ORIGINAL

IN THE SUPREME COURT OF OHIO

Willis Day Warehousing Co.,	:	
Appellant,	:	Case No. 2010 - 0115
v.	:	
Wood County Board of Revision and Wood County Auditor,	:	Appeal from the Ohio Board of Tax Appeals Case No. 2006-M-1749 and Case No. 2007-M-868
Appellees.	:	

MOTION OF APPELLEES WOOD COUNTY AUDITOR AND WOOD COUNTY BOARD OF REVISION TO DISMISS APPEAL

Ronald B. Noga (0013345)
COUNSEL OF RECORD
1010 Old Henderson Road, Suite 1
Columbus, Ohio 43220
614-326-1954
Fax 614-447-1673

Attorney for Appellant
Willis Day Warehousing Co.

James R. Gorry (0032461)
COUNSEL OF RECORD
1299 Carron Drive
Columbus, Ohio, 43220
614-327-1067
jgorry@richgillislawgroup.com

Attorney for Appellees Wood County Auditor and Board of Revision

FILED
JAN 10 2011
CLERK OF COURT
SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

Willis Day Warehousing Co.,	:	
Appellant,	:	Case No. 2010 - 0115
v.	:	
Wood County Board of Revision and Wood County Auditor,	:	Appeal from the Ohio Board of Tax Appeals Case No. 2006-M-1749 and Case No. 2007-M-868
Appellees.	:	

MOTION OF APPELLEES TO DISMISS APPEAL

Now come Appellees and move this Court to dismiss the appeal filed in this matter on the grounds that Appellant did not serve a copy of its notice of appeal on the Ohio Tax Commissioner as required by R.C. 5717.04 and *Olympic Steel, Inc. v. Cuyahoga Cty. Bd. of Revision*, 110 Ohio St.3d 1242, 2006-Ohio-4091, 852 N.E.2d 178.

The notice of appeal filed by Appellant herein does not name the Tax Commissioner as an appellee and the certificate of service does not state that a copy of the notice of appeal was served on the Ohio Tax Commissioner. The certificate of service states that the notice of appeal was served only on the Wood County Board of Revision and the Wood County Auditor.

In *Olympic Steel, Inc. v. Cuyahoga Cty. Bd. of Revision*, supra, this Court held that a notice of appeal from a decision of the Ohio Board of Tax Appeals must be served on the Tax Commissioner pursuant to R.C. 5717.04. According to this Court:

"{¶ 2} In any appeal from a decision of a county board of revision, R.C. 5717.03(B) requires the BTA to send a copy of its decision by certified mail to the Tax Commissioner, and R.C. 5717.04 requires that an appellant who wishes to challenge the BTA's decision must serve the Tax Commissioner, who by statute must be made an appellee, with a copy of the notice of appeal by certified mail."

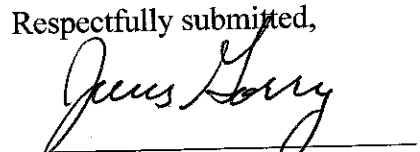
In paragraph two of the opinion in *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 114 Ohio St.3d 1224, 2007-Ohio-4007, this Court stated the following:

"{¶2} In *Olympic Steel, Inc. v. Cuyahoga Cty. Bd. of Revision*, 110 Ohio St.3d 1242, 2006-Ohio-4091, 852 N.E.2d 178, we held that the service requirement set forth in the sixth paragraph of R.C. 5717.04 is mandatory and jurisdictional and that failure to comply requires dismissal of the appeal. R.C. 5717.04 specifies who must be made appellees, and that section requires that an appellant serve a copy of its notice of appeal on those persons by certified mail."

CONCLUSION

For the reasons set forth herein, Appellees' respectfully request this Court to dismiss the appeal filed herein

Respectfully submitted,



James R. Gorry (0032461)
1299 Carron Drive
Columbus, Ohio 43220
(614) 327-1067

Attorney for Appellees
Wood County Auditor and BOR

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing motion was served Ronald Noga, 1010 Old Henderson Road, Suite 1, Columbus, Ohio, 43220, by regular U.S. Mail, postage prepaid, this 10th day of January, 2011.

James Gorry

James R. Gorry