform a holding and positioning function during machining or processing operation" on the grounds that it is the function of the device, rather than its form, that is paramount in determining whether

the item is exempt under R.C. 5701.03 as a jig, pattern, or die. Id. at 87 and at paragraph one of the syllabus.

A. Schulman's witness, Mr. Billy Ratliff, facility manager for appellant's plant, testified as to the subject equipment and the processes they are involved in as follows:

"Q. One of the things we need to pay particular attention to today in the extrusion process is the role played by screens, barrels, screws, water baths and cutters.

"Can you basically and briefly explain how the extrusion process works and the role that's played by barrels, screws, screens, water baths and cutters?

"A. Well, basically, the raw materials, which are the resins, additives, colors, are mixed together. There are several ways of that happening, but they're basically mixed together; they go into the barrel with the screw; they're heated up.

"As they pass through the barrel and screw they go to the die, which is at the end of the barrel and screw. They come through there, and there's knives at the end of it that cut it off, give it a water bath.

"Depending on the particular line they're being sprayed on, they could go right in underwater - they're cut off right at the end of the die and transferred to cartons or....

"Q. All right. Now, depending upon what kind of product it is that you're making, are there different barrels and screws that are used?

"A. Different sizes, yes. Different configuration.

"Q. Okay. Are they hooked to this end point line that you are talking about?

"A. Yes.

Appx. 17

"Q. What does the barrel and the screw then do? How does it interact with the product?"

"A. It turns the resins into a molten plastic and conveys them to the die in a uniform manner. To get them to go through the die in a uniform manner and consistent manner – See, we want a consistent pellet. We don't want different sizes. They need to be the same size, as specified by the customer.

"Q. So the barrel and screw act on the consistency form –

"A. Yes.

"Q. – of the product before it goes through and then gets cut off?"

"A. Yes.

\*\*\*\*

"Q. Does the barrel hold molten plastic?"

"A. Yes. The barrel and the screw will work together. The screw has to be the same size as the barrel. Basically, in order for the – to convey the material to the die it has to be completely filled till it is consistent all the way around, whether it's a round die or a rectangular-type die.

"It has to go through each and every section of that die evenly and consistently. If not, you will not get a consistent pellet that comes out the other end, where it cuts it off.

"Q. So is it kind of like an extension of that die?"

"A. They're all, basically, one piece. I mean, it's different pieces in the one – one will not work without the other."  
H.R. at 15-18.

In *American Book Co. v. Porterfield* (1969), 18 Ohio St.2d 49, 52, the court recounts some of the history of the subject exclusion. Therein, the court stated, with regard to certain glass molds, as follows:

“This exclusion was enacted in 1931 (114 Ohio Laws 714, 716) and research discloses several important tax determinations thereunder. In the earliest reported case requiring its interpretation, the Court of Appeals held that tire molds used in the rubber industry were in fact *dies* or *patterns* within the meaning of the statutory exclusion. *Mong v. B. F. Goodrich Co.* (1935), 19 Ohio Law Abs. 198. In *National Tube Co. v. Tax Commission* (1937), 26 Ohio Law Abs. 523, affirmed, 25 Ohio Law Abs. 619, 31 N.E.2d 486, certain ‘rolls, guide shoes, piercing points, plugs and welding balls,’ as these items were known to the steel industry, used in forming steel products, were excluded from taxation under the statute as *dies*. Glass molds, used in the production of pressed and blown glassware with figures or designs on the exterior were held by the Board of Tax Appeals to be *dies* for tax purposes in *Cambridge Glass Co. v. Evatt* (1940), 19 Ohio Ops. 162.

“In *Colonial Foundry Co. v. Peck* (1952), 158 Ohio St. 296, 109 N.E.2d 11, this court held various flasks, cast iron shapes, weights and clamps, used in the manufacture of iron and alloy castings of special and varying designs, exempt from taxation as *dies*.” (Emphasis added.)

Such is the case before us today. Mr. Ratliff’s testimony reveals that the subject equipment meets the requirements and definition of a “die” as described above and in the aforementioned *Gen. Motors* case. Therefore, we agree with appellant’s second specification of error and reverse the Tax Commissioner’s final determination on this issue.

Appellant's third specification of error<sup>3</sup> is that the true value of certain personal property should have been reduced for tax year 1999, 2000 and 2001 because of special circumstances.

Appellant states that it closed its manufacturing facility in Akron, Ohio in December of 2000 and that by February of 2001 all the manufacturing machinery and equipment was removed and scrapped by A. Schulman. At this board's evidentiary hearing, appellant presented the testimony of Mr. Curt Suppes, the corporate tax manager, and submitted a summary document prepared by its outside accountants to support its contentions of a lower proposed true valuation for the subject personal property. Ex. I. The closing of the facility and the scrapping of the aforestated machinery and equipment, appellant argues, clearly denotes an unusual and special circumstance which supports a deviation from the standard 302 personal property tax valuation.

R.C. 5709.01 provides that all personal property located and used in business in this state is subject to taxation. R.C. 5701.08 defines "used in business" and "business" as follows:

"As used in Title LVII [57] of the Revised Code:

"(A) Personal property is 'used' within the meaning of 'used in business' when employed or utilized in connection with ordinary or special operations, when acquired or held as means or instruments for carrying on the business, when kept and maintained as a part of a plant capable of operation, whether actually in operation or not, or when stored or kept on hand as material, parts, products, or merchandise. Machinery and equipment classifiable upon

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<sup>3</sup> Enumerated in appellant's notice of appeal as "5" and "8."

completion as personal property while under construction or installation to become part of a new or existing plant or other facility is not considered to be 'used' by the owner of such plant or other facility within the meaning of 'used in business' until such machinery and equipment is installed and in operation or capable of operation in the business for which acquired."

The starting point for determining the value of tangible personal property is R.C. 5711.18, which states in pertinent part as follows:

"In the case of personal property used in business, the book value thereof less book depreciation at such time shall be listed, and such depreciated book value shall be taken as the true value of such property, unless the assessor finds that such depreciated book value is greater or less than the then true value of such property in money."

In accordance with this statute, the Tax Commissioner promulgated the 302 computation directive which establishes the method of depreciation to be employed on all equipment used in business as well as the percentage of depreciation to be applied against specific types of equipment. The valuation of personal property used in business as derived by the method set forth by the commissioner applies to every taxpayer and to all applicable equipment so as to achieve uniformity of valuation in this state. The prescribed annual depreciation rates to be used in lieu of book depreciation are prima facie correct. *Monsanto Co. v. Lindley* (1978) 56 Ohio St.2d 59.

The goal sought by utilization of the 302 computation directive is to estimate as closely as possible the true market value of the plant equipment involved. Accordingly, the depreciation rates set forth by the directive will be adjusted in unusual and special circumstances, and will not be rigidly applied to create an

unreasonable or unjust result. *Alcoa v. Kosydar* (1978), 54 Ohio St.2d 477; *PPG Industries v. Kosydar* (1981), 65 Ohio St.2d 80; *Towmotor Corp. v. Lindley* (1981), 66 Ohio St.2d 53.

In *PPG Industries*, supra, the Supreme Court held that to establish the right to deviate from the prescribed rate of depreciation, the burden is on the taxpayer to demonstrate by competent evidence of probative value that the 302 computation produces a result which does not reflect the true value of its personal property. See, also, *Gahanna Heights, Inc. v. Porterfield* (1968), 15 Ohio St.2d 189, at 190; and *Commonwealth Plan, Inc. v. Kosydar* (1976), 47 Ohio St.2d 39, at 41.

Giving full attention and consideration to the totality of evidence presented herein, the Board of Tax Appeals concludes that the appellant has not demonstrated by competent evidence of probative value that the property at the subject facility should have a lower personal property valuation, nor that the 302 computation results in an excess value for the subject property.

Initially, the board points out that the Tax Commissioner's 302 computation is founded on industry-wide experience. Appellant has not shown that its equipment is put to an extraordinary use or is operated in an extraordinary environment. A. Schulman's first witness, Mr. William Ratliff, the facility manager of the Akron plant, only testified as to the process and did not discuss equipment life. Appellant's second witness, Mr. Suppes, was a corporate tax manager and was not qualified as an expert in valuing the subject property. The fact that the appellant had overcapacity at the time in question and high labor costs, as Mr. Suppes testified, does

not automatically result in obsolescence of, or a lower valuation for, the property in question. A plant closing based on these details alone would not prove special or unusual circumstances to justify such a change of value. See, also, *The BOC Group, Inc., fka Airco, Inc. v. Limbach* (June 30, 1989), BTA No. 1985-G-679, unreported.

We have no probative evidence before us which would show that the closed plant was incapable of operation. The claim that it was not economically feasible to operate the plant does not render the equipment and machinery useless nor does it enlighten us adequately as to the true condition of the property.

We find little value to Ex. I as it is merely a summary document of calculations based in part on the arguments above.

The appellant has failed to present any probative evidence of the value of the equipment in the closed plant and has therefore failed to meet its burden of proof to show that the Tax Commissioner was in error. Therefore, we deny this specification of error.

Appellant's final specification of error is that the subject personal property used in the manufacture of plastics should have been classified as Class Life IV for true value purposes.<sup>4</sup>

Appellant originally filed its personal property tax returns for the subject years in question utilizing Class Life V. A. Schulman contends that Class Life IV, which allows for a quicker depreciation schedule, is the appropriate classification and directs this board to its annual report (Form 10K) filed with the U.S. Securities and

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<sup>4</sup> Enumerated "7" in appellant's notice of appeal.

Exchange Commission for the year 2000 in support. The description therein reads as follows:

“The Company combines basic resins purchased from plastic resin producers and, through mixing and extrusion processes introduces additives that provide color, stabilizers, flame retardants or other enhancements that may be required by a customer. These compounds are formulated in the Company’s laboratories and are manufactured in the Company’s fourteen plastics compounding plants in North America, Europe and Asia. Customers for the Company’s plastic compounds include manufacturers, custom molders and extruders of a wide variety of plastic products and parts. The Company generally produces compounds on the basis of customer commitments. \*\*\*”

The 302 computation method provides a uniform method of valuing property by classifying similar types of property by business activity/industry. In some cases, however, property can be classified in two different categories, depending upon the use of the items.

In an attempt to assist taxpayers with classification of personal property, the Tax Commissioner publishes a pamphlet entitled “True Value of Tangible Personal Property – Composite Annual Allowance Procedure published in Accordance with Ohio Administrative Code 5703-3-11.” That pamphlet, which is published yearly, reflects accepted composite group-life classes for personal property tax purposes. *Monsanto Co.*, supra. Therein, it is stated regarding “composite class life”:

“The composite class life used for valuing the personal property of a business is determined on a prima facie basis by the business activity.

“The list of business activities in previous editions of this publication was based on the Standard Industrial Code

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(SIC) Manual published by the United States Office of Budget and Management (USOBM). As a guide to finding the business activity, the first two (2) of the four (4) digits for each classification was listed. In 1997, USOBM introduced the North American Industry Classification System (NAICS). The new classification system uses six (6) digits. The current edition of True Value of Tangible Personal Property lists general business activities and shows the first three (3) digits of the NAICS classification number. A table which displays SIC numbers and the corresponding NAICS numbers is on the inside front cover of this publication.”

Class Life IV, under which appellant seeks to classify the subject property, includes the following description under the aforementioned NAICS guidelines:

**“326 Plastics and Rubber Products Manufacturing**

“Industries in the Plastics and Rubber Products Manufacturing subsector make goods by processing plastics materials and raw rubber. The core technology employed by establishments in this subsector is that of plastics or rubber product production. Plastics and rubber are combined in the same subsector because plastics are increasingly being used as a substitute for rubber; however the subsector is generally restricted to the production of products made of just one material, either solely plastics or rubber.

“Many manufacturing activities use plastics or rubber, for example the manufacture of footwear, or furniture. Typically, the production process of these products involves more than one material. In these cases, technologies that allow disparate materials to be formed and combined are of central importance in describing the manufacturing activity. In NAICS, such activities (the footwear and furniture manufacturing) are not classified in the Plastics and Rubber Products Manufacturing subsector because the core technologies for these activities are diverse and involve multiple materials.

**"3261 Plastics Product Manufacturing**

"This industry group comprises establishments primarily engaged in processing new or spent (i.e., recycled) plastics resins into intermediate or final products, using such processes as compression molding; extrusion molding; injection molding; blow molding; and casting. Within most of these industries, the production process is such that a wide variety of products can be made."

The Tax Commissioner contends that the subject property more appropriately is classified as Class Life V and points to the corresponding NAICS sections which read as follows:

**"325211 Plastics Material and Resin Manufacturing**

"This U.S. industry comprises establishments primarily engaged in (1) manufacturing resins, plastics materials, and nonvulcanizable thermoplastic elastomers and mixing and blending resins on a custom basis and/or (2) manufacturing noncustomized synthetic resins.

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**"325991 Custom Compounding of Purchased Resins**

"This industry comprises establishments primarily engaged in (1) custom mixing and blending plastics resins made elsewhere or (2) reformulating plastics resins from recycled plastics products."

We agree with the commissioner. Mr. Ratliff testified regarding appellant's products as follows:

"Q. You had been asked to identify two exhibits, Exhibit A and Exhibit B. I believed you indicated that Exhibit A was a resin that was one of the raw materials used to produce Schulman's product?"

"A. Correct.

"Q. What is Exhibit A? What kind of material is that?

"A. Exactly what kind of material it is, I don't know. It's a resin. We have different kinds of resins. It could be propylene; it could polyethylene. Based on -- the hardest -- I would say it's probably propylene.

"Q. And then Exhibit B, is that the actual product that results from the use of Exhibit A in conjunction with other materials?

"A. Correct.

"Q. What other -- with respect to Exhibit B, what materials or compounds other than what is contained in Exhibit A would go into the product?

"A. Well, depending on the physical properties required, the different types of additives, colors, fillers, stabilizers....

"Q. Now, is the product that results that's at least contained in Exhibit B, is that a resin product itself?

"A. I'm not sure.

"Q. What would you call that specific product? Does it have a specific --

"A. It would have a specific name, yes. For instance, I'm not sure exactly which one this is, but PP1329-2173. The -1329 part would represent the physical properties, and then the -2173 would represent the color. The second number would be the color of it.

"Q. Would one of the products that would be manufactured by H&O be a polyvinylchloride-type product?

"A. Yes.

"Q. Is that a fairly common product they make?

"A. It used to be years ago. I don't think -- We produced very little of it in the last several years. In '83, when we

modernized Lines 1 and 2, PPC was our biggest product. We ran that from Line 2, I mean, 24/7.

“Q. Would the more modern products be modern versions of polyvinylchloride-type products?”

“A. Not really.

“Q. Well, I guess what I’m saying is what you make is a product that’s a combination of various raw material, resins and other chemical compounds?”

“A. Yes.

“Q. And that results in various compounds that have color concentrates that are then sent to your customers that they use as a raw material?”

“A. Yes.

“Q. Would most of the products, the compounds that you manufacture for your customers, be custom manufactured for a particular customer?”

“A. Yes.

“Q. They want a particular type of resins with a particular color and certain other additives?”

“A. Yes, sir. Basically, what they want is certain physical properties for – and a specific color, which we would match it to their specifications and physical properties and the coloring.

“Q. Would most of the products produced by A. Schulman resemble what we see in Exhibit B?”

“A. Yes.

“Q. Same basic size, maybe different colors, additives, properties?”

“A. You may have pretty much the same size, you may have different shapes, depending on the type of die that it

goes through. Some of it will be a square cut, which is something that may come out of the die and go through the water bath and it's cut in what's called dicer, which dices it.

"Q. If you know, would your customers normally take that product and in using it first would they melt it into a –

"A. Yes.

"Q. – or later mold it into a product or –

"A. They would – they'd have to do it at the time they melt it.

"Q. They would melt it?

"A. Yes, and mold it into another item.

"Q. What type of specification do they ask for for a particular product?

"A. It all depends on the customer. They ask for strength, weathering. One of our largest customers was the automotive industry. They ran very strict specifications for weathering, strength, durability." H.R. at 19-23.

This description of appellant's products appears to squarely fit within the definition of a Class Life V property.

However, A. Schulman contends that it is engaged "in processing \*\*\* plastic resins into *intermediate*\*\*\* products," fulfilling the requirement of NAICS 3261, and thus, qualifying for either classification. Indeed, Mr. Ratliff testified under redirect examination as follows in this regard:

"Q. Mr. Ratliff, the product that you make, that you sell to other people, is that then used by them to turn into another product?

"A. Yes.

"Q. Okay. Could you classify, or do you know if you could classify what's in Exhibit A as a basic resin?"

"A. Yes, it is a basic resin.

"Q. Is what you have in Exhibit B a basic resin?"

"A. No, it's not.

"Q. What kind of resin might it be?"

"A. It's a custom-compounded resin.

"Q. Okay. Would that be *intermediate*, then, to making something else?"

"A. Yes.

"Q. All right. So your finished product is someone else's raw product?"

"A. Correct." H.R. at 29, 30. (Emphasis added.)

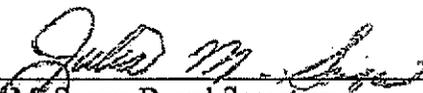
Despite this assertion that A. Schulman produces an intermediate product, the evidence indicates otherwise. There is no heel or sole being produced for later assembly into the final product of some footwear or any other production which might fit this classification. The evidence indicates only that A. Schulman is primarily engaged in Class Life V activities. This conclusion is further supported by the commissioner's aforementioned "True Value of Tangible Personal Property" guide which describes Class Life IV rubber and plastic products as follows:

"Manufacturing products from natural, synthetic or reclaimed rubber such as tires, tubes, footwear, heels and soles, mechanical rubber goods, flooring and rubber sundries; recapping, retreading and rebuilding tires; manufacturing finished plastics products and molding of primary plastics for the trade." Id. at 5.

Given the evidence herein before us regarding appellant's products, we cannot conclude that A. Schulman has met its burden of proof. Accordingly, we reject appellant's final specification of error.

Based upon the foregoing, appellant's second specification of error is well taken. Appellant's other specifications of error are overruled. It is the order of this board that the final determination of the Tax Commissioner must be, and hereby is, affirmed in part and reversed in part, consistent with this decision.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.

  
Julia M. Snow, Board Secretary

# The Supreme Court of Ohio

November 03, 2006

Leonard Anders Carlson  
Leonard A. Carlson  
2700 East Main Street  
Suite 111  
Columbus, OH 43209

Re: 2006-1944

A. Schulman, Inc.

v.

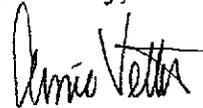
William W. Wilkins, Tax Commissioner of Ohio

Dear Leonard Anders Carlson:

This is to notify you that the record in the above-styled case was filed with the Clerk's Office on November 2, 2006.

If, after reviewing the Supreme Court Rules of Practice, you have any questions about filing deadlines in the case, please feel free to call a deputy clerk at (614) 387-9530.

Sincerely,



Amie Vetter  
Records Assistant

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# The Supreme Court of Ohio

November 03, 2006

Leonard Anders Carlson  
Leonard A. Carlson  
2700 East Main Street  
Suite 111  
Columbus, OH 43209

Re: 2006-1944

A. Schulman, Inc.

v.

William W. Wilkins, Tax Commissioner of Ohio

Dear Leonard Anders Carlson:

This office previously notified you when the record was filed in the above-captioned case. This is to notify you that additional portions of the record were filed with the Clerk's Office on November 3, 2006. Unless otherwise ordered by the Court, the filing of these additional portions of the record does not affect the time frame for filing merit briefs under the Supreme Court of Ohio Rules of Practice.

If, after reviewing the Supreme Court Rules of Practice, you have any questions about filing deadlines in the case, please feel free to call a deputy clerk at (614) 387-9530.

Sincerely,



Amie Vetter  
Records Assistant

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1.11 Remedial laws liberally construed.

Remedial laws and all proceedings under them shall be liberally construed in order to promote their object and assist the parties in obtaining justice. The rule of the common law that statutes in derogation of the common law must be strictly construed has no application to remedial laws; but this section does not require a liberal construction of laws affecting personal liberty, relating to amercement, or of a penal nature.

HISTORY: RS § 4948; S&C 940; 51 v 57, § 2; GC 10214; Bureau of Code Revision. Eff 10-1-53.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Memorandum Contra Motion To Dismiss was sent by regular United States Mail to the Office of the Attorney General of Ohio, Taxation Section, Attn: Barton A. Hubbard, Assistant Attorney General, State Office Tower, 30 East Broad Street, 16<sup>th</sup> Floor, Columbus, Ohio 43215 this <sup>27<sup>th</sup></sup> day of November, 2006.

  
\_\_\_\_\_  
Leonard A. Carlson, Counsel of Record