

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 49-700-03-1-7-01791
49-700-04-1-7-01964
49-700-05-1-7-00900
Petitioner: Malibu Wellness, Inc.
Respondent: Warren Township Assessor (Marion County)
Parcel: Personal Property
Assessment Years: 2003, 2004, and 2005

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner initiated assessment appeals with the Marion County Property Tax Assessment Board of Appeals (PTABOA) for the years 2003, 2004, and 2005 by letter dated October 18, 2005.
2. The PTABOA mailed the notice of its decision on June 22, 2007.
3. The Petitioner appealed to the Board by filing three Form 131's on July 20, 2007. It elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing dated October 23, 2007.
5. Administrative Law Judge Paul Stultz held an administrative hearing for the appeals in Indianapolis on November 27, 2007.
6. The following persons were present and sworn as witnesses at the hearing:
For the Petitioner - Tom Porter, President of Malibu Wellness, Inc.,
For the Respondent - Terica Immormino, Deputy Township Assessor,
Patrick Ball, Deputy Township Assessor,
John Shelton, Tax Management Associates.¹

¹ The Board notes that, although Mr. Shelton failed to sign the Hearing Sign-In sheet, he appeared before the Board and was sworn in as a witness for the Respondent.

Facts

7. The subject property is classified as business tangible personal property located at 1550 South Franklin Road (Warren Township, Marion County).
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. The PTABOA determined the assessed value of business tangible personal property for 2003 is \$516,750. For 2004 it is \$564,340. And for 2005 it is \$472,540.
10. The Petitioner requested assessed value of \$85,000 for 2003, \$113,600 for 2004, and \$93,840 for 2005.
11. The Petitioner did not file business tangible personal property tax returns (Form 103) for the assessment years 2003 and 2004. In 2005, it filed Form 103 on July 27, 2005. *Porter testimony; Immormino testimony; Shelton testimony.*

Contentions

12. The Petitioner contends two company employees intentionally failed to file business tangible personal property tax returns for the years under review. *Porter testimony: Pet'r Exs. 23A, 23B, 23C, 23D, 24A, 24B, 24C, 25A, 25B, and 25C.* It asserts the Internal Revenue Service ("IRS"), the Indiana Department of Revenue, and the State (Indiana) Workforce Development agency reviewed evidence of employee wrongdoing. As a result, they waived all penalties and interest. *Porter testimony: Pet'r Exs. 23A, 23B, 23C, 23D, 24A, 24B, 24C, 25A, 25B, and 25C.*
13. The Petitioner claims the IRS and state tax authorities set a precedent that the Board should follow. *Porter testimony.* The precedent would allow the Petitioner to claim an Interstate Commerce Exemption ("ICC exemption") for 2003, 2004, and 2005 despite waiver issues. *Porter testimony.*
14. The Respondent contends the Petitioner failed to follow statutory procedures to claim ICC exemptions. Specifically, it waived the exemptions because the Petitioner did not timely file business tangible personal property tax returns. Additionally, the Respondent asserts the Petitioner did not present evidence to support the requested assessed value for each year at issue. *Shelton testimony.*

Record

15. The official record for this matter is made up of the following:
 - a) The Petition,
 - b) The digital recording of the hearing,

- c) Petitioner Exhibit 1-A: Form 131 for appeal #49-700-05-1-7-00900,
Petitioner Exhibit 1-B: Form 131 for appeal #49-700-04-1-7-01964,
Petitioner Exhibit 1-C: Form 131 for appeal #49-700-03-1-7-01791,
Petitioner Exhibit 2: Opening Statement,
Petitioner Exhibit 3-A: Background of Hester,
Petitioner Exhibit 3-B: Offer of Employment/Compensation Package for Hester,
Petitioner Exhibit 4: Background of Ray,
Petitioner Exhibit 5: “Sabotage” definition,
Petitioner Exhibit 6: Documents relating to fraud committed against Malibu
Wellness, Inc. by Erin Ray,
Petitioner Exhibit 7: Financial Statements 6/30/04,
Petitioner Exhibit 8: Letter from CPA,
Petitioner Exhibit 9: Financial Statements 4/30/05,
Petitioner Exhibit 10: Note regarding voluntary termination by Erin Ray,
Petitioner Exhibit 11: CPA preliminary report of financial irregularities,
Petitioner Exhibit 12: CPA e-mail listing unaccounted funds,
Petitioner Exhibit 13: Letter documenting Phil Hester’s resignation,
Petitioner Exhibit 14: Financial Statements 6/30/05,
Petitioner Exhibit 15: Listing of liens against Malibu Wellness, Inc.,
Petitioner Exhibit 16: Summons in the Marion Superior Court,
Petitioner Exhibit 17: Award of Arbitrator,
Petitioner Exhibit 18: Letter to Warren Twp. Assessor dated 7/25/05,
Petitioner Exhibit 19: Letter from Warren Twp. Assessor dated 10/3/05, signed by
David Dudley,
Petitioner Exhibit 20: Letter from Warren Twp. Assessor dated 10/3/05, signed by
William Birkle, with added notes,
Petitioner Exhibit 21: Request for appeal to Warren Township dated 10/18/05,
Petitioner Exhibit 22: “Precedence” definition,
Petitioner Exhibit 23-A: IRS Notice,
Petitioner Exhibit 23-B: IRS Audit Appointment letter,
Petitioner Exhibit 23-C: IRS Release of Levy,
Petitioner Exhibit 23-D: Release of IRS lien and waiver of penalty,
Petitioner Exhibit 24-A: Department of Revenue Notice,
Petitioner Exhibit 24-B: Department of Revenue Appeal,
Petitioner Exhibit 24-C: Department of Revenue Letters of Resolution,
Petitioner Exhibit 25-A: Indiana Workforce Development Notice,
Petitioner Exhibit 25-B: Letter to Indiana Workforce Development requesting
consideration of leniency of interest and penalty,
Petitioner Exhibit 25-C: Indiana Workforce Development waiver of interest and
penalty,
Petitioner Exhibit 26: Chronological regarding property tax—inventory exemption,
Board Exhibit A: 131 Petitions,
Board Exhibit B: Notice of Hearing on Petitions,
Board Exhibit C: Hearing Sign-In Sheet.

- d) These Findings and Conclusions.

Analysis

16. The Petitioner did not make a case for any relief. The Board reaches this conclusion because:
- a) The Petitioner provided evidence that other governmental agencies waived penalties and interest. The Petitioner failed, however, to establish how such waivers are relevant to the question of allowing ICC tax exemptions in this case. Furthermore, the Petitioner provided no authority that would permit waiving the requirements for disclosing the property and making a proper, timely exemption claim.
 - b) An exemption is a privilege. To obtain the exemption, the taxpayer must report the property and claim the exemption on the personal property return in a timely manner. 50 IAC 4.2-12-1. If the owner does not comply with the statutory procedures for obtaining an exemption, it waives the exemption. As a result, the property is subject to taxation. Ind. Code § 6-1.1-11-1; 50 IAC 4.2-11-10. *See also Kentron, Inc. v. State Bd. of Tax Comm'rs*, 572 N.E.2d 1366 (Ind. Tax Ct. 1991); *Gulf Stream Coach, Inc. v. State Bd. of Tax Comm'rs*, 519 N.E.2d 238 (Ind. Tax Ct. 1988).
 - c) Regardless of its reasons, the Petitioner did not file returns for 2003 or 2004. The Petitioner did file a late 2005 tangible personal property tax return on July 27, 2005. The Petitioner did not meet the statutory requirement for filing a return with the inventory value and the exemption claims in a timely manner for any of these three years. Consequently, the Petitioner waived the exemptions.
 - d) Even if the requirement for proper, timely filing of exemptions could be waived, the Petitioner would be required to prove what the correct ICC exemptions and assessed values should be. The Petitioner provided no explanation for how it arrived at its requested assessed values for 2003, 2004, and 2005.

Conclusion

17. The Petitioner failed to make a prima facie case. The Board finds in favor of Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should not be changed.

ISSUED: _____

Commissioner, 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>>