

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

Petition: 71-026-12-1-7-06707
Petitioner: Philip M. Slatt
Respondent: St. Joseph County Assessor
Parcel: 71-126-08599-00 (Business Tangible Personal Property)
Assessment Year: 2012

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner initiated his 2012 appeal with the St. Joseph County Assessor by filing a Petition for Review of Assessment (Form 130) on April 16, 2014.¹
2. On December 18, 2014, the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.
4. The Board issued a notice of hearing on October 14, 2016.
5. Administrative Law Judge (ALJ) Joseph Stanford held the Board's administrative hearing on December 15, 2016. He did not inspect the property.
6. Philip M. Slatt appeared *pro se* and was sworn as a witness. Attorney Frank Agostino appeared for the Respondent. St. Joseph County Assessor Rosemary Mandrici, and personal property manager Janine M. Dudzinski were sworn as witnesses for the Respondent.

Facts

7. The business personal property under appeal is located at 1015 East Corby in South Bend.
8. The Petitioner is not challenging the assessed value of the property. Instead, he is contesting a penalty assessed by the Respondent for failure to file his 2012 personal property return.

¹ The Petitioner included an attachment to the Form 130 entitled "Petition for Correction of an Error." It does not appear the Petitioner ever filed a Petition for Correction of Error (Form 133).

9. The Petitioner is requesting a refund of \$506.99 plus interest and an unspecified amount for “labor in preparing for this hearing.”

Record

10. The official record for this matter is made up of the following:

- a) Form 131 with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

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| Petitioner Exhibit 1: | Petitioner’s “2012 payable 2013” property tax bill, |
| Petitioner Exhibit 1A: | Letter from Mark A. McNamee, CPA, to Rosemary Mandrici, dated January 13, 2015, |
| Petitioner Exhibit 2: | Letter from Mr. Slatt to Rosemary Mandrici, dated July 11, 2014, |
| Petitioner Exhibit 3: | 2011 Business Tangible Personal Property Return (Form 104) and Business Tangible Personal Property Return (Form 103-Short) for Corby Fabric Care Center (Form 103-Short MARKED CONFIDENTIAL), |
| Petitioner Exhibit 4: | 2012 Form 104 and Form 103-Short for Corby Fabric Care Center (Form 103-Short MARKED CONFIDENTIAL), ² |
| Petitioner Exhibit 5: | 2012 Form 104 and Form 103-Short for Approved Safety & Security, Inc. (Form 103-Short MARKED CONFIDENTIAL), ³ |
| Petitioner Exhibit 6: | Invoice from Mark A. McNamee, CPA, dated April 27, 2012, |
| Petitioner Exhibit 7: | Copy of Petitioner’s cancelled check dated May 15, 2012 (MARKED CONFIDENTIAL), |
| Petitioner Exhibit 8: | Payable 2011 receipt for personal property dated May 10, 2011. |
| Respondent Exhibit 1: | Petitioner’s personal property filing history, |
| Respondent Exhibit 2: | Petitioner’s 2012 Form 103-Short data (MARKED CONFIDENTIAL), |
| Respondent Exhibit 3: | 2012 Notice of Assessment/Change (Form 113/PP) dated June 20, 2012. |

² The Petitioner claims these exhibits are for the 2012 assessment year, but it is clearly marked March 1, 2011, at the top of the forms.

³ Again, the Petitioner claims these exhibits are for the 2012 assessment year, but it is clearly marked March 1, 2011, at the top of the forms.

- Board Exhibit A: Form 131 with attachments (attachments MARKED CONFIDENTIAL),
Board Exhibit B: Notice of hearing dated October 14, 2016,
Board Exhibit C: Hearing sign-in sheet,
Board Exhibit D: Notice of Appearance for Frank J. Agostino.

d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioner's case:

- a) The Petitioner is "appealing the fine for not filing [his] tax return when in fact it was properly filed." Mr. Slatt is seeking a refund of the \$506.99 penalty levied against him for "allegedly" failing to file his 2012 Business Tangible Personal Property Return for his business Corby Fabric Care Center (Corby). Mr. Slatt is also asking the Board to find he is entitled to interest and an unspecified amount for "labor in preparing for this hearing." *Slatt argument; Pet'r Ex. 1.*
- b) Mr. Slatt testified that he "remembers" filing Corby's 2012 personal property return. He "believes" he filed it on May 15, 2012. It was on this date the personal property return was signed and returned to him by Mark A. McNamee, CPA. Additionally, Mr. Slatt testified this was the same date he paid Mr. McNamee for preparing the personal property return. Mr. Slatt went on to testify he "remembers" filing Corby's personal property return with a personal property return for Approved Safety & Security, Inc., (Approved) another business he owns. Admittedly, Mr. Slatt does not know if he put both returns in the same envelope, but he testified that he is "certain" he put them "in the same mailbox on the same day." *Slatt testimony; Pet'r Ex. 4, 5, 6, 7.*
- c) The Respondent admits she received Approved's return. Therefore, Mr. Slatt argues it is "unlikely" she did not receive Corby's. Mr. Slatt acknowledged that his CPA erroneously filed both business' 2012 return on 2011 forms. In fact, Mr. McNamee wrote a letter confirming his mistake. Mr. Slatt opined the Respondent "may have" received Corby's return but did not accept it because, unlike Approved's return, the data and assessed value reported was exactly the same for 2012 as it was in 2011. *Slatt argument; Pet'r Ex. 1A, 3, 4, 5.*

12. Summary of the Respondent's case:

- a) The Respondent's imposition of a penalty for failure to file is correct. The Respondent is required to treat all taxpayers uniformly, and that uniformity requires that filing dates are determined by "the postmark of when it is received in the mail." *Agostino argument.*

- b) Corby’s filing history indicates that a personal property return has been routinely filed since 2003. But the Respondent did not receive a 2012 personal property return for Corby. The Respondent did receive Approved’s 2012 personal property return on a 2011 tax form. And the Respondent “moved” the data to a 2012 form. The same would have been done with Corby’s form had she received it. *Dudzinski testimony; Resp’t Ex. 1.*
- c) Instead, the Respondent carried the data from Corby’s 2011 personal property return to 2012 to determine the proper assessment. After this was done, the Respondent mailed Mr. Slatt a Form 113/PP Notice of Assessment/Change notifying him of the assessment. This notice clearly stated Mr. Slatt had 30 days to file a return. Admittedly, Mr. Slatt “ignored the Form 113/PP ... as the numbers assessed agreed.” *Agostino argument (referencing Pet’r Ex. 2); Dudzinski testimony; Resp’t Ex. 2, 3.*

Analysis

13. The Board lacks jurisdiction to review the Petitioner’s claim.
- a) 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 gets an extension of time. Ind. Code § 6-1.1-3-7; 50 IAC 4.2-2-2.
 - b) According to Ind. Code § 6-1.1-37-7(a), if a person fails to file a personal property return on or before the due date, the county auditor shall add a penalty of \$25 to the person’s next property tax installment. Additionally, if the person fails to file the personal property return within 30 days after the due date, the county auditor shall add a penalty of 20% of the taxes finally determined to be due with respect to the personal property that should have been reported. Ind. Code § 6-1.1-37-7(a).
 - c) Unfortunately, it is futile for the Board to consider whether the Petitioner offered probative evidence indicating if he properly filed his 2012 personal property return. Even if the Petitioner was able to persuade the Board he properly filed his return, the Board lacks the authority to strike the penalties imposed by the Respondent. The Board is a creation of the legislature, and it has only those powers conferred by statute. *Whetzel v. Dep’t of Local Gov’t Finance*, 761 N.E.2d 904 (Ind. Tax Ct. 2002) (citing *Matonovich v. State Bd. of Tax Comm’rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)); *Hoogenboom-Nofziger v. State Bd. of Tax Comm’rs*, 715 N.E.2d 1018, 1021 (Ind. Tax Ct. 1999). The relevant statute is Ind. Code § 6-1.5-4-1, which provides as follows:
 - (a) The Indiana board shall conduct an impartial review of all appeals concerning:
 - (1) the assessed valuation of tangible property;

- (2) property tax deductions;
 - (3) property tax exemptions;
 - (4) property tax credits;
- that are made from a determination by an assessing official or county property tax assessment board of appeals to the Indiana board under any law.
- (b) Appeals described in this section shall be conducted under IC 6-1.1-15.

Ind. Code § 6-1.5-4-1.

- d) In *Whetzel*, the Tax Court held that the statute did not grant the Board power to review penalties imposed by the county for late payment of property taxes. Therefore, the Board did not have authority to decide Whetzel's appeal of the penalty.⁴ *Whetzel*, 761, N.E.2d at 904.
- e) While penalties for failing to file a personal property return are not the same as the late-payment penalties described in *Whetzel*, it seems clear the statute does not empower the Board to review any penalties imposed by the county.

Conclusion

- 14. The Board lacks jurisdiction to review the validity of the penalties levied against the Petitioner.

Final Determination

In accordance with these findings and conclusions of law, the Board lacks jurisdiction to review the penalties, thus the Petitioner's claims for relief are denied.

ISSUED: March 15, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

⁴ *Whetzel* cited Ind. Code § 6-1.1-30-11 which has since been repealed, but is now in effect in substantially similar language in Ind. Code § 6-1.5-4-1(a).

- 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>>.