

ORIGINAL

11-1793

IN THE SUPREME COURT OF OHIO

PROGRESSIVE PLASTICS, INC., ) Appeal from the Ohio Board of Tax Appeals  
 )  
 Appellant, )  
 v. )  
 ) Board of Tax Appeals  
 RICHARD A. LEVIN [JOSEPH W. TESTA], )  
 Tax Commissioner of Ohio, ) Case No. 2008-A-241  
 )  
 Appellee. )

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NOTICE OF APPEAL OF APPELLANT PROGRESSIVE PLASTICS, INC.

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**NOTICE OF APPEAL OF APPELLANT PROGRESSIVE PLASTICS, INC.**

Appellant Progressive Plastics, Inc. hereby gives notice of its appeal as of right, pursuant to R. C. § 5717.04, to the Supreme Court of Ohio from a Decision and Order of the Board of Tax Appeals journalized in Case No. 2008-A-241 on September 20, 2011. A true and accurate copy of the Decision and Order of the Board being appealed is attached hereto and incorporated herein by reference.

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

1. The Board of Tax Appeals erred in upholding the Final Determination of Appellee Tax Commissioner with regard to Appellant Progressive Plastics, Inc.'s 2004 and 2005 personal property tax return.

2. The Board of Tax Appeals erred in holding that it was Appellant Progressive Plastics, Inc.'s burden to prove the accuracy of the book value of its inventory under R. C. §§ 5711.18 and 5711.21(A).

3. The Board of Tax Appeals erred in finding that Appellee Tax Commissioner had met its burden under R. C. §§ 5711.18 and 5711.21(A) to make a finding that Appellant Progressive Plastics, Inc.'s book value of its inventory did not accurately represent the true value of such inventory for personal property tax purposes.

4. The Board of Tax Appeals erred, as a matter of fact and law, in finding that the FIFO method of accounting undervalued Appellant Progressive Plastics, Inc.'s inventory for the purpose of its 2004 and 2005 personal property tax.

5. The Board of Tax Appeals' decision in upholding the Final Determination of Appellee Tax Commissioner was against the manifest weight of the evidence and contrary to law

as the only evidence presented to the Board of Tax Appeals was from Appellant Progressive Plastics, Inc. which substantiated the book value of its inventory.

6. The Board of Tax Appeals interpretation of R. C. §§ 5711.18 and 5711.21(A) violates the Equal Protection and Due Process Clauses of the United States Constitution in that it places the burden on the taxpayer to prove the accuracy of the book value of its inventory.

7. The Board of Tax Appeals interpretation of R. C. §§ 5711.18 and 5711.21(A) violates the Equal Protection and Due Process Clauses of the United States Constitution in that it allows the Appellee Tax Commissioner to arbitrarily increase the value of a taxpayer's inventory for personal property tax purposes.

8. The Board of Tax Appeals erred in including information obtained from prior audits in the Record in the instant case.

9. The Board of Tax Appeals erred in allowing Appellee Tax Commissioner to rely on information obtained from a prior year's audit in assessing additional personal property tax to Appellant Progressive Plastics, Inc. for 2004 and 2005.

10. The Board of Tax Appeals erred in finding that Appellee Tax Commissioner took into consideration relevant information for the 2004 and 2005 tax years in rendering his Final Determination.

11. The Board of Tax Appeals erred as a matter of fact and law in holding that information obtained by Appellee Tax Commissioner from a prior year's audit supported the Final Determination as to Appellant Progressive Plastics, Inc.'s 2004 and 2005 personal property tax return.

12. The Board of Tax Appeals erred in holding that the doctrine of collateral estoppel precluded Appellant Progressive Plastics, Inc. from arguing that the FIFO (“first in, first out”) method of accounting properly valued its inventory.

13. The Board of Tax Appeals erred in holding that Appellant Progressive Plastics, Inc. did not specify as an error with the Board of Tax Appeals that certain of its personal property was exempt from taxation under the “dies” exception contained in R. C. 5701.03(A).

Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing *Notice of Appeal of Appellant Progressive Plastics, Inc.* was served via Certified Mail [REDACTED] this 19<sup>th</sup> day of October, 2011 upon the following:

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**OHIO BOARD OF TAX APPEALS**

Progressive Plastics, Inc.,	)	
	)	
Appellant,	)	
	)	CASE NO. 2008-A-241
vs.	)	
	)	(PERSONAL PROPERTY
Richard A. Levin, Tax Commissioner	)	TAX)
of Ohio,	)	
	)	DECISION AND ORDER
Appellee.	)	

APPEARANCES:

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Entered SEP 20 2011

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant from a final determination issued by the Tax Commissioner. Therein, the commissioner affirmed the personal property tax assessments against appellant Progressive Plastics, Inc. ("Progressive") relating to tax years 2004 and 2005.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the Tax Commissioner, and the briefs filed by counsel in lieu of appearing before the board.

At the outset, we acknowledge the presumption that the findings of the Tax Commissioner are valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. It is therefore incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut the presumption and establish a right to the relief requested. *Hatchadorian v. Lindley* (1986), 21 Ohio St.3d 66; *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the Tax Commissioner's determination is in error. *Kern v. Tracy* (1995), 72 Ohio St.3d 347; *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213. Where no competent and probative evidence is developed before this board by the appellant to show that the Tax Commissioner's findings are incorrect, then the Board of Tax Appeals must affirm the Tax Commissioner's findings. *Kern*, supra; *Kroger Co. v. Limbach* (1990), 53 Ohio St.3d 245; *Alcan*, supra.

In its notice of appeal, Progressive, a plastic bottle manufacturer, contends that the commissioner's "Final Determination of Appellant's Tax Years 2004 and 2005 Ohio personal property tax liability erroneously, unreasonably and unlawfully increased Appellant's personal property for Tax Years 2004 and 2005 by: (1) increasing the listed value of Appellant's inventory; (2) increasing the listed value of Appellant's manufacturing machinery and equipment; and (3) increasing the listed

value of Appellant's furniture, fixtures, etc. not used in manufacturing." Appeal at 1-2.

In its reply brief, Progressive further summarized its position, as follows:

"(1) First, PPI intends [sic] that the Tax Commissioner cannot rely on information obtained from a 2003 audit to challenge the value of a taxpayer's personal property for 2004 and 2005;

"(2) Even if it was proper [for] the Tax Commissioner to rely on 2003 information to assess additional tax liability for the 2004-2005 years, the Tax Commissioner failed to meet its [sic] burden under R.C. 5711.18 and 5711.21(A) to make a finding, based on the facts and circumstances unique to the taxpayer, to rebut the listed value of PPI's inventory; and

"(3) The Tax Commissioner erroneously assessed personal property tax on items of equipment exempt from such taxation under the dies exception contained in R.C. 5701.03." Reply Brief at 1.

Relevant to our discussion herein is this board's prior determination, and the court of appeals affirmance thereof, regarding an assessment against Progressive relating to its personal property tax return for tax year 2003. See *Progressive Plastics, Inc. v. Wilkins* (May 13, 2008), BTA No. 2006-M-1043, unreported, affirmed sub nom. *Progressive Plastics, Inc. v. Levin*, Cuyahoga App. No. 91614, 2009-Ohio-2033. In the board's decision, we agreed with the commissioner's conclusion that Progressive's use of the "Last-In, First-Out" ("LIFO") method of reporting inventory for accounting and federal income tax purposes did not accurately reflect Progressive's inventory, and, as such, the "First-In, First-Out" ("FIFO")

method should have been used.<sup>1</sup> The board concluded that Progressive had not met its burden of providing competent and probative evidence “that the inventory is more accurately valued in accordance with the method proposed by Progressive.” *Id.* at 13. The board also agreed with the commissioner’s conclusion that based upon the definitions for dies set forth in *A. Schulman, Inc. v. Levin*, 116 Ohio St. 3d 105, 2007-Ohio-5585, which “describe devices which take some action upon the final product by impression or force,” the value attributable to extrusion heads and screws was not exempt from taxation as dies since the “extrusion heads and screws work together to create the usable material necessary to form a mold, but do not participate in the formation process.” *Id.* at 16-17. Finally, the board agreed with Progressive that the software costs should have been removed from the assessment since “the software program had been removed from use as of the end of 2003,” as demonstrated by its tax return which clearly listed two human resource software packages, one purchased in November 1994, which Progressive argued was abandoned after a second package was purchased in January 2000. *Id.* at 19.

In the instant matter, Progressive first argues that “the commissioner cannot rely on 2003 ‘findings’ to assess tax for 2004/2005.” Appellant Brief at 4. On the contrary, when taxpayer information has been requested but not supplied, the commissioner “shall inform himself as best he can on the matters necessary to be

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<sup>1</sup> “LIFO assumes that the last merchandise purchased or manufactured by a merchant is sold by the merchant before he sells the older merchandise in stock. FIFO (‘first-in, first-out’) assumes that the first inventory purchased or manufactured is the first inventory sold. FIFO generally better reflects the current replacement costs of the inventory than LIFO because the average inventory values under the FIFO method will be based on the acquisition costs of the most newly acquired inventory, rather than the earliest acquired inventory.” *Progressive Plastics, Inc. v. Levin*, Cuyahoga App. No. 91614, 2009-Ohio-2033, at 1.

known in order to discharge his duties.” R.C. 5703.36. See, also, R.C. 5711.26 (“For the purpose of issuing a final assessment the commissioner may utilize all facts or information he possesses \*\*\*.”). While the audit remarks, dated May 12, 2006, reflect that the “auditor completed the audit of the 2004 and 2005 returns with only the information that was made available from the 2003 audit,” Appellant Brief, Ex. A at 3, such remarks also indicate that although requested from the taxpayer on several occasions, no records relating to the subject tax year, including, as requested, fixed asset records, inventory schedules, documentation used to reconcile the records with the general ledger, charts of accounts, and work papers used in preparing returns, S.T. at 459, were provided by Progressive before the auditor’s remarks were completed. Appellant Brief, Ex. A at 3-6.<sup>2</sup> The commissioner was compelled to issue the assessments prior to the expiration of the statute of limitations for doing so, i.e., August 14, 2006. See R.C. 5711.25. Progressive contends that “on or about August 31, 2006,<sup>3</sup> the undersigned Firm provided all the relevant information to the Department of Taxation.” Appellant Brief at 4. Thereafter, on or about September 22, 2006, Progressive filed its petition for reassessment from the amended preliminary assessment certificates of valuation, which were dated July 21, 2006. S.T. at 289. After the petition for reassessment was filed, a telephone hearing was convened with

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<sup>2</sup> Appellant contends that it did not refuse to provide the records in question. It claims that it had requested that the 2004-2005 audit be postponed until the 2003 tax year audit was resolved, and while waiting for a response to its request, the assessments were issued. Further, it claims it never received the commissioner’s denial of its request for postponement or it would have then provided the records in question. Appellant’s Brief at 3-4.

<sup>3</sup> The commissioner contends, however, that he did not receive such information until on or about January 24, 2007. Appellee Brief at 6.

the commissioner before the final determination was issued, on or about December 26, 2007.

In rendering the final determination herein, the commissioner clearly had available to him all of the information supplied by Progressive after the audit was concluded and the preliminary assessments issued, as well as any further information provided through the petition for reassessment and at hearing by Progressive. Therefore, arguably, the final determination has taken into consideration not only relevant information related to the 2003 tax year, but also the subject 2004 and 2005 tax years. But, even if the commissioner's final determination had not considered the facts relating to tax years 2004 and 2005, as Progressive claims, it did not provide any evidence of how the facts, as they relate to the subject tax years, have changed since tax year 2003 or how the amounts assessed are specifically incorrect. In fact, Progressive chose to submit the instant matter on the record, waiving its right to a hearing, and foregoing an opportunity to present evidence or testimony in support of its claims.<sup>4</sup> Accordingly, based upon the foregoing, we find no merit in Progressive's claim that the assessments that were affirmed through the commissioner's final determination were only based upon information from tax year 2003.

Progressive next contends that the commissioner's increase in its inventory valuation based upon the use of the FIFO method of valuation, instead of the LIFO method, as advocated by Progressive, is improper and unsupported by the

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<sup>4</sup> We note that Progressive's initial briefs in both the 2003 tax year case and the 2004-2005 tax year case are essentially identical, arguably highlighting the identity of facts, issues and arguments involved in both cases.

facts herein. Progressive describes its principal place of business as a manufacturing facility and a warehouse where plastic bottles are manufactured and stored. Appellant's Brief at 6. Based upon the manner in which these plastic bottles are stored in the warehouse, Progressive argues that the more recently produced bottles are stored in front of the older bottles, and, as such, are more readily accessible to Progressive's employees and therefore, are drawn upon quite frequently. Appellant's Brief at 6. Progressive contends that based upon its business practices, "LIFO is not merely an accounting method at PPI, but is also a substantial part of how inventory is actually moved at PPI. \*\*\* Having said that, as an economic reality, PPI's actual method of moving its inventory is a hybrid method, utilizing both LIFO and FIFO." Appellant's Brief at 7. If the foregoing statement is accurate, then Progressive has admittedly used a method of valuation that is not completely reflective of its inventory and business practices.

Further, this board considered the same arguments from Progressive in the 2003 tax year case. We held that Progressive did not provide this board with any corroborating evidence demonstrating its personal property's value in conjunction with the description of its business practices. As this board reiterated in that case, quoting *Howard Paper Mills, Inc. v. Lindley* (July 23, 1979), BTA No. 1978-E-128, unreported, affirmed (Jan. 14, 1980), Montgomery App. No. CA 6522, unreported, "[a]lthough the appellant tries to place the burden on the Tax Commissioner to show that FIFO inventory method values reflect true value, the burden of proof is upon the taxpayer." *Progressive Plastics*, BTA No. 2006-M-1043, at 11. The taxpayer must

establish the right to the relief sought, and we held that “[w]ithout some evidence that the inventory is more accurately valued in accordance with the method proposed by Progressive, this board cannot find that Progressive met its burden in this claim of presenting competent and probative evidence of an error.” *Progressive Plastics*, BTA No. 2006-M-1043, at 13. On appeal, the court echoed this board’s conclusions, stating that “[t]he record demonstrates that PPI failed to provide sufficient evidence that LIFO accurately reflected the true value of its inventory.” *Progressive Plastics*, Cuyahoga App. No. 91614, at 7.

Based upon the foregoing, we find that Progressive is precluded from raising the LIFO/FIFO arguments. Collateral estoppel precludes an identical claim from being raised a second time among the same parties. See *State ex rel. Westchester, v. Bacon* (1980), 61 Ohio St.2d 42. While the doctrine of collateral estoppel has been applied in tax matters, see *Superior’s Brand Meats, Inc. v. Lindley* (1980), 62 Ohio St.2d 133, generally, collateral estoppel does not apply in tax cases because every assessment is new; therefore, there is no identity of issues. *Beatrice Foods v. Lindley* (1982), 70 Ohio St.2d 29. However, in *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* 122 Ohio St.3d 134, 2009-Ohio-2461, the court held that “the determination in an earlier year of a discrete factual/legal issue that is common to successive tax years may bar relitigation of that discrete issue in the later years[.]” citing *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Dec. 28, 1993), Franklin Cty. App. No. 92-AP-1715, unreported. In addition, as this board’s hearing is judicial in nature, the court has determined that the doctrine of collateral

estoppel applies to determinations made by the Board of Tax Appeals. *Superior's Brand Meats, Inc.*, syllabus.

The elements of collateral estoppel, or issue preclusion, are as follows: the party against whom estoppel is sought was a party or in privity with a party to the prior action; there was a final judgment on the merits in the previous case after a full and fair opportunity to litigate the issue; the issue must have been admitted or actually tried and decided and must be necessary to the final judgment; and the issue must have been identical to the issue involved in the prior suit. *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36, 41, reversed on other grounds, *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473.

In the present matter, the same LIFO/FIFO issue and arguments in support were raised by Progressive as were raised in the 2003 tax year case. In fact, Progressive's initial brief in the 2004-2005 tax year cases is essentially identical to that which it submitted in the 2003 tax year case, highlighting the identity of facts, issues and arguments involved in both cases. Progressive has not in any way attempted to distinguish the facts of the present matter from those of the previous case or argued the application or relevance of any different law. Further, Progressive submitted the instant matter on the record, waiving its right to a hearing, and, therefore, the presentation of any evidence or testimony in support of its claims; arguably, if it is Progressive's contention that tax years 2004 and 2005 are different from the previously considered 2003 tax year, it is unclear why it would voluntarily

waive the opportunity to provide the evidence or testimony necessary to support such claim. This board issued a judgment on the same merits in its previous case after a full and fair opportunity to litigate. Moreover, the matter was also considered and determined by the court of appeals. Therefore, we find that the LIFO/FIFO issue was fully litigated in the 2003 case and accordingly, under the doctrine of collateral estoppel, Progressive's arguments regarding LIFO/FIFO in the instant matter will not be considered.

Next, Progressive argues, as it did with regard to tax year 2003, that its extrusion heads and/or screws qualify as dies that are exempt from taxation pursuant to R.C. 5701.03(A).<sup>5</sup> The commissioner, however, contends that this board does not have jurisdiction to consider such issue because it was not specified as error, either in Progressive's petition for reassessment before the commissioner or in the notice of appeal filed with this board. We agree.

Our determination regarding whether jurisdiction has been properly established with this board begins with R.C. 5717.02, which provides in pertinent 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*, but failure to attach a copy of such notice and incorporate it by reference in the notice of appeal does not invalidate the appeal." (Emphasis added.)

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<sup>5</sup> The record reflects, however, that Progressive properly included the extrusion heads and screws in its tax computation for the 2004 and 2005 returns. S.T. at 315.

In *Funtime, Inc. v. Wilkins* (May 24, 2011), BTA No. 2006-K-730, unreported at 5-6,

this board held:

“Pursuant to R.C. 5717.02, a party may challenge a final determination issued by the commissioner, but in doing so it must specify the errors claimed to exist therein. ‘Under the wording of the statute the board [is] entitled to be advised specifically of the various errors charged to the Tax Commissioner. The word, “specify,” according to Black’s Law Dictionary (4 Ed.) means “to mention specifically; to state in full and explicit terms; to point out; to tell or state precisely or in detail; to particularize; or to distinguish by words on thing from another.” See, also, 39A Words and Phrases (Perm. Ed.), 469. And in Webster’s New International Dictionary (2 Ed.), “specify” is defined as “to mention or name in a specific or explicit manner; to tell or state precisely or in detail.” *Queen City Valves v. Peck* (1954), 161 Ohio St. 579, 583. In *Brown v. Levin*, 119 Ohio St.3d 335, 2008 Ohio 4081, the court reiterated its prior holding, ‘[a]s 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. \*\*\* An assignment 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 ¶18.

“Despite language indicating that ‘[i]n resolving questions regarding the effectiveness of a notice of appeal, we are not disposed to deny review by a hyper-technical reading of the notice,’ *Buckeye Internatl., Inc. v. Limbach* (1992), 64 Ohio St.3d 264, 268, 1992 Ohio 55, the Supreme Court has acknowledged ‘the specification requirement is stringent.’ *Brown*, supra, at ¶18. The court has not been reluctant to find this board’s jurisdiction is ‘limited to errors specified in the notice of appeal,’ *Newman v. Levin*, 120 Ohio St.3d 127, 2008 Ohio 5202, at ¶26, at times reversing this board’s exercise of jurisdiction over issues not sufficiently specified. See, e.g., *Ohio Bell Tel. Co. v. Levin*, 124 Ohio St.3d 211, 2009 Ohio 6189; *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.”

In its decisions, the Ohio Supreme Court has clearly focused upon the specification of error requirement set forth in R.C. 5717.02, finding that this board has no jurisdiction to consider specific issues unless the appellant identifies such error in its notice of appeal. See *Ohio Bell*, supra; *Newman*, supra; *Brown*, supra. But, see, *WCI Steel, Inc. v. Testa*, 129 Ohio St.3d 256, 2011-Ohio-3280.

Thus, upon review, we find the notice of appeal under consideration has provided no specific claim regarding any error committed by the commissioner relating to extrusion heads and screws.<sup>6</sup> In its notice of appeal, Progressive generally cited as error the increase in “the listed value of Appellant’s schedule of assets.” Notice of Appeal at 5. We find nothing in the notice of appeal which suggests that the appellant is specifically challenging the commissioner’s determination regarding extrusion heads and screws.

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<sup>6</sup> Even if Progressive had specified error with regard to such issue, we would have concluded that there is nothing in the record to call into question this board’s previous pronouncement that the extrusion heads/screws are not dies, and therefore are not exempt from personal property taxation. Progressive has not provided this board with any information that would require us to disturb our prior finding that “[t]he extrusion heads and screws work together to create the usable material necessary to form a mold, but do not participate in the formation process.” *Progressive Plastics*, BTA No. 2006-M-1043, at 17.

Similarly, we find that Progressive did not raise this issue through its petition for reassessment. The Supreme Court has held that a party's failure to raise an issue before the Tax Commissioner precludes that party from later making such a challenge on appeal. See *CNG Dev. Co. v. Limbach* (1992), 63 Ohio St.3d 28, 31-33. Thus, with no specific claim of error relating to the extrusion heads and screws in Progressive's petition for reassessment or its notice of appeal, we find that we have no jurisdiction to consider such claim.

Finally, it is unclear whether Progressive is also contesting the application of tax on certain computer software. As described by the commissioner, Progressive's brief contains a fleeting<sup>7</sup> reference to such issue:

"Curiously, after briefing three-and-a-half pages on why extrusion heads and extrusions screws should be exempt from property tax as dies, Progressive Plastics proceeds to offer three unrelated sentences concerning computer software [in the same paragraph]:

"Accordingly, PPI has demonstrated sufficient evidence for the Board of Tax Appeals to overturn the Commissioner's Final Determination on this issue. First, the facts and circumstances surrounding this issue are consistent with PPI's position that the software was not utilized after the year 2000. Second, PPI has provided the Commissioner with documentation affirmatively stating that the software was not used after the year 2000. Accordingly, the Board of Tax Appeals must overturn the Commissioner's Final Determination on this issue." Appellee Brief at 12.

~~If it was, in fact, Progressive's intent to raise such an issue, we find that this board does not have jurisdiction to consider it, for the same reasons we cited relating to the~~

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<sup>7</sup> It appears that Progressive's reference to the software may have been an oversight caused by use of its prior brief relating to the 2003 tax year as the template for its current brief.

extrusion screws and heads, i.e., Progressive did not specify such issue as error in the notice of appeal or the petition for reassessment.<sup>8</sup>

Accordingly, based upon the foregoing, this board finds that the Tax Commissioner's findings were reasonable and lawful. It is the decision and order of the Board of Tax Appeals that the decision of the Tax Commissioner must be and hereby is affirmed.

ohiosearchkeybta

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. VanMeter, Board Secretary

<sup>8</sup> In the final determination, the commissioner acknowledges that the increases in Schedule 2 and Schedule 4 property in the assessments related to software costs related to the "blow molding and extrusion equipment" and "general business software." S.T. at 2. Thus, the increased tax referred to in the notice of appeal and petition for reassessment for the years in question could not relate to the extrusion screws and heads or the software, as argued for tax year 2003, because those items had been treated properly by Progressive in its 2004 and 2005 returns.