REPRESENTATIVE FOR PETITIONER: Bradley D. Hasler, Dentons Bingham Greenebaum LLP

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

BEFORE THE INDIANA BOARD OF TAX REVIEW

Republic Services of Indiana Transportation, LLC, Petitioner, v. Marion County Assessor, Respondent,	)	Petitions: 49-600-17-1-7-00270-22 49-600-17-1-7-00267-22 49-600-18-1-7-00268-22 49-600-18-1-7-00271-22 49-600-19-1-7-00269-22 49-600-19-1-7-00272-22 Parcels: F193276 A193482 County: Marion Assessment Years: 2017-2019

OCTOBER 24, 2024

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. Republic Services of Indiana Transportation, LLC ("Republic") filed personal property returns for its property at two locations in Indianapolis. The Marion County Assessor ("Assessor") audited the returns and issued assessments for the front-end lift equipment of Republic's garbage trucks. On appeal, Republic moved for summary judgment claiming that its returns were in substantial compliance, and accordingly, the Assessor's assessments were untimely. In the alternative, Republic argued the front-end lifts were

not taxable as personal property. We grant Republic's motion for summary judgment on both grounds.

PROCEDURAL HISTORY

2. Republic filed business personal property returns for property located at 4935 Robison Road and 829 Langsdale Avenue, Indianapolis on May 9, 2017, May 9, 2018, and May 3, 2019. The values on these returns were:

Year	Parcel F193276	Parcel A193482
2017	$681,920	$375,380
2018	$615,100	$314,670
2019	$641,150	$339,730

3. On February 21, 2020, the Assessor issued Notices of Change (Form 113s) for each of the returns. The values on the Form 113s were:

Year	Parcel F193276	Parcel A193482
2017	$1,177,670	$1,020,640
2018	$1,001,380	$1,174,780
2019	$1,030,420	$1,151,010

4. Republic timely appealed to the Marion County Property Tax Assessment Board of Appeals ("PTABOA"). The PTABOA affirmed the changed assessments on February 18, 2022.

5. The Board set this matter for hearing on June 13, 2023. Republic filed a motion for summary judgment seeking judgment based on the untimeliness of the assessment, and without opposition, moved to continue the hearing and hold a case management conference. The Board vacated the hearing and scheduled the case management conference. At the conference, the parties agreed to wait for the Board to rule on the motion for summary judgment before moving forward with a final hearing. The parties

also notified the administrative law judge that neither oral argument nor a hearing on summary judgment was necessary.

6. The Assessor responded to the motion for summary judgment with a brief and designated evidence addressing the issues of substantial compliance and the merits. Republic filed a reply in which it also addressed the merits and designated additional evidence. Additionally, Republic filed a Motion to Strike portions of one of the Assessor's exhibits, to which the Assessor responded.

7. The parties designated the following exhibits:

Petitioner's Ex. P-1:	Affidavit of Daniel Bodily
Petitioner's Ex. P-2:	Parcel F193276 2017 Business Personal Property Return
Petitioner's Ex. P-3:	Parcel F193276 2018 Business Personal Property Return
Petitioner's Ex. P-4:	Parcel F193276 2019 Business Personal Property Return
Petitioner's Ex. P-5:	Parcel A193482 2017 Business Personal Property Return
Petitioner's Ex. P-6:	Parcel A193482 2018 Business Personal Property Return
Petitioner's Ex. P-7:	Parcel A193482 2019 Business Personal Property Return
Petitioner's Ex. P-8:	Parcel F193276 2017 Form 113
Petitioner's Ex. P-9:	Parcel F193276 2018 Form 113
Petitioner's Ex. P-10:	Parcel F193276 2019 Form 113
Petitioner's Ex. P-11:	Parcel A193482 2017 Form 113
Petitioner's Ex. P-12:	Parcel A193482 2018 Form 113
Petitioner's Ex. P-13:	Parcel A193482 2019 Form 113
Petitioner's Ex. P-14:	Second Affidavit of Daniel Bodily
Petitioner's Ex. P-15:	Affidavit of Dustin Brenton
Petitioner's Ex. P-16:	Photograph of property at issue
Petitioner's Ex. P-17:	Photograph of property at issue
Petitioner's Ex. P-18:	Photograph of property at issue
Petitioner's Ex. P-19:	Photograph of property at issue
Petitioner's Ex. P-20:	Photograph of property at issue
Petitioner's Ex. P-21:	Photograph of property at issue
Petitioner's Ex. P-22:	Photograph of property at issue
Petitioner's Ex. P-23:	Photograph of property at issue
Petitioner's Ex. P-24:	Photograph of property at issue
Petitioner's Ex. P-25:	Photograph of property at issue
Petitioner's Ex. P-26:	Photograph of property at issue
Petitioner's Ex. P-27:	Indiana Registration Cab Card
Petitioner's Ex. P-28:	2022 Indiana Commercial Vehicle Excise Tax Fee Schedule
Respondent's Ex. R-1:	Parcel A193482 2017 Form 131

Respondent's Ex. R-2: Parcel A193482 2018 Form 131
Respondent's Ex. R-3: Parcel A193482 2019 Form 131
Respondent's Ex. R-4: Parcel F193276 2017 Form 131
Respondent's Ex. R-5: Parcel F193276 2018 Form 131
Respondent's Ex. R-6: Parcel F193276 2019 Form 131
Respondent's Ex. R-7: Affidavit of Nicholas Getz and supporting documents
Respondent's Ex. R-8: Pub. Law 23-236, § 12 (May 4, 2023)

8. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeals, (2) all orders and notices issued by the Board or our ALJ.

MOTION TO STRIKE

9. Republic moved to strike paragraphs 8 and 10 of Respondent's Ex. R-7, the affidavit of Nicholas Getz, who was the auditor retained by the Assessor to examine Republic's returns.

10. For Paragraph 8, Republic argued that the affidavit failed to demonstrate that Getz had sufficient personal knowledge of garbage collection vehicles to conclude that without the front-end lift, a garbage truck "would still be capable of functioning as a garbage truck." The Assessor's response to the motion to strike did not specifically address this paragraph.

11. For Paragraph 10, Republic argued that the paragraph contained impermissible legal conclusions as to whether front-end lift equipment is taxable as personal property. The Assessor responded that Getz had sufficient personal knowledge of personal property audits to testify about them. The Assessor did not address Republic's claim that the affidavit contained legal conclusions.

12. We find both paragraphs merely state the reasoning underlying the conclusions of the audit, and we deny Republic's motion to strike.

STATEMENT OF FACTS NOT IN DISPUTE

13. The Assessor did not allege any facts were in dispute.[1] During the tax years at issue, Republic owned garbage collection trucks equipped with front-end lifts. Front-end lifts are used to pick up a dumpster (waste receptacle) from the front of the truck, lift it over the cab, and empty it into the compactor in back of the truck. For the reasons set forth below, we find it immaterial whether a garbage truck might still function as a garbage trucks without the lifts. There is no dispute the front end lifts on the garbage trucks are used to collect and transport garbage. *Pet'r Ex. P-1-28.*

14. The garbage trucks are registered with the Indiana Bureau of Motor Vehicles, and Republic paid excise taxes based on their gross weight. Each of the garbage trucks has a gross vehicle weight in excess of 11,000 pounds. *Pet'r Ex. P-1-28.*

15. In submitting property tax returns for its property located at 4935 Robison Road and 829 Langsdale Avenue respectively, Republic did not list the front-end lifts as taxable personal property. However, Republic did include with the property tax returns a list of "Inactive/Moved" property that provided a description of the garbage trucks as well as their acquisition dates and costs. The front-end lifts were not separately identified. Republic did not include any costs for the collection trucks or front-end lift equipment on its returns because it believed both the trucks and front-end lifts were subject to excise tax rather than personal property tax. *Pet'r Ex. P-1-28.*

16. The Assessor hired Tax Management Associates, Inc. to audit Republic's returns. As a result of the audit, the Assessor issued notices of change on February 21, 2020. These notices added assessments for the front-end lift equipment. *Pet'r Ex. P-1-6; Resp't Ex. R-7.*

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[1] In its response to Republic's motion to strike Getz's assertion that garbage trucks can function without front-end lifts, the Assessor argued Republic has consequently admitted there is "*disputed* evidence" and a question of fact. *Resp.'s Response to M. to Strike* (emphasis in original). The Assessor's summary judgment brief fails to assert that a factual dispute should defeat summary judgment. *Assessor's Br. in Opp. to S.J.* In any event, as explained below, it is immaterial whether the garbage trucks could still function as garbage trucks without the front-end lifts because the dispositive issue is whether the lifts are used to transport garbage.

CONCLUSIONS OF LAW

I. INTRODUCTION

17. This case revolves around the standard for deciding whether a property tax return is in substantial compliance. The Tax Court in *Ingredion, Inc. v. Marion Cnty. Assessor*, 184 N.E.3d 731 (Ind. Tax Ct. 2022), diverged from prior case law and set a much lower bar for complete disclosure in self-reporting personal property. In response, the Legislature promptly amended the statute. The parties clash over the thorny issues of whether the Legislature intended the statute to be corrective and retroactive, and beyond that, whether the Legislature's language effectively reversed the holding in *Ingredion*. Fortunately, this matter may be resolved without untangling this knot.

18. Under either *Ingredion* or its predecessors interpreting the audit statute, we find that Republic disclosed the garbage trucks in the property tax returns, and, consequently, placed the Assessor on notice of the front-end lifts. Under the pre-*Ingredion* case law, Republic's property tax returns were in substantial compliance and the Assessor's notices were untimely.

19. In the alternative, both parties argued the merits of the matter were ripe for summary judgment. The Assessor described "the primary dispute" as "whether front-end lift equipment for garbage trucks is subject to personal property tax as nonautomotive, or not," based on a rule issued by the Department of Local Government Finance ("DLGF"). *Assessor's Br. in Opp. to M. for S.J. at 1.* Republic, as an alternative to its main argument, argued the DLGF rule was in conflict with the statute, or in any event, the lifts were nonautomotive. *Pet'r. 's Reply Br. in Supp. of M. for S.J. at 20-24.* For the reasons set forth below, we find that the front-end lifts were not taxable as personal property.

II. SUMMARY JUDGMENT STANDARD

20. 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).

21. Neither party designates a material fact in dispute. This matter rests entirely upon which party should prevail as a matter of law.

III. THE PERSONAL PROPERTY RETURNS WERE IN SUBSTANTIAL COMPLIANCE UNDER THE *AMOCO* STANDARD

22. Indiana's personal property tax system is a self-assessment system. Every person, owning, holding, possessing, or controlling personal property with a tax situs in Indiana as of the yearly assessment date must file a personal property tax return. Indiana Code § 6-1.1-3-7; 50 IAC 4.2-2-2.

23. Not all personal property is subject to assessment and taxation under the property tax statutes. Relevant here, vehicles subject to excise tax are specifically excluded from personal property tax under I.C. § 6-1.1-2-7(b)(2).

24. Because personal property is self-reported, the system "is therefore heavily reliant on full disclosure and accurate reporting." *Paul Heuring Motors v. State Bd. of Tax Comm'rs*, 620 N.E.2d 39, 41 (Ind. Tax Ct. 1993). Our property tax system does not compel assessors to rely on the honesty of property owners. Assessors are empowered to audit the business records of taxpayers to ensure that their personal property returns comply with the law. If an audit discloses "personal property which is omitted from or undervalued on the return," the assessor may assess the omitted property and adjust the assessments. I.C. § 6-1.1-9-3(a).

25. Our Supreme Court recognized a century ago that without audits, "property would wholly escape taxation, and nothing would be taken from the burden of the honest property

owner who returns all of his property to be taxed." *Fleener v. Litsey*, 30 Ind. App. 399, 404-05, 66 N.E. 82, 84 (Ind. 1903), *see also BP Prods. N. Am. v. Bd. of Comm'rs*, 812 N.E.2d 139, 143 (Ind. Ct. App. 2004). Accordingly, "public policy favors the power to audit for undervalued property." *Tippecanoe County v. Ind. Manufacturer's Ass'n.*, 784 N.E.2d 463, 467 (Ind. 2003). Interpreting the statutes so that a taxpayer is "shielded from an increased assessment" or to "avoid taxation," will not be "tolerated." *BP Prods.*, 812 N.E.2d at 146.

26. How long an assessor is granted to complete an audit and reassess a property tax return depends on the degree to which the taxpayer complied with the law. For a timely filed, non-fraudulent, and substantially compliant property tax return, the assessor must complete the audit and send notice of the change in the assessment by October 30th of the assessment year.[2] I.C. § 6-1.1-16-1(a). Failing to do so, the value reported by the taxpayer becomes "final," and the assessor cannot change the assessment. I.C. § 6-1.1-16-1(b); I.C. § 6-1.1-9-3(a).

27. If a taxpayer "fails to file a personal property return which substantially complies with this article and the regulations of the [DLGF]," the assessment does not become final on October 30th. I.C. § 6-1.1-16-1(d). Rather, the assessor is granted three years to audit the return. I.C. § 6-1.1-9-3(a). The statute is not merely procedural. The substantive "purpose of the audit is to determine whether [the taxpayer] has filed its returns for prior years in substantial compliance with the Indiana Code." *BP Prods. N. Am. v. Bd. of Comm'rs*, 812 N.E.2d at 144. The Legislature has struck a balance between finality and compliance.

28. As for the meaning of substantial compliance, prior to 2023 the statute required the taxpayer to "make a complete disclosure of all information required by the department of local government finance that is related to the *value, nature, or location* of personal property." I.C. § 6-1.1-9-3(a) (2022) (emphasis added). As an additional requirement, "the taxpayer shall certify to the truth" of the information and data in the return. I.C. § 6-

[2] If untimely filed, yet still non-fraudulent and substantially compliant, an assessor has five months after the filing date to complete the audit. I.C. § 6-1.1-16-1(a).

1.1-9-3(b).

29. The Tax Court has long held that the "main objectives" of the self-reporting system are "full disclosure and accurate reporting." *Lake County Assessor v. Amoco Sulfur Recovery Corp.*, 930 N.E.2d 1248, 1255 (Ind. Tax Ct. 2010). For substantial compliance, "a taxpayer simply needs to provide property descriptions that identify the property with particularity." *Id.* at 1253. "Substantial compliance means an assessor understands the taxpayer's property description at first blush." *Id.* at 1253 n.9. While accurate reporting is necessary, a return may be in substantial compliance even if there are errors or disputes as to whether property is exempt. "A taxpayer's inaccurate determination that its personal property qualifies for an exemption, without something more, is insufficient to support a finding that the taxpayer's returns failed to substantially comply." *Id.* at 1256. Accordingly, *Amoco* set a standard for substantial compliance that required accuracy of the property description, but also provided that a return with an "inaccurate determination" of eligibility for an exemption might still substantially comply.

30. The Tax Court revisited this standard in the 2022 opinion in *Ingredion*. It reaffirmed the holding in *Amoco* that "substantial 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 736 (internal quotations and edits omitted). Then, going beyond *Amoco*, the *Ingredion* court concluded that I.C. § 6-1.1-9-3(a) contained no accuracy requirements whatsoever: "the statute expressly requires disclosure, not accuracy." *Id.* at 738. The opinion's final analysis considered whether the tax returns made a "complete disclosure," implicitly holding that an *inaccurate* disclosure also suffices as a *complete* disclosure. *Id.*

31. But that was only half the new ground broken in *Ingredion*. Because I.C. § 6-1.1-3-9(a) (2022), used the word "or" in the information to be disclosed ("value, nature, or location"), the *Ingredion* court held that "only one of the three is required." *Id.* at 737 n.1. Whereas *Amoco* expressly affirmed the DLGF rule requiring "a full and complete disclosure of such information . . . relating to the value, nature, *and* location of all [its] personal property," in 50 I.A.C. 4.2-2-5(a), *Ingredion* held that the DLGF rule "is

inconsistent with the statute" and "the '*and*' is invalid." *Amoco*, 930 N.E.2d at 1252 n.8; *Ingredion*, 183 N.E.3d at 737 n.1 (emphases added). Thus, the *Ingredion* court concluded that "Taxpayers are only required to meet one of the three statutory objectives." *Ingredion*, 183 N.E.3d at 738. Applying the law, the court held the taxpayer's return was in substantial compliance because the taxpayer made a complete disclosure of the *location* of the property. *Id.* at 738.

32. Thus, the fundamental holding in *Ingredion* is that a taxpayer who fails to report *any value* for its personal property substantially complies with a personal property tax system that is dependent upon taxpayers self-reporting the value of their personal property.

33. Republic disclosed locations for its personal property, and presuming *Ingredion* remains good law, we need look no further to conclude that the returns were in substantial compliance. But the status of *Ingredion* is far from certain.

34. The Legislature swiftly reacted to the Tax Court's decision in *Ingredion* and amended I.C. § 6-1.1-9-3(a) to replace the word "or" with "and." P.L. 236-2023 § 12. Effective July 1, 2023, taxpayers are once again required to make a complete disclosure of "value, nature, *and* location of personal property." I.C. § 6-1.1-3-9(a) (2023) (emphasis added).

35. The Assessor argues that this amendment was a "clarification" of existing law and should be "given retroactive effect" to abrogate *Ingredion*. *Resp't. Br.* at 4. Generally, statutes are given prospective effect only, and there must be strong and compelling reasons to apply an amendment retroactively. *Indiana Dep't. of Revenue v. Estate of Riggs*, 735 N.E.2d 340 (Ind. Tax Ct. 2000). The bill amending the statute did not explicitly state that the enactment should apply retroactively. The bill likewise failed to state that the amended statute should apply only to tax returns or audits filed after its effective date. Moreover, applying a statute to events or litigation that commenced prior to the enactment of the statute does not necessarily mean it is being applied retroactively. *See Church v. State*, 189 N.E.3d 580 (Ind. 2022).

36. Nonetheless, it is far from clear that the Legislature addressed the "accuracy" holding in *Ingredion*. The Legislature did not enact a definition of substantial compliance or otherwise expressly reverse the Tax Court's holding that complete disclosure *does not*

require accuracy. Thus, the landmark holding in *Ingredion*, that taxpayers need not accurately report values to substantially comply, may remain controlling law.

37. Fortunately, we need not determine the status of *Ingredion* to dispose of this case. It behooves all judicial and quasi-judicial tribunals to hold fast to the most solid ground in resolving legal issues whenever possible. Applying the stricter standard originally announced in *Amoco* and expressly affirmed by *Ingredion*, we still find that Republic's property tax returns substantially complied with the reporting requirements of the statute.

38. As noted above, the personal property returns filed by Republic included descriptions, values, and locations of the garbage trucks. In doing so, Republic fully disclosed what property it was excluding from its self-reported assessment. This substantially complies with the self-reporting statute because it achieved the "reasonable objectives" of placing the Assessor in full knowledge and understanding of what was included and what was omitted. *See Amoco*, 930 N.E.2d at 1256; *Ingredion*, 184 N.E.3d at 736. "At first blush," the Assessor should have known that garbage trucks were excluded and, necessarily, the common features of garbage trucks like front-end lifts were omitted as taxable personal property. *Amoco*, 930 N.E.2d at 1253 n.9. Even if Republic's beliefs about the taxability of the front-end lifts might prove incorrect or inaccurate, the return was substantially compliant at the time it was filed.

39. Accordingly, we conclude that the Assessor's assessment was untimely because Republic's returns were in substantial compliance.

IV. THE FRONT-END LIFTS WERE AUTOMOTIVE AND NON-TAXABLE AS PERSONAL PROPERTY.

40. Regardless of whether the property tax returns were in substantial compliance, we find that the front-end lifts were not subject to assessment as personal property.

41. The undisputed facts establish that each of the garbage trucks are "trucks" as defined under the commercial vehicle excise statute. The garbage trucks exceed 11,000 pounds, and Republic has properly registered and paid the excise tax on them. The garbage trucks' front-end lifts are used by the trucks to collect and transport garbage. However, a front-end lift, in and of itself, is not a vehicle.

42. The commercial vehicle excise tax is imposed on vehicles, including trucks in excess of a declared gross vehicle weight of 11,000 pounds. I.C. § 6-6-5.5-3(a)(1).[3] A "truck" is defined as a "motor vehicle designed, used, or maintained primarily for the transportation of property." I.C. § 9-13-2-188(a); I.C. § 6-6-5.5-1(b)(11).[4] The Assessor has not challenged whether garbage can be considered property. Because garbage trucks are used primarily to transport garbage, as a matter of law, the garbage trucks at issue here are subject to the excise tax. None of these legal conclusions are contested.

43. The commercial vehicle excise tax is imposed "*instead* of the ad valorem property tax." I.C. §6-6-5.5-3(b)(1) (emphasis added).[5] The law clearly evinces the intention that a commercial vehicle will not be subject to both an excise tax and a property tax. Because the garbage trucks are subject to the excise tax, they cannot be assessed as personal property.

44. Neither party disputes that commercial vehicles are personal property. Personal property is commonly understood as "things movable, as distinguished from real property or things attached to the realty." Barron's Law Dictionary (1996). Republic's garbage trucks *are personal property*; however, they are *not taxable* as personal property because they are "instead" taxed under the excise statute.

45. In its rules, the DLGF has declared that personal property "also includes nonautomotive equipment attached to excise vehicles." 50 I.A.C. 4.2-1-1.1(m)(2).[6] It is not apparent how this regulation has any operative effect because whether any equipment is considered personal property does not answer the question of whether it is exempt under the excise statute.

46. Defining a portion of a vehicle as personal property does not logically exempt it from the excise statute. What makes a garbage truck subject to the excise statute is its primary use

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[3] The statute was amended in 2017. Previously, vehicles were not expressly limited to trucks in excess of 11,000 pounds, but there is no dispute the garbage trucks were subject to the excise tax for 2017. See I.C. §6-6-5.5-1(c) (2016); I.C. 6-6-5.5-2(a) 2016.

[4] For 2017, see I.C. §6-6-5.5-1(q) (2016).

[5] For 2017, the language was even more express: "No commercial vehicle subject to taxation under this chapter shall be assessed as personal property for the purpose of the assessment and levy of personal property taxes or shall be subject to ad valorem taxes." I.C. §6-6-5.5-3(d) (2016).

[6] Previously, the same language was found at 50 I.A.C. 4.2-1-1.1(l)(2).

(transporting property) and its gross vehicle weight (over 11,000 pounds), not whether it is considered personal property. The excise statute does not presume to classify trucks as something other than personal property. It recognizes that commercial vehicles *are personal property* and expressly exempts them from *taxation* as personal property. For these reasons, simply defining part of the truck as personal property cannot exclude it from the excise tax and make it taxable as personal property.

47. The DLGF "nonautomotive" rule might have had an operative effect if it declared *what is or is not part* of a "commercial vehicle." But that is not how the regulation was drafted.

48. This is not to say that the infirmities of the DLGF "nonautomotive" rule ends the inquiry. The excise statute applies to *vehicles*, and not necessarily to any other personal property affixed to the vehicle. A front-end lift is not a vehicle, and detached from a qualifying commercial vehicle, there is no suggestion it would not be subject to the excise tax. The same could be said of bumpers or windshields.

49. While Republic references the fact that the weight of the front-end lifts was included in the calculation of the excise tax due on the garbage trucks, that cannot be dispositive. The equipment is either taxable as personal property or not, and an owner cannot avoid the property tax simply by erroneously paying an excise tax on it.[7] The substantive question is where a "truck" begins and ends for purposes of a "vehicle" subject to the excise tax.

50. The DLGF "nonautomotive" rule and a March 3, 2011, DLGF memorandum endeavor to give guidance on what ancillary equipment is taxable as personal property. In addition to front-end lifts on garbage trucks, the Memo's examples include the drilling unit of a well-drilling truck, the MRI unit of a mobile medical trailer, and truck-mounted equipment like toolboxes, generators, and air compressors. *Resp't.'s Ex. R-7A.*[8] The question of

[7] How an owner might ensure the weight of non-excise equipment (taxable personal property) is excluded from the excise tax calculation is neither before us nor within the scope of our jurisdiction. *See* I.C. § 6-1.5-4-1.

[8] The Memo draws a distinction between a garbage truck's front-end lifts (taxable as personal property) and compaction equipment (taxable as excise). *Resp't.'s Ex. R-7A.* We fail to see a reasonable distinction between the compaction equipment and front-end lifts, as both are equally related to more efficiently transporting garbage. In the same vein, if the standard for ancillary equipment is whether a garbage truck would still be capable of functioning as a garbage truck without the equipment, the answer would likely be the same for front-end lifts and compaction equipment.

whether the equipment is nonautomotive is certainly a relevant consideration. But the standard must be founded on the language of the excise statute. Based on the excise statute's definition of a "truck," we find the question is whether the challenged ancillary equipment is used for the "transportation of property." I.C. § 9-13-2-188(a).

51. The undisputed facts establish that the front-end lifts on Republic's garbage trucks are attached to the vehicle and used for the collection and transport of garbage. Whether the garbage trucks, in the absence of front-end lifts, could still haul garbage is immaterial. Republic's garbage trucks have lifts that *are used by the vehicle to transport garbage*, and accordingly, we hold they are subject to the excise tax as part of a "truck" as defined under the commercial vehicle excise tax statute.

52. This is consistent with the outcome, if not the reasoning, of a prior Board decision. We have held that street sweeping equipment should be considered part of a truck for purposes of the excise tax. *Republic Services v. Vanderburgh Co. Assessor*, 82-027-13-1-7-01258-17, et. al., Ind. Bd. Tax Rev. (February 4, 2019). Just as sweepers collect trash off the street for transport, front-end lifts collect garbage from dumpsters for transport. While our analysis was different in the street sweeper case,[9] we find both types of equipment are used for transporting property and are not taxable as personal property.

53. For these reasons, we find as a matter of law that Republic did not err when it failed to self-report the front-end lists as taxable personal property.

CONCLUSION

54. Because Republic's returns substantially complied with the audit statute and the front-end lifts are not taxable as personal property, we find the values from Republic's originally filed returns are final and correct, and we order the Assessor to reinstate those values.

[9] In *Republic Services v. Vanderburgh Co. Assessor*, we applied the "nonautomotive" standard and distinguished sweeping equipment as not analogous to front-end lifts.

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>.