

REPRESENTATIVE FOR PETITIONER:

Thomas C. Koster, Controller for Delta III, Inc.

REPRESENTATIVES FOR RESPONDENT:

Department of Local Government Finance

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

DELTA III, INC.,)	
)	
Petitioner,)	Review of the Claim for Economic
)	Revitalization Area "New Manufacturing
)	Equipment" Deduction
)	
v.)	Petition No. 44-002-00-4-9-00001
)	
)	County: LaGrange
DEPARTMENT OF LOCAL)	
GOVERNMENT FINANCE,)	Township: Lima
)	
Respondent.)	Assessment Year: 2000
)	

Appeal from the Final Determination of
Department of Local Government Finance

February 20, 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 Delta III, Inc. (Delta) is entitled to an Economic Revitalization Area (ERA) “New Manufacturing Equipment” deduction for the 2000 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. Delta filed Form 322 ERA/PP, Application for Deduction From Assessed Valuation New Manufacturing Equipment in Economic Revitalization Area (ERA application) on May 16, 2000. The ERA application was for the March 1, 2000 assessment date. The latest date upon which the form could have been timely filed was May 15, 2000.
3. On April 10, 2003, the Department of Local Government Finance (DLGF) notified Delta that Delta’s ERA deduction claim was denied.
4. Pursuant to IND. CODE § 6-1.1-12.1, Delta filed written notice of its intention to appeal. The Petition For Review of Department of Local Government Finance Action (Form 139) was filed on May 28, 2003. The Form 139 has been labeled Board Exhibit A.
5. The subject property is located at 7225 North State Road 9, Howe, Indiana 46746, Lima Township, LaGrange County.

Economic Revitalization Area “New Manufacturing Equipment” Deduction

6. In accordance with case law, the Board may consider a late-filed application for Economic Revitalization Area “New Manufacturing Equipment” Deduction. *State Bd. of Tax Comm’rs v. New Energy Co. of Indiana*, 585 N.E.2d 38 (Ind. Ct. App. 1992). As a result of *New Energy*, the Board considers the totality of the facts and circumstances in determining whether or not to approve a late-filed deduction application (*see* 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 applications. 50 IAC 10-4-2(b).
8. On July 9, 2003, the Board sent a letter to Delta requesting that Delta provide information regarding each of the seven (7) factors. The Board’s letter is labeled as Board Exhibit B.
9. Thomas C. Koster, Controller for Delta, submitted a written response with attachments on August 7, 2003. The attachments include a letter from Mr. Koster to Kay Myers, LaGrange County Auditor, dated April 15, 2002, a copy of a Form EZ-1,¹ dated August 8, 2003, an outline of the Enterprise Zone Inventory Credit (IC 4-4-6.1-3), a copy of a Form EZB-R, dated August 8, 2003,² a copy of a letter from Mark Woodington, Delta to Kay Myers, dated May 15, 2000, a copy of the Form SB-1, dated May 16, 2000, a copy of the Form 322 ERA/PP, dated May 16, 2000, a copy of the Form CF-1, dated May 16, 2000, and a copy of the Form 103 and 103-T Business Tangible Personal Property

¹ The Board’s July 9, 2003, letter incorrectly referenced the Enterprise Zone Personal Property Tax Credit (EZ Credit) rather than the Economic Revitalization Area New Manufacturing Equipment deduction. It appears that Koster filed EZ Credit paperwork in response to the letter, as well as filing a written response with the Board. As EZ Credit eligibility is not at issue in this appeal, the Board will disregard the EZ Credit paperwork and base its decision on his written response.

² *See* footnote 1, *supra*.

Assessment Return for March 1, 2000. Mr. Koster's letter with attachments has been labeled 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). The authority and responsibility to determine the amount of an ERA Deduction rests with the Department of Local Government Finance. IND. CODE § 6-1.1-12.1-5.5(e).
11. Furthermore, a taxpayer must show that the property for which a deduction is claimed meets the statutory requirements for obtaining the deduction. *See, e.g., American Juice Co., Inc. v. State Bd. of Tax Comm'rs*, 527 N.E.2d 1169, 1170 (Ind. Tax Ct. 1988).
12. The Board is the proper body to hear an appeal of an action of the DLGF pursuant to IND. CODE § 6-1.5-4-1.

Burden

13. 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.
14. 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.

15. 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).

Economic Revitalization Area “New Manufacturing Equipment” Deduction

16. Pursuant to IND. CODE § 6-1.1-12-1, a person that files a timely personal property return must file the application for Deduction From Assessed Valuation New Manufacturing Equipment in Economic Revitalization Area (Form 322 ERA/PP) between March 1 and May 15 of that year in order to obtain the deduction. A person that obtains a filing extension under IND. CODE § 6-1.1-3-7 for an assessment year must file the application between March 1 and June 14 of that year in order to obtain the deduction.
17. Delta filed its Form 322 ERA/PP on May 16, 2000. Delta had not applied for, and had not been granted an extension to file its Form 322.
18. The Board has the legal authority to consider a late-filed application for the Economic Revitalization Area “New Manufacturing Equipment” Deduction. *See State Bd. of Tax Comm’rs v. New Energy Co. of Indiana*, 585 N.E.2d 38 (Ind. Ct. App. 1992).
19. In considering a late-filed application, the Board shall consider all of the relevant facts and circumstances, and determine if it is more equitable to grant or deny the ERA Deduction application.
20. 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 applications. 50 IAC

10-4-2(b). 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. 50 IAC 10-4-2(b)(1).

The Petitioner did not address this factor. There is no indication that the failure to timely file the application resulted from an act of God, or from the death or serious illness of the person responsible for filing 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. 50 IAC 10-4-2(b)(2).

The Petitioner did not address this factor. It can be assumed that the taxing unit would sustain a loss in revenue equal to the deduction gained by the late-filing petitioner.

(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. 50 IAC 10-4-2(b)(3).

The Petitioner did not address this factor. There is no indication that the Petitioner was given misleading information.

(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. 50 IAC 10-4-2(b)(4).

The Petitioner contends the Form SB-1, Form CF-1, and Form 322 ERA/PP were hand delivered to the Auditor's office on May 16, 2000, one day late and that hand delivery provided faster service than if the documents were mailed on May 15. Therefore, based on the filing date of the application the local officials would not have been prevented from accurately determining the assessed value for budget, rate, and levy purposes. There is no indication that the local officials were prevented from accurately determining the assessed value of the property by the one-day delay.

(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. 50 IAC 10-4-2(b)(5).

The Board views this as the most important factor in the evaluation of the late-filed application. Delta 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. 50 IAC 10-4-2(b)(6).

The Petitioner contends the Form SB-1, Form CF-1, and Form 322 ERA/PP were hand delivered on May 16, 2000, one day late. Thus, Delta does not "feel" the late filing was due to the taxpayer's negligence. However, there is no other explanation for the delay.

In a letter dated April 15, 2002, from Koster to Kay Myers, the LaGrange County Auditor, Koster states “I understand Deflecta-Shield has a history of late filings.” It is precisely this sort of history that brings taxpayer negligence to the forefront of this evaluation.

Pursuant to 50 IAC 4.2-13, it is the responsibility of the taxpayer to file a timely return in compliance with this article. The Petitioner has an obligation to know the rules and regulations of the state it does business in. The Board notes that both the Indiana Code § 6-1.1 and Regulation 16 (50 IAC 4.2) provide the filing requirements for business personal property and information about the credits, deductions, and exemptions available. Further, IND. CODE § 6-1.1-12-1 states that a person that desires to claim the Deduction from Assessed Valuation “New Manufacturing Equipment” in Economic Revitalization Area shall file an application with the auditor of the county where the property for which the deduction is claimed is located from March 1 and May 15 of each year. 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. 50 IAC 10-4-2(b)(7).

As stated previously, the Board considers the totality of the facts and circumstances in determining whether to approve a late-filed application. Delta was given the opportunity to present evidence to help the Board determine if it is more equitable to grant or deny the Economic Revitalization Area “New Manufacturing Equipment” Deduction application. Delta was unable to show whether the deduction amount was taken into consideration for budget purposes, whether the approval would result in a loss of property tax revenue or whether any of the local officials would approve of the late filed application.

21. Petitioner failed to respond to several of the factors. Petitioner failed to demonstrate compliance with the filing procedures or offer any compelling argument as to why its non-compliance should be excused. Therefore, the Board hereby denies Delta's ERA deduction for the 2000 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.