

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 18-005-07-1-7-00580-18
18-005-08-1-7-00581-18
18-005-09-1-7-00582-18
Petitioner: Rivar’s, Inc.
Respondent: Delaware County Assessor
Parcel: 18-05-07-389-103.000-005 (Personal Property)
Assessment Years: 2007, 2008, and 2009

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

PROCEDURAL HISTORY

1. Rivar’s, Inc. filed personal property returns for 2007, 2008, and 2009. On May 11, 2010, the Assessor issued Form 113/PP notices increasing the assessed values of Rivar’s business personal property as follows:

	Self-Reported	Form 113/PP
2007	\$121,490	\$187,490
2008	\$121,220	\$204,690
2009	\$124,210	\$221,760

2. On May 26, 2010, Rivar’s filed Form 130 petitions¹ seeking review with the Delaware County Property Tax Assessment Board of Appeals (“PTABOA”). On April 4, 2018, the PTABOA issued Form 115 notices upholding the increased assessments.
3. On May 18, 2018, Rivar’s filed Form 131 petitions² with the Board for all three years and elected our small claims procedures. On December 20, 2018, Joseph Stanford, our designated administrative law judge (“ALJ”) held a consolidated hearing on the petitions. Neither he nor the Board inspected the property.

¹ Although Rivar’s attached its Form 130 petitions for each of the years under appeal to its Form 131 petitions, the Form 130 addressing the 2009 assessment is the only form submitted that bears a signature and the May 26, 2010 date. Nevertheless, the three forms are identical (other than the years and assessments) and set up for the same tax representative to sign. Additionally, David W. Garrett, Rivar’s tax representative, testified that he believed Rivar’s initiated the appeals in May of 2010.

² We received Rivar’s Form 131 petitions on May 22, 2018. However, Rivar’s filed its Form 131 petitions by certified mail on May 18, 2018. Pursuant to 52 IAC 2-3-1, the postmark date constitutes prima facie proof of the date of filing. While we recognize that Rivar’s certified mail envelope listed the Indiana Department of Revenue as the recipient, it was otherwise correctly addressed and was delivered to our office.

4. Rivar's appeared by David W. Garrett, CPA. The Assessor appeared by attorney Joseph I. Rhettts. Garrett and Jordan Hertig, an auditor for Tax Management Associates ("TMA"), testified under oath.

RECORD

5. The official record contains the following:
 - a) Exhibits:

Petitioner Exhibit 1:	Show-choir dress
Petitioner Exhibit 2:	2008 product catalogue
Respondent Exhibit A:	Rivar's federal depreciation expense schedule for May, 1, 2008 through April 30, 2009
 - b) The record also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

SUMMARY OF CONTENTIONS

6. Rivar's case:
 - a) Rivar's is a manufacturer and distributor of show-choir apparel. It manufactures "sample and sizing garments" for its salespeople to use in their marketing campaigns. *Garrett testimony; Pet'r Exs. 1, 2.*
 - b) Garrett, Rivar's CPA, argued that those garments are inventory, and therefore not subject to business personal property taxation. According to Garrett, Rivar's uses the garments for marketing, which "by code" defines them as inventory, and it then sells them in three to five years at a discounted price. *Garrett testimony.*
 - c) Garrett acknowledged that Rivar's listed the garments on its depreciation expense schedule for the years in question and deducted depreciation expense. In doing so, Rivar's was attempting to write the garments down to net realizable value, and was using the depreciation system to make that calculation. *Garrett testimony; see Resp't Ex. A.*
 - d) However, Garrett asserted that this resulted in an improper deduction for federal income tax purposes. The write-down should have been "run through an inventory reserve," which is not deductible for federal tax purposes until it is actually realized. When the error was discovered, Rivar's changed its federal tax reporting to the proper method. However, it did not file amended returns for 2007, 2008, 2009, because the error was not discovered until the statute of limitations had expired. Nonetheless,

Garrett contended that the garments in question are inventory, and therefore not subject to property taxation. *Garrett testimony.*

- e) Responding to the Assessor's argument regarding the timeliness of Rivar's appeals, Garrett testified that he did not remember the exact timing, but he believed that Rivar's initiated the appeals in May of 2010. And neither Rivar's nor Garrett's predecessor received notice of the original dates, possibly because Rivar's moved from Muncie to Fishers. *Garrett testimony.*

7. The Assessor's case:

- a) The Assessor hired TMA to perform an audit of Rivar's business personal property returns. Through the audit, TMA discovered that Rivar's had not reported certain items listed as depreciable assets on its depreciation expense report. TMA added those items, consisting of sample inventory and sizing inventory, to Rivar's assessment because Rivar's was taking depreciation on them. That was the only change TMA made to Rivar's assessments. *Hertig testimony; Resp't Ex. A.*
- b) The Indiana administrative code specifically excludes from inventory items that are subject to depreciation. Whether the depreciation expense was proper, Rivar's depreciated the property in 2007, 2008, and 2009. Therefore, the property is subject to taxation. *Rhetts argument.*
- c) The Assessor also made "a general objection to the timeliness" of Rivar's appeals claiming that Rivar's missed its 45-day deadline to file its appeals with the Board:

The IBTR appeal would presumably be untimely because we assume that the PTABOA appeal was filed timely. The PTABOA deadline for the determination had come and gone. The taxpayer had, I think, 45 days after that deadline then to file to the IBTR for appeal, which presumably didn't happen, because I think this IBTR appeal was filed in early-2018, if I remember correctly.

Rhetts argument.

ANALYSIS

- 8. 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 were required to file a personal property tax return on or before May 15 of that year unless an extension of time was granted. Ind. Code § 6-1.1-3-7; 50 IAC 4.2-2-2. However, inventory is not subject to assessment and taxation as personal property. Ind. Code § 6-1.1-2-7; 50 IAC 4.2-5-1.1; *see also* Ind. Code § 6-1.1-1-11 (excluding inventory from the definition of personal property).

9. Here, relying on an audit performed by TMA, the Assessor increased Rivar’s business personal property assessments for 2007, 2008, and 2009 because he believes the garments in question are depreciable assets rather than inventory. For its part, Rivar’s maintains that the garments are inventory, and therefore not subject to property taxation. We conclude, however, that the PTABOA failed to timely issue its final determinations, making Rivar’s self-reported assessments final.
10. Indiana Code § 6-1.1-16 dictates that result. The first section of that chapter provides, in relevant part:

Sec 1. (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 (emphasis added). Section 2 allows an assessor to seek review with the Board if a property tax assessment board of appeals fails to act within Section 1(a)(2)’s deadlines. Ind. Code § 6-1.1-16-2(a). The 45-day deadline for seeking that review runs from the last day the PTABOA was permitted to act. *Id.*; Ind. Code § 6-1.1-15-3(d).

11. While neither party submitted evidence establishing the actual dates Rivar's filed its returns, the Assessor issued Form 113/PP notices increasing Rivar's 2007, 2008, and 2009 assessments on May 11, 2010. Thus, Rivar's clearly filed them before May 11, 2010 since the Assessor based the Form 113/PP notices on TMA's audit of Rivar's returns.
12. Without knowing the actual filing dates of Rivar's returns, we cannot determine if the Assessor's Form 113/PP notices were timely for any given assessment year. However, the Indiana Tax Court has held that Ind. Code § 6-1.1-16-1(a)(2)'s plain language applies to a county property tax assessment board of appeals when, like here, it acts as a "quasi-adjudicator" in the appeal process. *See Washington Twp. Ass'r v. Verizon Data Services, Inc.*, 43 N.E.3d 697, 701-03 (Ind. Tax Ct. 2015). Whether we calculate the PTABOA's deadline to issue final determinations on the Assessor's changes to Rivar's self-reported assessments using the May 11, 2010 date of the Form 113/PP notices or even the May 26, 2010 date of Rivar's Form 130 petitions, we conclude the PTABOA's determinations were untimely. At most, the PTABOA had until five months from May 26, 2010 to issue its determinations. However, the PTABOA failed to issue them until April 4, 2018, more than 7 years past the most generous reading of its deadline. The Assessor's counsel even admitted that the PTABOA's deadline for issuing its determinations "had come and gone."
13. Despite the PTABOA missing that deadline, the Assessor could have sought to preserve his assessment by seeking review under section 2 (Ind. Code § 6-1.1-16-2). But he failed to do so. And the Assessor never argued that Rivar's returns were fraudulent or that it failed to substantially comply with Indiana's property tax statutes and regulations.
14. Because the PTABOA failed to change the assessments and give notice of those changes within the time prescribed by Ind. Code § 6-1.1-16, Rivar's is entitled to have its assessments reduced to the amounts originally claimed on its personal property returns. As a result, we need not address whether the garments in question are inventory.
15. However, we do need to briefly address the Assessor's argument regarding the timeliness of Rivar's appeals to us. His argument appears to be that the Form 131 petitions were untimely because Rivar's failed to appeal the Assessor's Form 113/PP increases before the PTABOA's deadline to issue determinations expired. But Rivar's 45-day deadline to appeal to us started to run when the PTABOA issued its Form 115 determinations on April 4, 2018, not on the date of the PTABOA's deadline to issue those determinations. Ind. Code § 6-1.1-15-3(d). Rivar's filed its Form 131 petitions on May 18, 2018, only 44 days after the Form 115's were issued. We therefore conclude that Rivar's timely filed its Form 131 petitions.

FINAL DETERMINATION

16. We find for Rivar's for all three years under appeal and order the 2007, 2008, and 2009 assessments reduced to \$121,490, \$121,220, and \$124,210, respectively.

ISSUED: June 14, 2019

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 of 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>>.