

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 49-400-04-1-7-01662
Petitioner: Superb Sound of Castleton
Respondent: Lawrence Township Assessor (Marion County)
Parcel: Personal Property
Assessment Year: 2004

The Indiana Board of Tax Review (Board) issues this determination in the above matter. It finds and concludes as follows:

Procedural History

1. The Petitioner filed Form 130 with the Marion County Property Tax Assessment Board of Appeals (PTABOA) initiating this appeal.
2. The PTABOA mailed notice of its decision to Petitioner on December 15, 2006.
3. The Petitioner appealed to the Board by filing a Form 131 on January 16, 2006. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated October 25, 2007.
5. Administrative Law Judge Paul Stultz held the administrative hearing in Indianapolis on November 27, 2007.
6. Mr. Jeff Kelsey represented the Petitioner and testified at the hearing. No one appeared or testified for the Respondent.

Facts

7. The property is business tangible personal property.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The assessed value of business tangible personal property as determined by the Marion County PTABOA is \$790,880.
10. The assessed value requested by the Petitioner is \$779,260.

Petitioner's Contentions

11. The 2004 property tax return was filed timely (on or before May 15, 2004) and in substantial compliance with the rules promulgated by the Department of Local Government Finance (DLGF) at Indiana Administrative Code Title 50, Rule 4.2. *Kelsey testimony.*
12. The Board defined substantial compliance in the determination of *Best Lock Corporation* as being a return that omits less than 5% of cost or undervalues true tax value (TTV) by less than 5%. *Kelsey testimony; Pet'r Ex. 9.* The summary of audit results shows the Petitioner omitted cost totaling \$38,764 or 2.84% of the total cost of taxable property. The Petitioner undervalued the TTV of said personal property by \$11,619 or 1.47%. *Kelsey testimony; Pet'r Ex. 7.*
13. Because the Petitioner's return was in substantial compliance, Indiana Code 6-1.1-16-1 allows the Respondent until September 15 of that year, or four months after the date the property tax return was filed, to make a change in the assessment. *Kelsey testimony.*
14. In this case, the Respondent had four months to make changes, but waited until May 9, 2005. The Respondent changed the assessment after the four month period expired, which makes the changes unauthorized. Consequently, the assessed value should be the amount as filed by the Petitioner. *Kelsey testimony; Pet'r Ex. 8.¹*

Record

15. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1: Power of Attorney,
Petitioner Exhibit 2: Form 131,
Petitioner Exhibit 3: Notice of Final Determination by PTABOA,
Petitioner Exhibit 4: Petition to the PTABOA,
Petitioner Exhibit 5: Notice of PTABOA hearing on Petition,
Petitioner Exhibit 6: Summary of pertinent facts presented to the PTABOA,
Petitioner Exhibit 7: Summary of audit changes,
Petitioner Exhibit 8: Notice of the audit results presented to the PTABOA,
Petitioner Exhibit 9: Findings of Fact & Conclusions of Law for *Best Lock Corporation v. Lawrence Township Assessor,*

¹ The Petitioner also expressed "concern" about several allegedly erroneous facts stated on the PTABOA's determination, Form 115. According to the Petitioner, the Form 115 has the wrong hearing date, indicates persons were present who were not actually at the hearing, and lists exhibits that were not offered at the hearing. These are moot points as a result of the Board's determination that the assessor's change to the Petitioner's originally reported values must be set aside because the change was too late.

Petitioner Exhibit 10: Request for list of witnesses and copies of exhibits,
Petitioner Exhibit 11: Notification of intended witnesses and exhibits,
Board Exhibit A: Form 131 with attachments,
Board Exhibit B: Notice of Hearing on Petition,

- d. Petitioner's Motion For Summary Judgment,
- e. Board's Order On Motion For Summary Judgment,
- f. These Findings and Conclusions.

Analysis

16. The most applicable governing statutes are:

Ind. Code § 6-1.1-1-7

"Filing date" means May 15th.

Ind. Code § 6-1.1-9-3

(a) If a taxpayer files a personal property return for a particular year, personal property which is omitted from or undervalued on the return may be assessed, or its assessed value may be increased, only if the notice required under section 1 of this chapter is given within three (3) years after the date the return is filed. However, if the taxpayer's personal property return for a particular year substantially complies with the provisions of this article and the regulations of the department of local government finance, an assessing official or a county property tax assessment board of appeals may change the assessed value claimed by the taxpayer on the return only within the time period prescribed in IC 6-1.1-16-1.

Ind. Code § 6-1.1-16-1

(a) ...[A]n assessing official, county assessor, or county property tax assessment board of appeals may not change the assessed value claimed by a taxpayer on a personal property return unless the assessing official, county assessor, or county property tax assessment board of appeals takes the action and gives the notice required by IC 6-1.1-3-20 within the following time periods:

(1) A township or county assessing official must make a change in the assessed value and give the notice of the change on or before the later of:

(A) September 15 of the year for which the assessment is made; or

(B) four (4) months from the date the personal property return is filed if the return is filed after May 15 of the year for which the assessment is made.

17. The Respondent did not appear or offer evidence to rebut or impeach Petitioner's evidence.
18. The undisputed facts show that the Petitioner filed its return on or before May 15, 2004. The undisputed facts show that the Respondent did not give notice of the assessment change until May 9, 2005. That change clearly does not comply with the time limits in Ind. Code § 6-1.1-16-1.
19. The Respondent might have been authorized to change an assessment under the 3-year time limit in Ind. Code § 6-1.1-9-3. But where a return substantially complies with statutory provisions and the regulations of the Department of Local Government Finance, an assessing official or a county property tax assessment board of appeals may change the assessed value claimed by the taxpayer on the return only within the time period prescribed in IC 6-1.1-16-1. Therefore, the question of substantial compliance in relation to the Petitioner's original return is critical to determining whether or not any changes could be made to the 2004 assessed value on May 9, 2005.
20. "Substantial compliance" is not defined by statute. Nevertheless, the Department of Local Government Finance's penalty rule establishes that a lack of substantial compliance exists when the total cost omitted on a personal property return exceeds 5% of the total cost a person was required to report and/or the amount of the TTV undervaluation exceeds 5% of the value that should have been reported. 50 IAC 4.2-2-10 (d). "The purpose of the ... penalty is to ensure a complete disclosure of all information required ... on the prescribed self-assessment personal property tax form(s). This enables the township assessor ... to carry out their statutory duties of examining returns each year to determine if they substantially comply with the rules" *Id.* Because this rule applies to a closely associated area and there is no more specific provision defining "substantial compliance" for purposes of the time to change an assessment, the Board concludes that the same standard should apply. In other words, the Respondent's authority to change the assessment for three years after the return was filed exists only if the original return undervalued or omitted property by more than 5%.
21. The difference between the original return and the Respondent's increased values was only 2.84% of cost and 1.47% of TTV. The Petitioner's original return substantially complied with applicable statutory and regulatory requirements. Consequently, the Respondent's window of opportunity for making changes to what the Petitioner originally reported closed on or about September 15, 2004.

Conclusion

- 22. The time permitted for changing assessed value from what the Petitioner reported for its 2004 personal property had expired before the Respondent made changes. The increase was barred by Ind. Code § 6-1.1-16-1 and is not authorized by the 3-year statute in Ind. Code § 6-1.1-9-3. Accordingly, the Respondent must reinstate the originally reported amount as the assessed value for the Petitioner's total business personal property for March 1, 2004.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$779,260.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>