

OHIO BOARD OF TAX APPEALS

Stepleton & Ruble Steel, Inc.,)
)
 Appellant,) CASE NO. 2004-R-484
)
 vs.) (SALES TAX)
)
) DECISION AND ORDER
 William W. Wilkins,)
 Tax Commissioner of Ohio,)
)
 Appellee.)

APPEARANCES:

For the Appellant - No Appearance
Stepleton & Ruble Steel, Inc.
R.R. #1
P.O. Box 250
Hideaway Hills, OH 43107

Appeal Filed By - Rodney G. Stepleton
Stepleton & Ruble Steel, Inc.
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P.O. Box 250
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For the Appellee - Jim Petro
Attorney General of Ohio
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Entered June 24, 2005

Ms. Margulies, Mr. Eberhart, and Mr. Dunlap concur.

This matter is before the Board of Tax Appeals upon a motion to dismiss filed by the Tax Commissioner. In his motion to dismiss, the commissioner requests that this

board dismiss the appellant's appeal for failure to invoke the jurisdiction of the board. The Tax Commissioner submits that the appellant failed to specify the error complained of in the notice of appeal with regard to any of the issues raised in the commissioner's final determination.

The matter is submitted to the Board of Tax Appeals upon the notice of appeal, the Tax Commissioner's motion to dismiss, and the record of the hearing before this board. Despite due notice, the appellant did not appear at the scheduled hearing. The Tax Commissioner was represented by counsel.

R.C. 5717.02 sets forth the requirements that must be met in order to appeal a final determination of the Tax Commissioner to the Board of Tax Appeals. Specifically, R.C. 5717.02 states as follows:

“*** The notice of appeal shall have attached thereto and incorporation 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.)

In the final determination, the commissioner addressed numerous issues, including the amount of time the tax department required in issuing its final determination, the taxability of materials and labor, the taxability of delivery costs when it is not separated on the invoice from materials and labor, the rejection of exemption certificates, letters of exemption, and direct pay permits, the applicability of checks and payments, the status of various refunds, and the denial of a request for the remission of preassessment interest. The

appellant's notice of appeal, however, states that the appellant is unable to procure documents from banks to complete the audit, that the appellant was unable to obtain information on certain transactions, that the appellant's attorneys committed tax –H-fraud, that the final determination reflects different total amounts for the initial assessment and the assessment as amended. From a thorough review of these documents, it appears to this board that none of the appellant's statements in its notice of appeal specify errors of the Tax Commissioner with regard to issues addressed in the final determination.

In *Queen City Valves, Inc. v. Peck* (1954), 161 Ohio St. 579, the Supreme Court of Ohio held that the requirement to specify error in R.C. 5717.02 is mandatory. See, also, *Moraine Hts. Baptist Church v. Kinney* (1984), 12 Ohio St.3d 134; *Kern v. Tracy* (1995), Ohio St.3d 347; *Reuters America, Inc. v. Tracy* (Nov. 28, 1994), BTA No. 1992-H-1414, unreported; *Land & Reclamation Specialists, Inc. v. Tracy* (Oct. 18, 1996), BTA No. 1994-T-512, unreported; and *Black v. Wilkins* (Jan. 7, 2005), BTA No. 2004-G-400, unreported.¹ Furthermore, failure to strictly comply with this requirement fails to invoke the jurisdiction of this board. See, also, *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147; *Abex Corp. v. Kosydar* (1973), 35 Ohio St. 2d 13; *Buckeye Internatl., Inc. v. Limbach* (1992), 64 Ohio St.3d 264; and *Ellwood Engineered Castings Co. v. Zaino* (2003), 98 Ohio St.3d 424.

Based upon the foregoing, the board finds that the appellant's notice of appeal fails to specify the error complained of in the Tax Commissioner's final determination.

Following the statutes and case law in this matter, the board is therefore constrained to find that the commissioner's motion to dismiss must be, and hereby is, granted.

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¹ However, Cf. *Key Services Corp. v. Zaino*, 95 Ohio St.3d 11, 2002-Ohio-1488, in which the Supreme Court of Ohio found that if the board finds issues not raised on appeal are important, the matter may be remanded.