

**IN THE SUPREME COURT OF OHIO**

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

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**APPELLEES' MEMORANDUM IN OPPOSITION TO APPELLANT'S  
MOTION FOR RECONSIDERATION**

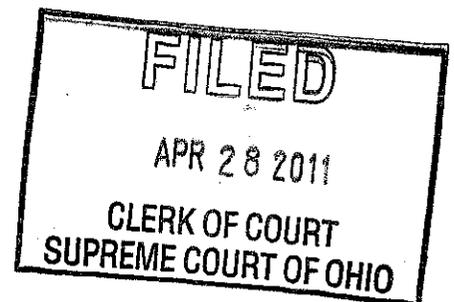
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Ronald B. Noga (0013345)  
COUNSEL OF RECORD  
1010 Old Henderson Road, Suite 1  
Columbus, Ohio 43220  
614-326-1954  
Fax 614-447-1673

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



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Now come Appellees, the Wood County Auditor and Wood County Board of Revision, and submit this memorandum in opposition to Appellant's motion for reconsideration.

With all due respect to Appellant, its motion for reconsideration is not based on the correct interpretation of R.C. 5717.03. Appellant's argument, which is the very same argument originally set forth in its reply to Appellees' motion to dismiss, is based on the application of R.C. 5717.03(B) or R.C. 5717.03(E) to the notice of appeal. According to Appellant, it was not required by R.C. 5717.04 to serve the Tax Commissioner with a copy of its notice of appeal because a BTA decision dealing with its own "jurisdiction" is not a decision referred to in R.C. 5717.03(B), and the BTA was not required to send a copy thereof to the Tax Commissioner. This means that Appellant was not required to join the Tax Commissioner in an appeal taken from a jurisdictional decision of the BTA.

However, Appellant misinterprets R.C. 5717.03(B) and (E). The former provision applies to any appeal "from a decision of a county board of revision." Appellant's appeal to the BTA was an appeal "from a decision of a county board of revision." This provision reads as follows:

“(B) In case of an appeal from a decision of a county board of revision, the board of tax appeals shall determine the taxable value of the property whose valuation or assessment by the county board of revision is complained of \*\*\* and the board of tax appeals’ decision \*\*\* shall be sent by the board \*\*\* to the tax commissioner.”

Appellant claims that because the BTA did not “determine the taxable value of the property” but rather determined that it had no jurisdiction to determine that value, R.C. 5717.03(B) had no application to the BTA’s decision. Rather, Appellant claims that the BTA’s jurisdictional decision fell under R.C. 5717.03(E), which states as follows:

“(E) In the case of all other appeals or applications filed with and determined by the board, the board’s order \*\*\* shall be sent by the board to the person who is a party to such appeal or application, to such persons as the law requires, and to such other persons as the board deems proper.”

R.C. 5717.03(B) specifically refers to “an appeal from a decision of a county board of revision” and when it authorizes the BTA to “determine the taxable value of the property whose valuation is complained of” it obviously authorizes the BTA to determine whether it has jurisdiction to determine the value of the property. The BTA is authorized to determine its own jurisdiction. *National Tube Co. v. Ayres* (1949), 152 Ohio St. 255, 89 N.E.2d 129, and *State v. Carney* (1956), 166 Ohio St. 811, 1 Ohio Op. 2d 210, 139 N.E.2d 339. Thus, any decision made in “an appeal from a decision of a county board of revision” is governed by R.C. 5717.03(B) and is required to be sent to the Tax Commissioner. All jurisdictional decisions, procedural decisions that constitute final

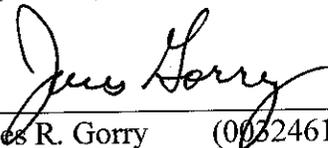
orders, and valuation decisions made in “an appeal from a decision of a county board of revision” are made under R.C. 5717.03(B), and all must be sent to the Tax Commissioner.

When R.C. 5717.03(E) refers to “all other appeals or applications filed with and determined by the board” it refers to the various appeals from county budget commissions of tax rates and library funds and other appeals relating to state revenue sharing funds (local government funds and such) under R.C. 5705.321, R.C. 5705.341, R.C. 5705.37, R.C. 5747.53, and R.C. 5747.55, for instance. These types of appeals are referred to in R.C. 5703.02(A)(1) as appeals from the “[a]ctions of county budget commissions.”

#### CONCLUSION

For the reasons set forth herein, Appellees’ respectfully request this Court to deny Appellant’s motion for reconsideration.

Respectfully submitted,

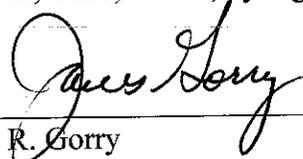


James R. Gorry (0032461)  
1299 Carron Drive  
Columbus, Ohio 43220  
(614) 327-1067

Attorney for Appellees  
Wood County Auditor and BOR

#### CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing memorandum was served Ronald Noga, 1010 Old Henderson Road, Suite 1, Columbus, Ohio, 43220, by regular U.S. Mail, postage prepaid, this 28th day of April, 2011.



James R. Gorry