

REPRESENTATIVE FOR PETITIONER:  
Richard L. Archer, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT:  
Cathy Searcy, Elkhart County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Universal Forest Products,	)	Petition No.:	20-009-07-1-3-00221
	)		
Petitioner,	)	Parcel No.:	20-02-36-476-022.000-009
	)		
v.	)	County:	Elkhart
	)		
Elkhart County Assessor,	)	Township:	Concord
	)		
Respondent.	)	Assessment Year:	2007

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

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*May 18, 2012*

**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:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Introduction**

1. This case hinges on whether Universal timely filed its appeal at the local level, which in turn hinges on the date Universal was notified of the subject property’s assessment through a Special Notice to Property Owner (Treasurer Form TS-1A) and tax bill. The

Board presumes that December 2, 2008—the notice date listed on the TS-1A—was the date that Universal was notified of the property’s assessment, and an unsworn letter from a deputy treasurer claiming that tax bills were actually mailed on November 14, 2008, does not suffice to rebut that presumption.

### **Procedural History**

2. On January 16, 2009, Universal initiated its appeal by sending the Assessor a letter contesting the subject property’s March 1, 2007 assessment. On October 12, 2010, the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) determined that Universal’s appeal was untimely and therefore denied Universal relief. Universal then filed a Form 131 petition with the Board.
3. On February 23, 2012, the Board’s administrative law judge, Patti Kindler (“ALJ”), held a hearing on Universal’s petition. Neither the Board nor the ALJ inspected the subject property.

### **Hearing Facts and Other Matters of Record**

4. The following people were sworn in and testified:
  - For Universal: Richard Archer, certified tax representative
  - For the Assessor: Cathy Searcy, Elkhart County Assessor
5. Universal submitted the following exhibits:
  - Petitioner Exhibit 1: Property record card for the subject property
  - Petitioner Exhibit 2: January 16, 2009 letter from Richard Archer to Cathy Searcy
  - Petitioner Exhibit 3: Form 115 determination for the subject property’s March 1, 2007 assessment
  - Petitioner Exhibit 4: Form 131 petition
  - Petitioner Exhibit 5: Front page of Form 115 determination for the subject property’s March 1, 2008 assessment and document listing parties’ exhibits

- Petitioner Exhibit 6: Page 4 of Form 130 petition signed by Kristin Rowe on February 22, 2011 and by Richard Archer on February 24, 2011
- Petitioner Exhibit 7: December 16, 2010 letter from Richard Archer to the PTABOA and December 8, 2010 e-mail from Greg Clark to Archer
- Petitioner Exhibit 8: Warranty Deed from Banks Enterprises, Inc. to Universal Forest Products Eastern Division, Inc. and sales disclosure form listing Banks as seller and Universal as buyer
- Petitioner Exhibit 9: October 30, 2007 cover letter from David A. DiMuzio to Stacey Prigge with the following documents regarding the sale of 701 Collins Road: Warranty Deed, Indiana Disclosure Statement (sales disclosure form), Universal Forest Products Eastern Division, Inc. Resolution of the Board of Directors, Closing Statement, and Land Contract
- Petitioner Exhibit 10: Map and listing sheets for eight properties
- Petitioner Exhibit 11: Power of Attorney for Richard Archer
- Petitioner Exhibit 12: Aerial map of the subject property
- Petitioner Exhibit 14: Front page for blank Form TS-1A (2009)
- Petitioner Exhibit 15: Page from TS-1A (R/ 8-09) with portion highlighted
- Petitioner Exhibit 16: Front page of completed TS-1A for the subject property with 12/2/2008 listed as “DATE OF NOTICE FOR 2007 PAY 2008”
- Petitioner Exhibit 17: Front page of completed TS-1A for property owned by Menard, Inc. with 12/2/2008 listed as “DATE OF NOTICE FOR 2007 PAY 2008”
- Petitioner Exhibit 18: Front page of completed TS-1A for Universal’s personal property located at 701 Collins Road with 12/2/2008 listed as “DATE OF NOTICE FOR 2007 PAY 2008”
- Petitioner Exhibit 19: Front page of completed TS-1A for Universal’s personal property located at 54693 CR 17 with 12/2/2008 listed as “DATE OF NOTICE FOR 2007 PAY 2008”<sup>1</sup>

6. The Assessor submitted the following exhibits:

- Respondent Exhibit 1: Cover letter explaining the Assessor’s contentions
- Respondent Exhibit 2: January 16, 2009 letter from Archer to Searcy
- Respondent Exhibit 3: Copy of the envelope addressed to Elkhart County Assessor with January 16, 2009 postmark
- Respondent Exhibit 4: Certified mail receipt signed by Monica Leatherman
- Respondent Exhibit 5: December 17, 2010 letter from Jacqueline Meyers to Searcy
- Respondent Exhibit 6: Copy of tax bill addressed to Allied Finance Co.

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<sup>1</sup> Universal did not submit an Exhibit 13.

Respondent Exhibit 7: Ind. Code § 6-1.1-15-1  
Respondent Exhibit 8: Stipulation Agreement

7. The Board recognizes the following additional items as part of the record of proceedings:
  - Board Exhibit A: Form 131 petition
  - Board Exhibit B: Hearing notices
  - Board Exhibit C: Hearing sign-in sheet
8. The subject property contains several light manufacturing and storage structures. It is located at 54693 County Road 17 in Elkhart.
9. The PTABOA determined the following assessment:

Land: \$566,000	Improvements: \$1,224,000	Total: \$1,790,000.
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10. Universal requested the following assessment:

Land: \$566,000	Improvements: \$ 490,000	Total: \$1,056,000.
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### **Summary of Parties' Contentions**

#### **A. Universal's Evidence and Contentions**

11. Universal timely filed its appeal with the Assessor. Because the Assessor did not send Universal a separate notice of assessment, Universal's tax bill serves as its notice. And the Form TS-1A that accompanied Universal's tax bill has the following entry: "DATE OF NOTICE FOR 2007 PAY 2008 TAXES 12/2/2008." *Archer testimony; Pet'r Ex. 16.* Even if that date is a misprint as the Assessor suggests, Universal's tax representative, Richard Archer, relied on that date in calculating Universal's deadline for appealing the subject property's March 1, 2007 assessment. Based on that notice date, Mr. Archer filed Universal's appeal—in the form of a letter to the Assessor requesting a preliminary conference—on January 16, 2009. *Archer testimony; Pet'r Ex. 2.*
12. At least three other Form TS-1As show December 2, 2008 as the notice date for 2007 pay 2008 tax bills. *Archer testimony; Pet'r Exs. 17-19.* Taxpayers should not have to contact county officials to verify that all dates listed on their forms are correct. Nonetheless,

Universal's appeal appears to be the only one where timeliness was an issue, so it is unlikely to set a precedent. *Archer argument*.

13. Timeliness questions aside, the subject property's assessment increased from \$1,502,200 for March 1, 2006, to \$1,790,000, for March 1, 2007. Thus, the Assessor has the burden of proving that the March 1, 2007 assessment is correct. *Archer testimony*. The Assessor, however, has agreed to stipulate to a March 1, 2007 value of \$1,056,000 should the Board find that Universal's original appeal was timely filed. *Id.* (*referring to Searcy testimony and Resp't Ex. 8*). Universal and the Assessor have already stipulated to similar values for March 1, 2008 and March 1, 2009. *Archer testimony; Pet'r Exs. 5-6*.

#### **B. The Assessor's Evidence and Contentions**

14. Universal did not timely file its appeal at the local level. A letter from a deputy treasurer, Jacqueline Meyers, indicates that tax bills based on the March 1, 2007 assessment were actually mailed on November 14, 2008, and that the December 2, 2008 notice date shown on the Form TS-1A is incorrect:

The tax bills for the assessment year 2007 were due in two installments, the first installment due December 2, 2008, and then the final installment due January 13, 2009. The full year statement was mailed November 14, 2008 from Huntington Bank in Carmel.

Please note that the original Treasurer Form TS-1A-2 notice date reflects 12/2/2008 which was incorrect. Tax bills were mailed November 14, 2008, as the copy of the return envelope enclosed indicates.

*Resp't Ex. 5*. Although Ms. Meyers's letter refers to a "return envelope," the Assessor did not offer that envelope as evidence at the Board's hearing.

15. To supplement Ms. Meyers's letter, the Assessor offered a copy of the subject property's tax bill. That bill indicates that the first installment based on the March 1, 2007 assessment was due December 2, 2008. Logically, the bill would not have been mailed on the same day that taxes were due. *Resp't Ex. 6; Searcy argument*.

16. Thus, under Ind. Code § 6-1.1-15-1, Universal’s deadline to file an appeal was December 29, 2008—45 days from November 12, 2008. But Universal did not mail its appeal until January 16, 2009. And the Assessor did not receive that appeal until January 20, 2009. *Searcy testimony; Resp’t Exs. 3-4, 7.* While Mr. Archer might have relied on the date contained on the Form TS-1A that his client gave to him, an assessor is not responsible for making sure that taxpayers give the right information to their tax representatives. *Searcy testimony.*
17. Finally, if the Board finds that Universal timely filed its appeal, the Assessor agrees that the subject property’s March 1, 2007 assessment should be \$566,000 for the land and \$490,000 for the improvements, for a total assessment of \$1,056,000. *Searcy testimony; Resp’t Ex. 8.*

### **Discussion**

18. The Legislature has created specific appeal procedures by which a taxpayer can challenge an assessment. If a taxpayer chooses to exercise its appeal rights, the taxpayer must follow those procedures by filing an appropriate petition in a timely manner. *Williams Industries v. State Bd. of Tax Comm’rs*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995). At the times relevant to this appeal, Indiana Code § 6-1.1-15-1 provided the following with regard to the deadline for a taxpayer to file an appeal at the local level:
- (a) A taxpayer may obtain review by the county board of a county or township official’s action with respect to . . . the following:
    - (1) The assessment of the taxpayer’s tangible property.
    - . . .
  - (b) At the time that notice of an action referred to in subsection (a) is given to the taxpayer, the taxpayer shall also be informed in writing of:
    - (1) the opportunity for a review under this section . . . : and
    - (2) the procedures the taxpayer must follow in order to obtain a review under this section
  - (c) In order to obtain a review of the assessment . . . effective for the assessment date to which the notice referred to in subsection (b) applies, the taxpayer must file a notice in writing with the county or township official referred to in subsection (a) not later than forty-five (45) days after the date of the notice referred to in subsection (b).

(d) A taxpayer may obtain a review by the county board of the assessment of the taxpayer's tangible property effective for an assessment date for which a notice of assessment is not given as described in subsection (b). To obtain the review, the taxpayer must file a notice in writing with the township assessor, or the county assessor if the township is not served by a township assessor. The right of a taxpayer to obtain a review under this subsection for an assessment date for which a notice of assessment is not given does not relieve an assessing official of the duty to provide the taxpayer with the notice of assessment as otherwise required by this article. For an assessment date in a year before 2009, the notice must be filed on or before May 10 of the year. For an assessment date in year after 2008, the notice must be filed not later than the later of:

- (1) May 10 of the year; or
- (2) forty-five (45) days after the date of the statement mailed by the county auditor under IC 6-1.1-17-3(b).

I.C. § 6-1.1-15-1 (2008 supp.). Indiana Code § 6-1.1-15-13, in turn, provides

If notice of the action of a board or official is not otherwise given in accordance with the general assessment provisions of this article, the receipt by the taxpayer of the tax bill resulting from that action is the taxpayer's notice for the purpose of determining the taxpayer's right to obtain a review or initiate an appeal under this chapter.

I.C. § 6-1.1-15-1.

19. This case turns upon the date that Universal was notified of the subject property's March 1, 2007 assessment. Mr. Archer's appeal letter to the Assessor was postmarked, and therefore filed, on January 16, 2009. *See* I.C. § 6-1.1-36-1.5 (providing that a document is considered to be filed by the due date if properly addressed and deposited in the United States First Class Mail with sufficient postage and postmarked on or before the due date). Thus, if Universal was notified of the subject property's assessment on December 2, 2008, Universal's appeal was timely.
20. The undisputed evidence shows that Universal received only two items that could possibly be considered notice of the subject property's assessment: the Form TS-1A and the subject property's tax bill. The Form TS-1A lists the date of that notice as December 2, 2008. The Board therefore presumes that December 2, 2008 was the date that the tax bill and TS-1A were mailed. *See Tibero v. Allergy Asthma Immunology of Rochester,*

664 F.3d 35, 37 (2<sup>nd</sup> Cir. 2011) (“There is a presumption that a notice provided by a government agency was mailed on the date shown on the notice.”).

21. The Assessor, however, contends that the date printed on the TS-1A is wrong and that 2007 pay 2008 tax bills were actually mailed on November 14, 2008, making Universal’s appeal untimely. Indeed, that is what Ms. Meyers says in her unsworn letter.
22. Ms. Meyers’s letter does not suffice to rebut the presumption that Universal was notified of the subject property’s March 1, 2007 assessment on the notice date appearing on the Form TS-1A. Ms. Meyers’s assertions were unsworn and she was not subject to cross examination. Moreover, Ms. Meyers did not claim to have personally mailed any of the tax bills, much less Universal’s bill, or that the treasurer followed routine business practices in mailing Universal’s tax bill by a given date. *See Indiana Sugars*, 683 N.E.2d 1383, 1386 (Ind. Tax Ct. 1997) (quoting *F&F Construction Co. v. Royal Globe Insurance Co.*, 423 N.E.2d 654 (Ind. App. Ct. 1981) (“Proof consisting of testimony from one with direct and actual knowledge of the particular message in question is required to establish proof of mailing.”); *see also, U-Haul Co. of Indiana, Inc. v. Ind. Dep’t of State Revenue*, 896 N.E.2d 1253, 1257 (Ind. Tax Ct. 2008) (finding that designated evidence showing the Department of Revenue had conformed to its routine business practices supported a reasonable inference that it had timely mailed an assessment). At most, Ms. Meyers’s letter referred to a return envelope for an unidentified taxpayer, which the Assessor did not even offer into evidence.
23. Indeed, even if the Assessor had shown that Universal’s Form TS-1A and tax bill were actually mailed on November 14, 2008, the Board would need to address whether Universal should nonetheless have been allowed to rely on the December 2, 2008 notice date appearing on the Form TS-1A. As it is, the Board reserves that question for another day.
24. Having found that Universal timely filed its appeal, there is little else to do. The parties agree that if the Board reaches the merits of Universal’s appeal, the assessment should be



reduced to \$1,056,000. The Board accepts the parties' agreement and orders that the subject property's March 1, 2007 assessment be reduced to \$1,056,000.

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

25. Universal timely filed its appeal at the local level. And the parties agree that, if Universal's appeal was timely, the subject property should be assessed at \$1,056,000. The Board therefore orders that the subject property's March 1, 2007 assessment be reduced to \$1,056,000.

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

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

#### **IMPORTANT NOTICE**

##### **- 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>.