

REPRESENTATIVES FOR PETITIONER: Kevin Manley, Vice President,  
SunTrust Leasing Corp., and  
Donald Lippert, Jr., Senior Manager,  
Grant Thornton LLP

REPRESENTATIVE FOR RESPONDENT: Michael McCormack,  
Wayne Township Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

SunTrust Leasing Corp.,	)	
	)	Petition No.: 49-901-05-1-7-00832
Petitioner,	)	
	)	
v.	)	Personal Property I122572
	)	Marion County
Wayne Township Assessor,	)	Wayne Township
	)	2005 Assessment
Respondent.	)	

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

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**September 13, 2007**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments. The Board hereby enters its findings and conclusions.

Issue: Should the value of an aircraft as reported on the Petitioner's Business Tangible Personal Property Return (Form 103) for 2005 be removed from the value upon which the Petitioner's property tax is calculated?

## **PROCEDURAL HISTORY**

1. The Petitioner, SunTrust Leasing Corp., filed a Form 103, Business Tangible Personal Property Assessment Return, for 2005 on May 13, 2005. It reported assessed value of \$10,113,280.
  
2. The Petitioner filed a Form 130 Petition for review of its 2005 personal property assessed value on June 14, 2006. The requested change stated:

The aircraft is exempt from personal property taxes per 50 IAC 4.2-1-1 subsection h subsection 4. Proof of payment of excise taxes is attached. It is our contention that taxes on the equipment have been charged more than one time for the same year. Under IC 6-1.1-15-12 subsection a subsection 3 we request that the county auditor correct the error in the tax duplicate. The original cost of the aircraft was \$13,000,000 with a true tax value of \$5,200,000. A copy of the Form 103-Long Form has been attached and the equipment was listed on line 42 in Schedule A. The equipment should have been listed on line 7 of Schedule A.
  
3. The Marion County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on October 27, 2006. The PTABOA determined:

Per IC 6-1.1-15-12(g) "If the taxpayer wishes to correct an error made by the taxpayer on the taxpayer's personal property return, the taxpayer must instead file an amended personal property tax return under IC 6-1.1-3-7.5." The amended return deadline for 2005 was November 14, 2005. The petition was filed June 14, 2006. No changes are warranted at this time.
  
4. Mr. Chris Soler, Operations Manager for SunTrust Leasing Corp., filed a Form 131 Petition, seeking an administrative review by the Board. He filed the Form 131 with the Marion County Assessor on November 8, 2006.

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

5. The personal property that is the subject of this case is a 1987 Gulfstream aircraft. It is based at the Indianapolis International Airport (Wayne Township, Marion County).

6. Paul Stultz, the Administrative Law Judge designated by the Board, held the hearing on June 28, 2007. He did not view the subject property.
7. At the hearing, the parties agreed the year under appeal is 2005 and the total value of record for personal property currently is \$10,113,280.
8. The following persons were present and sworn as witnesses:
  - Donald Lippert, Jr., Senior Manager, Grant Thornton LLP,
  - Kevin Manley, Vice President, SunTrust Leasing Corp.,
  - Michael McCormack, Wayne Township Assessor,
  - Melody Clark, Wayne Township Deputy Assessor,
  - Wayne Grabman, Wayne Township Deputy Assessor.
9. The Petitioner presented no exhibits. The Respondent presented the following exhibits:
  - Respondent Ex. A — Notice of Hearing on Petition,
  - Respondent Ex. B — Letter from Melody Clark to the Board dated June 6, 2007,
  - Respondent Ex. 1 — Business Tangible Personal Property Assessment Return  
with attached schedules,
  - Respondent Ex. 2 — Form 130 Petition,
  - Respondent Ex. 3 — Form 115 Notification of Final Assessment Determination,
  - Respondent Ex. 4 — Form 131 Petition for Review of Assessment,
  - Respondent Ex. 5 — Ind. Code § 6-1.1-15-1 (b) and Ind. Code § 6-1.1-15-12(g),
  - Respondent Ex. 6 — Letter from Melody Clark to the Board dated June 14, 2007,
  - Respondent Ex. 7 — Copies of *Will's Far-Go Coach Sales v. Nusbaum, Roger and Pamela Shoot v. Anderson Twp. Assessor*, and *TriMas Fasteners, Inc. v. Washington Twp. Assessor, Clinton Co.*
10. The following additional items are part of the record of proceedings:
  - Board Exhibit A — Form 131 Petition,
  - Board Exhibit B — Notice of Hearing,
  - Board Exhibit C — Hearing Sign In Sheet.

## OBJECTION

11. The Respondent objected to the Petitioner citing specific statutes, contending that copies of those statutes had not been exchanged as required by the Board's procedural rules at 52 IAC 2-7-1.
12. While that procedural rule imposes specific requirements for the exchange of evidence, in this particular instance the objection lacks merit.
13. Statutes are often critical to a case. The parties are responsible for knowing applicable statutes and incorporating them into any analysis. Indiana statutes do not need to be proved. Consequently, provisions from the Indiana Code are not properly characterized as evidentiary material (even though copies are unnecessarily marked as exhibits). They are not subject to the exchange of evidence requirements in 52 IAC 2-7-1.
14. The Respondent's objection is overruled.

## CONTENTIONS

15. The Petitioner claims that due to an administrative error it erroneously reported an airplane on its Form 103. According to the Petitioner, the airplane should not have been reported because it is subject to an annual license excise tax and it is exempt from personal property taxes pursuant to both Ind. Code § 6-6-6.5-12<sup>1</sup> and 50 IAC 4.2-1-1(h)(4).<sup>2</sup> The Petitioner argues that, therefore, personal property taxes on the airplane are illegal as a matter of law under Ind. Code § 6-1.1-15-12 (a)(6). *Lippert testimony; Board Ex. A.*

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<sup>1</sup> This statute imposes "an annual license excise tax upon aircraft, which tax shall be in lieu of the ad valorem property tax levied for state or local purposes. No taxable aircraft shall be assessed as personal property for the purpose of the assessment and levy of personal property or shall be subject to ad valorem taxes, beginning with taxes for the year of 1975 payable in 1976 and thereafter."

<sup>2</sup> In pertinent part, this rule defines "personal property" to include "airplanes (other than airplanes subject to the aircraft excise tax) ...."

16. The Respondent argues that the Petitioner did not file an amended personal property tax return within the time allowed to do so. The Respondent also argues that the Petitioner failed to initiate this appeal in a timely manner. Therefore, according to the Respondent, the assessed value should remain unchanged. *Grabman testimony; Resp't Ex. 5.*

#### ANALYSIS

17. Indiana's personal property tax system is 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 in Indiana on March 1 of a year must file a personal property tax return on or before May 15 of that year unless the person gets an extension of time. Ind. Code § 6-1.1-3-7; 50 IAC 4.2-2-2.

18. The most applicable statute in this case, Ind. Code § 6-1.1-3-7.5, provides:

(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 in which to file under section 7 of this chapter.

(2) The extension date for the original personal property tax return, if the taxpayer is granted an extension under section 7 of this chapter.

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(c) If a taxpayer wishes to correct an error made by the taxpayer on the taxpayer's original personal property tax return, the taxpayer must file an amended personal property tax return under this section within the time required by subsection (a). A taxpayer may claim on an amended personal property tax return any adjustment or exemption that would have been allowable under any statute or rule adopted by the department of local government finance if the adjustment or exemption had been claimed on the original personal property tax return.

19. The Petitioner failed to present any evidence or argument that it had attempted to amend its original return in compliance with Ind. Code § 6-1.1-3-7.5 and the Petitioner did not dispute the Respondent's testimony that it failed to amend the return. The undisputed

evidence establishes that the Petitioner filed its Form 103 on May 13, 2005, and never filed an amended return. Consequently, the Petitioner missed the opportunity to amend its return and possibly remove the airplane from the value upon which property tax was calculated.

20. As previously noted, the Petitioner brought this matter to the Board as a Form 131 appeal. That process is governed by Ind. Code § 6-1.1-15 and is for taxpayers who appeal an action of a local assessing official.<sup>3</sup> Such actions would include a local assessing official placing an assessment on personal property when a taxpayer failed to file a property tax return, or a local assessing official making a change to a return that was filed by a taxpayer. In this appeal, however, the Petitioner seeks to correct a purported error on the return it filed. No local assessing official took action to change anything about the original return. Accordingly, the appeal process described in Ind. Code § 6-1.1-15 does not provide an avenue to the remedy the Petitioner seeks.
21. The Petitioner also claims that relief should be granted because personal property taxes on the aircraft are illegal as a matter of law and cited Ind. Code § 6-1.1-15-12 as support for that claim. This section, however, applies to a Petition for Correction of an Error (Form 133), which is not what the Petitioner filed. More importantly, Ind. Code § 6-1.1-15-12(g) specifically prohibits “this section” (section 12) from being used to correct errors made on the taxpayer’s personal property tax return. Section 12(g) clearly states that the remedy would have been to file an amended personal property tax return under Ind. Code § 6-1.1-3-7.5. The appeal process described in Ind. Code § 6-1.1-15-12 is not available in this case.
22. One final point must be addressed. Mr. Lippert’s representation of the Petitioner at this hearing was an improper, unauthorized practice of law. He was identified as a senior manager of an accounting firm. There is no indication that he is a certified public

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<sup>3</sup> The most pertinent language states “A taxpayer may obtain a review by the county property tax assessment board of appeals of a county or township official’s action with respect to the assessment of the taxpayer’s tangible property if the official’s action requires the giving of notice to the taxpayer.” Ind. Code § 6-1.1-15-1(a).

accountant, certified tax representative, or attorney. Consequently, Mr. Lippert should not have been permitted to act as the Petitioner's representative at the hearing. The Board's procedural rules permit a certified public accountant to represent a client in a matter that relates only to personal property tax. 52 IAC 1-1-6(4). Those rules also permit certified tax representatives to practice before the Board in most circumstances, so long as certain conditions are met. 52 IAC 1-2-1. Claims that an assessment or tax is "illegal as a matter of law" are specifically beyond what those rules allow. Nevertheless, that was one of the specific arguments that Mr. Lippert made. The violation would have been serious if Mr. Lippert had some proper status to provide representation, but it is even more serious because he had no proper status. The Petitioner and Mr. Lippert are hereby admonished to refrain from any future violation.

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

23. The Petitioner failed to file a timely amended personal property tax return under Ind. Code § 6-1.1-3-7.5, which would have been the appropriate way to obtain relief. This procedural failure precludes the Board's determination about whether or not the airplane should have been included in the taxable value of the Petitioner's business personal property.
24. The Board finds for the Respondent. There will be no change as a result of this appeal.

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

**- 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>>