

REPRESENTATIVE FOR PETITIONERS:

Veronica Bennu, Attorney

REPRESENTATIVE FOR RESPONDENT:

Wayne Grabman, Deputy Wayne Township Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Speedway SuperAmerica, LLC and )		Petitions: See Attached Table 1
Marathon Ashland Petroleum, LLC <sup>1</sup> )		
	)	
Petitioners, )		
	)	Marion County
v. )		Wayne Township
	)	
Wayne Township Assessor, )		Personal Property
	)	Assessment Years: 2002, 2003, and 2004
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 subject 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 and Marathon Ashland Petroleum, LLC are wholly owned subsidiaries of Marathon Petroleum Company, LLC. Fourteen of the Petitioners’ stores are the subjects of these twenty-seven appeals.

<sup>2</sup> The Petitioners used the terms “walk-in cooler” and “cold storage area” interchangeably. The Form 131 Petitions also raised an issue about an adjustment for materials and supplies. That issue was not addressed at the hearing. The Board considers it waived.

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

### **PROCEDURAL HISTORY**

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

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

2. Paul Stultz, the designated Administrative Law Judge, held a single administrative hearing for these twenty-seven petitions in Indianapolis on January 15, 2008. He did not conduct an on-site inspection of any property.
3. The following persons were sworn as witnesses at the hearing:
  - For the Petitioners - DeWayne Wendt, tax consultant, Marathon Petroleum Company, LLC,
  - For the Respondent - Wayne Grabman, Deputy Assessor, Wayne Township, Michael McCormack, Wayne Township Assessor, Melody Clark, Deputy Assessor, Wayne Township.
4. The Petitioners presented the following exhibits:
  - Petitioners Exhibit 1 - Floor plan of one store showing the walk-in cooler,
  - Petitioners Exhibit 2 - Photograph taken inside the cooler,
  - Petitioners Exhibit 3 - Photograph of glass doors and shelving,
  - Petitioners Exhibit 4 - Photograph of shelving and inventory inside the cooler,
  - Petitioners Exhibit 5 - Photograph of glass doors and shelving,
  - Petitioners Exhibit 6 - Photograph of glass doors and shelving,
  - Petitioners Exhibit 7 - Photograph of shelving and inventory inside the cooler,
  - Petitioners Exhibit 8 - Photograph taken inside the cooler,
  - Petitioners Exhibit 9 - Photograph taken inside the cooler,
  - Petitioners Exhibit 10 - Photograph taken inside the cooler,
  - Petitioners Exhibit 11 - DVD of store being constructed.

5. The Respondent presented the following exhibits:

- Respondent Exhibit 1 - Property record card (PRC) of one location,
- Respondent Exhibit 2 - PRC of one location,
- Respondent Exhibit 3 - PRC of one location,
- Respondent Exhibit 4 - PRC of one location,
- Respondent Exhibit 5 - PRC of one location,
- Respondent Exhibit 6 - PRC of one location,
- Respondent Exhibit 7 - PRC of one location,
- Respondent Exhibit 8 - PRC of one location,
- Respondent Exhibit 9 - PRC of one location,
- Respondent Exhibit 10 - PRC of one location,
- Respondent Exhibit 11 - PRC of one location,
- Respondent Exhibit 12 - PRC of one location,
- Respondent Exhibit 13 - PRC of one location,
- Respondent Exhibit 14 - PRC of one location,
- Respondent Exhibit 15 - Package of documents containing the following:
  - a. Seven-page computer generated worksheet detailing real property value for the 2601 S. Lynhurst location with coolers not assessed as real property,
  - b. Sketch of cooler with calculations that determine the addition value of the cooler as real property is \$13,187 at 2601 S. Lynhurst,
  - c. Six-page computer generated worksheet detailing real property value for the 2601 S. Lynhurst location with coolers assessed as real property,
  - d. Three pages of two aerial photographs and four interior photographs of cooler of store located at 3350 Georgetown Road,
  - e. Three pages of one aerial photograph and seven interior photographs of cooler located at 2601 S. Lynhurst,
  - f. Two pages of nine interior photographs of store and cooler located at 7169 Rockville Road,
  - g. Two pages of one aerial photograph and seven interior photographs of store and cooler located at 75 N. Lynhurst Drive,
  - h. Two pages of two aerial photographs and eight interior photographs of store and cooler located at 3540 W. 30th Street,
  - i. Three pages of three aerial photographs and ten interior photographs of store and cooler located at various locations,
  - j. Six pages of five aerial photographs and nine interior photographs of store and cooler located at various locations,
  - k. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Appendix G at 19 and 25 (incorporated by reference at 50 IAC 2.3-1-2),
  - l. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005).

6. The following additional items are recognized as part of the record of proceedings:
  - Board Exhibit A - The 27 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 27 appeals,
  - Board Exhibit F - List of assessments of record and the Petitioners' proposed assessments for the 27 appeals.
7. The PTABOA's determination of the assessed values of the personal property and the personal property assessments proposed by the Petitioners are listed on Table 1, which is attached to this determination.

#### **OBJECTION**

8. The Petitioners objected to the Respondent's Exhibit 15 because the Respondent did not provide copies of its exhibits at least 5 business days before the hearing as required by the Board's procedural rules. *Bennu argument.*
9. Attorney Bennu explained that she received a letter from the Respondent listing witnesses and referencing the exhibits as being enclosed, but they were not enclosed. As a result, Attorney Bennu called the Respondent, advised that no copies of exhibits were enclosed, and requested copies to review before the hearing. The Respondent acknowledged Attorney Bennu's telephone request and admitted that no copies of the evidence were sent. *Clark testimony.* The Respondent argued that it notified the Petitioner of an intent to offer "[a]dditional documentation and photos as necessary to rebut the Petitioner's argument or evidence," which allows for the additional evidence to be introduced. *Grabman argument.*
10. The Board's procedural rules clearly state that each party must provide all other parties a list of the witnesses and exhibits it intends to offer at least 15 business days before any administrative hearing and provide copies of documentary evidence at least 5 business

days before the hearing. 52 IAC 2-7-1(b). The Board may exclude evidence based on a party's failure to comply with that deadline. 52 IAC 2-7-1(f).

11. The Board's pre-hearing disclosure rules exist to allow parties to adequately prepare their cases. Here, it is undisputed that the Respondent failed to timely provide the Petitioners with copies of Exhibit 15 before the hearing. To accept the Respondent's argument about the general reference to rebuttal evidence would nullify 52 IAC 2-7-1 and allow a party to withhold evidence from the opposing party until the hearing. The Board sustains the Petitioners' objection. It will not consider Respondent Exhibit 15 any further.

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

12. 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).
13. 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").
14. 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

15. The Petitioners 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 Petitioners' personal property returns. *Wendt testimony.*
  - B. Photographs and a DVD from these sites reveal the techniques used to construct the cold storage areas. *Wendt testimony.* The walk-in storage areas are 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'rs Ex. 11.* There were no stores under construction in Wayne Township to demonstrate the construction techniques. Although the photographs and video showing this kind of installation are from locations in other townships, the cooler unit in the photographs and video is similar to those placed in all Marion County stores. *Wendt testimony.*
  - C. The cold storage areas are intended to be permanent additions to the building. *Wendt testimony.*
16. The Respondent presented the following evidence:
- A. These walk-in coolers were not included as part of the Petitioners' real property assessments. They are personal property, but they were not reported on the Petitioners' personal property tax return. Consequently, they were added to the

- personal property assessments as a result of an audit done on behalf of the Respondent. *Grabman testimony.*
- B. The contested property is personal property because the cooler could not be used as a cooler if the front doors were removed. Built-in cold storage rooms are larger than the feature located in the Petitioners' stores. *Grabman testimony.*
  - C. The photographs and video are from locations not in Wayne Township. *Grabman testimony.*
17. 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.
18. Nevertheless, the Petitioners 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 Petitioners established the construction materials and techniques shown in the photographs and video are typical for its Marion County stores. The Petitioners' evidence establishes the cold storage area is not prefabricated—it was constructed on the site. The photographs and video show the walls are permanently attached to the concrete floor. The evidence further establishes the contested feature is 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 Petitioners made a prima facie case the contested property should be classified as real property.
- D. The Respondent failed to prove the unit is prefabricated. The Respondent offered no substantial explanation or authority to support its argument that the size of the contested area was somehow determinative. According to the Respondent, the fact that removing the doors would make the unit inoperable somehow supports a classification as personal property. Again, the Respondent offered no substantial explanation or authority for that position. Unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

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

- 19. The Board finds in favor of the Petitioners. The disputed areas in the Petitioners' 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  
Wayne Township

Year	Parcel or Key #	Petition #	Address	Current Assessment	Requested Assessment
2002	I500304	49-930-02-1-7-10737	1205 S. Lynhurst Drive	194,550	184,550
2003	I502803	49-900-03-1-7-01669	7169 Rockville Road	386,370	362,990
2003	I111902	49-900-03-1-7-01673	6302 Rockville Road	198,970	191,150
2003	I501406	49-900-03-1-7-01676	75 North Lynhurst Drive	112,960	109,610
2003	I111903	49-900-03-1-7-01677	2601 South Lynhurst	193,020	189,150
2004	I502803	49-900-04-1-7-01799	7169 Rockville Road	324,810	307,280
2004	I108386	49-900-04-1-7-01802	2954 South Holt Road	110,430	106,380
2004	I111902	49-900-04-1-7-01803	6302 Rockville Road	190,910	183,090
2004	I501406	49-900-04-1-7-01806	75 North Lynhurst Drive	110,970	107,620
2004	I111903	49-900-04-1-7-01807	2601 South Lynhurst	185,820	181,950
2003	I502802	49-901-03-1-7-01671	4155 West 10th Street	128,210	121,740
2003	I108386	49-901-03-1-7-01672	2954 South Holt Road	117,370	113,320
2003	I113360	49-901-03-1-7-01674	3437 Lafayette Road	161,590	156,990
2003	I500303	49-901-03-1-7-01675	3350 Georgetown Road	126,550	123,110
2003	I502804	49-901-03-1-7-01679	3540 West 30th Street	121,530	117,370
2004	I502802	49-901-04-1-7-01801	4155 West 10th Street	123,560	118,130
2004	I113360	49-901-04-1-7-01804	3437 Lafayette Road	136,330	131,730
2004	I500303	49-901-04-1-7-01805	3350 Georgetown Road	115,250	111,810
2004	I502804	49-901-04-1-7-01809	3540 West 30th Street	116,800	112,640
2003	I502863	49-914-03-1-7-01678	4743 West 16th Street	160,310	154,580
2004	I502863	49-914-04-1-7-01808	4743 West 16th Street	154,060	148,330
2003	I500304	49-930-03-1-7-01601	1205 S. Lynhurst Drive	184,810	176,710
2003	I502800	49-970-03-1-7-01680	3250 West Morris Street	106,210	103,490
2004	I502800	49-970-04-1-7-01810	3250 West Morris Street	87,940	84,850
2003	I502526	49-982-03-1-7-01670	7270 West 10th Street	185,340	180,140
2004	I502526	49-982-04-1-7-01800	7270 West 10th Street	172,970	167,770
2004	I113445	49-900-04-1-7-01798	5405 Bradbury	102,530	93,970