

Notice of Appeal of Appellant, WCI Steel, Inc.

Appellant, WCI Steel, Inc. (the "Taxpayer") hereby gives notice of its appeal as of right, pursuant to R.C. 5717.04, to the Supreme Court of Ohio, from the May 18, 2010 Decision and Order of the Board of Tax Appeals ("Board"), in Case No. 2005-V-1565 that dismissed its appeal of Final Assessment Certificates of Valuation of the Tax Commissioner relating to the Taxpayer's 2001, 2002 and 2003 personal property tax returns for lack of jurisdiction. A true copy of the Decision and Order of the Board being appealed is attached as Exhibit A and incorporated herein by reference.

The Appellant complains of the following errors in the Decision and Order of the Board:

1. The Board erroneously held that Assignment of Error #2 of the Taxpayer's Notice of Appeal to the Board, attached as Exhibit B¹ which, in pertinent part, stated that the value of its Property² for the 2003 tax year was correctly reflected on its tax return with a value of \$30,000,000, was "broad and vague" and lacked sufficient specificity to invoke the Board's jurisdiction.
2. The Board erroneously held that Assignment of Error #2 of the Taxpayer's Notice of Appeal which, in pertinent part, stated that the value of Taxpayer's personal property for 2001 and 2002 should be valued at not more than \$30,000,000 was "broad and vague" and lacked sufficient specificity to invoke the Board's jurisdiction.
3. The Board erroneously held that Assignment of Error #2 in the Taxpayer's Notice of Appeal which incorporated, by reference, the following additional description of the error in

¹ Exhibit B is also incorporated by reference and specifically for purposes of providing the exact and complete Notice of Appeal filed with the Board.

² Property is a defined term in the Notice of Appeal and includes WCI Steel, Inc.'s inventory and property consisting of, and/or associated with, 18 enumerated categories of personal property at its steel making plants.

the Tax Commissioners' final assessment was also "so broad and vague" and lacked sufficient specificity to invoke the Board's jurisdiction:

"The true value of the Property is substantially less than the value determined using the Tax Commissioner's prescribed methodology described below ('302 Computation'). The portions of the Property that are taxable should be valued at not more than \$30 million for the 2001 and 2002 tax years. The Taxpayer's 2003 tax return was correctly filed reflecting a value of the taxable Property of \$30 million, but this was not accepted by the Tax Commissioner."

4. The Board erroneously held that the Taxpayer's Notice of Appeal did not set forth a Tax Commissioner error with sufficient specificity.

5. The Board erroneously interpreted the Taxpayer's Notice of Appeal in a "hypertechnical manner and held it lacked jurisdiction" because it believed recent decisions of this Court required this result.

6. Because of the errors stated above, the Taxpayer requests that the Board's Decision and Order be reversed and that the Board decide the Taxpayer's appeal on the merits by determining the Property's value for the 2001 through 2003 tax years.

7. The Taxpayer further requests such other relief as may be accorded by law.

Respectfully submitted,



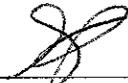
Steven A. Dimengo (0037194) Counsel of Record
David W. Hilkert (0023486)
BUCKINGHAM, DOOLITTLE & BURROUGHS, LLP
3800 Embassy Parkway, Suite 300
Akron, Ohio 44333
Telephone: (330) 376-5300
Facsimile: (330) 258-6559
Email: SDimengo@bdblaw.com
DHilkert@bdblaw.com

Attorneys for Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Notice of Appeal of Appellant WCI Steel, Inc. was sent by certified U.S. mail to:

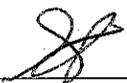
Richard Cordray
Attorney for Appellee, William W. Wilkins, Ohio Tax Commissioner
c/o Barton Hubbard, Assistant Attorney General
State Office Tower
30 East Broad Street, 25th Floor
Columbus, Ohio 43266



Steven A. Dimengo (0037194) (Counsel of Record)

CERTIFICATE OF FILING

I certify that on the 10th day of June, 2010 a Notice of Appeal has been filed with the The Ohio Board of Tax Appeals.



Steven A. Dimengo (0037194) (Counsel of Record)

OHIO BOARD OF TAX APPEALS

WCI Steel, Inc.,)
)
 Appellant,)
)
)
 vs.)
)
)
 William W. Wilkins,)
 Tax Commissioner of Ohio,)
)
 Appellee.)

CASE NO. 2005-V-1565
(PERSONAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellant - Buckingham, Doolittle
& Burroughs LLP
Steven A. Dimengo
David W. Hilkert
3800 Embassy Parkway, Suite 300
Akron, Ohio 44334

For the Appellee - Richard Cordray
Attorney General of Ohio
Barton H. Hubbard
Assistant Attorney General
State Office Tower
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410

Entered **MAY 18 2010**

Ms. Margulies, Mr. Johrendt, and Mr. Dunlap concur.

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal. Appellant WCI Steel, Inc. ("WCI") appeals a final determination of the Tax Commissioner, appellee herein, denying a petition for reassessment and affirming the personal property tax assessments. The underlying assessments relate to WCI's 2001, 2002, and 2003 personal property tax returns and the appropriate valuation of certain property under the "302 computation."



On February 2, 2010, this board requested that the parties address any jurisdictional issues in light of the Ohio Supreme Court's decision in *Ohio Bell Tel. Co. v. Levin*, 124 Ohio St.3d 211, 2009-Ohio-6189. Appellant has filed a supplemental brief, whereas the commissioner has now filed a motion to dismiss based upon appellant's failure to specify error in its notice of appeal.¹

In *CNG Dev. Co. v. Limbach* (1992), 63 Ohio St.3d 28, 32, the Supreme Court of Ohio considered the import of R.C. 5739.13, holding that "a taxpayer has not substantially complied with the statute, so as to invoke the right to review of a particular error, if he has not set forth that error with specificity in the petition for reassessment." In reaching this conclusion, the court discussed at length the requirements imposed upon taxpayers to make clear their objections to assessments, final determinations, and decisions throughout the administrative and appellate process:

"In *Gochneaur v. Kosydar* (1976), 46 Ohio St.2d 59, 65-67, *** this court affirmed the BTA's refusal, for lack of jurisdiction, to address an error not raised in the notice of appeal filed with the BTA. The BTA's lack of jurisdiction results in an appellate court's lack of jurisdiction. *Osborne Bros. Welding Supply, Inc. v. Limbach* (1988), 40 Ohio St.3d 175, 178, ***. Furthermore, we have dismissed notices of appeal from the BTA to this court that did not set forth with specificity the errors claimed. *Deerhake v. Limbach* (1989), 47 Ohio St.3d 44, ***. Thus, we have concluded, in contexts involving appeals, that stating error with specificity is a jurisdictional prerequisite, and that the reviewing body is '*** entitled to be advised specifically of the various errors charged ***.' *Queen City Valves, Inc. v. Peck* (1954), 161 Ohio St. 579, 583, ***. As we noted in *Akron Standard Div. [v. Lindley]* (1984), 11 Ohio St.3d 10], we see no appreciable difference between notices of appeal and petitions for reassessment in this procedural context. *Id.*, 11 Ohio St.3d at 11, *** , fn. 2." *Id.* at 32.

¹ The parties have previously participated in a hearing before this board and submitted briefs addressing the underlying merits of the appeal.

In *Ohio Bell Tel. Co.*, supra, the court reaffirmed its position regarding the obligation of taxpayers to specify objections, pointing out that “[f]or an appeal to the BTA from a final determination of the tax commissioner, R.C. 5717.02 requires the notice of appeal to ‘specify the errors therein complained of.’ This requirement is jurisdictional.” Id. at P16.

In discerning what is meant by “specificity,” the court has held that a challenge which “does not enumerate in definite and specific terms the precise errors claimed but uses language so broad and general that it might be employed in nearly any case is insufficient to meet the demands of the statute ***.” *Queen City Valves*, supra, at syllabus. In *Brown v. Levin*, 119 Ohio St.3d 335, 2008-Ohio-4081, the court acknowledged that “the specification requirement is stringent. As we stated more than 50 years ago in *Queen City Valves*, ‘specify’ means ‘to state in full and explicit terms’ any contention upon which an appellant *** seeks relief. *Queen City Valves*, 161 Ohio St. at 583, *** quoting Black’s Law Dictionary (4th Ed.). A specification of error in a notice of appeal does not confer jurisdiction if ‘[t]he errors set out are such as might be advanced in nearly any case and are not of a nature to call the attention of the board to those precise determinations of the Tax Commissioner with which appellant took issue.’ Id.”). See, also, *Newman v. Levin*, 120 Ohio St.3d 127, 2008-Ohio-5202; *Lovell v. Levin*, 116 Ohio St.3d 200, 2007-Ohio-6054; *Castle Aviation, Inc. v. Zaino*, 109 Ohio St.3d 290, 2006-Ohio-2420; *Satullo v. Wilkins*, 111 Ohio St.3d 399, 2006-Ohio-5856; *Cousino Construction Co. v. Wilkins*, 108 Ohio St.3d 90, 2006-Ohio-162; *Gen. Motors Corp. v.*

Wilkins, 102 Ohio St.3d 33, 2004-Ohio-1869; *Ellwood Engineered Castings Co. v. Zaino*, 98 Ohio St.3d 424, 2003-Ohio-1812.

The notice of appeal describes the background of appellant's claimed overvaluation of specific items of personal property by the Tax Commissioner. Appellant states, in pertinent part:

"The true value of the Property is substantially less than the value determined using the Tax Commissioner's prescribed methodology described below ('302 Computation'). The portions of the Property that are taxable should be valued at not more than \$30 million for the 2001 and 2002 tax years. The Taxpayer's 2003 tax return was correctly filed reflecting a value of the taxable Property of \$30 million, but this was not accepted by the Tax Commissioner." Notice of Appeal, at 2.

Appellant's assignments of error are as follows:

"The Tax Commissioner's Determination is erroneous, unreasonable, and unlawful for the following reasons:

"1. The Determination reflects the inclusion of real property as defined in R.C. 5701.02 or items and costs not related to taxable personal property. See R.C. 5709.01(B) and 5711.01(A).

"2. The Determination reflects property being valued as a percentage of its original cost using the Tax Commissioner's composite annual allowance procedure (also known as the '302 computation'). The value or true value of the Taxpayer's personal property included in the Determination is not more than the values identified above, as asserted in the Taxpayer's Applications for Final Assessment (2001 and 2002 tax years) and the 2003 tax return as filed. R.C. 5711.03 and 5711.18; see also, Ohio Administrative Code Rules 5703-3-10 and 5703-3-11.

"3. The Determination erroneously includes the Taxpayer's spare arc transformer for its Ladle Metallurgical Facility which was held for disposal and was not used in business.

“4. The Determination of the Tax Commissioner is not based on evidence and is contrary to law.” Id. at 2-3.

In attempts to avoid depriving taxpayers of an opportunity to be heard, this board has expressed its disinclination to read petitions for reassessments and/or notices of appeal in a “hypertechnical manner,” citing decisions such as *Abex Corp. v. Kosydar* (1973), 35 Ohio St.2d 13, *Goodyear Tire & Rubber Co. v. Limbach* (1991), 61 Ohio St.3d 381, and *Buckeye InternatI, Inc. v. Limbach* (1992), 64 Ohio St.3d 264. However, the Supreme Court has on several occasions reversed such decisions, finding this board exceeds its jurisdiction when addressing issues not clearly specified as error. See, e.g., *Ohio Bell Tel. Co.*, supra; *Cousino Construction*, supra; *Ellwood Engineered Castings Co.*, supra. The latest pronouncement in *Ohio Bell Tel. Co.*, supra, evidences the court’s disinclination to deviate from the exacting standard it has previously announced. Although this board found the taxpayer’s specifications to be sufficient in that appeal, ultimately ruling in Ohio Bell’s favor, the Supreme Court disagreed, reversing our decision and ordering the reinstatement of the commissioner’s determination.

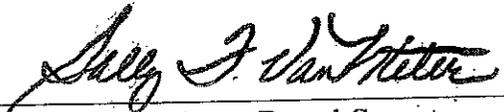
As for appellant’s specification of error one, asserting the commissioner’s determination erroneously includes items of real property or items and costs not related to taxable personal property, and three, asserting that the commissioner’s determination erroneously includes appellant’s “spare arc transformer” which is being held for disposal, to the extent not expressly withdrawn, they appear to have been abandoned. See *HealthSouth Corp. v. Levin*, 121 Ohio St.3d 282, 2009-Ohio-584, at P18, fn. 2 (holding that “the omission of an argument from a party’s brief may be deemed to waive that argument. *E. Liverpool v. Columbiana Cty. Budget Comm.*, 116 Ohio St.3d 1201, 2007-

Ohio-5505, *** ¶3, citing *Household Fin. Corp. v. Porterfield* (1970), 24 Ohio St.2d 39, 46 ***.”).

Appellant argues that the notice of appeal construed in *Ohio Bell Tel. Co.*, is distinguishable from appellant’s notice of appeal because the latter includes accompanying background and specifies the value of the property at issue to be no more than \$30,000,000. We disagree.

With respect to specifications of error two and four, to the extent not waived, we find them to be so broad and vague as to be insufficient to invoke this board’s jurisdiction. Thus, we are constrained to grant the commissioner’s motion to dismiss for lack of jurisdiction. Accordingly, it is the decision and order of this board that the matter is hereby dismissed.

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.


Sally F. Van Meter, Board Secretary

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BOARD OF TAX APPEALS

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STATE OF OHIO

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BOARD OF TAX APPEALS
COLUMBUS, OHIO

WCI Steel, Inc.)
1040 Pine Ave. SE)
Warren, Ohio 44483)
)
Appellant,)
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vs.)
)
William W. Wilkins)
Tax Commissioner of Ohio)
Rhodes State Office Tower)
30 East Broad Street, 22nd Floor)
Columbus, Ohio 43215)
)
Appellee.)

Case No. _____
(Personal Property Tax)

NOTICE OF APPEAL

Pursuant to section 5717.02 of the Ohio Revised Code ("R.C."), WCI Steel, Inc. (hereinafter, the "Taxpayer") hereby gives notice of its appeal to the Ohio Board of Tax Appeals from the Final Assessment Certificates of Valuation (hereinafter, collectively the "Determination" or "Determinations") by William W. Wilkins, the Tax Commissioner of the State of Ohio. A true copy of said Determinations for the tax return years 2001, 2002, and 2003, dated September 12, 2005, are attached hereto as Exhibit A and incorporated herein by reference to the same degree as if fully rewritten.

BACKGROUND

The Taxpayer filed Applications for Final Assessment for the 2001 and 2002 return years requesting a refund of personal property tax ("tax") attributable to the over valuation of the Taxpayer's non-inventory property consisting of, and/or associated with, the

EXHIBIT
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following personal property at its steel making plants (hereinafter, collectively such inventory and other property to be referred to as the "Property"):

- Blast Furnace
- Basic Oxygen Furnaces
- Ladle Metallurgy Facility
- Vacuum Degasser – Tank
- Twin Strand 6" Slab Caster
- 56" Hot Strip Mill
- Continuous Hot Rolled Pickle Lines
- Hot Rolled Multiple Slitters
- 52" Hot Rolled Temper Mill
- 54" 4 Stand Tandem Mill
- Annealing Furnaces: 37 HNX & 5 Hydr.
- 54" Cold Rolled Temper Mill
- Continuous Silicon Annealing Line
- Continuous Galvanizing Line
- 48" Multiple Slitter
- Roll Forming Line
- Hydrochloric Acid Regeneration Plant
- Sinter Plant

The true value of the Property is substantially less than the value determined using the Tax Commissioner's prescribed methodology described below ("302 Computation"). The portions of the Property that are taxable should be valued at not more than \$30 million for the 2001 and 2002 tax years. The Taxpayer's 2003 tax return was correctly filed reflecting a value for the taxable Property of \$30 million, but this was not accepted by the Tax Commissioner.

ASSIGNMENTS OF ERROR

The Tax Commissioner's Determination is erroneous, unreasonable and unlawful for the following reasons:

1. The Determination reflects the inclusion of real property as defined in R.C. 5701.02 or items and costs not related to taxable personal property. *See* R.C. 5709.01(B) and 5711.01(A).
2. The Determination reflects property being valued as a percentage of its original cost using the Tax Commissioner's composite annual allowance procedure (also known as the "302 computation"). The value or true value of the Taxpayer's personal property included in the Determination is not more than the values

identified above, as asserted in the Taxpayer's Applications for Final Assessment (2001 and 2002 tax years) and the 2003 tax return as filed. R.C. 5711.03 and 5711.18; *see also*, Ohio Administrative Code Rules 5703-3-10 and 5703-3-11.

3. The Determination erroneously includes the Taxpayer's spare arc transformer for its Ladle Metallurgical Facility which was held for disposal and was not used in business.
4. The Determination of the Tax Commissioner is not based on evidence and is contrary to law.

REQUEST FOR RELIEF

Based upon the Tax Commissioner's errors, the Tax Commissioner's Determination must be canceled, and the Taxpayer is entitled to a refund of previously paid tax attributable to:

1. The Taxpayer's erroneous inclusion of real property or items and costs not related to taxable personal property.
2. The overstatement of value for the taxable Property.

REQUEST FOR HEARING

In accordance with R.C. 5717.02, the Taxpayer hereby requests a hearing at which it may present oral testimony and other evidence in support of its appeal.

Respectfully submitted,



Steven A. Dimengo
David W. Hilkert
BUCKINGHAM, DOOLITTLE & BURROUGHS, LLP
50 S. Main Street, P.O. Box 1500
Akron, Ohio 44309-1500
Telephone: 330.258.6460
Facsimile: 330.252.5460
Email: sdimengo@bdbl.com

Attorneys for Appellant, WCI Steel, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was mailed by certified mail, return receipt requested, on this 10th day of November, 2005, to:

Board of Tax Appeals (original plus two copies)
Rhodes State Office Tower
30 East Broad Street, 24th Floor
Columbus, OH 43215

William W. Wilkins (one copy)
Tax Commissioner of Ohio
Rhodes State Office Tower
30 East Broad Street, 22nd Floor
Columbus, OH 43215



Steven A. Dimengo
David W. Hilkert
Attorneys for Appellant, WCI Steel, Inc.