
**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

MIDDLEBURY SOLAR, LLC,	)	Petition Nos. 20-032-14-9-2-00001
	)	20-032-13-9-2-00001
Petitioner,)	
v.	)	Parcel No. 20-04-35-379-014.000-032
	)	County: Elkhart
INDIANA DEPARTMENT OF LOCAL)	
GOVERNMENT FINANCE,	)	Township: York
)	
Respondent.	)	Assessment Years: 2013 and 2014

LINCOLN SOLAR, LLC,	)	Petition Nos. 45-030-14-9-3-00001
	)	45-030-13-9-2-00001
Petitioner,)	
v.	)	Parcel No. 45-13-30-200-010.000-030
	)	County: Lake
INDIANA DEPARTMENT OF LOCAL)	
GOVERNMENT FINANCE,	)	Township: Ross
)	
Respondent.	)	Assessment Years: 2013 and 2014

LAPORTE SOLAR, LLC,	)	Petition Nos. 46-053-14-9-2-00001
	)	46-053-13-9-2-00001
Petitioner,)	
v.	)	Parcel: 46-07-31-400-086.000-053
	)	County: LaPorte
INDIANA DEPARTMENT OF LOCAL)	
GOVERNMENT FINANCE,	)	Township: Kankakee
)	
Respondent.	)	Assessment Years: 2013 and 2014

PORTAGE SOLAR, LLC,	)	Petition Nos. 64-015-14-9-2-00001
	)	64-015-13-9-2-00001
Petitioner,)	
	)	Parcel: 64-06-19-176-001.000-015
v.)	
	)	County: Porter
INDIANA DEPARTMENT OF LOCAL)	
GOVERNMENT FINANCE,	)	Township: Portage
)	
Respondent.	)	Assessment Years: 2013 and 2014

**ORDER ON SUMMARY JUDGMENT AND
FINAL DETERMINATION**

1. The Petitioners in this consolidated matter (collectively “Solar”) challenge the authority of the Respondent (the “Department”) to assess Solar’s property under Ind. Code Chapter 6-1.1-8. The Board determines that there are no genuine issues of material fact, and that judgment should be entered in favor of the Department as a matter of law.

Procedural Posture

2. Solar filed personal property returns on May 14, 2013, for the 2013 assessment year. The Department issued tentative assessments on May 24, 2013. Solar filed objections on May 29, 2013, and the Department issued determinations on June 21, 2013. Solar appealed to the Board on July 29, 2013. Solar filed annual statements on March 31, 2014, for the 2014 assessment year. The Department issued its tentative assessments on May 2, 2014, and Solar appealed to the Board on May 13, 2014. Solar moved for summary judgment on October 1, 2014, the Department responded on October 27, 2014, and Solar replied on January 2, 2015. Commissioner Jonathan Elrod and Administrative Law Judge Gary Ricks heard oral argument on January 9, 2015.

Summary Judgment Standard

3. The Board's procedural rules permit a party to move for summary judgment pursuant to the Indiana Rules of Trial Procedure. Ind. Admin. Code tit. 52, r. 2-6-8. Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C); *Wittenberg Lutheran Village Endowment Corp. v. Lake Co. Property Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 487 (Ind. Tax Ct. 2003). The party seeking summary judgment bears the burden of demonstrating through designated evidence that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. *Coffman v. PSI Energy, Inc.*, 815 N.E.2d 522, 526 (Ind. Ct. App. 2004). Where there is no genuine issue of material fact, the Board's task is to apply the law to those facts. *Knauf Fiber Glass v. State Bd. of Tax Comm'rs*, 629 N.E.2d 959, 960 (Ind. Tax Ct. 1994).
4. "Interpretation of a statute presents a pure question of law for which disposition by summary judgment is particularly appropriate." *State Auto Ins. Cos. v. Shannon*, 769 N.E.2d 228, 231 (Ind. Ct. App. 2002) (citations omitted).
5. While the burden is on the moving party to prove the nonexistence of a genuine issue of material fact, once the movant has sustained this burden, the opponent may not rest upon mere allegations or denials in his pleadings, but must set forth specific facts showing that there is a genuine issue for trial. T.R. 56(E); *Oelling v. Rao*, 593 N.E.2d 189, 190 (Ind. 1992). If the nonmovant fails to meet its burden, summary judgment may be granted for the movant. *Pitcock v. Worldwide Recycling, Inc.*, 582 N.E.2d 412, 414 (Ind. Ct. App. 1991).
6. "Summary judgment shall not be granted as of course because the opposing party fails to offer opposing affidavits or evidence, but the court shall make its determination from the evidentiary matter designated to the court." T.R. 56(C). "Summary judgment is awarded on the merits of the motion, not on technicalities." *Murphy v. Curtis*, 930 N.E.2d 1228,

1233-34 (Ind. Ct. App. 2010). In fact, “even a party who failed to respond to a motion for summary judgment could have summary judgment entered in his favor.” *Id.* at 1233.

Analysis

7. The facts are not in dispute. Solar owns and operates solar electric generating facilities and sells the electricity to a public utility through a feed-in tariff program.
8. At issue is whether Solar is subject to assessment under Ind. Code Chapter 6-1.1-8. Solar argues that Chapter 6-1.1-8 only applies to the property owned by “public utilities”¹ or those “furnishing . . . power by electricity.”² The Board agrees that those provisions have definitions consistent with descriptions of traditional public utility companies. However, the Board finds most relevant I. C. § 6-1.1-8-3(a), which states:

Except as provided in subsection (c), the following companies are subject to taxation under this statute:

...

(2) Each company which is engaged in the business of selling or distributing electricity, gas, steam, or water.

The Board finds that I.C. § 6-1.1-8-3 has a much broader definition and is intended to apply to the property of a wider variety of companies that are not necessarily similar to a traditional public utility company.³ Because Chapter 8 expressly applies to the property of a company that sells electricity, it applies to Solar.

9. I.C. § 6-1.1-8-3 was amended in 2013(effective July 1, 2013). Under the amendment, a company is “not subject to taxation under this chapter” if it is “participating . . . in a feed-in tariff program” and “files a personal property tax return for the property” with the local assessor. I.C. § 6-1.1-8-3(c)(7). This express provision referencing companies engaged

¹ I.C. § 6-1.1-8-1.

² I.C. § 6-1.1-8-2.

³ For these reasons, the companies within the broad scope of I.C. § 6-1.1-8-3 “include, but are not limited to” those engaged in a variety of services, such as bridge companies, light, heat, or power companies, and telephone, telegraph, or cable companies. Expressly excluded are aviation, broadcasting, and water transportation companies.

in selling electricity through a feed-in tariff program removes any doubt as to whether Chapter 8 generally applies to entities like Solar. Only the most contorted interpretation could suggest otherwise.

10. The Board notes that I.C. § 6-1.1-8-3(c)(7) does not absolutely exclude companies participating in a feed-in tariff program from taxation under Chapter 8. Rather, the exclusion is better characterized as an option. Prior to the amendment, companies were required to file with the Department. As amended, the company has the option to file locally. The default provision is that the company files with the Department.
11. For 2013, the Board finds that Solar's property is subject to taxation under I.C. § 6-1.1-8-3, and the amendment to Subsection (c) was not retroactive. Solar's property must be assessed under Chapter 8 for 2013.
12. For 2014, the issue is whether I.C. § 6-1.1-8-3(c)(7) applies. The annual reports (Forms UD-45) were submitted by Solar on March 31, 2014. *Respondent Ex. C*. The Department issued its tentative assessments on May 2, 2014. *Petitioner Ex. G*. The personal property returns were filed by Solar on May 5, 2014. *Affidavit of Michael Melone in Support of Petitioners' Motion for Summary Judgment*. At the time Solar submitted its annual reports, it had not filed personal property returns with the local assessor. At the time the Department issued its tentative assessments, Solar had still not yet filed personal property returns. The Board finds the Department did not exceed its authority when it considered Solar's annual reports and issued its tentative assessments because Solar had not yet met the requirements for exclusion from assessment under I.C. § 6-1.1-8-3(c)(7). Having decided the matter on these grounds, the Board declines to consider the Department's arguments that Solar waived its option to file locally by self-reporting through a UD-45 and failing to timely amend it.⁴

⁴ To avoid assessment under Chapter 8, the statute states that the taxpayer must file "a personal property tax return for the property." I.C. § 6-1.1-8-3(c)(7) (emphasis added). Having resolved this matter on other grounds, the Board declines to consider whether Solar reported the property on the personal property returns.

13. The Board now turns to the merits of the assessment. Solar's arguments relating to whether the property is real, personal, or distributable generally relate to the applicability of Chapter 8 rather than assessment rules for classifying property as real, personal, or distributable. Solar has failed to persuade the Board that the Department's classification, in accordance with the Guidelines, was in error. Solar has also failed to state what the assessment should be, prior to the application of the deduction, if a different classification were applied. "A taxpayer must walk the Indiana Board through every element of its analysis rather than assuming that the evidence speaks for itself." *Fraternal Order of Eagles #3988, Inc. v. Morgan County Prop. Tax Bd. of Appeals*, 5 N.E.3d 1195, 1200 (Ind. Tax Ct. 2014).

14. Solar's final claim is that the Department should have applied a deduction for certain solar equipment under I.C. § 6-1.1-12-26.1. The process for applying the deduction is found in I.C. § 6-1.1-12-27.1:

On verification of the statement by the assessor of the township in which the real property . . . or solar power device is subject to assessment, or the county assessor if there is no township assessor for the township, the county auditor shall allow the deduction.

The statute plainly places the authority on the local assessor to verify eligibility for the deduction, and on the auditor for approving the deduction. Neither the taxpayer nor the Department is charged with applying the deduction to the assessed valuation. The Department did not err in failing to apply the deduction.⁵

15. Based on the foregoing, Solar has failed to show that the Department has erred in its assessments as a matter of law, and its motion for summary judgment is denied. As there are no genuine issues of material fact and this determination resolves all issues before the Board, summary judgment is entered as a final determination in favor of the Department as a matter of law. The values indicated in the Department's assessments are affirmed.

⁵ Because Solar appeals the decision of the Department, which did not have authority to grant the deduction, the issue of Solar's eligibility for a deduction is not before the Board, and the Board does not make any ruling in regard to whether Solar is entitled to a deduction for 2013 or 2014.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on this date February 4, 2015.

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>>.