

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

Petition: 54-025-01-1-7-00019
Petitioner: Titan Wheel
Respondent: Union Township Assessor (Montgomery County)
Parcel: Personal Property
Assessment Year: 2001

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Montgomery County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 petition.
2. The PTABOA mailed notice of its decision to the Petitioner on December 19, 2005.
3. The Petitioner filed an appeal to the Board by filing a Form 131 on January 23, 2006. The Petitioner elected to have this case heard according to small claim procedures. The Respondent did not exercise the right to opt out of small claims.
4. The Board issued a notice of hearing to the parties dated May 5, 2006.
5. The Board held an administrative hearing on June 28, 2006, before Administrative Law Judge Paul Stultz.
6. Persons present and sworn as witnesses at the hearing:
William Hugenberg, Accounting Supervisor,
Sue Sams, Union Township Assessor,
Peggy Hudson, Montgomery County Assessor.

Hearing Facts and Other Matters of Record

7. The personal property in question is steel purchased by the Petitioner from ISG and USS Steel corporations. The steel is shipped to Heidtman Steel in Crawfordsville, Indiana, and cut into plates. The plates are then shipped to Petitioner in Quincy, Illinois.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.

9. The assessed value of personal property as determined by the PTABOA is \$252,530.
10. The Petitioner contends the property should be exempt.
11. The Petitioner filed its Business Tangible Personal Property Return (Form 104) and Business Tangible Personal Property Return, (Form 103) for the 2001 assessment on August 11, 2005.¹ Mr. Hugenberg stated that the reason for the late filing was because the Respondent did not send the personal property forms to the attention of a specific individual. Mr. Hugenberg stated they were probably sitting on someone's desk. The Petitioner claims it acted in good faith every year since 2001 by filing the appropriate forms and its property was exempt for 2002, 2003, and 2004. The Petitioner feels it would be unfair to have the pay taxes on personal property that is exempt. *Hugenberg testimony*.
12. The Respondent contends that the Petitioner failed to timely file Forms 104 and 103 for the 2001 assessment. The Respondent sent the Petitioner a Notice of Assessment Change (Form 113/PP) on June 27, 2001. *Respondent Ex. 2*. The Petitioner failed to respond to the Form 113/PP. The Respondent sent an assessment to the auditor on September 4, 2001. It was not until 2005 that the Petitioner filed the Forms 104 and 103. *Respondent Ex. 1; Sams testimony*.

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibits – None,
Respondent Exhibit 1 – Forms 104 and 103 filed by Petitioner,
Respondent Exhibit 2 – Notice of Assessment/Change, Form 113/PP,
Board Exhibit A – Petition for Review of Assessment, Form 131,
Board Exhibit B – Notice of Hearing on Petition,
 - d. These Findings and Conclusions.

Analysis

14. The most applicable governing statutes and rules are:
 - a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case. *See Meridian Towers East & West v.*

¹ The Form 103 is a confidential filing that contains the computation of the personal property assessment. The Form 104 is public record that shows the assessed value reported on the Form 103.

Washington Twp. Assessor, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also*, *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

- b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).
15. The Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:
- a. The Petitioner failed to timely file a personal property return for the 2001 assessment. Pursuant to Ind. Code § 6-1.1-3-15 the Respondent mailed a form 113/PP on June 27, 2001, assessing \$252,530 of business personal property. The form 113/PP clearly informed the Petitioner that it had the right to file an assessment return within 30 days of the first notice. The Petitioner did not do so. The Petitioner filed the personal property return on August 11, 2005. That filing is more than 4 years after the Respondent sent the Form 113/PP to the Petitioner.
 - b. The Petitioner failed to timely claim an exemption on the personal property. 50 IAC 4.2-12-1(a) requires the property to be reported and “claimed exempt annually on the business tangible personal property return in a timely manner.” An exemption is a privilege that may be waived by a person who owns tangible property that would qualify for the exemption. Ind. Code § 6-1.1-11-1. The Petitioner failed to seek an exemption for the personal property in a timely manner, and consequently, it waived the exemption. *Id.*; *Davcon, Inc. v. State Bd. of Tax Comm'rs*, 644 N.E.2d 192, 198 (Ind. Tax Ct. 1994); *Kentron Inc, v. State Bd. of Tax Comm'rs*, 572 N.E.2d 1366, 1370 (Ind. Tax Ct. 1991).
 - c. The undisputed evidence establishes that the Petitioner failed to file a timely return or a timely exemption claim for 2001. The burden never shifted to the Respondent to rebut. The Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code § 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.