

REPRESENTATIVE FOR PETITIONER:

Veronica Bennu, Attorney

REPRESENTATIVE FOR RESPONDENT:

Robert Agnew, Hearing Examiner, Property Tax Assessment Board of Appeals

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Speedway SuperAmerica, LLC <sup>1</sup>	)	Petitions: See Attached Table 1
	)	
Petitioner,	)	Marion County
	)	Pike Township
v.	)	
	)	Personal Property
Marion County Assessor,	)	Assessment Years: 2004, 2005, and 2006
	)	
Respondent.	)	

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

**April 15, 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 twelve 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 August 24, 2007.<sup>3</sup> The Form 131 Petitions were filed on September 14, 2007.

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

2. Paul Stultz, the designated Administrative Law Judge, held a single administrative hearing for these twelve petitions in Indianapolis on January 15, 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 - Robert Agnew, Hearing Examiner,  
John Shelton, Tax Management Associates.
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.

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<sup>3</sup> The date of the PTABOA determinations means that the Marion County Assessor, rather than the Pike Township Assessor is designated as the Respondent.

5. At the request of the Administrative Law Judge, the Respondent presented the following exhibit on January 17, 2008:  
Respondent Exhibit 1 - Property record cards for the four locations.
6. The following additional items are recognized as part of the record of proceedings:  
Board Exhibit A - The 12 Petitions,  
Board Exhibit B - Notices of Hearing,  
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 12 appeals,  
Board Exhibit F - List of assessments of record and the Petitioner's proposed assessments for the 12 appeals.
7. The PTABOA's determination of the assessed values of the personal property and the personal property assessments proposed by the Petitioner are listed on Table 1, which is attached to this determination.

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

8. 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).
9. 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”).
10. 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

11. The Petitioner presented the following evidence:
  - A. The contested feature is a real property cold storage room. The Respondent erroneously classified this area as a personal property walk-in cooler during an audit of the Petitioner's personal property returns. *Wendt testimony*.
  - B. Photographs and a DVD from these sites show the techniques used to construct the cold storage areas. *Wendt testimony*. The walk-in 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 cooler is not a preassembled unit 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 Pike Township. *Wendt testimony*.
  - C. The cold storage areas are intended to be permanent additions to the building. *Wendt testimony*.
12. The Respondent presented the following evidence:
  - A. The contested feature is personal property because the partitions are interlocking prefabricated panels. The walls are manufactured off site and then shipped for installation. *Agnew testimony*.

- B. The Respondent's auditor did not inspect any of the Petitioner's Pike Township locations. Most cold storage areas, however, are huge warehouse facilities for grocery chains or beer companies. The 2002 Real Property Assessment Manual (incorporated by reference at 50 IAC 2.3-1-2) does not identify an area this small as a cold storage room. *Shelton testimony.*
  
  - C. The audits added the walk-in coolers because they have prefabricated, portable wall panels. They are not built into the building. *Shelton testimony.*
13. 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.
14. 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 Respondent offered no substantial explanation for how the size of the contested area supports the classification of the cooler unit as personal property.
  
  - C. The Respondent asserted the video is hearsay evidence. Hearsay evidence, however, may be admitted. 52 IAC 2-7-3. Furthermore, there is a significant amount of other evidence that supports this decision.

- D. These cold storage areas are not prefabricated—they are constructed on the site as built-in features. Furthermore, the Respondent’s main justification for considering the cold storage area to be personal property appears to be directly related to conclusory testimony characterizing the wall panels as portable, but there is no probative evidence to support that characterization. The testimony and other evidence provide substantial probative evidence that the wall panels are not portable. The photographs and video show the walls are attached to both the inside of the exterior walls and to the concrete floor. The evidence establishes the walls of the cold storage areas are a permanent part of the structure. They are not the kind of thing that could be successfully moved and used again.
- E. The cold storage areas should be classified as real property.

#### **SUMMARY OF FINAL DETERMINATION**

15. 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>

Table 1  
Pike Township

Year	Parcel or Key #	Petition #	Address	Current Assessment	Requested Assessment
2004	F523280	49-600-04-1-7-01965	6315 West 56th Street	199,230	194,980
2004	F552080	49-600-04-1-7-01966	5201 Lafayette Road	248,160	232,140
2004	F505920	49-600-04-1-7-01967	4810 West 38th Street	424,360	401,660
2004	F504063	49-600-04-1-7-01968	5555 West 86th Street	313,690	300,330
2005	F523280	49-600-05-1-7-00901	6315 West 56th Street	206,140	201,890
2005	F552080	49-600-05-1-7-00902	5201 Lafayette Road	231,290	216,280
2005	F505920	49-600-05-1-7-00903	4810 West 38th Street	341,090	324,080
2005	F504063	49-600-05-1-7-00904	5555 West 86th Street	278,960	266,440
2006	F523280	49-600-06-1-7-01586	6315 West 56th Street	141,780	137,530
2006	F552080	49-600-06-1-7-01587	5201 Lafayette Road	159,480	144,450
2006	F505920	49-600-06-1-7-01588	4810 West 38th Street	196,620	183,650
2006	F504063	49-600-06-1-7-01589	5555 West 86th Street	188,130	175,610