

REPRESENTATIVE FOR PETITIONER: Jeffrey S. Berry, President, Berry Inc.

REPRESENTATIVES FOR RESPONDENT: Victoria L. Voris, Deputy Assessor,  
Stephanie Robbins, Deputy Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Berry Inc.,	)	Petition Numbers:	49-900-02-1-7-00001
	)		49-901-03-1-7-01594
Petitioner,	)		
	)		
v.	)		
	)	Personal Property	
Wayne Township Assessor,	)	Marion County	
	)	Wayne Township	
Respondent	)	Assessment Years: 2002 and 2003	
	)		

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

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**October 6, 2006**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence presented in this case. The Board now enters its findings of fact and conclusions of law.

**Issue**

Where the Petitioner did not file timely personal property tax returns, the assessor made estimated assessments and the Petitioner failed to file a timely appeal from the estimated assessments, should those estimated values for the Petitioner's 2002 and 2003 personal property be sustained?

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

### **Procedural History**

1. Pursuant to Ind. Code § 6-1.1-15-3, Jeffrey Berry filed two Form 131 Petitions on behalf of Berry Inc. seeking review of its 2002 and 2003 personal property assessments. The Petitioner filed those petitions with the county assessor on December 15, 2005. The Marion County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations on November 18, 2005.

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

2. Paul Stultz, the duly designated Administrative Law Judge, held the hearing on July 13, 2006.
3. The following persons were sworn as witnesses at the hearing:
  - Jeffrey Berry, President, Berry Inc.,
  - Stephanie Robbins, Deputy Township Assessor,
  - Victoria Voris, Deputy Township Assessor.
4. The following exhibits were presented:
  - Petitioner Exhibit 1 – Business Tangible Personal Property Return (Form 104) and Business Tangible Personal Property Assessment Return (Form 103) for 1999,
  - Petitioner Exhibit 2 – Form 104 and Form 103 for 2000,
  - Petitioner Exhibit 3 – Information Return for Commercial Vehicles Paying License Excise Tax Effective January 1, 2000, with attached Commercial Vehicles Depreciable Pools and Interstate Motor Truck and Trailer Fleet summaries,
  - Petitioner Exhibit 4 – Petition for Correction of an Error (Form 133) for 2000,
  - Petitioner Exhibit 5 – Form 104 and Form 103 for 2001,

Petitioner Exhibit 6 – Form 133 for 2001,  
Petitioner Exhibit 7 – Form 104 and Form 103 for 2002,  
Petitioner Exhibit 8 – Form 131, Notification of Final Assessment Determination (Form 115), and Petition to the Property Tax Assessment Board of Appeals for Review of Assessment (Form 130) for 2002,  
Petitioner Exhibit 9 – Form 104 and Form 103 for 2003,  
Petitioner Exhibit 10 – Form 131, Form 115, and Form 130 for 2003,  
Petitioner Exhibit 11 – Form 104 and Form 103 for 2004,  
Petitioner Exhibit 12 – Form 104 and Form 103 for 2005,  
Petitioner Exhibit 13 – Receipts for commercial vehicle excise tax payments,  
Respondent Exhibit 1 – Form 104 and Form 103 for 1999, township property information system sheet showing assessment for 2000, Form 104 and Notice of Assessment (Form 113) for 2001, Form 104 and Form 113 for 2002 and 2003, Form 104 and Form 103 for 2004,  
Respondent Exhibit 2 – Form 133s for 2000 and 2001, Form 104 and Form 103 for 2001,  
Respondent Exhibit 3 – Form 130 for 2002, Form 104 and Form 103 for 2002, Notice of Property Tax Assessment Board of Appeals of Hearing (Form 114) for 2002, Form 130 for 2003, Form 104 and Form 103 for 2003, Form 114 for 2003, letter dated May 9, 2005,  
Respondent Exhibit 4 – Notification of Final Assessment Determination (Form 115) for 2003 and 2002,  
Respondent Exhibit 5 – Form 131 for 2002 and 2003,  
Respondent Exhibit 6 – Indiana Code §§ 6-1.1-15-1 through 6-1.1-15-3, Continuing Education Article, 50 IAC 4.2-2 pages 5 through 8 and 50 IAC 4.2-3 pages 13 and 14, Memorandum regarding Conversion of AV to Equal True Tax Value dated March 7, 2001,  
Respondent Exhibit 7 – Clerk/Judgment Master dated June 9, 2006, Clerk/Judgment Master dated June 9, 2006, previous year tax computation – 2003 payable 2004, previous year tax computation 2002 payable 2003,  
Respondent Exhibit 8 – *Will's Far-Go Coach Sales v. Nusbaum* decision,  
Respondent Exhibit 9 – Calculations for Berry Inc.'s assessments,

Respondent Exhibit 10 – Summary of Respondent’s position,  
Respondent Exhibit 11 – Letter to Berry Inc. from Vicki Voris, Wayne Township Deputy  
Assessor, dated May 9, 2005,  
Board Exhibit A – Form 131 petitions,  
Board Exhibit B – Notices of Hearing,  
Board Exhibit C – Letter from the Respondent opting out of small claims.

5. The Petitioner does business as Berry Trucking at 2503 W. Lambert Street, Indianapolis.
6. The Administrative Law Judge did not view the subject property.
7. The years under appeal are 2002 and 2003. The current total assessed value for each year is \$142,080. The Petitioner contended the assessed value of the property should be \$7,680 for 2002 and \$15,930 for 2003.

#### **Petitioner’s Contentions**

8. The Petitioner did not file timely Forms 104 and 103 for 2002 or 2003. The Petitioner does not have the 2002 and 2003 notices of assessment sent by the township assessor, Form 113/PP, but does not doubt they were received. The Petitioner has had the same mailing address for at least eight years. The Petitioner did not file the appeals within the required forty-five days after the notices. The failure to file timely returns and appeals was not intentional. It was the result of more pressing business matters. *Berry testimony.*
9. The assessments of \$142,080 are inflated beyond the point of reason. *Berry testimony.* The assessments are based on ownership of semi-trucks in prior years. After 2000, the Petitioner paid excise tax when it purchased license plates for these vehicles. *Pet’r Ex. 13.* No property tax should be assessed on the vehicles, although the Petitioner owned other assessable personal property in the years under appeal. *Berry testimony.* The Respondent accepted the Petitioner’s assessed values for 2000, 2001, 2004, and 2005.

These values ranged from \$3,230 to \$9,520. *Pet'r Exs. 4, 6, 11, 12.* The disputed assessments are fifteen times greater than they should be. *Berry testimony.*

10. The Petitioner did not present any documentary evidence to support its proposed values for 2002 and 2003. *Berry testimony.*

### **Respondent's Contentions**

11. The Petitioner did not file timely personal property tax returns for 2002 or 2003. As a result, the Respondent estimated the assessment for each year. The required written notices, Form 113/PP, for 2002 and 2003 were mailed on October 18, 2002, and December 1, 2003, respectively. *Robbins testimony; Resp't Ex. 1.* The Petitioner did not file appeals for 2002 or 2003 until May 2, 2005. *Resp't Ex. 3.* The appeals were not filed within forty-five days of the notices as required by Ind. Code § 6-1.1-15-1. *Robbins testimony; Resp't Ex. 6.*
12. The Respondent estimated the assessed values using the Petitioner's 1999 returns, which established the assessed value at \$37,890. The Respondent added 25% to the 1999 value because an average business will have a 25% annual increase in depreciable assets and then multiplied by three to establish the values for the 2002 and 2003 assessments. *Robbins testimony; Resp't Ex. 1, 9.*<sup>1</sup>

### **Administrative Review and the Petitioner's Burden**

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a

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<sup>1</sup> The Respondent multiplied the 1999 value by three to account for a change in assessment methodology. Assessments had been  $\frac{1}{3}$  of the true tax value. Effective March 1, 2001, the assessed valuation became 100% of the true tax value.

county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.

14. A Petitioner seeking review of an assessing official's determination 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).
15. 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”).
16. 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**

17. Indiana’s personal property tax relies on a self-assessment system. Every person, including any firm, company, partnership, association, corporation, fiduciary, or individual owning, holding, possessing, or controlling personal property with a tax situs within Indiana on March 1 is required to file a personal property tax return on or before May 15 of that year unless an extension of time to file is obtained. 50 IAC 4.2-2-2.
18. “[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.” Ind. Code § 6-1.1-3-7(a). When a taxpayer fails to file a personal property tax return, “the township assessor may estimate the value of the personal

property of the taxpayer and shall assess the [taxpayer] . . . in an amount based upon the estimate.” 50 IAC 4.2-3-1(b). Although the Petitioner could have elected to file returns for 2002 and 2003 within thirty days after notice of the township assessor's action, in this case there is no evidence that it did so.

19. The Form 113/PP states, “[i]f you do not agree with the action of the assessing officer giving this notice, the Property Tax Assessment Board of Appeals will review that action if you file a petition with the Marion County Assessor within forty-five (45) days of the date of this notice.” *See* Ind. Code § 6-1.1-15-1.
20. Notice for the 2002 assessment is dated October 18, 2002. Similarly, notice for the 2003 assessment is dated December 1, 2003. The Petitioner did not initiate the appeal process for either year until May 2, 2005. Both appeals were filed after the forty-five days allowed by Ind. Code § 6-1.1-15-1 and the Petitioner has offered no facts or authority for proceeding with his dispute about the amount of the assessments.
21. The evidence establishes that the assessor acted in conformity with his authority in making the estimated assessments for 2002 and 2003. *Adams v. Spears*, 812 N.E.2d 876 (Ind. Tax Ct. 2004). The Petitioner had the opportunity to challenge those values, but it failed to do so within the time allowed. That failure is fatal to the Petitioner's claim. *Id.* There is no exception based on intent or more pressing business matters.

### **Summary of Final Determination**

22. The Petitioner's assessments for 2002 and 2003 should not be changed.

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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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](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>.