

REPRESENTATIVE FOR PETITIONER:

Veronica Bennu, Attorney

REPRESENTATIVE FOR RESPONDENT:

Ethan Heagy, Deputy Township Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Speedway SuperAmerica, LLC <sup>1</sup>	)	Petition Nos.: 49-401-03-1-7-01763
	)	49-400-03-1-7-01764
Petitioner,	)	49-400-03-1-7-01765
	)	49-400-03-1-7-01766
	)	49-401-04-1-7-01900
	)	49-400-04-1-7-01901
v.	)	49-400-04-1-7-01902
	)	49-400-04-1-7-01903
	)	
	)	Marion County
Lawrence Township Assessor,	)	Lawrence Township
	)	Personal Property
Respondent.	)	Assessment Years: 2003 and 2004

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

**April 14, 2008**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters findings of fact and conclusions of law on the following issue: Are the cold storage areas (or walk-in coolers) at the Petitioner’s gas stations/convenience stores real or personal property?<sup>2</sup>

<sup>1</sup> Speedway SuperAmerica, LLC is a wholly owned subsidiary of Marathon Petroleum Company, LLC. Four of the Petitioner’s stores are the subjects of these eight appeals.

<sup>2</sup> The Petitioner used the terms “walk-in cooler” and “cold storage area” interchangeably.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **PROCEDURAL HISTORY**

1. The Petitioner filed Forms 131, petitioning the Board for an administrative review from determinations of the Marion County Property Tax Assessment Board of Appeals (PTABOA) that are dated November 17, 2006. The Form 131 Petitions were filed on December 14, 2006, with the Marion County Assessor.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

2. Paul Stultz, the designated Administrative Law Judge, held a single administrative hearing for these eight petitions in Indianapolis on January 16, 2008. He did not conduct an on-site inspection of any property.
3. The following persons were sworn and presented testimony at the hearing:
  - For the Petitioner – DeWayne Wendt, tax consultant, Marathon Petroleum Company, LLC,
  - For the Respondent – Ethan Heagy, Deputy Township Assessor.
4. The Petitioner presented the following exhibits:
  - Petitioner Exhibit 1 – Floor plan of one store showing the walk-in cooler,
  - Petitioner Exhibit 2 – Photograph taken inside the cooler,
  - Petitioner Exhibit 3 – Photograph of glass doors and shelving,
  - Petitioner Exhibit 4 – Photograph of shelving and inventory inside the cooler,
  - Petitioner Exhibit 5 – Photograph of glass doors and shelving,
  - Petitioner Exhibit 6 – Photograph of glass doors and shelving,
  - Petitioner Exhibit 7 – Photograph of shelving and inventory inside the cooler,
  - Petitioner Exhibit 8 – Photograph taken inside the cooler,
  - Petitioner Exhibit 9 – Photograph taken inside the cooler,
  - Petitioner Exhibit 10 – Photograph taken inside the cooler,
  - Petitioner Exhibit 11 – DVD of store being constructed.
5. The Respondent did not present any exhibits.

6. The following additional items are recognized as part of the record of proceedings:
- Board Exhibit A – The eight Petitions,
  - Board Exhibit B – Notice of Hearings,
  - Board Exhibit C – Hearing sign in sheet,
  - Board Exhibit D – Motion to be admitted pro hac vice and letter granting motion,
  - Board Exhibit E – List of eight appeals,
  - Board Exhibit F – List of assessments of record and the Petitioner’s proposed assessments for the eight appeals.

7. The PTABOA’s determination of the assessed values of the personal property and the assessments proposed by the Petitioner are shown in the following table.

Year	Parcel or Key #	Petition #	Address	Current Assessment	Requested Assessment
2003	D107705	49-401-03-1-7-01763	7339 Pendleton Pike	182,010	178,170
2003	D500339	49-400-03-1-7-01764	4535 North Shadeland Avenue	304,920	286,620
2003	D511500	49-400-03-1-7-01765	5990 East 71st Street	212,340	206,780
2003	D116960	49-400-03-1-7-01766	6741 East 82nd Street	310,720	293,440
2004	D107705	49-401-04-1-7-01900	7339 Pendleton Pike	188,130	184,280
2004	D500339	49-400-04-1-7-01901	4535 North Shadeland Avenue	261,610	247,670
2004	D511500	49-400-04-1-7-01902	5990 East 71st Street	225,330	219,770
2004	D116960	49-400-04-1-7-01903	6741 East 82nd Street	370,210	357,250

**REQUEST FOR CONTINUANCE**

8. The Respondent requested a continuance at the hearing. Mr. Heagy stated that he was not adequately prepared to represent the Respondent because he was assigned to defend the appeal only two days earlier. *Heagy argument.*
9. The Petitioner objected to a continuance. The Petitioner argued sufficient notice was given to the Respondent and pointed out that the office, rather than a specific individual, was responsible to defend the assessment. Furthermore, the Petitioner’s witness and counsel traveled from Ohio for this hearing. The Petitioner would incur an unnecessary burden and expenses if the hearing were continued. *Bennu argument.*
10. The Respondent failed to demonstrate good cause for a continuance. Both parties were given notice of the hearing as required by Indiana Code 6-1.1-15-4(b). No extenuating

facts support a request for a continuance. The fact that the Respondent sent a deputy assessor who was not prepared does not justify a continuance under these circumstances. The request for a continuance properly was denied.

### **OBJECTIONS**

11. Although the Lawrence Township Assessor's Office admittedly had received a copy, the Respondent objected to the admission of Petitioner Exhibit 11 (the DVD) because Mr. Heagy personally had not viewed it. Such circumstances are not a reason to exclude an exhibit, which properly was admitted into the record.
12. In addition, the Respondent objected to a portion of the content of the DVD. At one point, the construction manager disagreed with statements made by unidentified people that disassembled cooler parts could be reused. The Respondent objected because statements by unidentified individuals constituted hearsay evidence.
13. In this instance, the Petitioner's counsel admitted that the statements were not offered to prove the truth of the matter asserted. In any event, hearsay evidence may be admitted in Board hearings. 52 IAC 2-7-3. The Respondent's objection is overruled.

### **ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN**

14. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
15. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp.*

*Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).

16. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

#### ANALYSIS

17. The Petitioner presented the following evidence:
  - A. The contested features are real property cold storage rooms. The Respondent erroneously classified those areas as personal property walk-in coolers during an audit of the Petitioner’s personal property returns. *Wendt testimony*.
  - B. Recently, two stores were constructed using the standard floor plan for Indiana stores. Photographs and a DVD from these sites show the construction of the cold storage areas. *Wendt testimony*. A walk-in cold storage area is constructed on-site. Tracks are initially screwed to the floor. The cooler panels are then set into the tracks and interlocked, creating a rubberized seal. The panels are first attached to trusses. Then steel studs are attached for framing and the frame is covered with drywall. The unit is entirely assembled on site. The coolers are not preassembled units that can simply be placed in the desired area. Once a cooler unit is disassembled, it becomes worthless because the integrity of the cooling seals is broken in the process. Accordingly, the coolers are left in a building when an older store is demolished. *Pet’r Ex. 11*. This construction is typical of the Petitioner’s stores located in Lawrence Township. *Wendt testimony*.
  - C. The cold storage areas are intended to be permanent additions to the building. *Wendt testimony*.

18. The Respondent presented the following evidence:
  - A. Business personal property is tangible property used to operate the business and generate income. Not all personal property is movable. *Heagy testimony*.
  - B. The Petitioner acknowledges that much of the cooler, such as the shelves and doors, are personal property. *Heagy testimony*.
19. Unfortunately, the original personal property returns and the audit are not in evidence. There is no evidence that proves what the audit's exact changes were or what amount was added to the personal property value as a result of the reclassification of the cold storage areas. In addition, nothing establishes when the changes were made. This lack of information precludes the Board from making a determination of exactly what the corrected assessments should be.
20. Nevertheless, the Petitioner provided sufficient evidence to establish the current assessments should be changed.
  - A. Built-in cold storage rooms are classified as real property. Prefabricated, walk-in cold storage areas are classified as personal property. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch.1 at 8-9 (incorporated by reference at 50 IAC 2.3-1-2); 50 IAC 4.2-4-10(d).
  - B. The Petitioner's evidence establishes the cold storage area is not prefabricated—it was constructed on the site. The photographs and video show the walls are attached to the concrete floor. Testimony establishes the contested feature is designed to be a permanent addition to the structure and would be left with a building when it is demolished. It is not the kind of thing that could be successfully moved and used again.

- C. The Petitioner made a substantial case the contested property should be classified as real property.
- D. The Respondent observed that the shelves and doors of the unit are personal property. No explanation was presented to establish how this fact related to the classification of the cooler unit. The Respondent failed to rebut or impeach the Petitioner's evidence.

### **SUMMARY OF FINAL DETERMINATION**

- 21. The Board finds in favor of the Petitioner. The disputed areas in the Petitioner's gas stations/convenience stores must be regarded as built-in cold storage rooms that are classified as real property. The amounts that the audit added for them as personal property must be removed.

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

### **- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, 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 Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>