

REPRESENTATIVE FOR PETITIONER:
Bradley Hasler, Bingham, Greenebaum, Doll, LLP

REPRESENTATIVES FOR RESPONDENT:
Darren C. Chadd, Kirtley, Taylor, Sims, Chadd, & Minnette, P.C.
Tyler M. Nichols, Kirtley, Taylor, Sims, Chadd, & Minnette, P.C.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Raybestos Powertrain, LLC,	)	Petitions:	54-028-14-1-7-10142-15
	)		54-028-14-1-7-10143-15
Petitioner,)		
)		
	)	Parcel:	224-20135-36
v.	)		224-20140-04
)		
	)	County:	Montgomery
Montgomery County Assessor,)		
	)	Assessment Year:	2014
Respondent.)		

Appeals from the Final Determinations of
Montgomery County Property Tax Assessment Board of Appeals

May 10, 2016

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), has reviewed the evidence and arguments. Having considered the issues raised in this case, we find and conclude the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

Raybestos Powertrain, LLC (“Petitioner”) appeals the timeliness of the Montgomery Property Tax Assessment Board of Appeal’s (“PTABOA”) determination that upheld the Assessor’s removal of the deduction for abnormal obsolescence claimed on the Petitioner’s personal property returns for 2014.

PROCEDURAL HISTORY

1. The Petitioner timely filed its 2014 business personal property returns (Forms 103) on May 15, 2014. For parcel 224-20135-36, the Petitioner reported an assessed value of \$478,847, which included an adjustment for abnormal obsolescence in the amount of \$1,562,242. For parcel 224-20140-04, the Petitioner reported an assessed value of \$185,702, which included an adjustment for abnormal obsolescence of \$550,334.
2. On May 30, 2014, the Assessor issued a Form 113 for each parcel denying the abnormal obsolescence adjustments. The Assessor increased the personal property assessment on parcel 224-20135-36 to \$2,041,090 and on parcel 224-20140-04 to \$736,034. The Petitioner timely filed Form 130 petitions with the Montgomery PTABOA appealing the Assessor’s action. On March 2, 2015, the PTABOA issued its determination denying the Petitioner’s abnormal obsolescence adjustments. The Petitioner timely filed Form 131 petitions with the Board.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held the administrative hearing on February 10, 2016.

4. Mark Rittenhouse, tax representative with Baden Tax Management, was sworn as a witness for the Petitioner. Montgomery County Assessor Sherri Bentley was sworn as a witness for the Respondent.

5. The Petitioner submitted the following exhibits:

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|--------------------------|-----------------------------------------------------------------------------------------------------------------|
| Petitioner Exhibit P-1: | 2014 Form 104, Business Tangible Personal Property Return for parcel 224-20135-36, |
| Petitioner Exhibit P-2: | 2014 Form 104, Business Tangible Personal Property Return for parcel 224-20140-04, |
| Petitioner Exhibit P-3: | 2014 Form 103, Business Tangible Personal Property Return for parcel 224-20135-36 (Confidential) ¹ , |
| Petitioner Exhibit P-4: | 2014 Form 103, Business Tangible Personal Property Return for parcel 224-20140-04 (Confidential) ² , |
| Petitioner Exhibit P-5: | 2014 Form 113/PP, Notice of Assessment Change for parcel 224-20135-36, |
| Petitioner Exhibit P-6: | 2014 Form 113/PP, Notice of Assessment Change for parcel 224-20140-04, |
| Petitioner Exhibit P-7: | 2014 Form 130, Petition to the PTABOA, parcel 224-20135-36, |
| Petitioner Exhibit P-8: | 2014 Form 130, Petition to the PTABOA, parcel 224-20140-04, |
| Petitioner Exhibit P-9: | Form 115, Notification of Final Assessment Determination, parcel 224-20135-36, |
| Petitioner Exhibit P-10: | Form 115, Notification of Final Assessment Determination, parcel 224-20140-04, |
| Petitioner Exhibit P-11: | List of proposed PTABOA hearing dates. |

6. The Respondent submitted the following exhibit:

- | | |
|------------------------|------------------------------------------------------------|
| Respondent Exhibit RA: | Letters dated September 3, 2014, requesting a continuance. |
|------------------------|------------------------------------------------------------|

7. The following additional items are officially recognized as part of the record of proceedings:

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|------------------|-------------------------------------|
| Board Exhibit A: | Form 131 Petition with attachments, |
| Board Exhibit B: | Notice of hearing, |
| Board Exhibit C: | Hearing sign-in sheet, |

¹ Pursuant to Administrative Rule 9(G)(5), Petitioner submitted exhibit P-3 on green paper.

² Pursuant to Administrative Rule 9(G)(5), Petitioner submitted exhibit P-4 on green paper.

Board Exhibit D: Notice of Appearance by Darren C. Chadd and Tyler M. Nichols,
Board Exhibit E: Notice of Appearance by Bradley D. Hasler.

7. The parties also requested that all the testimony and argument from the hearing on petition 54-030-14-1-7-10144-15 for Crown Holdings, Inc. be incorporated into the record for both Raybestos Powertrain, LLC appeals. They agreed that the testimony from Crown Holdings was applicable to Raybestos. They asked the Board to consider those arguments and evidence as if they had been presented in the Raybestos hearing. We grant that request.

SUMMARY OF THE PETITIONER'S CASE

8. The Petitioner contends the PTABOA failed to timely issue determinations on its petitions under Indiana Code § 6-1.1-16-1. The Petitioner's counsel called Assessor Bentley, the Assessor, as a witness. Bentley testified that she reviewed the Petitioner's personal property returns. Bentley did not feel the Petitioner provided enough information to grant the abnormal obsolescence adjustments and she disallowed the deductions. Bentley notified the Petitioner of the change on Form 113s dated May 30, 2014. The PTABOA issued its determination (on Form 115) on March 2, 2015. No Form 115 was issued prior to that date. *Pet'r Exs. P-1 through P-6, P-9 & P-10; Bentley testimony.*
9. The PTABOA originally scheduled a hearing for September 25, 2015. Rittenhouse testified that, when they [Baden Tax Management] received the hearing notice for this hearing, they sent a letter asking to reschedule due to conflicts between Baden Tax Management and the multiple clients they were to represent at the hearing (including Crown Holdings, Inc. and the Petitioner). According to Rittenhouse, this was the first contact with the Assessor's office after receiving the notice. He followed up with phone calls within a week or so thereafter, because the hearing date was approaching and he needed to know if there was a problem with rescheduling. *Resp't Ex. RA; Rittenhouse testimony.*

10. When he finally talked to Bentley, the point was made that the hearing would be after October 30. Bentley testified that he said, “Okay, let’s do that.” This hearing was eventually scheduled for January 27, 2015, and resulted in the PTABOA’s March 2, 2015 determination. *Rittenhouse testimony.*
11. The Petitioner argues that there is no evidence that the taxpayer impeded the PTABOA from setting or deciding the case before October 30, 2014. According to the Petitioner, in the Verizon decision, the Tax Court very clearly explains that filing an appeal and requesting a delay in the proceedings does not constitute waiver. *Hasler argument.*
12. Respondent Exhibit RA did not specifically state the taxpayer waived the PTABOA’s October 30 deadline. The Petitioner claims it is insufficient to be waiver. According to Rittenhouse, he was not asked to provide any sort of written acknowledgement about the October 30 deadline. There was no discussion as to when any PTABOA hearing would be rescheduled. Further, Exhibit RA is not the type of document that one would expect the Assessor, who was keenly aware of the deadline, to evaluate as a waiver. Waiver is not a realistic conclusion, especially when the Assessor was careful enough to request and receive an express waiver of the 30-day notice for the January 27, 2015 PTABOA hearing. *Resp’t Ex. RA; Hasler argument; Bentley testimony.*
13. To create estoppel, the words or conduct of a party must be calculated to mislead the other party. The Petitioner claims the Assessor’s testimony showed she was eminently aware of the October 30 deadline. There was no suggestion that the law was misrepresented in any way by the taxpayer. According to the Petitioner, there can be no estoppel here. *Hasler argument.*
14. Also with respect to the estoppel argument, the PTABOA is a statutorily created body under Indiana Code § 6-1.1-28. The county assessor is a non-voting member of the PTABOA. A quorum of the PTABOA is required to transact business and a majority vote is needed in order for the PTABOA to act. In this case, the representations were made to the Assessor, but she is not the PTABOA. The PTABOA is a separate body that

has its own authority to act. There is no evidence that any representations were made to the members of the PTABOA or that any members of the PTABOA acted differently in reliance on any of these representations. *Hasler argument.*

15. The issue and the deadline facing the PTABOA is not a deadline to hold a hearing. It is deadline to make a change in the assessment reported on the taxpayer's return. Whether there was a violation of Chapter 16 was not known until the PTABOA issued the Form 115 on March 2, 2015. At that point, and not before that point, the taxpayer learned the PTABOA changed the amount reported by the taxpayer on the taxpayer's return. *Hasler argument.*
16. A person is simply not able to waive a right before they are in a position to assert it. This was recognized by the Indiana Supreme Court in *Doan v. Fort Wayne*, 252 N.E.2d 415, at 418 (Ind. 1969). It was a legal impossibility for a waiver to have occurred before March 2, 2015. According to Petitioner, no evidence close to March 2, 2015, suggests there was any act of acquiescence or waiver on the taxpayer's part to the PTABOA's determination. *Hasler argument.*
17. Finally, the taxpayer argues another important point, which is that a taxpayer is not able to confer authority to the PTABOA that is not granted by statute. When a statutory administrative board acts outside the authority granted by the statutes, those actions are void. This principle is found in *State ex rel. Evansville City Coach Lines, Inc. v. Rawlings*, 229 Ind. 552 at 576 (Ind. 1951). According to the Petitioner, the PTABOA's authority to change the assessment ended after October 30, 2014. *Hasler argument.*
18. The Petitioner filed its personal property returns on May 15, 2014. *Pet'r Exs. P-1-P-4.* The PTABOA attempted to change the value reported by the taxpayer on its returns, but pursuant to Indiana Code § 6-1.1-16-1(a), the PTABOA is required to issue a determination by October 30 of the assessment year. The Petitioner argues that because the PTABOA failed to issue a determination within the time allowed by statute, the assessed value claimed by the taxpayer on the personal property returns is final. *Hasler argument.*

SUMMARY OF THE RESPONDENT'S CASE

19. A PTABOA hearing was originally scheduled for September 25, 2014. Rittenhouse called the Assessor's office and requested a continuance. Rittenhouse said he was working with multiple clients and would not be able to make that date. He was asked to put the request in writing. During a detailed conversation, they discussed the October 30 deadline. It was Bentley's belief that the Petitioner was waiving the deadline, although she could not remember whether or not he used the word "waive." *Bentley testimony.*
20. The taxpayer requested a continuance with awareness that a subsequent hearing would not be held within the deadline. The letter from Baden Tax Management did not specifically state they were waiving the deadline. In the multiple discussions with Rittenhouse, however, it was very clear that both parties understood the deadline. Rittenhouse was concerned about scheduling issues and assured that going past the deadline was not a problem. It is the Respondent's position that by requesting a continuance the taxpayer waived the deadline. *Resp't Ex. RA; Bentley testimony.*
21. The Respondent contends that she tried to reschedule the hearing on October 28 and, again, on December 9. Rittenhouse was unable to attend on either date. Finally, they settled on January 27, 2015. Rittenhouse waived the 30-day notice of hearing for that date. But then at the PTABOA hearing Rittenhouse objected and asked the PTABOA to find in favor of his client because the hearing was outside the October 30 deadline. *Bentley testimony.*
22. There is no dispute about the existence of the October 30 deadline, but the issue is whether that deadline can be waived or is subject to estoppel. In a footnote in the *Allen County/Verizon* case, the Tax Court stated, "The Court will assume, without deciding, that the provisions of Chapter 16 may be waived." The Respondent argues that the *Allen County/Verizon* cases are very different from this case. First, the parties in *Verizon* disputed whether Chapter 15 or Chapter 16 procedures applied, which is not an issue in this case. Second, the Court noted that Verizon had no duty to notify the county of its statutory deadline. This was not an issue in this case because both parties were aware of

the deadline. Third, in *Verizon*, the assessor failed to file an appeal under Ind. Code § 6-1.1-16-4. Here, the assessor testified she did not file an appeal but she had no reason to do that because she agreed to reschedule the hearing. Fourth, the Court said Verizon did not represent either explicitly or implicitly that it would forgo its rights under Chapter 16 to have the hearing by October 30. Here, the taxpayer explicitly represented that it would forgo its right. Finally, in *Verizon* the Court said that the county offered nothing to support a reasonable inference that it detrimentally relied on the taxpayer's actions. In this case the Assessor directly relied on the taxpayer's representation that it would not hold the county to the deadline. According to the Respondent, this is a completely different case and requires a different result. *Chadd argument.*

23. It is the Respondent's position that the taxpayer intentionally relinquished a known right, that right being to have the hearing and the determination by October 30. The Petitioner's counsel questions whether that right can be waived before it exists. But the Respondent argues the right that was waived is the right to have a hearing and a determination by October 30. This right existed when the taxpayer requested the continuance. The taxpayer knew the deadline, asked for a continuance, understood it would result in a determination after the original deadline, and chose to proceed in that manner. The Respondent contends that conduct constitutes a waiver. *Chadd argument.*
24. The Respondent also claims estoppel applies because the Petitioner should be estopped from denying the request and agreement that it made. The Assessor acted on the Petitioner's request for a continuance. She accommodated the request with the taxpayer specifically understanding and agreeing that it would have an impact on the October 30 deadline. Therefore, the taxpayer would not hold the Assessor or the PTABOA to that deadline. Bentley testified that she would not have continued the hearings had she not believed the Petitioner waived the deadline. *Chadd argument.*
25. Estoppel requires some degree of being misled. The Assessor was not misled about the deadline or if there was a deadline. But she was misled when the taxpayer said if she continued the hearing the taxpayer would not hold her to the deadline. The Respondent claims she relied on that statement to her detriment. *Chadd argument.*

26. Finally, the Respondent argues that this situation raises the doctrine of invited error. A party cannot invite a party to take a certain action and then try to hold it against them. That is what happened here. According to the Respondent, the taxpayer asked for a continuance with the understanding it would extend the proceedings past the deadline (an invited error), and now seeks to use that result against the Respondent. *Chadd argument*.

ANALYSIS

27. Indiana's personal property tax system is a self-assessment system. Every person, including any firm, company, partnership, association, corporation, fiduciary, or individual owning, holding, possessing, or controlling personal property with a tax situs in Indiana on March 1 of a year must file a personal property tax return on or before May 15 of that year unless the person obtains a timely extension of time. Ind. Code § 6-1.1-3-7; 50 IAC 4.2-2-2.
28. Indiana Code § 6-1.1-16-1(a)(2) states, that "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 change on or before the latter 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 return."
29. Indiana Code § 6-1.1-16-1(b) states, "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."³

³ Indiana Code § 6-1.1-16-1(a)'s deadlines do not apply if a taxpayer: (1) fails to file a return that substantially complies with Ind. Code § 6-1.1 and the DLGF's regulations, or (2) files a fraudulent return with the intent of evading the payment of property taxes. Ind. Code. § 6-1.1-16-1(d). The Assessor, however, makes no claim that the Petitioner acted fraudulently or that the Petitioner's return was not substantially compliant.

30. Much of the testimony and argument in this case was focused on whether the taxpayer waived the right to have a hearing and determination by October 30, 2014. This point, however, is not the determinative question. Rather, we find the outcome of these cases depends entirely on the statutory powers granted to the PTABOA regarding changes to a taxpayer's self-reported personal property returns.
31. The PTABOA is a creation of the legislature, and thus has only those powers conveyed it by statute. *See Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904 at 908 (Ind. Tax Ct. 2002) (holding that the State Board of Tax Commissioners, as a creation of the legislature, had only those powers conferred to it by statute). The legislature specifically prescribes the outcome if the PTABOA does not change the assessment by October 30 of the assessment year in question, which in these cases is 2014. Absent any timely appeal by the Assessor, the taxpayer's self-reported assessment becomes final. Thus, any action by the PTABOA outside of its statutory authority, including the untimely changing of the taxpayer's self-reported assessments, is void. *See Whetzel at 908*; *See also Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999) (finding that a creature of the legislature has only those powers granted by statute); *Popovich v. Ind. Dep't of State Revenue*, 2016 Ind. Tax LEXIS 11 (Ind. Tax Ct. Apr. 14, 2016) (finding that an untimely proposed assessment by the Indiana Department of Revenue was void).
32. The Respondent contends the doctrines of estoppel and invited error apply because she was misled by the Petitioner's assurances and she relied on them to her detriment. These arguments fail for similar reasons. No action or statement by the Petitioner could grant the PTABOA authority beyond that conveyed by the legislature. In addition, we note that the Petitioner's self-reported returns became final automatically by operation of law. *See Allen Cnty. Assessor v. Verizon Data Servs., Inc.*, 43 N.E.3d 705 at 708 (Ind. Tax Ct. 2015). Thus, there was no forbearance or acquiescence attributable to the Petitioner.
33. The Assessor was not without remedy in this case. She could have filed an appeal within 45 days of the October 30 deadline pursuant to Ind. Code § 6-1.1-16-2. Although she may have decided not to do so based on representations from the Petitioner, that reliance

does not grant the PTABOA additional authority where the legislature has so clearly dictated the outcome.

SUMMARY OF FINAL DETERMINATION

34. Indiana Code § 6-1.1-16-1(a)(2) required the PTABOA to issue determinations changing the Petitioner’s self-reported assessments, including any determination on the Petitioner’s appeals from the Form 113 notice issued by the Assessor, by October 30, 2014. Because the PTABOA failed to issue final determinations changing the assessments within Ind. Code § 6-1.1-16-1(a)(2)’s deadline and the Assessor failed to file appeals under Ind. Code § 6-1.1-16-2, the Petitioner’s self-reported assessments are final.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first 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>>.