

FOR PETITIONER: Benjamin Blair & Abraham Benson
Faegre, Drinker, Biddle & Reath, LLP

FOR RESPONDENT: Mike Schultz, LaPorte County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Lowe’s Home Centers, LLC.,)	Petitions:	46-009-14-1-7-00244-18
)		46-009-15-1-7-00243-18
Petitioner,)		
)	Parcel:	46-13-99-15-049-085
v.)		
)	County:	LaPorte County
LaPorte County Assessor,)		
)	Assessment Years:	2014 & 2015
Respondent.)		

August 17, 2021

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, finds and concludes as follows:

INTRODUCTION

1. Lowe’s Home Centers, LLC disputed the Assessor’s audit of its 2014 and 2015 personal property tax returns contending that the audit was untimely because the returns substantially complied with the law. Lowe’s moved for summary judgment and the Assessor failed to respond. We find that Lowe’s returns were substantially compliant and became final as of October 30 of each assessment year. Thus, the audit was untimely and we find for Lowe’s.

PROCEDURAL HISTORY

2. Lowe's timely filed its 2014 and 2015 business tangible personal property returns on May 15, 2014 and May 15, 2015 respectively for property located at 5200 Franklin Street in Michigan City. It reported values of \$1,196,600 for 2014 and \$1,229,410 for 2015. On August 23, 2016, the Assessor notified Lowe's that Tax Management Associates ("TMA") would audit those returns. As a result of the audit, the Assessor issued Form 113s on February 6, 2017, increasing Lowe's assessments to \$1,356,060 for 2014 and \$1,375,230 for 2015.
3. Lowe's timely protested the increased assessments. It then filed appeals directly with the Board after the LaPorte County Property Tax Assessment Board of Appeals ("PTABOA") failed to act within the time limits prescribed by law in Ind. Code § 6-1.1-16-1.
4. Lowe's filed a Motion for Summary Judgment and designated evidence in support of that motion. The Assessor failed to respond to the Motion, nor did he file any other motion or response to the appeal. Neither party requested a hearing.
5. Neither the Board nor the administrative law judge inspected the subject property.

RECORD

6. Lowe's designated the following evidence:

Petitioner's Exhibit 1:	Form 131 Petitions for Review (2014, 2015)
Petitioner's Exhibit 2:	Notice of Hearing
Petitioner's Exhibit 3:	Affidavit of Jessica Griffith with attachments
Petitioner's Exhibit A:	Letter from LaPorte County Assessor-Audit Notification-August 23, 2016
Petitioner's Exhibit B:	Letter to Lowe's from Assessor—Request for Documents-September 26, 2016
Petitioner's Exhibit C:	Lowe's Asset List for February 2014 and 2015 (Confidential)
Petitioner's Exhibit D:	Assessor's Letter to Lowe's-Additional Assessments-(Confidential)
Petitioner's Exhibit E:	Notice of Change in Assessment—Forms 113/PP
7. 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 administrative law judge.

FINDINGS OF FACT

8. As discussed above, the Assessor conducted an audit of Lowe's through TMA. TMA reviewed a number of documents Lowes provided including a chart of accounts, Federal tax depreciation schedules, Federal income tax returns, and business personal property returns. *Griffith Affidavit, paragraphs 12-16, Pet'r. Exs. B, C, D.*
9. In a letter dated February 6, 2017, the Assessor alleged that Lowe's had failed to list four specific items of personal property on its 2014 return. Lowe's acquired these items on March 1, 2014 and listed them on its March 1, 2015 personal property return. The cost basis for the four items was approximately 1% of the total costs for each assessment year. *Griffith Affidavit, Pet'r Ex. D.*
10. In addition, the Assessor found that because Lowe's had provided no detail on real estate costs, it was appropriate to add 5% of the total "cost of real estate assets (building, building improvements, and allocating the real estate as personal property)." He included no explanation as to why this adjustment constituted personal property. *Griffith Affidavit, paragraph 18; Pet'r. Ex. E.*
11. Lowe's submitted an affidavit from Jessica Griffith, its Manager of Property Tax and Business Licenses. She averred that all of Lowe's depreciable personal property that was at the location at issue and present on the assessment dates was included in Lowe's returns in accordance with Indiana law. *Griffith Affidavit.*

ANALYSIS

12. Summary Judgment is appropriate only when the designated evidence proves that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. *Wittenburg Lutheran Village Endowment Corp. v. Lake County Property Tax Assessment Board of Appeals*, 782 N.E. 2d 483, 487 (Ind. Tax Ct. 2002), *Presbytery of Ohio Valley, Inc. v. OPC, Inc.*, 873 N.E. 2d 1099, 1110 (Ind. 2012). The moving party

must make a prima facie case to meet both prongs. *Coffman v. PSI Energy, Inc.*, 815 N.E. 2d 522, 526 (Ind. Ct. App. 2004). If the moving party satisfies its burden, the non-movant may not 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). In deciding whether a genuine issue exists, we must construe all facts and reasonable inferences in favor of the non-moving party. *Carey v. Ind. Physical Therapy, Inc.* 926 N.E. 2d 1126, 1128 (Ind. App. 2010).

13. 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).
14. 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.
15. 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.

16. 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:

....

(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.

....

(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.

17. 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 the designated evidence establishes that each return “substantially complies” with the law and the regulations of the DLGF. We find that it does.

18. As discussed above, the Assessor did not respond to Lowe’s Motion for Summary Judgment or designate any evidence in opposition. In analyzing the designated evidence Lowe’s provided, we see no genuine issue of material fact. The Griffith affidavit establishes that Lowe’s substantially complied with Indiana’s property tax laws. In addition, the four items in the audit results that the Assessor alleges were omitted comprise approximately 1% of the total costs of Lowe’s personal property for the years at issue. The DLGF has defined non-substantial compliance in 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.

Under this definition, even were we to accept that the items had been erroneously omitted, they do not rise to the level of non-substantial compliance that would allow the Assessor to conduct an audit after the default deadlines. The Assessor also alleged in the audit letter that 5% of the real estate costs should be included in the personal property. The Assessor provided no basis in Indiana law for why personal property should be based on a percentage of the real estate costs. Thus, we find this allegation wholly unsupported and insufficient to establish a genuine issue of material fact.

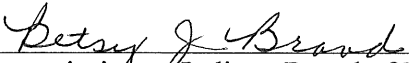
CONCLUSION

19. Lowe’s timely filed its returns in 2014 and 2015. Thus, if Lowe’s returns were substantially compliant, the Assessor’s deadlines to make any changes to the returns were

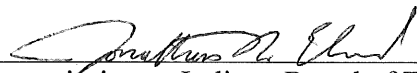
October 30, 2014 and October 30, 2015. I.C. § 6-1.1-16-1(a)(2). The Assessor missed those deadlines. Lowe's established through its designated evidence that its returns substantially complied with the law. The Assessor designated no evidence in opposition and there is no genuine issue of material fact. Thus, Lowe's returns were final as of October 30, 2014, and October 30, 2015. For that reason we enter summary judgment for Lowe's and order the Assessor to reinstate the assessed values reflected in Lowe's reported personal property tax returns of \$1,196,600 for 2014 and and \$1,229,410 for 2015.

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>>.