

**STATE OF INDIANA
Board of Tax Review**

A.R.E., INC. d/b/a WAYNE'S FRAME & BODY)	On Appeal from the Lake County Auditor
)	
Petitioner,)	
)	
v.)	Claim for Airport Development Zone Business Personal Property Tax Credit
LAKE COUNTY AUDITOR)	
)	Petition No. 45-001-99-4-0-00001
Respondent.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

Whether A.R.E., Inc. d/b/a Wayne's Frame & Body is entitled to an Airport Development Zone Business Personal Property Tax Credit (ADZ Credit) for the 1999 assessment year.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law herein shall be considered a finding of fact.

2. A.R.E., Inc., d/b/a Wayne's Frame & Body (ARE) is a business located at 4010 West 4th Avenue, Gary, Calumet Township, Lake County. ARE is located in an airport development zone.
3. ARE received a personal property tax bill on April 20, 2000 and noted an increase in monies due. ARE contacted the Auditor's office and was informed that the Auditor had never received the Form ADZ-1 or the duplicate copies of the Forms 103 and 104. According to ARE, the Calumet Township Assessor received a copy of Form ADZ-1 and copies of the Forms 103 and 104; however the date the Township received the forms was not included in the documentation.
4. On April 28, 2000, ARE requested the State review the application for the ADZ credit. A Notice of Defect was sent to ARE because the Form ADZ-1 was not filed with the County Auditor.
5. ARE filed Form ADZ-1 with the Lake County Auditor. The Form ADZ-1 was denied on November 6, 2000 for untimely filing. ARE then filed a request for review by the State on November 7, 2000
6. On February 27, 2001, the State sent a letter to ARE informing it of the factors in 50 IAC 10-4-2. The State will consider the facts and circumstances in determining whether or not to approve a late-filed application. The State requested that each of the factors be addressed with a written statement and supporting documentation. In addition, the State requested that a copy of the Form 103 be submitted as well as a copy of the Form AZB-R and proof that such was timely filed. The information was to be submitted by March 30, 2001.
7. ARE requested additional time to present the information. The State extended the due date until April 20, 2001.

8. On April 12, 2001, ARE submitted some of the requested information. ARE addressed some of the factors and included a copy of the Form 103, a copy of the Form AZB-R, and a letter from the Lake County Auditor.

Conclusions of Law

1. Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the filing of a Form EZ-1, the levels of review are clearly outlined by statute. First, the Form EZ-1 is filed with the County and acted upon by the County Auditor. Ind. Code § 6-1.1-20.8. If the taxpayer disagrees with the County Auditor's action on the Form EZ-1, then a written request for review may be filed with the State. Ind. Code § 6-1.1-20.8-3(b).
2. The State is the proper body to hear an appeal of the action of the County Auditor pursuant to Ind. Code § 6-1.1-20.8-3(c).

A. Burden

3. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.
4. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him.

Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.

5. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

B. Airport Development Zone Business Personal Property Tax Credit

6. Pursuant to Ind. Code §§ 8-22-3.5 and 6-1.1-20.8-2, a person that files a timely personal property return must file the application for Airport Development Zone Business Personal Property Tax Credit (Form ADZ-1) between March 1 and May 15 of that year in order to obtain the credit. A person that obtains a filing extension under Ind. Code § 6-1.1-3-7(b) for an assessment year must file the application between March 1 and June 14 of that year in order to obtain the credit.
7. Pursuant to Ind. Code § 8-22-3.5-14(b), a business located in a airport development zone is entitled to the benefits as if the business were located in an enterprise zone. The procedures for claiming an ADZ credit are the same as for the EZ credit.
8. The State has the legal authority to consider a late-filed application for the Enterprise Zone Business Personal Property Tax Credit. *Graybar Electric Co. v. State Board of Tax Commissioners*, 723 N.E. 2d 491 (Ind. Tax 2000). In *Graybar*, the Tax Court references *State Board of Tax Commissioners of Indiana v. New Energy Company of Indiana* (Ind. App. 1992), 585 N.E.2d 38.

9. In considering a late-filed application, the State shall consider all of the relevant facts and circumstances, and determine if it is more equitable to grant or to deny the EZ credit application.

10. The State has adopted seven (7) factors to guide the exercise of its discretion in determining whether to grant late-filed applications. 50 IAC 10-4-2(b). The Petitioner was informed of the seven (7) factors and had the opportunity to present evidence on these factors. See Finding No. 6, above. The factors are as follows...
 - #1. Whether the failure to timely file the application resulted from an act of God, or from the death or serious illness of the person principally responsible for the filing of the deduction application. *(To the extent possible, the taxpayer should provide documentary evidence supporting its contention.)*

 - #2. Whether the approval of the late-filed application would result in the loss of property tax revenues to the taxing units affected by the deduction. *(The taxpayer should submit a written statement signed by the County Auditor stating whether approval would result in the loss of tax revenues.)*

 - #3. Whether a public official gave misleading information to the taxpayer that was the proximate cause of the late-filing, and whether it was reasonable for the taxpayer to rely on that misleading information. *(To the extent possible, the taxpayer should provide documentary evidence supporting its contention.)*

 - #4. Whether the lapse between the filing deadline and the date on which the application was actually filed would have prevented local officials from accurately determining the assessed value for budget, rate and levy purposes.

- #5. Whether there is substantial evidence that local officials support the approval of the late-filed application, even if such approval would result in a loss in tax revenues. *(The taxpayer should provide written documentary evidence including written statements from local officials, including the local Enterprise Zone Board, indicating support for the approval of the application, notwithstanding the fact that the application was filed late.)*
- #6. Whether the late-filing was not due to the taxpayer's negligence.
- #7. Any other factor that the State Board considers relevant.
11. ARE addressed only one of the factors. ARE presented a letter from the County Auditor stating that the granting of the credit would have an immaterial impact on the respective taxing districts revenues.
12. ARE did not address any of the other factors or present any evidence to show that the local officials would support the approval of the late filed application.
13. After careful consideration of the evidence presented, and the circumstances of this situation, the State hereby denies the Petitioner's ADZ credit for the 1999 assessment year.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this _____ day of _____ 2002.

Chairman, Indiana Board of Tax Review