

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

**Petitions:** 18-003-13-1-7-00559-18  
18-003-14-1-7-00560-18  
18-003-15-1-7-00558-18  
**Petitioner:** Rebecca Reece  
**Respondent:** Delaware County Assessor  
**Parcel:** 18-03-14-731-103.000-003 (Personal Property)  
**Assessment Years:** 2013, 2014, and 2015

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Rebecca Reece, president of Ultra Image, Inc., filed personal property returns for the company for 2013, 2014, and 2015. On May 16, 2016, the Assessor issued Form 113/PP notices increasing the assessed value of Ultra Image’s business personal property from \$14,240 to \$34,360 for each of the three years. Reece sought review with the Delaware County Property Tax Assessment Board of Appeals (“PTABOA”). On April 4, 2018, the PTABOA issued Form 115 notices upholding the increased assessments.
2. Reece timely filed Form 131 petitions with the Board for all three years and elected our small claims procedures. On December 20, 2018, Joseph Stanford, our designated administrative law judge (“ALJ”) held a consolidated hearing on the petitions. Neither he nor the Board inspected the property.
3. Reece appeared pro se. The Assessor appeared by attorney Joseph I. Rhetts. Reece and Jordan Hertig, an auditor for Tax Management Associates (“TMA”), testified under oath.

**RECORD**

4. The official record contains the following:

a) Exhibits:

Petitioner Exhibit A:	Form 106, dated May 14, 2013
Petitioner Exhibit B:	Form 113/PP for 2013
Petitioner Exhibit C:	Form 113/PP for 2014
Petitioner Exhibit D:	Form 113/PP for 2015
Petitioner Exhibit E:	Department of Local Government Finance Memorandum, dated August 21, 2009
Petitioner Exhibit F:	Listing of “unforeseen circumstances”

Respondent Exhibit 1: Asset listing and reconciliation

- b) The record also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

**SUMMARY OF CONTENTIONS**

5. Reece's case:

- a) Reece's tanning salon business, Ultra Image, Inc., was experiencing declining sales, and Reece was looking for an area to reduce expenses. She submitted a Form 106 with her 2013 business personal property tax return as support for writing down the cost of her depreciable assets to the "market value of the equipment at that time." Reece determined the market value of her equipment through online research. She used the highest market value she could find for the same or similar equipment. *Reece testimony; Pet'r Ex. A.*
- b) Reece did not receive any notice that the Assessor had changed her 2013 assessment, so she continued to use the same adjustment on her 2014 and 2015 personal property returns. In 2016, however, TMA audited Reece's personal property returns for 2013-2015. TMA denied Reece's adjustments, and as a result, the Assessor increased the assessments for all three years to reflect the original costs of her assets. *Reece testimony; Pet'r Exs. B, C, D.*
- c) Reece contends the Assessor increased her assessments after the deadline to change personal property assessments. According to 50 IAC 4.2-3-1(c) and 50 AIC 4.2-3-2(d), the Assessor must change an assessment by September 15 or four months after the return is filed, and the PTABOA must act by October 30 or five months after the return is filed. Here, the Assessor did not increase Reece's 2013-2015 assessments until May 16, 2016. *Reece testimony; Pet'r Exs. B, C, D, E.*
- d) Reece also claims that her adjustments were appropriate because several unforeseen circumstances negatively affected her business. The Affordable Care Act imposed a 10% tax on tanning services for tanning salons, while apartment complexes and some other businesses that provide services in addition to tanning are exempt from the tax. Indiana also passed a law prohibiting anyone under the age of 18 from tanning, even with parental consent. Additionally, Reece argued that tanning equipment depreciates quickly and her tanning equipment is 12-20 years old. Finally, Reece argues that Indiana's personal property system is unfair to businesses that do not operate efficiently. She believes the regulations provide for an adjustment to the cost of her depreciable assets for these reasons. *Reece testimony; Pet'r Ex. F.*

6. The Assessor's case:
- a) The Assessor hired TMA to perform an audit of Reece's business personal property returns. Although TMA's audit did not find any specific asset omissions, TMA determined that Reece had understated the cost of her equipment. That discovery led to an increase in the assessed values for all three years that TMA reviewed. *Hertig testimony.*
  - b) Reece provided an asset list at the PTABOA hearing showing the cost of her assets and their market values. TMA found the costs reported for several of the items on that list to be slightly lower than the costs reported on Reece's depreciation schedules.<sup>1</sup> TMA determined that the costs from the depreciation schedules represented the actual book value of Reece's assets. TMA then put together a reconciliation using those costs, placing all of the assets into Pool 3. The changes in the assessed values represent the difference between the values Reece reported and their actual book cost. *Hertig testimony; Resp't Ex. 1.*
  - c) The law clearly states that depreciable assets should be reported at book cost, not market value. Reece used the market values of her assets. The results of TMA's audit reflect the book cost, which is why the assessments went up. *Rhetts argument.*

#### ANALYSIS

7. Indiana's personal property tax system is a self-assessment system. During the years at issue, every person owning, holding, possessing, or controlling business personal property with a tax situs in Indiana on March 1 of a year were required to file a personal property tax return. *See* I.C. § 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. I.C. § 6-1.1-1-9(b); 50 IAC 4.2-2-4(a).
8. Cost is the starting point for determining true tax value for personal property. *See* 50 IAC 4.2-4-2. Generally, the cost of personal property is "the total amount reflected on the books and records of the taxpayer as of the assessment date," plus direct costs and an appropriate portion of indirect costs attributable to its production or acquisition and preparation for use. *Id.* There are exceptions to that rule for, among other things, property that is fully depreciated, retired, or nominally valued. *See* 50 IAC 4.2-4-3.
9. To compute true tax value, taxpayers must first adjust the cost for any depreciable personal property to its tax basis as defined in the Internal Revenue Code (unadjusted by Sections 167 (depreciation) and 179 (expense deduction) or any credits that diminished its cost basis) if the property's cost per books is different from its tax basis. 50 IAC 4.2-4-4. Each piece of property is then segregated into one of the pools based on its depreciable life for federal income tax purposes. 50 IAC 4.2-4-5. The adjusted cost of each year's acquisitions falling within a given pool is then multiplied by the percentage factor corresponding with that pool's year of acquisition from a table incorporated into

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<sup>1</sup> The hand-written costs on the asset list are the costs reported on Reece's depreciation schedules.

the Department of Local Government Finance's ("DLGF") regulations. 50 IAC 4.2-4-7. The resulting sum is the true tax value of the personal property, which automatically reflects all adjustments for Indiana property tax purposes, except abnormal obsolescence. *Id.* With a few exceptions, the total valuation of a taxpayer's personal property cannot be less than 30% of adjusted cost, even if applying the depreciation pools would indicate a lower value. 50 IAC 4.2-4-9.

10. The Assessor changed the amounts Reece reported on her 2013, 2014, and 2015 returns based on TMA's audit, and the PTABOA upheld those changes. Reece contests the changes for two reasons: (1) she contends the assessments were increased after the deadline to change personal property assessments, and (2) she believes her adjustments were proper.
11. In arguing that the Assessor's change to her personal property assessments are not timely, Reece relied on an August 2009 memorandum in which the DLGF cites to its own rules promulgated in 50 IAC 4-2-3-1(c) and 50 IAC 4.2-3-2(d). According to the memorandum's discussion of those two rules, the Assessor must change an assessment by September 15 or four months after the return is filed, and the PTABOA must act by October 30 or five months after the return is filed.
12. In 2010, the DLGF repealed those two rules, and replaced them with 50 IAC 4.2-3.1-7. The rule promulgated in 2010 provides that the deadline for both the County Assessor and PTABOA to change an assessment is October 30 or five months after the return is filed. 50 IAC 4.2-3.1-7(e). It also provides that if the taxpayer fails to file a personal property return that substantially complies with the rule's provisions, the assessment may be increased if notice is given within three years after the date the return is filed. *Id.*
13. The deadlines adopted by the DLGF mirror the deadlines implemented by the legislature in Ind. Code § 6-1.1-16 and Ind. Code § 6-1.1-9-3(a). The first section of Indiana Code § 6-1.1-16 provides, in relevant part:

Sec 1. (a) Except as provided in section 2 [IC 6-1.1-16-2] of this chapter, an assessing official or county property tax assessment board of appeals may not change the assessed value claimed by a taxpayer on a personal property return unless the assessing official or county property tax assessment board of appeals takes the action and gives the notice required by IC 6-1.1-3-20 within the following periods:

. . . .

(2) A county assessor or *county property tax assessment board of appeals must make a change in the assessed value, including the final determination by the board of an assessment changed by an assessing official, and give the notice of the change on or before the later of:*

(A) October 30 of the year for which the assessment is made;

or

(B) *five (5) months from the date the personal property return is filed if the return is filed after the filing date for the personal property tax return.*

....

(b) *Except as provided in section 2 of this chapter, if an assessing official or a county property tax assessment board of appeals fails to change an assessment and give notice of the change within the time prescribed by this section, the assessed value claimed by the taxpayer on the personal property return is final.*

....

(d) This section does not apply if the taxpayer:  
(1) fails to file a personal property return which substantially complies with this article and the regulations of the department of local government finance; or  
(2) files a fraudulent personal property return with the intent to evade the payment of property taxes. . . .

Ind. Code § 6-1.1-16-1 (emphasis added). Section 2 allows an assessor to seek review with the Board if a property tax assessment board of appeals fails to act within Section 1(a)(2)'s deadlines. I.C. § 6-1.1-16-2(a). The 45-day deadline for seeking that review runs from the last day the PTABOA was permitted to act. *Id.*; I.C. § 6-1.1-15-3(d).

14. While neither party submitted evidence establishing the actual dates Reece filed her returns, the Assessor issued Form 113/PP notices increasing Reece's 2013, 2014, and 2015 assessments on May 16, 2016. Thus, Reece clearly filed them before May 16, 2016 since the Assessor based the Form 113/PP notices on TMA's audit of Reece's returns.
15. Without knowing the actual filing dates of Reece's returns, we cannot determine if the Assessor's Form 113/PP notices were timely for any given assessment year. However, the Indiana Tax Court has held that Ind. Code § 6-1.1-16-1(a)(2)'s plain language applies to a county property tax assessment board of appeals when, like here, it acts as a "quasi-adjudicator" in the appeal process. *See Washington Twp. Ass'r v. Verizon Data Services, Inc.*, 43 N.E.3d 697, 701-03 (Ind. Tax Ct. 2015). Whether we calculate the PTABOA's deadline to issue final determinations on the Assessor's changes to Reece's self-reported assessments using the May 16, 2016 date or even the June 27, 2016 date of Reece's letter appealing the Assessor's Form 113/PP notices (attached to Reece's Form 131 petitions), we conclude the PTABOA's determinations were untimely. At most, the PTABOA had until five months from June 27, 2016 to issue its determinations. However, the PTABOA failed to issue them until April 4, 2018, more than 21 months past the most generous reading of its deadline.
16. Despite the PTABOA missing that deadline, the Assessor could have sought to preserve his assessment by seeking review under section 2 (Ind. Code § 6-1.1-16-2). But he failed to do so. And the Assessor never argued that Reece's returns were fraudulent or that she failed to substantially comply with Indiana's property tax statutes and regulations.

17. Because the PTABOA failed to change the assessments and give notice of those changes within the time prescribed by Ind. Code § 6-1.1-16, Reece is entitled to have her assessments reduced to the amounts she originally claimed on her personal property returns. As a result, we need not address whether her adjustments were proper.

**FINAL DETERMINATION**

18. We find for Reece for all three years under appeal and order the 2013, 2014, and 2015 assessments reduced to \$14,240.

ISSUED: June 14, 2019

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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

**- 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 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's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.