

REPRESENTATIVE FOR PETITIONER:

Linc Hobbs, CPA

REPRESENTATIVE FOR RESPONDENT:

Vicki Talpas, Sullivan County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Blann & Sons, LLC,	)	Petition No.: 77-011-18-1-7-01098-19
	)	
Petitioner,	)	
	)	Parcel No.: 77-11.50.00003 (Personal Property)
v.	)	
	)	
Sullivan County Assessor,	)	County: Sullivan
	)	
Respondent.	)	Assessment Year: 2018

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Appeal from the Final Determination of the  
Sullivan County Property Tax Assessment Board of Appeals

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**January 12, 2021**

**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:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**ISSUE**

1. Did the Petitioner prove the fine and penalty levied for the late filing of its 2018 business personal property return should be removed?

## PROCEDURAL HISTORY

2. The Petitioner initiated its 2018 appeal with the Sullivan County Assessor via a Taxpayer's Notice to Initiate an Appeal (Form 130).<sup>1</sup>
3. On September 24, 2019, the Sullivan County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board
4. On October 15, 2020, Joseph Stanford, the Board's designated administrative law judge (ALJ), held a telephonic hearing. Neither the Board nor the ALJ inspected the subject property.

## HEARING FACTS AND OTHER MATTERS OF RECORD

5. Linc Hobbs, CPA, appeared for the Petitioner telephonically. Vicki Talpas, Sullivan County Assessor, appeared for the Respondent telephonically. Tracey Sturr, Deputy Assessor, was a witness for the Respondent on the call. All were sworn and testified.
6. The Petitioner did not offer any exhibits.
7. The Respondent offered the following exhibits:

Respondent Exhibit 1:	Notice of Assessment/Change (Form 113/PP),
Respondent Exhibit 2:	Petitioner's 2018 personal property return (MARKED CONFIDENTIAL),
Respondent Exhibit 3:	Assessment penalty form,
Respondent Exhibit 4:	Screenshots of the Petitioner's assessment, tax liability, and penalties,
Respondent Exhibit 5:	Department of Local Government Finance (DLGF) slide regarding late-filing fines and penalties.

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<sup>1</sup> The record is not clear when the Petitioner initially filed its Form 130. The Form 130 signature line indicates a filing date of November 14, 2019, but that date is after the Notification of Final Assessment Determination (Form 115) was issued. Regardless, the Respondent did not argue the Form 130 was filed untimely and the Board will not raise the issue *sua sponte*.

8. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) the digital recording of the hearing and these findings and conclusions.
9. The property is located at 4919 West County Road 25 North in Sullivan.

#### **PETITIONER'S CONTENTIONS**

10. The fine and penalty levied by the Respondent for the failure to timely file a personal property return should be removed, or at least reduced. The penalty, in excess of \$4,000, is excessive for a taxpayer that has always filed its returns and paid its taxes. *Hobbs argument.*
11. The Petitioner had no intention of not filing or not paying taxes. The Petitioner “was in between accountants” and when the Form 113/PP was received in June of 2018, the Petitioner promptly filed a return in August. The late filing was “an honest mistake” and the county did not lose any revenue due to the late filing. *Hobbs argument.*
12. While Mr. Hobbs acknowledged the federal government also has penalties and fines for filing late returns, the federal government also reduces or eliminates penalties for “just cause.” Mr. Hobbs argues the Respondent could do the same thing. *Hobbs argument.*

#### **RESPONDENT'S CONTENTIONS**

13. The Petitioner filed its return late and did not request an extension of time to file. The late filing created extra work for both the Assessor and Auditor because “the books had been closed” and the Petitioner’s return had to be entered by hand. Any taxpayer that files late, is treated the same. *Sturr testimony; Resp’t Ex. 2.*
14. According to Indiana law, if a return is filed more than 30 days late, a \$25 fine and 20% of the taxes due, is applied to the tax bill as a penalty. The DLGF and the county attorney informed the Respondent she had no right to remove the fine or penalty. *Talpas testimony; Resp’t Ex. 5.*

## ANALYSIS

15. Indiana's personal property tax system is a self-assessment system. During the year at issue, every person owning, holding, possessing, or controlling personal property with a tax situs in Indiana on March 1 was required to file a personal property tax return. Ind. Code § 6-1.1-3-7; 50 IAC 4.2-2-2. With limited exceptions, the person who holds legal title to personal property is its owner for purposes of Indiana's property tax statutes. Ind. Code § 6-1.1-1-9(b); 50 IAC 4.2-2-4(a).
16. 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).
17. While the Board is sympathetic to the Petitioner's circumstance, 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 Fin.*, 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.

18. 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.<sup>2</sup> *Whetzel*, 761, N.E.2d at 904.
19. While penalties for failing to file a personal property return are not the same as the late-payment penalties described in *Whetzel*, it is clear the statute does not empower the Board to review any penalties imposed by the county. See *Philip M. Slatt v. St. Joseph Co. Ass'r*, Ind. Bd. of Tax Rev. Pet. No. 71-026-12-1-7-06707 (March 15, 2017). Accordingly, the Board lacks jurisdiction to address the Petitioner's claim.

#### **SUMMARY OF FINAL DETERMINATION**

20. The Board lacks jurisdiction to review the penalties levied against the Petitioner.

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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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<sup>2</sup> *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 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>>.