

INDIANA BOARD OF TAX REVIEW

Small Claims

Final Determination

Findings and Conclusions

Petitions: 19-002-18-1-7-00659-22 19-002-19-1-7-00660-22
19-002-20-1-7-00661-22 19-002-21-1-7-00662-22
19-002-22-1-7-00663-22
Petitioner: Sam Polen
Respondent: Dubois County Assessor
Parcel: 19-10-211-23000 (Personal Property)
Assessment Years: 2018-2022

The Indiana Board of Tax Review ("Board") issues this determination, finding and concluding as follows:

Procedural History

1. On June 3, 2022, Sam Polen filed a Form 130 petition contesting the Dubois County Assessor's increase of his 2022 business tangible personal property assessment from [REDACTED] to [REDACTED]. See Exs. G-H. The Dubois County Property Tax Assessment Board of Appeals ("PTABOA") issued a determination adopting the Assessor's value of [REDACTED].
2. Polen then filed a Form 131 petition for the 2022 assessment year with us. At the same time, Polen also filed Form 131 petitions with us addressing the 2018-2021 assessment years, attaching the PTABOA's determination for his 2022 appeal to those filings. He elected our small claims procedures in all his Form 131 petitions.
3. On August 30, 2023, our designated administrative law judge, Joseph Stanford ("ALJ"), held a telephonic hearing on Polen's petitions. Neither the ALJ nor the Board inspected the property. Polen represented himself. Marilyn Meighen appeared as counsel for the Assessor. Polen and Angie Giesler, the Dubois County Assessor, testified under oath.

Record

4. The official record for this matter includes the following:¹

Respondent Exhibit A: 2018 Form 113/PP Notice of Assessment/Change by an Assessing Official,
Respondent Exhibit B: 2019 Form 113/PP,
Respondent Exhibit C: 2020 Form 113/PP,
Respondent Exhibit D: 2021 Form 113/PP,

¹ Polen did not offer any exhibits.

Respondent Exhibit E: Assessor's argument that the 2018-2021 appeals should be dismissed,
 Respondent Exhibit F: Polen's 2022 Business Tangible Personal Property Return (**Confidential**),
 Respondent Exhibit G: 2022 Form 113/PP,
 Respondent Exhibit H: 2022 Form 130 petition,
 Respondent Exhibit I: 2022 Form 115,
 Respondent Exhibit J: Text of 50 IAC 4.2-9-1 through -4.²

5. The record also includes: (1) all petitions and other documents filed in these appeals; (2) all notices and orders issued by the Board or the ALJ; and (3) an audio recording of the hearing.

Findings of Fact

6. Polen owns and operates multiple car washes. The property at issue consists of equipment associated with a car wash at 50 Indiana Street in Jasper. The car wash is operational, servicing 50 cars a day and grossing [REDACTED] of income. As of the hearing, the equipment was approximately 28 years old. While some of the equipment may have been placed on a trailer, there is no clear testimony showing that any of the equipment was no longer in use. *Polen testimony.*
7. Polen did not file business personal property returns for the 2018-2021 assessment years. For each of those years, the Assessor sent Polen a Form 113/PP notice assessing the property at [REDACTED]. She arrived at that assessment using acquisition costs that Polen had reported on a previous return. She then applied a "30% floor" to those acquisition costs. Polen did not file appeals of those assessments with the Assessor. *Giesler testimony; Exs. A-D.*
8. Polen did file a business personal property return for 2022, although he did not offer a copy of his return at the hearing. The Assessor offered an unredacted copy of the return, which is mostly illegible, as well as a more legible copy in which all the numbers aside from Polen's final reported assessment are redacted. We therefore cannot tell what Polen reported as the equipment's cost or how he depreciated that cost. Polen attached a Form 106 schedule of adjustments to his return, which taxpayers may use to claim adjustments for, among other things, permanently retired equipment and abnormal obsolescence. On that schedule he wrote: "The personal property/equipment is 26 years old and closed operation down. The equipment has no value and with changes in technology is obsolete. Should be valued at [REDACTED]." Polen also filled in [REDACTED] on Line 61 of his return, which is reserved for reporting an adjustment for abnormal obsolescence. It does not appear that he wrote anything on the line reserved for reporting an adjustment for permanently retired equipment (Line 57). He reported the final assessed value as [REDACTED]. *Giesler testimony; Ex. F.*

² The Assessor mailed Respondent Exhibit K to us before the telephonic hearing, but she did not offer that exhibit.

9. The Assessor again sent Polen a Form 113/PP notice increasing the 2022 assessment to [REDACTED] based on the 30% floor. In the notice, the Assessor indicated that she had disallowed Polen's claimed adjustment for abnormal obsolescence. As explained above, this time, Polen filed a Form 130 petition with the Assessor. *Giesler testimony; Exs. G-I.*
10. There is no evidence in the record describing the equipment at issue. Based on the Assessor's calculation of the 30% floor, we might be able to infer what Polen reported as the book costs for his equipment in some unidentified year before 2018. But there is nothing to show whether the equipment from that year was the same as the equipment from the years at issue in these appeals. And Polen offered no evidence to show how he arrived at his valuation of [REDACTED]. *See Polen testimony.*

Conclusions of Law

A. We dismiss Polen's 2018-2021 appeals because he did not file Form 130 petitions with the Assessor for those years.

11. The Assessor argues that Polen's 2018-2021 appeals should be dismissed because he did not initially file appeals for those years at the county level. We agree. Although taxpayers have the right to challenge their assessments, they must comply with statutory requirements for doing so. *See Williams Industries v. State Bd. of Tax Comm'rs*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995). To appeal the assessed value of its personal property, a taxpayer must file a Form 130 petition (the form prescribed by the Department of Local Government Finance ("DLGF")) with the relevant assessor. Ind. Code § 6-1.1-15-1.1(a)-(b). The deadline for doing so has varied, depending on the year at issue. Since 2021, taxpayers have been required to file a Form 130 petition within 45 days after the date on which the county mails notice of an assessment. I.C. § 6-1.1-15-1.1(b)(3); 2020 Ind. Acts 159, § 18 (effective July 1, 2020).³ The Assessor issued Form 113/PP notices informing Polen of his assessment for each year from 2018 through 2021. Polen did not file Form 130 petitions in response to those notices, much less do so within the required filing deadlines. We therefore dismiss his appeals of the 2018-2021 assessment years for failure to comply with the required statutory procedures.

B. Polen did not make a prima facie case for changing his 2022 assessment.

12. Polen timely appealed his 2022 assessment, so we will address the merits of that claim. We begin with a brief discussion of Indiana's system for assessing and taxing personal property. It is a self-assessment system. Every person owning, holding, possessing, or controlling depreciable personal property with a tax situs in Indiana on January 1 of a

³ The 2020 amendment set out a separate deadline for appealing personal property assessments. Previously, the deadline for personal property appeals was the same as the deadline for real property appeals. For appeals of assessment dates before January 1, 2019, the deadline was the earlier of (1) 45 days after the assessment notice was mailed, or (2) 45 days after a tax statement was mailed. For assessments after December 31, 2018, the deadline was the earlier of (1) June 15 of the assessment year if the notice of assessment was mailed before May 1 of that year; or (2) June 15 of the year in which the tax statement was mailed. I.C. § 6-1.1-15-1.1(b)(2018).

year must file a personal property tax return on or before May 15 of that year unless the person gets an extension of time. I.C. § 6-1.1-3-7; 50 IAC 4.2-1-1.1(i).

13. “Depreciable personal property” includes all tangible personal property that is used in a trade or business, used to produce income, or held as an investment. 50 IAC 4.2-4-1. With limited exceptions, the cost of depreciable personal property, as recorded on the taxpayer’s books and records, must be used in determining its assessment. 50 IAC 4.2-4-2. Taxpayers must report the cost for all depreciable personal property still in use, even if it is fully depreciated and has been removed from the taxpayer’s books and records. 50 IAC 4.2-4-3. True tax value generally is then determined by segregating that cost into four “pools” based on the property’s acquisition date and depreciating the cost according to schedules provided for each pool. 50 IAC 4.2-4-5 through -7.
14. Taxpayers may adjust their assessments for various reasons. The DLGF’s rules do not allow adjustments for “normal obsolescence,” which they define as the expected reduction in value of business personal property that can be foreseen by a reasonable, prudent businessperson when property is acquired and placed into service. 50 IAC 4.2-4-8(b); 50 IAC 4.2-9-2; 50 IAC 4.2-9-6. Instead, the depreciation pools account for that obsolescence. *Id.* But the rules allow taxpayers to adjust their assessments for “abnormal obsolescence,” which they define as obsolescence occurring due to factors over which the taxpayer has no control and is unanticipated, unexpected, non-recurring, and cannot reasonably be foreseen by a prudent businessperson prior to its occurrence. 50 IAC 4.2-4-8; 50 IAC 4.2-9-3(a); 50 IAC 4.2-9-4. A taxpayer seeking an abnormal obsolescence adjustment must substantiate the facts, circumstances, and amount of the claimed adjustment. 50 IAC 4.2-4-8(a); 50 IAC 4.2-9-4.
15. Taxpayers similarly may elect to adjust their assessments to account for “permanently retired depreciable personal property,” which the rules define as property that has been removed from service on the assessment date and is awaiting disposition. 50 IAC 4.2-4-3(c). The property must be scheduled to be scrapped, removed, or disposed of, and will be considered permanently retired provided that the taxpayer actually scraps or sells the property. *Id.* To qualify its property for the adjustment, a taxpayer must substantiate that the property is permanently retired and not in use. *Id.* The cost of the permanently retired property may be taken as an adjustment as long as that cost was included in the cost per books that the taxpayer reported on the return. *Id.* The taxpayer then must report the property’s scrap value as its true tax value. *See* 50 IAC 4.2-4-3(d).
16. The total true tax value of a taxpayer’s depreciable personal property in a single taxing district generally cannot fall below 30% of its adjusted cost. 50 IAC 4.2-4-9(a). But that 30% floor applies before any adjustment for abnormal obsolescence is taken and does not apply to permanently retired property. 50 IAC 4.2-4-9(b).
17. Thus, to make a case for changing his assessment, Polen needed to offer evidence showing his equipment’s cost per books, acquisition date, and depreciable life. To the extent he claimed entitlement to an adjustment for abnormal obsolescence, he needed to fully disclose that claim on his business personal property return and demonstrate why

his equipment qualified for an adjustment. Similarly, to the extent that Polen claimed an adjustment for permanently retired property, he needed to show that the equipment was removed from service on the assessment date and was scheduled to be scrapped or disposed of. He also needed to offer evidence to establish the equipment's scrap value.

18. Polen did none of those things. He mostly talked about the real estate where the equipment was located and about other car washes that he owned. He did not even describe the personal property at issue. Instead, he simply testified that his equipment was 28 years old, and that it had either "no value" or "junk value." He therefore failed to make a prima facie case for changing his 2022 assessment.⁴

Final Determination

19. We find for the Assessor. We dismiss Polen's 2018-2021 appeals because he did not file petitions for those assessment years with the Assessor. For 2022, Polen filed a petition with the Assessor, but he failed to offer any probative evidence showing that the assessment was wrong or what the correct assessment should be. We therefore order no change to the assessment.

Date: 11.28.2023

Jonathan R. Elms
Chairman, Indiana Board of Tax Review

Betsy J. Beard
Commissioner, Indiana Board of Tax Review

Trinity Elms
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>.

⁴ If we were to address the merits of his 2018-2021 appeals, we would reach the same conclusion.