

REPRESENTATIVE FOR PETITIONER:

James E. Foster, Attorney

REPRESENTATIVE FOR RESPONDENT:

Robert W. Metz, Hearing Officer, Lake County

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Funk & Foster,)	Petition Nos.: 45-023-07-1-7-00002 ¹
)	45-023-08-1-7-00001
Petitioner,)	
)	
)	Parcel No.: 45-123-30884-00
v.)	Personal property
)	
)	
Lake County Assessor,)	County: Lake
)	
Respondent.)	Assessment Years: 2007 and 2008

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

July 25, 2016

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:

¹ Petitioner filed the 2007 appeal under the Board’s plenary hearing procedures. The 2008 appeal was filed under small claims procedures.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

Funk & Foster failed to file personal property tax returns for 2007 or 2008.² The Assessor contends Form 113/PPs were mailed for those years, but Mr. Foster contends he did not receive those forms. Petitioner contends the timeliness issue should not be dispositive and that the actual value of the personal property should be considered.

PROCEDURAL HISTORY

1. Petitioner initiated the assessment appeals with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). On July 23, 2014, the PTABOA denied the petitions. Petitioner then timely appealed to the Board.
2. On April 25, 2016, the Board’s administrative law judge (“ALJ”), Ellen Yuhan, held a hearing.
4. Attorney James E. Foster was sworn and testified for Petitioner. Hearing Officer Robert Metz and Deputy Assessor Nancy Smolen were sworn and testified for Respondent.
5. Petitioner offered the following exhibits:
 - Petitioner Exhibit A: Form 113 for March 1, 2007 dated August 20, 2007
 - Petitioner Exhibit B: Form 113 for March 1, 2007 and March 1, 2008
 - Petitioner Exhibit C: Form 130 dated December 9, 2009
 - Petitioner Exhibit D: Notice of PTABOA Hearing dated August 9, 2013
 - Petitioner Exhibit E: Personal property list
 - Petitioner Exhibit F: Request for conference
 - Petitioner Exhibit G: Objection concerning procedures
 - Petitioner Exhibit H: Motion to Produce
 - Petitioner Exhibit I: Advisement and Request for Specific Direction
 - Petitioner Exhibit J: List of exhibits presented to the PTABOA
 - Petitioner Exhibit K: Relevant previous proceedings
 - Petitioner Exhibit L: Form 131 attachment re: Section III: Grounds for Appeal.

² According to Mr. Foster, Funk & Foster was a partnership that dissolved in 2008 and he is the successor.

6. Respondent offered the following exhibits:
- Respondent Exhibit 1: Form 113/PP for March 1, 2007 dated August 20, 2007
 - Respondent Exhibit 2: Form 113/PP for March 1, 2008 dated August 6, 2008
 - Respondent Exhibit 3: Form 130 filed by James E. Foster received December 2, 2009
 - Respondent Exhibit 4: Notice of Hearing
 - Respondent Exhibit 5: Letter regarding PTABOA dated June 17, 2014
 - Respondent Exhibit 6: Form 115 for March 1, 2007
 - Respondent Exhibit 7: Form 115 for March 1, 2008
 - Respondent Exhibit 8: 50 IAC 4.2-2-2, 50 IAC 4.2-2-1(b), 50 IAC 4.2-3-3
 - Respondent Exhibit 9: 50 IAC 4.2-4-2
 - Respondent Exhibit 10: Indiana Board of Tax Review determination for Dean White v. North Township Assessor
 - Respondent Exhibit 11: Indiana Board of Tax Review determination for Berry, Inc. v. Wayne Township Assessor
 - Respondent Exhibit 12: SKF Steel, Inc. v. Lake County PTABOA
 - Respondent Exhibit 13: Donald Adams v. Charles Spears, Township Assessor of Wayne Township.
7. The following additional items are officially recognized as part of the record:
- Board Exhibit A: Form 131 petitions
 - Board Exhibit B: Hearing notice
 - Board Exhibit C: Hearing sign-in sheet.
8. The personal property is located at 5253 Hohman Avenue in Hammond.
9. The PTABOA determined the assessed value was \$20,000 for 2007. The PTABOA determined the value was \$26,000 for 2008.

OBJECTIONS

10. Mr. Foster objected because Mr. Metz did not ask the questions directed to Mr. Foster at the appropriate time. This objection is overruled.

11. Mr. Foster objected to Ms. Smolen's testimony about the different versions of the Form 113/PPs and past assessments. Mr. Foster's objection goes the weight of the testimony rather than to its admissibility. Consequently, the objection is overruled.

PETITIONER'S CONTENTIONS

12. Petitioner contends it never received the Form 113/PPs for 2007 or 2008. The Form 113/PPs show the names of the taxpayers as "Funk, R. Cordell & Foster, James E." Petitioner contends that the taxable entity is Funk & Foster and the forms should have been sent to Funk & Foster. *Foster testimony; Pet'r Exs. A and B.*
13. Mr. Foster filed a "Motion to Produce" to obtain records and documents that would show who mailed the forms, when they were mailed, who determined the estimates of value, and what data was used to determine the estimates of value. Mr. Foster said he was told there were no records showing who mailed the forms, who estimated the values, and no certificate of service to show Petitioner received the forms. *Foster testimony; Pet'r Ex. H.*
14. When Petitioner requested copies of the 2007 and 2008 Form 113/PPs, he received two different versions for each year. For 2007, both versions were generated on August 20, 2007, at 11:56:48 CDT. One version is stamped with the Assessor's name, address, and phone number. The 2008 versions, generated on August 6, 2008, show the same differences. *Foster testimony; Pet'r Exs. A and B.*
15. Petitioner contends the estimates of value are too high. The 2005 assessed value was \$3,700 based on an actual return. Mr. Foster claims the property should be valued at \$1,270 for 2007 and 2008. According to Mr. Foster, he was not allowed to present evidence of the market value of the personal property because the appeal was deemed untimely. He claims that the Assessor made no objective attempt to assess a true value. *Foster testimony; Pet'r Ex. E.*

16. Petitioner contends that the “ambiguities” raised in this case are the reason that the timeliness issue should not be dispositive. Further, he claims that there is a conflict of interest in that the department whose procedure is being questioned is the very office that determined the issue. *Foster argument.*

RESPONDENT’S CONTENTIONS

17. Respondent contends that Petitioner failed to file personal property returns for 2007 and 2008. The North Township Assessor’s office issued Form 113/PPs for both 2007 and 2008, increasing the assessment to \$20,000 and \$26,000 respectively. *Smolen testimony; Resp’t Exs. 1 and 2.*
18. According to Ms. Smolen, the Form 113/PPs should be initialed by the person who generated them, but that was not done in the case of the 2007 Form 113/PP. Petitioner’s forms were mailed to “Funk, R. Cordell & Foster, James E” and they were either mailed on the day they were generated or on the day after. For 2007, the Form 113/PP was mailed on or about August 20, 2007. The 2008 Form 113/PP was mailed on or about August 6, 2008. *Smolen testimony; Pet’r Exs. A and B.*
19. Respondent contends that Petitioner failed to file assessment returns within 30 days of the notices, and did not file a Form 130 until December 1, 2009. The appeal was considered untimely and denied. *Smolen testimony; Resp’t Ex. 3.*
20. The notices of hearing were not mailed to Funk & Foster because the Form 130 shows the property owner as James E. Foster. Respondent claims that there was a backlog in the appeals department, which was why it took so long to hold a hearing. *Smolen testimony; Resp’t Ex. 4.*
21. Ms. Smolen finally testified that the PTABOA was uncertain at the time if the Form 130 was for 2007 or 2008, so they heard both years. *Smolen testimony; Resp’t Ex. 3.*

ANALYSIS

22. 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.
23. When a taxpayer fails to file a personal property tax return, "the township assessor may estimate the value of the personal property of the taxpayer and shall assess the [taxpayer]...in an amount based upon the estimate." 50 IAC 4.2-3-1(b).
24. Upon receiving a notification of estimated value from the township or county assessor, the taxpayer may elect to file a personal property return within thirty (30) days from the first notice of assessment, subject to the penalties imposed by 50 IAC 4.2-2-10. In the event the taxpayer does not agree with an assessment made by the assessing official, the taxpayer may appeal to the PTABOA by filing a Form 130 within forty-five (45) days from the mailing of the written notice of assessment by the assessor. 50 IAC 4.2-3-3.
25. Mr. Foster contends he did not receive the Form 113/PPs for 2007 or 2008. Mr. Foster claims that Respondent has no records showing who mailed the forms or when the forms were mailed. There is no certificate of service proving Petitioner received the forms. Therefore, according to Mr. Foster, the timeliness of the Form 130 filing should not be dispositive of the appeal.
26. Ms. Smolen testified as to the standard operating procedure for generating and processing the Form 113/PPs, but did not know specifically who generated the forms and the estimates of value, or who placed the forms in the mail. She claims that the forms were placed in the mail the day they were generated or the day after.

27. For 2007, and for a portion of 2008, Mr. Foster was a partner in Funk & Foster. Respondent argues that, the fact that Mr. Foster was not aware the Form 113/PPs were sent does not mean they were not received by Mr. Funk. Also, according to Mr. Foster, the taxpayer entity presented its Form 130 on December 2, 2009, when the taxpayer entity discovered the assessed amounts of \$20,000 for 2007 and \$26,000 for 2008. *Pet'r Ex. L; Attachment to Board Ex. A.* While Mr. Foster may not have received the Form 113/PPs, the tax statement for 2007, payable in May 2008, would have been notice of the 2007 assessment, and the Form 130 was not filed until nineteen months later. Similarly, the 2008 tax statement would have been received seven months before the Form 130 was filed.
28. Even if the Board were to determine Petitioner did not receive the Form 113/PPs, and the Form 130 was filed timely, Petitioner failed to present probative evidence of the values under appeal.
29. The property at issue is depreciable personal property. In pertinent part, “depreciable personal property” is “all tangible personal property that is used for the production of income, or held as an investment that should be or is subject to depreciation for federal income tax purposes.” 50 IAC 4.2-4-1. In general, personal property is deemed to be depreciable property when a depreciation deduction is allowed for federal income tax purposes. *Id.*
30. The cost of depreciable property is “the total amount reflected on the books and records of the taxpayer.” 50 IAC 4.2-4-2. The cost of the depreciable personal property includes both its direct costs and an appropriate portion of indirect costs attributable to its production or acquisition and preparation for use. *Id.* The depreciable life used for federal income tax purposes, then, determines the percentage factor by which the cost of the property is multiplied to determine its “true tax value.” 50 IAC 4.2-4-7. Regardless of the percentage factor adjustment, however, the total valuation of a taxpayer’s depreciable personal property cannot be less than thirty percent of the adjusted cost of all depreciable personal property

of the taxpayer. 50 IAC 4.2-4-9.

31. The language of 50 IAC 4.2-4-2 states that the cost of depreciable property is determined by the taxpayer's books and records. Petitioner did not submit any cost schedules or other financial documents, nor did Petitioner submit any federal tax returns.
32. Petitioner argues that Respondent made no attempt to determine the market value or cash value of the personal property. True tax value does not mean fair market value, but the value determined in accordance with the rules issued by the Department of Local Government Finance. 50 IAC 4.2-1-1(t). Thus, "fair market value" is not relevant to the valuation of personal property. See 50 IAC 4.2 *et seq.*
33. Petitioner submitted a list of property with an estimate of value, but failed to explain how the value was determined or what criteria were used. Consequently, Petitioner's estimate of value is not probative of the property's true tax value. See *Inland Steel Co. v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000).

FINAL DETERMINATION

34. Petitioner failed to establish a prima facie case for a reduction in value. In accordance with the above Findings of Fact and Conclusions of Law, the Board determines no changes should be made to the assessments for 2007 and 2008.

The Final Determination of the above captioned matter is issued by the Board on the date written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- 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 within 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 Rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.