REPRESENTATIVE FOR PETITIONER: Randal J. Kaltenmark, Barnes & Thornburg, LLP

REPRESENTATIVE FOR RESPONDENT: Jess R. Gastineau, Office of Corporation Counsel

BEFORE THE INDIANA BOARD OF TAX REVIEW

Ingredion Inc.,	)	Petition Nos.: 49-101-12-1-7-00186-18
	)	49-101-13-1-7-00185-18
Petitioner,	)	
	)	Parcel No.: A121554
v.	)	
	)	County: Marion
Marion County Assessor,	)	
	)	Assessment Years: 2012 & 2013
Respondent.	)	

January 30, 2020

FINAL DETERMINATION

The Indiana Board of Tax Review ("Board"), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

INTRODUCTION

1. Ingredion filed personal property returns for both years under appeal. After auditing both years, the Assessor determined that Ingredion understated the assessed value of its personal property for each year. Ingredion does not dispute this, but instead argues that the audits were untimely under Indiana Code § 6-1.1-16-1 because the audits were more than five months after the returns were filed, the returns substantially complied with the law, and the returns were not filed with an intent to evade property taxes. The Assessor disagrees. Both parties filed for summary judgment. Because Ingredion's returns showed almost all of its personal property in either the incorrect pool and/or with an incorrect acquisition date, we find they did not substantially comply with the law. Thus, we find for the Assessor.

PROCEDURAL HISTORY

1. Ingredion filed its 2012 personal property return on May 15, 2012. It filed its 2013 return on May 15, 2013, and an amended 2013 return on November 26, 2013. After an audit, the Assessor issued notices of increased assessment for both years on March 14, 2015. Ingredion timely appealed both years.

2. The Marion County Property Tax Assessment Board of Appeals ("PTABOA") denied the appeals, and Ingredion timely filed appeals with the Board.

3. Both parties filed motions for summary judgment. Ingredion designated the following evidence in support of its motion. The Assessor did not designate any evidence.

(No exhibit designation)	Affidavit of Bart Burges
Pet. Ex. 1:	2011 Personal Property Return,
Pet. Ex. 2:	2012 Personal Property Return,
Pet. Ex. 3:	2013 Personal Property Return,
Pet. Ex. 4:	Amended 2013 Personal Property Return,
Pet. Ex. 5:	April 4, 2014 Marion County Assessor audit initiation letter,
Pet. Ex. 6:	April 14, 2015 Marion County Assessor audit result letter,
Pet. Ex. 7:	2012 Form 113 Notice of Assessment/Change,
Pet. Ex. 8:	2013 Form 113 Notice of Assessment/Change,
Pet. Ex. 9:	May 7, 2015 letter and supporting materials requesting refund for 2011,
Pet. Ex. 10:	2012 Form 130 Appeal,
Pet. Ex. 11:	2013 Form 130 Appeal,
Pet. Ex. 12:	2013 Form 114 Notice of Hearing,
Pet. Ex. 13:	2012 Form 114 Notice of Hearing,
Pet. Ex. 14:	2012 Form 115,
Pet. Ex. 15:	2013 Form 115,
Pet. Ex. 16:	2012 Form 131 Petition for Review,
Pet. Ex. 17:	2013 Form 131 Petition for Review.

4. The Board did not inspect the subject property.

5. The record also includes the following: (1) all pleadings, briefs and documents filed in the current appeals; and (2) all orders and notices issued by the Board or our designated Administrative Law Judge.

FINDINGS OF FACT

6. The following facts are undisputed. Ingredion filed timely personal property returns for assessment years 2012 and 2013. The returns showed a final assessed value of $73,799,290 in 2012 and $73,799,290 in 2013. Ingredion then filed an amended 2013 return on November 26, 2013 showing an amended final assessed value of $72,519,500. The Assessor marked all three returns as "NO FINE." *Pet'r Exs. 2, 3, and 4.*

7. The Assessor subsequently audited Ingredion for both assessment years. The Form 113 notices for both years were issued on April 14, 2015. This was 2 years, 334 days after the 2012 return was filed and 1 year, 139 days after the amended 2013 return was filed. *Pet'r Exs. 6, 7 and 8.*

8. Rather than reporting its property using the federal cost basis as required, Ingredion used "historical" cost basis. This error resulted in returns that were almost entirely inaccurate. Of the $240,819,000 in personal property costs that Ingredion reported for 2013, $3,155,701, or approximately 1.3%, was reported in the correct pool with the correct acquisition date. For 2012, Ingredion reported only $2,125,943 correctly. This was approximately 0.9% of the $244,703,331 in total reported costs for that year. *Pet'r Exs. 2, 3, 4, 6, and 9.*

9. Although the audit determined significantly lower base costs, $140,556,347 in 2013 and $129,430,233 in 2012, it resulted in higher assessed values because there was much less depreciation than Ingredion originally claimed. As a result, Ingredion's actual assessed values for personal property were $6,525,760 more than reported for 2013 and $2,926,660 more for 2012. When compared to the correct total costs, the amount that

Ingredion reported correctly for each year was approximately 2.2% for 2013 and 1.6% for 2012. *Pet'r Exs. 2, 3, 4, and 6.*

CONCLUSIONS OF LAW

10. Both parties have filed motions for summary judgment. Our procedural rules allow parties to move for summary judgment "pursuant to the Indiana Rules of Trial Procedure." 52 IAC § 2-6-8. Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Wittenberg Lutheran Village Endowment Corp. v. Lake Cnty. Prop. Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 487 (Ind. Tax Ct. 2002). The party moving for summary judgment must make a prima facie showing of both those things. *Coffman v. PSI Energy, Inc.*, 815 N.E.2d 522, 526 (Ind. Ct. App. 2004). If the movant satisfies its burden, the non-movant cannot rest upon its pleadings but instead must designate sufficient evidence to show that a genuine issue exists for trial. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). *Id*. In deciding whether a genuine issue exists, we must construe all facts and reasonable inferences in favor of the non-movant. *See Carey v. Ind. Physical Therapy, Inc.*, 926 N.E.2d 1126, 1128 (Ind. Ct. App. 2010).

11. Indiana's personal property tax system is a self-assessment system. During the years at issue, every person owning, holding, possessing, or controlling business personal property with a tax situs in Indiana on March 1 of a year was required to file a personal property tax return. *See* I.C. § 6-1.1-3-7; 50 IAC 4.2-2-2. With limited exceptions, the person who holds legal title to personal property is its owner for purposes of Indiana's property tax statutes. I.C. § 6-1.1-1-9(b); 50 IAC 4.2-2-4(a).

12. Cost is the starting point for determining true tax value for personal property. *See* 50 IAC 4.2-4-2. Generally, the cost of personal property is "the total amount reflected on the books and records of the taxpayer as of the assessment date," plus direct costs and an appropriate portion of indirect costs attributable to its production or acquisition and

preparation for use. *Id.* There are exceptions to that rule for, among other things, property that is fully depreciated, retired, or nominally valued. *See* 50 IAC 4.2-4-3.

13. To compute true tax value, a taxpayer must first adjust the cost for any depreciable personal property to its tax basis as defined in the Internal Revenue Code (unadjusted by Sections 167 (depreciation) and 179 (expense deduction) or any credits that diminished its cost basis) if the property's cost per books is different from its tax basis. 50 IAC 4.2-4-4. Each piece of property is then segregated into one of the pools based on its depreciable life for federal income tax purposes. 50 IAC 4.2-4-5. The adjusted cost of each year's acquisitions falling within a given pool is then multiplied by the percentage factor corresponding with that pool's year of acquisition from a table incorporated into the Department of Local Government Finance's ("DLGF") regulations. 50 IAC 4.2-4-7. The resulting sum is the true tax value of the personal property, which automatically reflects all adjustments for Indiana property tax purposes, except abnormal obsolescence. *Id.* With a few exceptions, the total valuation of a taxpayer's personal property cannot be less than 30% of adjusted cost, even if applying the depreciation pools would indicate a lower value. 50 IAC 4.2-4-9.

14. Although personal property is self reported, Assessors have the ability to audit personal property returns to ensure compliance. But there are strict time limits on the Assessor's ability to change a taxpayer's personal property return before it becomes final. Indiana Code § 6-1.1-16-1 provides, in relevant part:

> (a) Except as provided in section 2 [IC 6-1.1-16-2] of this chapter, an assessing official 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 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 periods:
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> . . . .
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> (2) A county assessor or county property tax assessment board of appeals must make a change in the assessed value, including the final determination by the board of an assessment changed by an assessing official, and give the notice of the change on or before the later of:

> (A) October 30 of the year for which the assessment is made; or
> (B) five (5) months from the date the personal property return is filed if the return is filed after the filing date for the personal property tax return.
>
> . . . .
>
> (b) Except as provided in section 2 of this chapter, if an assessing official or a county property tax assessment board of appeals fails to change an assessment and give notice of the change within the time prescribed by this section, the assessed value claimed by the taxpayer on the personal property return is final.
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> . . . .
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> (d) This section does not apply if the taxpayer:
>
> (1) fails to file a personal property return which substantially complies with this article and the regulations of the department of local government finance; or
>
> (2) files a fraudulent personal property return with the intent to evade the payment of property taxes. . . .

Ind. Code § 6-1.1-16-1.

15. In this case, because the deadlines in I.C. § 6-1.1-16-1(a)(2) had passed, the Assessor was only permitted to change the assessments under I.C. § 6-1.1-16-1(d). There is no evidence that the returns were filed with the intent to evade property taxes. Thus, we are left to determine whether each return "substantially complies" with the law and the regulations of the DLGF.

16. The Indiana Tax Court addressed the concept of substantial compliance in *Lake County Assessor v. Amoco Sulfur Recovery Corp.*, 930 N.E.2d 1248 (Ind. Tax Ct. 2010). In that case, the DLGF intervened to provide a memorandum in which it interpreted substantial compliance:

> [s]ubstantial compliance with [statutory and] regulatory requirements means compliance to the extent necessary to assure the reasonable objectives of the [statute and] regulation are met. *Id. at 1251.*

17. The Tax Court adopted that interpretation. In February of 2010, before the Tax Court issued the *Amoco Sulfur* decision, but after the tax years at issue in that case, the DLGF enacted 50 IAC 4.2-1-1.1(j) which states:

(j) "Nonsubstantial compliance" means a tax return that:

(1) omits five percent (5%) or more of the cost per books of the tangible personal property at the location in the taxing district for which a return is filed;

(2) omits leased property and other nonowned personal property assessable under 50 IAC 4.2-2-4(b) where such omitted property exceeds five percent (5%) of the total assessed value of all reported personal property; or

(3) is filed with the intent to evade personal property taxes or assessment.

We now examine whether Ingredion's returns substantially complied with the applicable laws and regulations.

18. The relevant facts are undisputed. As the audits show, Ingredion's personal property returns were largely incorrect. Ingredion argues that its returns did substantially comply with the relevant laws. In support of this claim, Ingredion points to the definition of nonsubstantial compliance in 50 IAC 4.2-1-1.1(j). It argues that this regulation "superseded" the memorandum the Tax Court relied on in *Amoco Sulfur*, and thus is the controlling law for the years under appeal. Under that definition, Ingredion argues that it did not omit 5% or more of its costs because the audit shows that Ingredion actually overstated its total combined personal property costs for both years under appeal.[1]

19. In arguing that the DLGF definition provides the only way for a return to not substantially comply Ingredion would have us interpret the law so narrowly that any return that did not understate its total costs by more than 5% and does not run afoul of 50 IAC 4.2-1-1.1(j)(2) or (3) should be deemed to substantially comply, regardless of the

[1]The Assessor argues, "Contrary to facts implied in Ingredion's brief, for the years at issue, Ingredion did not "overstate the amount of its personal property costs." (Compare Petr's Br. *with* Pet'rs Ex. 2-4, 6-8 (showing assessed value understated by $6,525,760 and $2,926,220 for the 3/1/2012 and 3/1/2013 assessment dates…" Resp't Cross Motion for Summary Judgment at 4. The Assessor apparently erroneously conflates "cost" with "value." There is no genuine issue of material fact as to whether Ingredion overstated its total personal property costs for the years at issue. It did.

accuracy of the rest of the return. We disagree with this interpretation for several reasons.

20. We first take issue with Ingredion's assertion that the new definition of non-substantial compliance "supersedes" the DLGF memorandum and thus, *Amoco Sulfur*. In that case, the Tax Court looked to the DLGF for guidance, but it was ultimately the Tax Court's prerogative whether to adopt the definition that the DLGF submitted. There was no requirement that it do so. Thus, by adopting the DLGF's definition, the Tax Court interpreted the statute. Even leaving aside the fact that the DLGF issued its rule before the Tax Court decided *Amoco Sulfur*, the DLGF does not have authority to overrule a statute. Absent clear guidance from the General Assembly rejecting the Tax Court's definition, it stands as the controlling precedent. Under that definition, a return must comply "to the extent necessary to assure the reasonable objectives of the [statute and] regulation are met." *Id. at 1251*. We find that returns that have only 2.2% and 1.6% of actual costs correctly reported do not meet the reasonable objectives of the law.

21. In addition, the statute uses the term "substantially complies" but the DLGF regulation defines "Nonsubstantial compliance." These are not identical. For that reason, we find it more likely that the DLGF only intended to define some ways in which a taxpayer could fail to substantially comply rather than define every conceivable way. While the regulation is helpful in showing that a taxpayer who omits more than 5% of their costs from their return has not substantially complied, it does not contemplate other potential deficiencies, such as Ingredion's failure to put almost any of its assets in the correct pools with the correct acquisition dates.

22. Ingredion's interpretation of 50 IAC 4.2-1-1.1(j)(1) would impermissibly narrow the statute. As discussed above, Ingredion would have us focus only on the total bottom line costs. Under that interpretation, unless there was evidence of fraud, any return that overstated its costs would be substantially compliant. This would include returns that, like Ingredion's, fail to show most or all of costs in the correct pools. It could even

include returns that are not filled out at all, save the line for total costs. We cannot find such a view was the intent of the legislature in drafting I.C. § 6-1.1-16-1(d). Thus, we will not interpret or apply the DLGF regulation as to frustrate that intent.[2] As the Tax Court noted in *Amoco Sulfur*, Indiana's system of self-assessment for personal property "relies on a taxpayer to fully and accurately report their taxable property." *Id. at 1252.* Ingredion's argument that only the total bottom line cost matters ignores half of this equation, the accuracy. An assessor should not be expected to meet the shorter deadlines of I. C. § 6-1.1-16-1(a)(2) when the taxpayer has submitted an almost wholly inaccurate return as in this case.

23. Ingredion relies heavily on the decisions of *Amoco Sulfur* and *Whirlpool Corp. v. State Bd. of Tax Comm'rs,* 338 N.E.2d 501 (Ind. Ct. Appl. 1975). But those cases both involved disputes over claimed personal property exemptions. They stand for the proposition that a difference in interpretation of whether certain personal property should receive an exemption does not mean that a return fails to substantially comply. In particular, *Amoco Sulfur* held that "Indiana's personal property tax system is not designed to penalize those taxpayers who claim an exemption in error but have nonetheless complied with its recordation requirements." *Amoco Sulfur at 1255-56.* In this case, Ingredion did not comply with the recordation requirements, and we must find that the returns failed to substantially comply with the law.

24. Finally, Ingredion also argues that even if it underpaid its taxes for 2012 and 2013, that underpayment should be offset by the amount it overpaid in taxes for the 2011 assessment year. In support, it points to I.C. § 6-1.1-9-10, which mandates an assessing official to correct any errors that resulted in overpayments, and process any resulting refunds or credits. We decline to make any finding on this issue because it is outside our

[2] We disagree with Ingredion's assertion that by finding a return with overstated costs not substantially compliant we are nullifying the effect of I.C. § 6-1.1-1-16-1. Reading the statute and regulation together it is clear that a taxpayer that reports the vast majority of its assets correctly (95%) should have some safe harbor from audit.

jurisdiction. The Board is a creation of the legislature, and it has only those powers conferred by statute. *Whetzel v. Dep't of Local Gov't Finance*, 761 N.E.2d 904 (Ind. Tax Ct. 2002) (Citing *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 Ind. Tax Ct. 1999). Ingredion has not pointed to any authority, nor are we aware of any, that empowers the Board to order an assessor to offset an underpayment of taxes with potential overpayments from different assessment years. We do note that Ingredion has filed a separate refund claim for 2011, which we address in another determination.

CONCLUSION

25. The designated evidence shows that Ingredion failed to substantially comply with the applicable statutes and DLGF regulations. Thus, the Assessor was permitted to audit Ingredion's returns under I.C. § 6-1.1-16-1(d). Ingredion does not dispute the accuracy of those audits. Therefore, we uphold the additional $2,926,660 assessed value for 2012 and the additional $6,525,760 in assessed value for 2013 and enter summary judgment for the Assessor. With this changes the correct total assessed value for 2012 is $76,725,950 and the correct total assessed value for 2013 is $79,045,260.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

_____
Chairman, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

_____
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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.