

ORIGINAL

IN THE SUPREME COURT OF OHIO

WCI STEEL, INC.

Appellant,

vs.

WILLIAM W. WILKINS [RICHARD A. LEVIN], TAX COMMISSIONER OF OHIO

Appellee.

CASE NO.: 2010-1027

Appeal from the Ohio Board of Tax Appeals

Board of Tax Appeals
Case No. 2005-V-1565

FIRST MERIT BRIEF OF APPELLANT, WCI STEEL, INC.

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STATEMENT OF THE CASE

WCI Steel, Inc. (“WCI”) filed an Application for Final Assessment (petition for refund) for the tax years 2001 and 2002 and an appeal from the personal property tax assessment for 2003. WCI asserted that a rigid and mechanical application of the Tax Commissioner’s “302 computation”¹ to WCI’s personal property resulted in over-stating the true value of WCI’s obsolete and antiquated equipment. WCI’s property was more than just old. It was functionally obsolete. For example, its 56” hot mill could only produce coils with pounds per square inch (PIW) of 850; whereas, many customers demanded a PIW of 1,000.² This prevented WCI from producing for major buyers like car manufacturers. Further, its equipment utilized an obsolete “pushing” technology that created unacceptable skid tears and resulted in an excessive scrap rate (9.5% WCI versus industry average of 2%).³ Yet, a rigid application of the 302 computation caused this equipment to have a true value of \$176.50 per ton of steel capacity, while comparable steel competitors with state of the art equipment were properly assessed at between \$36 and \$77.70 per ton of steel making capacity.⁴ Indeed, during a May, 2003 meeting with the Tax Commissioner on the refund requests and after WCI’s CFO (Mr. Gentile) presented extensive evidence in support of a substantially lower true value for its personal property,⁵ the Commissioner agreed that WCI could file its 2003 personal property tax return with “non-302” valuations without a risk of a penalty assessment.⁶

Shortly after WCI filed its “non-302” 2003 personal property tax return, it filed for bankruptcy protection in September, 2003. The Tax Commissioner, on March 4, 2004, audited

¹ Prescribed depreciation tables applied to acquisition costs.

² Supp. S. Ct. [Supp. 20] Hearing Transcript (Hearing) Vol. 1 p. 54.

³ Supp. 23 Hearing Vol. 1 p. 57.

⁴ Supp. 211 Statutory Transcript (“S.T.”) (710). See, also, Merit Brief of Appellant WCI in the Board of Tax Appeals p. 2.

⁵ Supp. 214, 215, 216 S.T. pp. 709, 710 and 713.

⁶ Supp. 209, 210, 212, 213 S.T. pp. 634-635, 707-708.

WCI and in the process reviewed a 2003 appraisal of WCI's machinery and equipment prepared by Nationwide, which again confirmed values lower than those produced through the 302 computation.⁷ In addition, WCI itself experienced astronomical losses of \$100.8 million in 2001 and \$37.6 million in 2002.⁸ Thus, historical cost figures less the 302 computation for depreciation would obviously be inappropriate because personal property that cannot produce income has a lower true value.

However, the Tax Commissioner refused to deviate from the 302 computation⁹ and disallowed the refund claims for tax years 2001 and 2002 and issued a deficiency assessment for the 2003 tax year. The denials were in the form of Final Assessment Certificates of Valuation and were issued without affording WCI a formal administrative hearing for the presentation of additional evidence in support of its continuing objection as to the overstatement of the value of its tangible personal property.

WCI timely appealed to the Board of Tax Appeals ("BTA") from the Tax Commissioner's final determinations denying the refund claims for the tax years 2001 and 2002 and assessing a deficiency for tax year 2003. The Tax Commissioner did not question the specificity of WCI's four (4) page notice of appeal. Rather, by motion at the May 2007 evidentiary hearing, the Tax Commissioner only objected to the introduction of the AccuVal appraisal since it had not been presented to him at the administrative appeal. However, the BTA hearing officer recognizing that the hearing was *de novo* overruled the objection, allowed Mr. Schmidt to testify, and requested post-hearing briefs which were filed on August 31, 2007.

On February 2, 2010, the BTA *sua sponte* requested the parties to address any jurisdictional issues in light of this Court's decision in *Ohio Bell Tel. Co. v. Levin*, 124 Ohio

⁷ Supp. 211 S.T. 706.

⁸ Supp. 9, 10 Hearing Vol I, pp. 43-44.

⁹ Supp. 206 S.T. 118 at (conclusion 29).

St.3d 211, 2009-Ohio-6189. The parties then filed supplemental briefs addressing the issue raised *sua sponte* by the BTA. On May 18, 2010 the BTA issued its final decision and order and dismissed WCI's appeal on jurisdictional grounds. It did so because it believed, under *stare decisis*, that a harsh and restrictive interpretation of WCI's assignments of error was required.

As the BTA 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, evidences 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.

Id. at p. 5.

Using an undefined "exacting" standard and rejecting WCI's argument that *Ohio Bell* was distinguishable, the BTA summarily concluded that WCI's assignments of error 2 and 4 were so broad and vague as to be insufficient to invoke its jurisdiction:

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.

Id. at p. 6.

The BTA neither explained why *Ohio Bell Tel. Co.* was controlling or why WCI's

specifications of error must be deemed “broad and vague”. This refusal to address WCI’s assignment of error #2, separate from labeling it broad and vague, is particularly troubling because assignment of error #2 was highly detailed. It stated:

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

* * *

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

2. The Determination reflects property being valued as a percentage of its original cost using the Tax Commissioner’s composite annual allowance procedure (also know[n] 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** [in the background],¹⁰ 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.

(Emphasis and explanation added.)

¹⁰ “Identified above” referred the Board to the “Background” cited above.

LAW AND ARGUMENT

Proposition of Law No. 1: A Taxpayer Complies With R.C. 5717.02 When It Specifies The Errors And The Board Has Reasonable Notice Of The Reasons For The Objections.

R.C. 5717.02 states in relevant part:

The notice of appeal shall have attached thereto and incorporated therein by reference a true copy of the notice sent by the commissioner or director to the taxpayer, enterprise, or other person of the final determination or redetermination complained of, and shall also specify the errors therein complained of . . .

The object of the verb “specify” is “the errors” of the Commissioner, not the evidence in support of the objections. The first definition of the word “specify,” as this court noted in *Queen City Valves v. Peck* (1954) 161 Ohio St. 578, is “to mention or name in a specific or explicit manner.”

The duty to mention the error in an explicit manner requires more than “language so broad and general that it might be employed in nearly any case” but does not impose a harsh or “hypertechnical requirement.” *Abex Corp. v. Kosydar* (1973), 35 Ohio St.2d 13.

Even though the standard is not to be a trap to avoid deciding cases on the merits, this Court has recently faced numerous requests by the Tax Commissioner to dismiss personal property tax appeals on jurisdictional grounds. The reason is because the Tax Commissioner has combined his evidentiary objections with his jurisdictional challenges, and this has proliferated the number of motions to dismiss. For example, the Tax Commissioner believes all appraisal reports prepared after his final determination are inadmissible, even if the appraiser simply highlights and expounds upon objections previously presented to the Tax Commissioner.

Traditionally, the BTA rejected this challenge to its jurisdiction because (1) the General Assembly has declared that the duty to specify relates only to the errors, not the evidence in

support of the objection, and (2) the hearing before the Board is *de novo* and not limited to the evidence considered by the Tax Commissioner. As this Court stated in *Key Services Corp. v. Zaino* (2002), 95 Ohio St.3d 11, 13; 2002-Ohio-1488 citing from *Bloch v. Glander* and its progeny:

The BTA is statutorily authorized to conduct full administrative appeals in which the parties are entitled to produce evidence in addition to that considered by the Tax Commissioner. *Bloch v. Glander* (1949), 151 Ohio St. 381, 387, 39 O.O. 216, 86 N.E.2d 318. The BTA may investigate to ascertain further facts and make its own findings independent of those of the Tax Commissioner. *Nestle Co., Inc. v. Porterfield* (1971), 28 Ohio St.2d 190, 193, 57 Ohio Op.2d 427, 277 N.E.2d 222. R.C. 5717.03 authorizes the BTA to modify orders based upon its independent findings. *Id.*

(Emphasis added.)

To circumvent *Key Services* and *Bloch*, the Tax Commissioner has recently claimed that the concept of specificity in the notice of appeal requires citations to existing evidence as well as the errors of the Tax Commissioner. He has advanced this position so that the BTA “may not consider evidence in addition to that considered by the Tax Commissioner.” Indeed, in his brief requesting dismissal of WCI’s appeal, he explained that his primary objection related to the trial decision of WCI to present and offer an appraisal by AccuVal, as opposed to arguing that WCI’s “unfortunate choice of words” doomed its appeal.

. . . In other words, WCI’s notice of appeal entailed far more than an “unfortunate choice of words” - - it constituted an impermissible wholesale “end-run” around the Commissioner’s expertise and discretion in making factual findings. (Citations omitted.)

. . . The AccuVal appraisal and the valuation methodologies, assumptions, analysis, and evidence comprising it never were furnished to the Commissioner and did not come into existence until nearly two years after the Commissioner issued his final determinations. The Commissioner did not, and could not, have issued findings concerning it. **Thus, if the BTA were to consider the matter on the merits, the BTA could not possibly apply the proper legal standard of review.**

Ohio Bell solves the “standard of review” problem presented by WCI’s newly raised valuation challenge. Just as was true of the notice of appeal in *Ohio Bell*, WCI’s notice of appeal fails to confer jurisdiction on the BTA to consider a **newly minted appraisal** that was not presented to the Commissioner and that relies on entirely different valuation methodologies, assumptions, analysis, and evidence regarding which the Commissioner did not and could not make any valuation findings. *Ohio Bell* at ¶¶23-24.

Id. at p. 4. (Emphasis added.)

The Tax Commissioner did not primarily focus on an alleged “unfortunate choice of words” because WCI’s assignment of error #2 was detailed and cites R.C. 5711.18 and the implementing Administrative Rules which permit deviation from the 302 computation in special or unusual circumstances. *See, e.g., Campbell Soup Co. v. Tracy* (2000), 88 Ohio St.3d 473.

A second reason the Tax Commissioner did not allege “a poor choice of words” is because WCI’s Notice of Appeal not only placed the BTA on notice (1) that the Tax Commissioner erroneously determined the true value of its 2003 personal property, but also (2) that the fair market value of its personal property was \$30,000,000, as listed on its return, rather than the assessed amount of \$121,890,890. Further, it informed the BTA that the Tax Commissioner also erred in rejecting WCI’s 2001 and 2002 refund claims since its personal property had a true value of \$30,000,000 or less, rather than the assessed value of \$123,102,239 for 2001 and \$121,895,305 for 2002. This reference to discrepancy between the 302 presumptive fair market value and the asserted actual true value was in accord with the typical method of specifying the error in valuation disputes relating to business personal property.

In an almost apologetic manner, however, the BTA construed *Ohio Bell Tel. Co. v. Levin* 124 Ohio St. 211, 2009-Ohio-6189 as now mandating that the taxpayer specify in his notice of appeal both the error complained of and all the evidence in support. But, in *Ohio Bell Tel Co. v. Levin*, 124 Ohio St.3d 211, 2009-Ohio-6189, this Court simply held that Ohio Bell’s notice of

appeal did not include an overvaluation challenge to the assessment. It did not state that the assignment also had to cite to existing evidence.

As in *Ohio Bell*, there was a new expert witness, AccuVal,¹¹ rather than Nationwide. But, here there was not, as the Commissioner alleges, a “newly minted” objection that was only conceived after WCI filed its BTA notice of appeal. Both AccuVal and Nationwide, an appraiser whose report was reviewed and evaluated before the final determination, followed Uniform Standards of Professional Appraisal Practice (USPAP) standards and valued the property on: (1) a replacement cost less depreciation (cost) (2) an income, and (3) a market/sales comparison basis.¹² Both applied sound judgment and selected the most reasonable sales comparison approach for discreet fungible assets (tow motors, etc.) and utilized an income approach for the remainder. In fact, the AccuVal appraisal reflected a higher true value as of 10/31/00 [\$85,800,000] than the Nationwide 2003 appraisal received by the Tax Commissioner before issuing this final determination.¹³ Moreover, both reports were entered into evidence by WCI and supported WCI’s claim, in its notice, (1) that the 302 computation overvalued its personal property, (2) that WCI’s Applications for Final Assessment for 2001 and 2002 were correct, and (3) that its 2003 tax return, as filed, properly reflected the true value of the personal property. Finally, CFO, Mr. Gentile, made the same objection, albeit with less detail, in his powerpoint presentation to the Department of Taxation.

Unlike the appellant in *Ohio Bell*, WCI not only relied upon a tripartite USPAP methodology before it drafted its BTA notice of appeal, it continued to advance this same theory

¹¹ AccuVal had initially been the appraiser for the bond holders during WCI’s bankruptcy. The Bankruptcy Court found its appraisal the most credible. The bond holders ultimately became owners and naturally elected to use it rather than Nationwide since they had a relationship and because AccuVal had previously done an appraisal of WCI’s real and personal property that was found to be credible. In any event, the Tax Commissioner himself presented evidence from accounting experts that it did not identify until after receiving the AccuVal report.

¹² Supp. 203 S.T. 115. See, also, Hearing 136-231 – Testimony of Expert Rick Schmidt. Supp. 102-197. Finally, see Supp. 217-223, Hearing Exhibit A Report of AccuVal Vol. I pp. 1-8.

¹³ Supp. 208 S.T. 312 – FMV \$83,316,000.

at the BTA. At the *de novo* hearing, the Tax Commissioner even acknowledged reviewing the Nationwide appraisal report on WCI's personal property, and Mr. Nolfi, on behalf of the Tax Commissioner, attempted to criticize it for "methodology" but never explained why.¹⁴ Perhaps he never explained why because the only real difference in the AccuVal and Nationwide appraisals was that the Nationwide approach was initially more "bottom up" until AccuVal at the request of the Bankruptcy Court also did a detailed analysis of the condition of each piece of machinery.¹⁵

In contrast, Ohio Bell had only objected to the Tax Commissioner's determinations of "costs" and "service lives" for its property. This objection represented only an assertion that such statutory variables were set too high by the Tax Commissioner, not a valuation challenge.

The Tax Commissioner's attempt to avoid the credible AccuVal appraisal by arguing, after evidence had been presented, that the taxpayer made a fatal jurisdictional decision – when it only called AccuVal expert witness Rick Schmidt and not the Nationwide appraiser - distorts the very concept of jurisdiction. Jurisdiction is simply the power to hear a case. The contention that jurisdiction is to be determined *ad hoc*, and based upon the witnesses called, is so counter intuitive that it obviously hides the real objection. Here, the objection is the BTA's right and duty to conduct a "de novo" evidentiary hearing where the parties are entitled to produce evidence in addition to that considered by the Tax Commissioner.

Proposition of Law No. 2: The Duty To "Specify The Errors Complained Of" In A Notice Of Appeal To The BTA Is Not A Harsh Requirement And A Taxpayer Need Not Cite Any Or All The Evidence They Have In Support But Rather They Simply Need To Reasonably Point Out The Basis Of Their Objection.

In *Queen City Valves v. Peck* (1954), 161 Ohio St. 579, this Court held that a

¹⁴ Supp. 198-201 Hearing Vol. II p. 18, 54-56.

¹⁵ Supp. 160-161 Hearing Vol. I pp. 194-195.

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. at 583.

In *Queen City Valves, supra*, this Court addressed assignments of error that were premised only on legal conclusions, such as that the decision was contrary to law or not sustained by the evidence or was against the manifest weight of the evidence. Indeed, the notice of appeal did not even attempt to explain how the Tax Commissioner erred. Rather, because it just dealt in generalities, this Court held that the notice did not invoke the Board’s jurisdiction because the “error set out ... might be advanced in nearly every case.”

After *Queen City Valves*, the next issue was the scope of the BTA’s jurisdiction once the appellant’s notice did more than simply deal in generalities. In *Goodyear Tire & Rubber Co. v. Limbach* (1991), 61 Ohio St.3d 381, the Tax Commissioner argued that the BTA had limited jurisdiction and the BTA could not grant relief by apportioning net income from the sale of an intangible asset (a tax refund) because Goodyear’s notice of appeal primarily relied upon the theory that the refund – received in the form of lease payments – was derived from leased property situated outside of Ohio. But, this Court found that Goodyear’s request to apportion a tax refund – because it was an intangible asset – was a valid alternative argument supporting the “grounds” pointed out in the notice of appeal. In holding that Goodyear had previously invoked the BTA’s jurisdiction for all related grounds, this Court relied upon *Abex Corp. v. Kosydar* (1973), 35 Ohio St.2d 13, a case declaring that the duty to specify did not impose a hypertechnical requirement.

The *Goodyear* alternative grounds concept, which permits refinement of an assignment of

error, was followed in *Buckeye Internat'l, Inc. v. Limbach* (1992), 64 Ohio St.3d 264. In *Buckeye* the taxpayer was permitted to proceed with its “double counting” objection to an assessment under a notice of appeal that stated the Tax Commissioner “erred in failing to follow general requirements of §5711.18.” Again, the Court noted that reference to double counting was a valid alternative argument since it related to the R.C. §5711.18 issue.

The Tax Commissioner’s demand – that the alternative grounds concept not swallow up the duty to list each separate error – was accepted when taxpayers failed to even inferentially point out a separate and distinct grounds for invalidating a use tax assessment. In *Cousino Constr. Co. v. Wilkins*, 108 Ohio St.3d. 90, 2006-Ohio-162, this Court held that each “distinct” grounds for a reversal as opposed to “alternative basis” should be listed in the notice of appeal. In *Cousino*, the taxpayer did not make any claim, even remotely, in his notice of appeal that the sales tax exemption for building and construction services incorporated into real property applied. Consequently, this separate grounds for reversal was justifiably deemed waived.¹⁶ However, this Court did not repeat its admonition that the duty to specify the error was not hypertechnical. Consequently, in addressing any jurisdictional motion to dismiss after *Cousino*, the BTA believed that it had to resolve any question about how thoroughly or technically the error was “specified” in favor of the Tax Commissioner.

Later, in *Brown v. Levin*, 119 Ohio St.3d 335, 2008-Ohio-408, this Court again dismissed an appeal on procedural grounds and used language declaring that R.C. §5717.02 imposed a “stringent” duty to specify with detail the error claimed in the notice itself. But again, the actual dispute related to the summary procedure used by the BTA in dealing with a backlog of grantor trusts appeals, after this Court had already resolved the issue in a previous appeal.

¹⁶ See, also, *Manfredi Motor Transit Co. v. Limbach* (1988), 35 Ohio St.3d 73, 77 for the first case which adopted this alternative basis versus distinct grounds test.

Next, this Court decided *Ohio Bell Tel. Co. v. Levin*, 124 Ohio St.3d 211, 2009-Ohio-6189. In *Ohio Bell*, the issue was entirely different because the taxpayer resorted to a unit appraisal method, a technique never conceived of at the time Ohio Bell filed its notice of appeal. The decision was not “merely” technical nor based upon “an unfortunate choice of words.” *Id.* at ¶32. It resulted from a failure to raise the unit appraisal concept to the Commissioner. In spite of this cautionary language, the BTA and the Tax Commissioner have construed this decision as a green light to impose a hypertechnical requirement and as an invitation to challenge every notice as either “too explicit” or “too vague,” even after a merit hearing has occurred.

This second guessing is unwarranted. WCI in good faith explained in its notice of appeal that, because of special circumstances, the 302 computation produced an unjust result and that the fair market value of its property was significantly lower than the assessed value. Indeed, WCI not only pointed out why the Tax Commissioner’s historical cost approach based upon the 302 tables created error, but also explained the scope of the error. Finally, it never abandoned this theory so that it could advance a new challenge.

WCI submits that an interpretation of “to specify” as mandating a duty “to mention” the Commissioner’s error, not to elaborate on evidence, should be the focus. It is the statutory standard approved by the General Assembly, and this focus fosters an atmosphere where most tax appeals will be decided on the merits.

Applying the *Queen City v. Peck* test that a notice is only deficient when it is so generic that it could “be advanced in every case,” WCI’s notice more than passes the specificity test. WCI did not attempt to hide its objection and simply state that the decision of Tax Commissioner is “contrary to law.” Here, the notice not only mentioned that the 302 computation produced an unjust result (the error) but also addressed in precise monetary terms the scope of the error

caused by a mechanical application of the 302 computation to its functionally obsolete personal property.

The BTA did not explain why WCI's notice was deemed to be vague. Perhaps the BTA interprets Ohio Bell as imposing a duty to cite to an existing appraisal report. If so, it is wrong. R.C. §5717.02 simply directs that an error be specified, not that evidence also be identified.

WCI's notice of appeal points out the objection of WCI as required in *Queen City v. Peck* and does so in more than generic language. WCI's notice states:

There is an "overvaluation of the Taxpayer's non-inventory property..." (Background ¶ 1).

"The true value of the Property is substantially less than the value determined using the Tax Commissioner's prescribed methodology described below ("302 Computation")." (Background ¶ 2).

"The portions of the Property that are taxable should be valued at not more than \$30 million for the 2001 and 2002 tax years." (Background ¶ 2).

"The Taxpayer's 2003 return was correctly filed reflecting a value for the taxable Property of \$30 million, but this was not accepted by the Tax Commissioner." (Background ¶ 2).

These background statements are then incorporated into WCI's second assignment of error where WCI objects to the Tax Commissioner's final determination because:

2. The Determination reflects property being valued as a percentage of its original cost using the Tax Commissioner's composite annual allowance procedure (also know[n] 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** [in the background],¹⁷ 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.

(Emphasis and explanation added.)

¹⁷ "Identified above" referred the Board to the "Background" cited above.

CONCLUSION

In no case has this Court ever suggested that it might require language not mandated by the text of R.C. §5717.02 and impose a duty to specify the evidence, as well as the error of the Tax Commissioner, to “solve the standard of review problem.” The Tax Commissioner’s request for “evidentiary based” assignment of errors that are ‘not too vague’ or ‘not too specific’” so that it can second guess and move for dismissal or in the alternative restrict the type of evidence offered at the *de novo* hearing is not warranted by the text of R.C. §5717.02.

WCI specified its valuation objections conferring jurisdiction on the BTA to determine the value of WCI’s personal property. The Tax Commissioner and BTA have over read *Ohio Bell*. WCI’s appeal should be reinstated since it specified both the error - that the 302 computation produced an unjust result - and the magnitude of the over-valuation error.

Respectfully submitted,



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The undersigned hereby certifies that on this 15th day of October, 2010 a true copy of this First Merit Brief of Appellant WCI Steel, Inc. was sent by certified U.S. mail to:

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APPENDIX

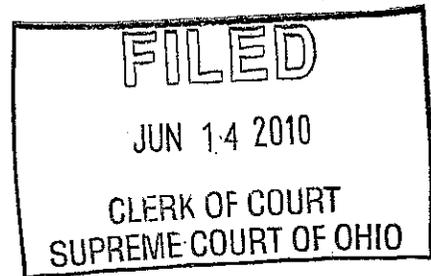
IN THE SUPREME COURT OF OHIO

WCI STEEL, INC.)	CASE NO.: 10-1027
)	
Appellant,)	Appeal from the Ohio Board of
)	Tax Appeals
vs.)	
)	Board of Tax Appeals
WILLIAM W. WILKINS, TAX)	Case No. 2005-V-1565
COMMISSIONER OF OHIO)	
)	
Appellee.)	
)	

NOTICE OF APPEAL OF APPELLANT WCI STEEL, INC.

Steven A. Dimengo (Counsel of record)
David W. Hilkert
BUCKINGHAM, DOOLITTLE & BURROUGHS, LLP
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Counsel for Appellant,
WCI Steel, Inc.



Richard Cordray, Attorney General of Ohio
Barton Hubbard, Assistant Attorney General
(Counsel of record)
State Office Tower
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410

Counsel for Appellee,
William W. Wilkins,
Tax Commissioner of Ohio

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
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Telephone: (330) 376-5300
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Email: SDimengo@bdbl.com
DHilkert@bdbl.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.,)	
)	CASE NO. 2005-V-1565
Appellant,)	
)	(PERSONAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
William W. Wilkins,)	
Tax Commissioner of Ohio,)	
)	
Appellee.)	

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

FILED
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BOARD OF TAX APPEALS
COLUMBUS, OHIO

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BOARD OF TAX APPEALS
STATE OF OHIO

WCI Steel, Inc.)
1040 Pine Ave. SE)
Warren, Ohio 44483)
Appellant,)
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
B

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 know 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,



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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@bdblaw.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.

OHIO BOARD OF TAX APPEALS

WCI Steel, Inc.,)	
)	CASE NO. 2005-V-1565
Appellant,)	
)	(PERSONAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
William W. Wilkins,)	
Tax Commissioner of Ohio,)	
)	
Appellee.)	

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.”

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

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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.

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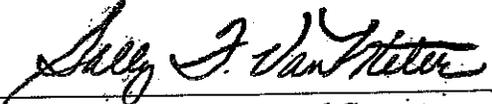
As for appellant’s specification of error one, asserting the commissioner’s determination erroneously includes items of real property or items and costs not related to taxable personal property, and three, asserting that the commissioner’s determination erroneously includes appellant’s “spare arc transformer” 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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BOARD OF TAX APPEALS
STATE OF OHIO

FILED
NOV 11 2005
BOARD OF TAX APPEALS
COLUMBUS, OHIO

WCI Steel, Inc.)
1040 Pine Ave. SE)
Warren, Ohio 44483)

Appellant,)

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



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 know 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,



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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.

(B) Appeals from a municipal board of appeal created under section 718.11 of the Revised Code may be taken by the taxpayer or the tax administrator to the board of tax appeals or may be taken by the taxpayer or the tax administrator to a court of common pleas as otherwise provided by law. If the taxpayer or the tax administrator elects to make an appeal to the board of tax appeals or court of common pleas, the appeal shall be taken by the filing of a notice of appeal with the board of tax appeals or court of common pleas, the municipal board of appeal, and the opposing party. The notice of appeal shall be filed within sixty days after the day the appellant receives notice of the decision issued under section 718.11 of the Revised Code. The notice of appeal may be filed in person or by certified mail, express mail, or authorized delivery service as provided in section 5703.056 [5703.05.6] of the Revised Code. If the notice of appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. The notice of appeal shall have attached thereto and incorporated therein by reference a true copy of the decision issued under section 718.11 of the Revised Code and shall specify the errors therein complained of, but failure to attach a copy of such notice and incorporate it by reference in the notice of appeal does not invalidate the appeal.

(C) Upon the filing of a notice of appeal with the board of tax appeals, the municipal board of appeal shall certify to the board of tax appeals a transcript of the record of the proceedings before it, together with all evidence considered by it in connection therewith. Such appeals may be heard by the board at its office in Columbus or in the county where the appellant resides, or it may cause its examiners to conduct such hearings and to report to it their findings for affirmation or rejection. The board may order the appeal to be heard upon the record and the evidence certified to it by the administrator, but upon the application of any interested party the board shall order the hearing of additional evidence, and the board may make such investigation concerning the appeal as it considers proper.

(D) If an issue being appealed under this section is addressed in a municipal corporation's ordinance or regulation, the tax administrator, upon the request of the board of tax appeals, shall provide a copy of the ordinance or regulation to the board of tax appeals.

HISTORY: 150 v H 95, § 1, eff. 6-26-03.

The provisions of § 156, H.B. 95 (150 v —), read as follows:
SECTION 156. (B) The amendment by this act of sections 718.11, 5717.011, and 5717.03 of the Revised Code apply to matters relating to taxable years beginning on or after January 1, 2004.

The effective date is set by section 183 of H.B. 95 (150 v —).

§ 5717.02 Appeals from final determinations; procedure; hearing.

Except as otherwise provided by law, appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be taken to the board

of tax appeals by the taxpayer, by the person to whom notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner is required by law to be given, by the director of budget and management if the revenues affected by such decision would accrue primarily to the state treasury, or by the county auditors of the counties to the undivided general tax funds of which the revenues affected by such decision would primarily accrue. Appeals from the redetermination by the director of development under division (B) of section 5709.64 or division (A) of section 5709.66 of the Revised Code may be taken to the board of tax appeals by the enterprise to which notice of the redetermination is required by law to be given. Appeals from a decision of the tax commissioner concerning an application for a property tax exemption may be taken to the board of tax appeals by a school district that filed a statement concerning such application under division (C) of section 5715.27 of the Revised Code. Appeals from a redetermination by the director of job and family services under section 5733.42 of the Revised Code may be taken by the person to which the notice of the redetermination is required by law to be given under that section.

Such appeals shall be taken by the filing of a notice of appeal with the board, and with the tax commissioner if the tax commissioner's action is the subject of the appeal, with the director of development if that director's action is the subject of the appeal, or with the director of job and family services if that director's action is the subject of the appeal. The notice of appeal shall be filed within sixty days after service of the notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner or redetermination by the director has been given as provided in section 5703.37, 5709.64, 5709.66, or 5733.42 of the Revised Code. The notice of such appeal may be filed in person or by certified mail, express mail, or authorized delivery service. If the notice of such appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 [5703.05.6] of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. The notice of appeal shall have attached thereto and incorporated therein by reference a true copy of the notice sent by the commissioner or director to the taxpayer, enterprise, or other person of the final determination or redetermination complained of, and shall also specify the errors therein complained of, but failure to attach a copy of such notice and incorporate it by reference in the notice of appeal does not invalidate the appeal.

Upon the filing of a notice of appeal, the tax commissioner or the director, as appropriate, shall certify to the board a transcript of the record of the proceedings before the commissioner or director, together with all evidence considered by the commissioner or director in connection therewith. Such appeals or applications may be heard by the board at its office in Columbus or in the county where the appellant resides, or it may cause its examiners to conduct such hearings and to report to it their findings for affirmation or rejection. The board may order the appeal to be heard upon the record and the evidence certified to it by the commissioner or director, but upon the application of any interested party the board shall order the

hearing of additional evidence, and it may make such investigation concerning the appeal as it considers proper.

HISTORY: GC § 5611; 106 v 246(260), § 54; 118 v 344; 119 v 34(48); Bureau of Code Revision, 10-1-53; 135 v § 174 (Eff 12-4-73); 136 v H 920 (Eff 10-11-76); 137 v H 634 (Eff 8-15-77); 139 v H 351 (Eff 3-17-82); 140 v H 260 (Eff 9-27-83); 141 v S 124 (Eff 9-25-85); 141 v H 321 (Eff 10-17-85); 145 v S 19 (Eff 7-22-94); 148 v H 612 (Eff 9-29-2000); 148 v S 287 (Eff 12-21-2000); 149 v S 200. Eff 9-6-2002.

Cross-References to Related Sections

Appeals from—

Air or noise pollution control certificate, RC § 5709.24.
 Beer, assessment against permit holders, RC § 4305.13.1.
 Cigarette tax assessment, RC § 5743.08.1.
 Conversion certificate, RC § 5709.34.
 Corporation franchise taxes assessed, RC § 5733.11.
 Electric distribution company, RC § 5727.89.
 Denial of registration, RC § 5727.93.
 Energy conversion certificate, RC § 5709.49.
 Gas company; electric company, RC § 5727.26.
 Highway use tax assessment, RC § 5728.10.
 Horse-racing; tax on pari-mutuel wagering system, RC § 3769.08.8.
 Income tax assessment, RC § 5747.13.
 Motor fuel dealer or qualified interstate bus operator; noncompliance, RC § 5735.12.
 Personal property assessment, RC §§ 5711.26, 5711.29, 5711.31, 5711.32.
 Public utility assessment, RC § 5727.23.
 Sales tax assessment, RC § 5739.13.
 Severance taxes assessed, RC § 5749.07.
 Tire sales fee, RC § 3734.90.7.
 Utilities service tax, liability and assessment on, RC § 324.06.
 Application by eligible enterprise for extension of benefits certificate or employee tax credit certificate, RC § 5709.66.
 Application for exemption; rights of board of education, RC § 5715.27.
 Assessment of real property; rules and procedures, RC § 5715.01.
 Cigarette distributor license, suspension for delinquency, RC § 5743.61.
 County to pay assessment and hearing expenses of tax commissioner, RC § 5715.36.
 Electric light company income assessment, RC § 5745.12.
 Journalization of board decision, RC § 5717.03.
 Liability shall relate back to original valuation, RC § 5717.06.
 Liquor permit holders; annual examination of tax records; notification of delinquency or liability; effect on renewal of permit, RC § 4303.27.1.
 Mailing of assessment to utility; petition for reassessment, RC § 5727.47.
 Nonrefundable credit for eligible employee training costs, RC § 5733.42.
 Nonresident taxpayer, election, RC § 5747.25.
 Redetermination that enterprise is unqualified for tax incentive certificate may be appealed, RC § 5709.64.
 Remission of illegally assessed taxes or late payment penalty, RC § 5715.39.
 Tobacco products excise tax, RC § 5743.56.
 Transfer of property to name of purchaser by county auditor, complaint against values or allocation of assessments when, RC § 319.20.
 Vendor's license revocation, RC § 5739.19.

Ohio Rules

Methods of service, CivR 4.1.

Ohio Administrative Code

Board of tax appeals—

Hearings. OAC 5717-1-15.
 Mediation conferences. OAC 5717-1-21.
 Notice of appeal. OAC 5717-1-04.

Income tax refund offset; portion of joint refund due to obligor's spouse; appeal from final determination. OAC 5703-7-14.
 International registration plan, audits and hearings: appeal from final determination of audit. OAC 5703-13-06.

Practice Manuals and Treatises

Anderson's Appellate Practice and Procedure in Ohio § 17.03
 Notice of Appeal

CASE NOTES AND OAG

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Constitutionality

When a taxpayer merely makes an allegation in its notice of appeal to the BTA that the imposition of the use tax violates federal and state equal protection, there is no specificity and the allegation of error must fail under RC § 5717.02: *Castle Aviation, Inc. v. Wilkins*, 109 Ohio St. 3d 290, 847 N.E.2d 420, 2006 Ohio 2420, (2006).

The question of whether a tax statute is unconstitutional when applied to a particular state of facts must be raised in the notice of appeal to the BTA, and the BTA must receive evidence concerning this question if presented, even though the BTA may not declare the statute unconstitutional: *Cleveland Gear Co. v. Limbach*, 35 Ohio St. 3d 229, 520 N.E.2d 188 (1988).

A party that challenges the constitutionality of the application of a tax statute in a particular situation is required to raise that challenge at the first available opportunity during the proceedings before the Tax Commissioner, and a failure to do so constitutes a waiver of that issue: *Bd. of Edn. of South-Western City Schools v. Kinney*, 24 Ohio St. 3d 184, 24 Ohio B. 414, 494 N.E.2d 1109 (1986).

Generally

In the context of administrative appeals, more specific sections of the Revised Code may apply, and if they do, RC Chapter 2505 is superseded. Under the circumstances, the board of tax appeals' denial of intervention constituted a final, appealable order because it affect a substantial right and was made in a special proceeding. A person's assertion that it has a legal right to be a party to a BTA appeal makes it a "party" under the third paragraph of RC § 5717.04 for one limited purpose: to seek the court's determination of whether the asserted right exists: *Southside Cmty. Dev. Corp. v. Levin*, 116 Ohio St. 3d 1209, 878 N.E.2d 640, 2008 Ohio 3, (2007).

A county auditor's right to appeal a final determination of the tax commissioner to the BTA is subject to the requirements of RC § 5717.02. The only issues that can be appealed to the BTA from a final determination are those set forth in the determination: *Deweese v. Zaino*, 100 Ohio St. 3d 324, 800 N.E.2d 1, 2003 Ohio 6502, (2003).

Service of the commissioner's order on the statutory agent at the address on file was sufficient. Where the petitioner for reassessment is a corporation, an appeal in an officer's personal