

ORIGINAL

IN THE SUPREME COURT OF OHIO

WCI STEEL, INC.)	CASE NO.: 2010-1027
)	
Appellant,)	
)	Appeal from the Ohio Board of
vs.)	Tax Appeals
)	
WILLIAM W. WILKINS [RICHARD A. LEVIN], TAX COMMISSIONER OF OHIO)	Board of Tax Appeals
)	Case No. 2005-V-1565
)	
Appellee.)	

BRIEF AMICUS CURIAE OF THE OHIO CHAMBER OF COMMERCE

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R.C. §5717.022

I. STATEMENT OF INTEREST OF AMICUS CURIAE

Founded in 1893, the Ohio Chamber of Commerce is Ohio's largest and most diverse statewide business advocacy organization. The Chamber works to promote and protect the interests of its more than 5,000 business members and the thousands of Ohioans they employ while building a more favorable Ohio business climate. As an independent and informed point of contact for government and business leaders, the Ohio Chamber is a respected participant in the public policy arena. Through its member-driven standing committees and the Ohio Small Business Council, the Chamber formulates policy positions on issues as diverse as education funding, taxation, public finance, health care, environmental regulation, workers' compensation and campaign finance. The advocacy efforts of the Ohio Chamber of Commerce are dedicated to creation of a strong pro-jobs environment – an Ohio business climate responsive to expansion and growth. An important aspect of a pro-growth business climate is a well functioning legal system.

The present appeal presents an opportunity for this Court to address an issue of great interest to all businesses in the state of Ohio. The issue is the reasonable expectation of taxpayers that their notices of appeal from final determinations of the Tax Commissioner will be heard on the merits if they reasonably specify the grounds for their objection. If this Court upholds a dismissal in the present case, it is foreseeable that the rate of dismissals of other tax appeals will grow and deserving business taxpayers will be denied hearings.

The Chamber believes that a tightening of the pleading standards for notices of appeals may unduly restrict the right of businesses to seek redress for assessments by the Tax Commissioner which they believe are unlawful and unreasonable. At the same time, the

Chamber acknowledges that the statute, R.C. §5717.02, requires that a business specify its objections without generic language¹ that could be advanced in any appeal. *Queen City Valves v. Peck* (1954), 161 Ohio St. 579. That said, the Chamber believes the recent “exacting” approach applied by the Board is unwarranted and fosters a predisposition to address appeals on hypertechnical grounds.

II. LAW AND ARGUMENT

Proposition of Law

Although Taxpayers Must Specify Their Objections, This Pleading Requirement, To Invoke The Jurisdiction Of The Board Of Tax Appeals, Should Not Be Applied In A Hypertechnical Manner.

In this case, a very detailed appeal was dismissed by the Board without any real explanation other than frustration with this Court for imposing an “exacting standard” in preceding appeals. The Board stated:

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 Internat’l, 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, *Elwood Engineering Castings Co.*, supra. The latest pronouncement in *Ohio Bell Tel. Co.*, supra, evidence the court’s disinclination to deviate from the **exacting** standard it has previously announced. Although this board found the taxpayer’s specification 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.

Moreover, that is not the first time lower courts have perceived that decisions of this Court reflect a demand that notices be construed in an unyielding manner. As the Tenth District

¹ For example, “the assessment is contrary to law.”

Court of Appeals stated at ¶13 of *General Commodities Candy & Tobacco, LLC v. Levin* 2008-Ohio-3173,

{¶13} Appellant protests that to prohibit an appeal to the BTA under these circumstances is harsh, given the single, narrow issue involved, which the BTA acknowledged it understood. We cannot wholly disagree. However, we find no authority that would support a less stringent reading of R.C. 5717.02, and the Ohio Supreme Court's adherence to a rigid construction of the requirement for specificity has been decidedly unyielding. Based on this precedent, we find no error in the BTA's decision to dismiss appellant's appeal, and appellant assignment of error is overruled.

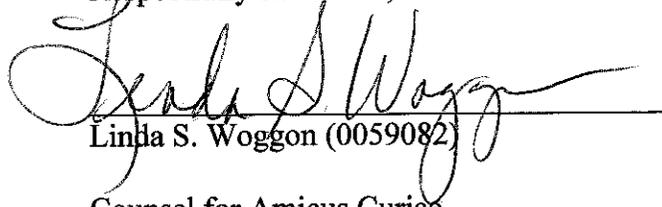
The Chamber believes that it is in the best interest of both the State and businesses that the specificity test be interpreted in a reasonable manner that avoids dismissals on hypertechnical grounds. In fact, the decision in *Abex Corp. v. Kosydar* (1973), 35 Ohio St.2d 13 is a directive not to apply the specification requirement in a hypertechnical manner.

Here, the Appellant set forth an overvaluation error and specified that the error resulted from an inflexible approach to the 302 tables as applied to functionally obsolete property. Further, the Appellant set forth the amount of the claimed error. This should be sufficient under *Queen City Valves* since it points out the claimed error and does not use generic language that could be used in any appeal.

To apply an undefined "exacting" standard - - without any framework for determining exactly when the assignment of error might be "too general" or "too specific" - - simply leads to unnecessary recriminations and pleading battles.

The Chamber believes that a restoration of the standard from *Queen City Valves* that notices must be more than generic (e.g. contrary to law), but need not be detailed or cite to specific evidence is the appropriate standard. There is no necessity that cases need be decided on technicalities rather than on the merits. It serves both the State and businesses operating in this state, if cases are decided on the merits.

Respectfully submitted,



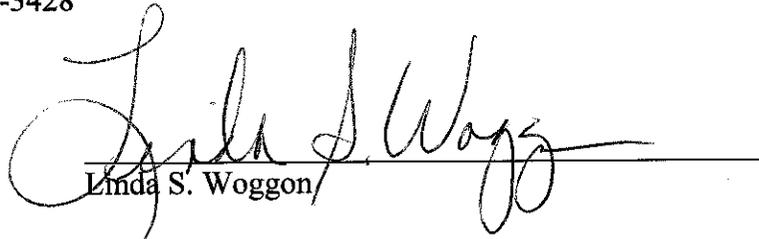
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this ____ day of October, 2010 a true copy of this Brief Amicus Curiae of the Ohio Chamber of Commerce was sent by U.S. mail to:

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