

REPRESENTATIVE FOR PETITIONER:

Jim Bushey, General Manager of Bushey's Renovation Concepts

REPRESENTATIVE FOR RESPONDENT:

Lisbeth A. Blosser, Allen County Auditor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

BUSHEY'S RENOVATION CONCEPTS,	)	
	)	
Petitioner,	)	Review of the Claim for Enterprise
	)	Zone Personal Property Tax Credit
	)	
v.	)	Petition No. 02-074-03-4-0-00003
	)	
ALLEN COUNTY AUDITOR,	)	County: Allen
	)	Township: Wayne
	)	Assessment Year: 2003
Respondent.	)	

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On Appeal from the Allen County Auditor

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**February 24, 2004**

**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

Whether Bushey's Renovation Concepts (Bushey's) is entitled to an Enterprise Zone Business Personal Property Tax Credit (EZ Credit) for the 2003 assessment year.

### Findings of Fact and Other Matters of Record

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.
2. Bushey's filed Form EZ-1, Enterprise Zone Business Personal Property Tax Credit (Form EZ-1) on May 23, 2003. The Form EZ-1 was for the March 1, 2003, assessment date.
3. On June 3, 2003, Lisbeth Blosser, Allen County Auditor notified Bushey's that she denied Bushey's Form EZ-1 Credit application for the March 1, 2003, assessment date.
4. Pursuant to IND. CODE § 6-1.1-20.8-3(b),<sup>1</sup> Jim Bushey, General Manager of Bushey's, on behalf of Bushey's, filed a written request for review of the Claim for Enterprise Zone Business Personal Property Tax Credit (Form EZ-1) by the Board. The request was filed on July 2, 2003. The request for review is labeled Board Exhibit A.
5. The subject property is located at 1701 Fairfield Avenue, Fort Wayne, Wayne Township, Allen County.

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<sup>1</sup> In HEA 1714, PUB. L. NO. 245-2003, SEC. 17, the General Assembly changed the appeal process for review of EZ Credit applications. For applications filed after July 1, 2003, "[a] person may appeal the determination of the county auditor under [IND. CODE § 6-1.1-20.8-3(a)] by filing a complaint in the office of the clerk of the circuit or superior court not more than forty-five (45) days after the county auditor gives the person notice of the determination." Bushey's application was filed on May 23, 2003, and thus will be determined under the law that applied prior to PUB. L. NO. 245-2003.

## Enterprise Zone Business Personal Property Tax Credit

6. The Board may consider a late-filed application for the Enterprise Zone Business Personal Property Tax Credit. *Graybar Electric Co. v. State Bd. of Tax Comm'rs*, 723 N.E.2d 491, 496 (Ind. Tax Ct. 2000). The Board considers the totality of the facts and circumstances in determining whether or not to approve a late-filed deduction application. *Id.*; 50 IAC 10-4-2.
  
7. The former State Board of Tax Commissioners adopted seven (7) factors to guide the exercise of its discretion in determining whether to grant late-filed Economic Revitalization Area deduction applications. 50 IAC 10-4-2(b). As the courts have found the determination to be made on these late-filed applications to be analogous, the Board will apply the factors of 50 IAC 10-4-2(b)(2) to its analysis of late-filed EZ Credit applications. *See State Bd. of Tax Comm'rs v. New Energy Co. of Indiana*, 585 N.E.2d 38 (Ind. Ct. App. 1992); *Graybar Electric Co.*, 723 N.E.2d at 495-496.
  
8. On July 15, 2003, the Board sent a letter to Bushey's giving it an opportunity to address the seven (7) factors. The Board's letter is labeled as Board Exhibit B.
  
9. Bushey submitted a written response with attachments on August 15, 2003. The attachments include: a copy of the Board's letter to address the seven (7) factors, dated July 15, 2003; a letter from Bushey's to the Department of Local Government Finance, dated June 27, 2003; a letter from the Urban Enterprise Association, Inc. of Fort Wayne; a copy of the denial of deduction from the Allen County Auditor, dated June 3, 2003; a copy of the Form EZ-1, dated May 23, 2003; a copy of the Form 103 Business Tangible Personal Property Assessment Return for March 1, 2003; and a copy of the Form EZB-R for the calendar year 2002, dated May 23, 2003. Mr. Bushey's letter with attachments is labeled as Board Exhibit C.

### Conclusions of Law

10. Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E.2d 1353 (Ind. 1996); *County Bd. of Review of Assessment for Lake County v. Kranz*, 66 N.E.2d 896 (Ind. 1964). Regarding the filing of a Form EZ-1, the levels of review are clearly outlined by statute. First, the Form EZ-1 is filed with the County and acted upon by the County Auditor. IND. CODE § 6-1.1-20.8-3. If the taxpayer disagrees with the County Auditor's action on the Form EZ-1, then a written request for review may be filed with the Board. IND. CODE § 6-1.1-20.8-3(b). The taxpayer also has the right to petition for judicial review of this Board's decision. IND. CODE § 6-1.1-15-5.
  
11. The Board is the proper body to hear an appeal of the action of the County Auditor pursuant to IND. CODE § 6-1.1-20.8-3(c).

### Burden

12. It is fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. PUBLIC ADMINISTRATIVE LAW AND PROCEDURE, § 128.
  
13. The taxpayer is required to meet his burden of proof at the Board administrative level for two reasons. First, the Board is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the Board in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
  
14. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain

sufficient.” *Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998); *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E.2d 882, 887 (Ind. Tax Ct. 1994).

### **Enterprise Zone Business Personal Property Tax Credit**

15. Pursuant to IND. CODE § 6-1.1-20.8-2.5, a person that files a timely personal property return must file the application for Enterprise Zone Business Personal Property Tax Credit (Form EZ-1) between March 1 and May 15 of that year in order to obtain the credit. A person that obtains a filing extension under IND. CODE § 6-1.1-3-7(b) for an assessment year must file the application between March 1 and the extended due date in order to obtain the credit for the following year. IND. CODE § 6-1.1-20.8-2.5.
16. Bushey’s filed its EZ Credit application on May 23, 2003. Bushey’s had not applied for, and had not been granted an extension to file its application.
17. The Board has the authority to consider a late-filed application for the Enterprise Zone Business Personal Property Tax Credit. *Graybar Electric Co. v. State Bd. of Tax Comm’rs*, 723 N.E.2d 491, 496 (Ind. Tax Ct. 2000). The Board considers the totality of the facts and circumstances in determining whether it is more equitable to grant or to deny the EZ Credit application. *Id.*; 50 IAC 10-4-2.
18. The former State Board of Tax Commissioners adopted seven (7) factors to guide the exercise of its discretion in determining whether to grant late-filed Economic Revitalization Area deduction applications. 50 IAC 10-4-2(b). As the courts have found the determination to be made on these late-filed applications to be analogous, the Board will apply the factors of 50 IAC 10-4-2(b)(2) to its analysis of late-filed EZ Credit applications. *See State Bd. of Tax Comm’rs v. New Energy Co. of Indiana*, 585 N.E.2d 38 (Ind. Ct. App. 1992); *Graybar Electric Co.*, 723 N.E.2d at 495-496.

19. The Petitioner was informed of the seven (7) factors and had the opportunity to present evidence on these factors. *See* ¶¶ 8-9, *supra*. The factors and the Petitioner's response to each factor are as follows:

(1) Whether the failure to timely file the deduction application resulted from an act of God, or from the death or serious illness of the person principally responsible for the filing of the deduction application. *See* 50 IAC 10-4-2(b)(1).

**Bushey's contends the failure to file did not result from an act of God, or from the death or serious illness of the person principally responsible for the filing of the deduction application.**

(2) Whether the approval of the late-filed deduction application would result in the loss of property tax revenues to the taxing units affected by the deduction. *See* 50 IAC 10-4-2(b)(2).

**Bushey's contends the approval of the late filing would not impact the tax revenues, due to the fact that Bushey's has received an inventory tax credit in past years.**

**However, Bushey's failed to provide a written statement from the Allen County Auditor stating whether the approval would result in the loss of tax revenue.**

(3) Whether a public official gave misleading information to the taxpayer that was the proximate cause of the late-filing, and whether it was reasonable for the taxpayer to rely on that misleading information. *See* 50 IAC 10-4-2(b)(3).

**Bushey's contends this is a significant factor in the late filing of their application, as it relied upon a letter dated March 6, 2003, from Terrance McCaffrey, Administrator of the Urban Enterprise Association, in which**

**McCaffrey indicates the Form EZ-1 must be filed no later than May 15, 2002. Bushey's claims the date makes no sense, because the due date passed ten months before the letter was sent. Because McCaffrey's letter accompanied other information and forms, Bushey's relied on the deadline on the Form EZBR and filed all of the forms, including EZ-1 on March 23, 2003, well before that May 31, 2003, deadline.**

**The letter from McCaffrey does state that the Form EZ-1 is to be filed no later than May 15, 2002, which is clearly incorrect. The form was actually due by May 15, 2003. However, McCaffrey's letter states "[r]eview these forms, instructions and due dates very carefully." The letter further states that the Form EZ-1 has instructions at the top of the form. The Form EZ-1 instructions clearly state that the form is to be filed between March 1 and May 15 of the year for which the person reports the property for assessment.**

**Although the due date stated in McCaffrey's letter was incorrect, Bushey's should have been able to identify the error, refer to the form EZ-1 instructions, and locate the correct filing date. The due dates are also clearly stated in the statutes, which Bushey's is presumed to be aware of. *See* Ind. Code § 6-1.1-20.8-2.5. Additionally, Bushey's indicated that it has filed for the inventory tax credit in prior years. Thus, it is determined that although Bushey's was given misleading information by McCaffrey, the correct filing information was readily available for Bushey's to use.**

(4) Whether the lapse between the filing deadline and the date on which the deduction application was actually filed would have prevented local officials from accurately determining the assessed value for budget, rate, and levy purposes. *See* 50 IAC 10-4-2(b)(4).

**Bushey's contends the EZ-1 filed on May 23, 2003, was only eight (8) calendar days after the deadline, therefore it is unlikely that eight (8)**

**calendar days would have prevented local officials from accurately determining the assessed value for budget, rate, and levy purposes. There is no evidence from the local officials in regards to this factor.**

(5) Whether there is substantial evidence that local officials support the approval of the late-filed application, even if such approval would result in a loss in tax revenues. *See* 50 IAC 10-4-2(b)(5).

**The Board views this as the most important factor in the evaluation of the late-filed application. Bushey's was not able to produce documentation from the local officials to show that the local officials support the granting of the late-filed application.**

(6) Whether the late-filing was not due to the taxpayer's negligence. *See* 50 IAC 10-4-2(b)(6).

**Bushey's contends it takes tax matters with the utmost seriousness, that property tax forms for prior years have been timely filed, and that some of the forms for the current year have been filed within the appropriate timeframe. Bushey's position is that the misleading information from Urban Enterprise Association, Inc. was the determining factor; therefore the late filing was not due to the taxpayer's negligence.**

**Pursuant to 50 IAC 4.2-2-2, "[I]t is the responsibility of the taxpayer to obtain forms from the assessor and file a timely return in compliance with this article." The Petitioner has an obligation to know the rules and regulations of a state it does business in. The Board notes that both the IND. CODE § 6-1.1 and 50 IAC 4.2 provide the filing requirements for business personal property and information about the credits, deductions, and exemptions available.**



**Further, Ind. Code § 6-1.1-3-7 (a) specifically states that a person that timely files a personal property return for an assessment year must file the EZ-1 application between March 1 and May 15 of that year in order to obtain the credit in the following year.**

**Although the letter was misleading, Bushey's could have simply read the instructions on the form or researched the law to find the correct deadline. The Board is unable to conclude that the late filing was not due to the Petitioner's negligence.**

(7) Any other factor that the state board considers relevant. *See* 50 IAC 10-4-2(b)(7).

**As stated previously, the Board considers the totality of the facts and circumstances in determining whether or not to approve a late-filed application. *Graybar Electric Co.*, 723 N.E.2d at 496. The Petitioner was given the opportunity to present evidence to help the Board determine whether it is more equitable to grant or to deny the EZ credit application. The Petitioner presented no information to show whether the credit amount was taken into consideration for budget purposes, whether the approval would result in a loss or property tax revenue, or whether any of the local officials would approve of the late filed application. The Board finds no other factors to consider in this determination.**

20. After careful consideration of the totality of the circumstances surrounding Bushey's late filed application, the Board hereby denies Bushey's EZ Credit for the 2003 assessment year.

The above stated findings of fact and conclusions of law are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
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.