

REPRESENTATIVE FOR PETITIONER: Kerry Wade, Tax Representative

REPRESENTATIVE FOR RESPONDENT: John Shelton, Tax Management Associates

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

BEST LOCK CORPORATION)	Petition No.: 49-400-03-1-7-01687
D/B/A BEST ACCESS SYSTEMS,)	
)	
Petitioner,)	Marion County
)	
v.)	Lawrence Township
)	
LAWRENCE TOWNSHIP)	Personal Property
ASSESSOR,)	
)	2003 Assessment
Respondent.)	

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

March 12, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters these Findings of Fact and Conclusions of Law.

Issue

1. The parties focused on whether the assessor, through a personal property audit and assessment change, opened the door to an increased exemption that would be favorable to the taxpayer. There is, however, a more fundamental question: Does the law permit any change to the assessed value reported on the taxpayer's timely 2003 personal property return if such a change is based on a November 2005 audit and notice?

Hearing Facts and Other Matters of Record

2. The Petitioner timely filed its 2003 Business Personal Property Return. *Resp't Ex. B; Shelton testimony.* These documents include Form 103-Long Form, Form 103-N, Form 103-P, Form 103-T, Form 103-W, Extension Request (granted until June 14, 2003), and Form 104. The Form 103-W claims \$262,422 of inventory is exempt under Ind. Code § 6-1.1-10-29. *Resp't Ex. B.*
3. The Respondent issued a Notice of Assessment Change (Form 113/PP) dated November 28, 2005, increasing the business personal property assessment from \$10,815,480 to \$10,862,170 as a result of a personal property audit. *Pet'r Ex. 4.*
4. The Petitioner sought a review of the change by filing a Form 130 Petition. The Marion County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on May 19, 2006. *Pet'r Ex. 3.*
5. The Petitioner filed a Form 131 Petition for Review on June 16, 2006. *Pet'r Ex. 1.*
6. Paul Stultz, the designated Administrative Law Judge (ALJ), held the administrative hearing for that petition in Indianapolis on December 11, 2006. The ALJ did not conduct an on-site inspection of the property.
7. The following persons were present and sworn as witnesses:
For the Petitioner – Richard Young, tax accountant,
Kerry Wade, CPA,
For the Respondent – Sarah Walker, Lawrence Township Deputy Assessor,¹
John Shelton, Tax Management Associates.

¹ Sarah Walker did not testify.

8. The parties presented the following exhibits:
 - Petitioner Exhibit 1 – Form 131 Petition with attachments,
 - Petitioner Exhibit 2 – Form 115 Notice of Final Assessment,
 - Petitioner Exhibit 3 – Form 130 Petition with attachments,
 - Petitioner Exhibit 4 – Form 113 Notice of Assessment Change,
 - Petitioner Exhibit 5 – Final Audit Report of Tax Management Associates,
 - Petitioner Exhibit 6 – Department of Local Government Finance Memorandum issued August 19, 2005,
 - Petitioner Exhibit 7 – Copies of various statutes,
 - Petitioner Exhibit 8 – Power of Attorney,
 - Respondent Exhibit A – Findings of Fact/Conclusions of Law for Iron Out, Inc.,
 - Respondent Exhibit B – Form 103-Long Form with attachments.

9. The following additional items are part of the record of proceedings:
 - Board Exhibit A – Form 131 petition with attachments,
 - Board Exhibit B – Notice of Hearing on Petition,
 - Board Exhibit C – Hearing sign in sheet,
 - Board Exhibit D – Waiver of Thirty-Day Minimum Notice.

10. The Petitioner manufactures, sells, and services access control systems. The tangible personal property is inventory located at 6161 East 75th Street, Indianapolis, Indiana.

11. The Petitioner argues that an error in its exemption claim on the original Form 103 resulted in an over assessment that should have been corrected in the personal property audit. The Petitioner argues that the Respondent erred when it did not make the change to correct (increase) the exemption and thereby lower the total assessment. In support of its position, the Petitioner presented the following testimony and other evidence:
 - a) The Petitioner filed its Form 103 and claimed the interstate commerce inventory exemption. Because the Petitioner was not aware that the application of the inventory exemption had been expanded to include raw materials and work in

process, the Petitioner did not claim all of the inventory that would qualify. This mistake resulted in reporting an assessed value that was too high, but the Petitioner did not attempt to amend its 2003 return because the 6 months allowed for amending already had expired when it discovered the error. *Wade testimony.*

- b) The Petitioner provided information regarding the inventory reported on its 2003 Form 103 as requested by the Respondent's audit contractor, Tax Management Associates (TMA). The Petitioner informed TMA that an error in the calculation of the inventory exemption had occurred because it had omitted qualifying inventories of raw materials and work in process. *Wade testimony.*
 - c) Upon receiving written notice of the proposed assessment changes that increased the assessment while making no change regarding the exemption, the Petitioner requested correction of the inventory exemption with a timely written request. *Wade testimony.*
 - d) When an audit conducted to discover under assessed or omitted property discovers that a taxpayer has over assessed its property, a memorandum issued by the Department of Local Government Finance on August 19, 2005, instructs assessing officials that they can and should make the correction, even if it will lower the assessment. *Wade testimony; Pet'r Ex. 6.*
12. The Respondent contends that the waiver provision in 50 IAC 4.2-11-10 means the Petitioner cannot be allowed any additional exemption because the Petitioner did not comply with the statutory procedure for obtaining an exemption for raw materials and work in process. In support of its position, the Respondent presented the following testimony and other evidence:
- a) The exemption claim was accepted as originally filed. *Shelton testimony.*

- b) The Board's Final Determination in Iron Out, Inc. supports the Respondent's decision not to change the exemption claim to the correct amount. The Board determined that Iron Out waived its privilege of exemption because it did not claim the exemption on its original return. *Shelton testimony; Resp't Ex. A.*
- c) The Respondent does not contend that the ratio used to calculate exempt inventory is incorrect. The exempt inventory amount proposed by the Petitioner would be correct if it had been properly claimed. *Shelton testimony.*
- d) An assessing official can increase an assessment if an exemption claim is fully or partially denied, or when an error occurred in calculating the exemption if the change reduces the exemption and increases the assessed value. Even if an error is discovered, an assessing official cannot decrease an assessment by increasing the amount of exemption beyond what the taxpayer claimed. *Shelton testimony.*

Jurisdiction

- 13. The Indiana Board conducts an impartial review of all appeals from a determination by an assessing official or a county property tax assessment board of appeals under any law if they concern assessed value of tangible property, deductions, or exemptions . Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.

Analysis

- 14. The most applicable statutes are:

Ind. Code § 6-1.1-1-7

"Filing date" means May 15th.

Ind. Code § 6-1.1-3-7

(a) Except as provided in subsections (b) and (d), a taxpayer shall, on or before the filing date of each year, file a personal property return with the assessor of each township in which the taxpayer's personal property is subject to assessment.

(b) The township assessor may grant a taxpayer an extension of not more than thirty (30) days to file the taxpayer's return if:

- (1) the taxpayer submits a written application for an extension prior to the filing date; and
- (2) the taxpayer is prevented from filing a timely return because of sickness, absence from the county, or any other good and sufficient reason.

Ind. Code § 6-1.1-3-7.5

(a) A taxpayer may file an amended personal property tax return, in conformity with the rules adopted by the department of local government finance, not more than six (6) months after the later of the following:

- (1) The filing date for the original personal property tax return, if the taxpayer is not granted an extension
- (2) The extension date for the original personal property tax return, if the taxpayer is granted an extension

Ind. Code § 6-1.1-9-3

(a) If a taxpayer files a personal property return for a particular year, personal property which is omitted from or undervalued on the return may be assessed, or its assessed value may be increased, only if the notice required under section 1 of this chapter is given within three (3) years after the date the return is filed. However, *if the taxpayer's personal property return for a particular year substantially complies with the provisions of this article and the regulations of the department of local government finance, an assessing official or a county property tax assessment board of appeals may change the assessed value claimed by the taxpayer on the return only within the time period prescribed in IC 6-1.1-16-1* (emphasis added).

Ind. Code § 6-1.1-16-1

(a) ...[A]n assessing official, county assessor, 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, county assessor, 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 time periods:

- (1) A township or county assessing official must make a change in the assessed value and give the notice of the change on or before the later of:
 - (A) September 15 of the year for which the assessment is made; or
 - (B) four (4) months from the date the personal property return is filed if the return is filed after May 15 of the year for which the assessment is made.

15. The authority to audit the Petitioner's returns is clear and undisputed. Although there were references to a three-year audit window in this case, the statutes actually have no time limit on the power to audit. *See BP Products v. Bd. of Comm'rs of Lake Co.*, 812 N.E.2d 139, 144 (Ind. App. 2004). There is, however, a three-year window for increasing an assessment if a return was not in substantial compliance. Ind. Code § 6-1.1-9-3(a). "In reviewing the relevant statutes, it is apparent ... that the purpose of the audit is to determine whether [the taxpayer] has filed its returns for prior years in substantial compliance with the Indiana Code. In the event that such compliance is found to be lacking ... then the assessment may be changed for up to three years after the date the return is filed." *BP Products*, 812 N.E.2d at 144. Where a return was in substantial compliance, the time for changes is much shorter and dictated by Ind. Code § 6-1.1-16-1(a). Under that provision, the time for an assessing official to take action is generally September 15 of the assessment year, but if the return was filed after May 15, the time limit is four months after the return was filed.²
16. The undisputed facts show that the Petitioner filed its return in a timely manner and pursuant to an extension of time on June 14, 2003. The undisputed facts also show that the Respondent did not give notice of the assessment change until November 28, 2005. The presentations from both the Petitioner and the Respondent assume that the assessment changes were based on the authority of Ind. Code § 6-1.1-9-3(a) because the action clearly does not comply with the time limits in Ind. Code § 6-1.1-16-1(a). Although neither party specifically addressed the question of substantial compliance in relation to the Petitioner's original return, that point is critical to determining whether or not any changes could be made to the 2003 assessed value on November 28, 2005.
17. "Substantial compliance" is not defined by statute. Nevertheless, the Department of Local Government Finance penalty rule establishes that *a lack of substantial compliance exists when the total assessed value reported on a personal property return is less than the total a person was required by law to report and the amount of the undervaluation*

² Indiana Code § 6-1.1-16-1(d) specifically excepts taxpayers who file fraudulent or substantially noncompliant personal property returns from the shorter time limits provided in that section.

exceeds 5% of the value that should have been reported. 50 IAC 4.2-2-10 (d). "The purpose of the ... penalty is to ensure a complete disclosure of all information required ... on the prescribed self-assessment personal property tax form(s). This enables the township assessor ... to carry out their statutory duties of examining returns each year to determine if they substantially comply with the rules" *Id.* Because this rule applies to a closely associated area and there is no more specific provision defining "substantial compliance" for purposes of the time to change an assessment, the Board concludes that the same standard should apply. In other words, the Respondent's authority to change the assessment for three years after the return was filed exists only if the original return undervalued the personal property it should have reported by more than 5%.

18. The record contains no evidence or argument that the original return failed to satisfy the substantial compliance requirement. The notice of change shows only a difference of \$46,690.³ This tiny difference is not close to 5%. Furthermore, the Respondent characterized the basis for the changes as inadvertent omissions and assessed no penalty. *Pet'r Ex. 5.* It is clear that the Petitioner's original return substantially complied with applicable statutory and regulatory requirements. Consequently, the Respondent's window of opportunity for making changes closed on or about November 15, 2003.
19. The evidence and arguments presented by both sides put the cart before the horse by focusing entirely on what changes should be made to the original assessed value and neglecting to establish how there is authority to make any change. Lacking a basis for any changes to the assessed value reported on the original return, the Board need not, and will not determine how the Department of Local Government Finance's instructional memo to assessors about audit procedures (*Pet'r Ex. 6*) should apply in this case. Similarly, the Board need not, and will not determine how the waiver of exemption statute and regulation might relate to that memo or this case. *See* Ind. Code § 6-1.1-11-1; 50 IAC 4.2-11-10.

³ The assessed value changed from \$10,815,480 to \$10,862,170. *Pet'r Ex. 4.*

Summary of Final Determination

20. The time for making any changes to the assessed value that the Petitioner reported for its 2003 personal property already had expired before either the Petitioner or the Respondent sought changes. The changes that the Respondent purported to make and the changes the Petitioner requested are both barred by Ind. Code § 6-1.1-16-1. Accordingly, the Respondent must reinstate the original amount of \$10,815,480 as the assessed value for the Petitioner's total business personal property.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.