

REPRESENTATIVE FOR PETITIONER:
Todd Churchward, CPA

REPRESENTATIVE FOR RESPONDENTS:
Teresa Rigsby, Scott County Assessor
Jennifer Binkley, Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Austin Tri-Hawk Automotive, Inc.,)	Petition No.:	72-003-05-1-7-00001
)		72-003-06-1-7-00002
Petitioner,)		
)		
v.)	Scott County	
)	Jennings Township	
Scott County Assessor and)		
Jennings Township Assessor,)		
)	Personal Property	
Respondents.)	Assessment Years 2005 and 2006	

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

September 24, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law on the following question: Does the Petitioner's taxable 2005 and 2006 business personal property value have the benefit of the correct Economic Revitalization Area deduction?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. On behalf of Austin Tri-Hawk Automotive, Inc., Todd Churchward filed Form 130 petitions regarding its 2005 and 2006 business personal property. Those petitions challenged how the Economic Revitalization Area (ERA) deduction was calculated, claiming the allowable deduction was understated and the taxable value was overstated.¹ The Property Tax Assessment Board of Appeals (PTABOA) issued its determinations (no change) on December 11, 2006. On January 11, 2007, Mr. Churchward filed Form 131 petitions for Austin Tri-Hawk seeking an administrative review by the Board.

Hearing Facts and Other Matters of Record

2. Paul Stultz, the Board's designated Administrative Law Judge, held the hearing in Scottsburg on June 6, 2007. He did not conduct an on-site inspection of the property.
3. The persons present and sworn as witnesses at the hearing were Todd Churchward, County Assessor Teresa Rigsby, and Deputy Assessor Jennifer Brinkley.
4. The Petitioner's exhibits are listed on Attachment A and Attachment B. The Respondents' exhibits are listed on Attachment C.
5. The following additional items are part of the record of proceedings:
 - Board Exhibit A – Form 131 petitions with attachments,
 - Board Exhibit B – Notices of Hearing on Petition,
 - Board Exhibit C – Hearing sign in sheet.

¹ The record contains a Form 113/PP, Notice of Assessment / Change for 2006 that shows the business personal property assessed value was increased from \$636,520 to \$2,867,600 based on changing how the ERA deduction was computed. This form is signed by the Scott County Assessor, Teresa Rigsby. It is among the attachments to the Form 131 for 2006. Although documentation is not in the record, apparently the Petitioner's original ERA deduction claim for 2005 was also changed to reduce the ERA deduction and increase the taxable value.

6. The subject property is machinery, equipment, and special tooling located at 2001 West Just Industrial Parkway, Austin, Indiana.
7. The Scott County Council adopted a resolution on April 21, 1998 (1998 Resolution) establishing the relevant economic revitalization area under Ind. Code § 6-1.1-12.1-2.5. The 1998 Resolution established a deduction period of 10 years for real property and 5 years for personal property. The 1998 Resolution specifically excluded special tooling. *Churchward testimony; Binkley testimony; Resp't Ex. C-1.*²
8. The Scott County Council adopted resolutions on April 16, 2002, and August 20, 2002, purportedly amending the 1998 Resolution. These 2002 Resolutions increased the deduction period for personal property from 5 years to 10 years and added special tooling. *Churchward testimony; Binkley testimony; Resp't Ex. C-2, C-3.*³
9. The dispute centers on the legal consequences and the correct application of all three resolutions.
10. The parties agreed the ERA deduction currently allowed is \$14,625,680 for 2005 and \$8,766,560 for 2006. The Petitioner, however, claims the ERA deduction should be \$17,717,530 for 2005 and \$10,997,640 for 2006. With that change, the taxable value for 2005 would be reduced to \$0 and for 2006 it would be \$636,520.

² The most relevant portions of the 1998 resolution state: “[T]he County Council hereby finds that the purposes of IC 6-1.1-12.1 are served by allowing Austin Tri-Hawk the deductions provided by IC 6-1.1-12.1-3 for a period of ten (10) years and by allowing Austin Tri-Hawk the deductions provided by IC 6-1.1-12.1-4.5 for a period of five (5) years, with no deduction for special tooling The owner of property within the above-designated economic revitalization area shall be entitled to the deductions as provided by IC 6-1.1-12.1-4.5 for a period of five (5) years for new manufacturing equipment except special tooling Notice of the adoption and substance of this resolution and all other disclosures required by IC 6-1.1-12.1-2.5 shall be duly published” *Resp't Ex. C-1.*

³ Both 2002 Resolutions contain similar language: “The Resolution adopted by the Council on April 21, 1998, is amended to provide that businesses locating within the economic revitalization area may be entitled to real and personal property tax abatements for up to ten (10) years for eligible property and Austin Tri-Hawk Automotive, Inc., shall be entitled to tax abatement for ten (10) years for real property, ten (10) years for personal property and ten (10) years abatement for special tooling.” *Resp't Ex. C-3.*

CONTENTIONS

11. The Petitioner contends the 2002 Resolutions placed its qualifying personal property on a 10 year deduction schedule as of March 1, 2003, and included special tooling. In addition, the Petitioner argues the 2002 Resolutions relate back to, and are effective from, the original 1998 Resolution because they are amendments.

12. The Petitioner also contends its stipulation agreement with the Department of Local Government Finance (DLGF) for 2003 is based on calculating the personal property deduction on a 10 year deduction schedule including special tooling. According to the Petitioner, this methodology should carry forward to the assessment years 2004, 2005, and 2006. Thus, the assessed value from the stipulation agreement should serve as the proper basis for the disputed ERA deductions. The stipulated costs, adjusted for disposals and additions, were carried forward and included personal property in service at the time of filing the Petitioner's original returns for 2005 and 2006.

13. The Respondents point out that the Scott County Council adopted the 1998 Resolution under Ind. Code § 6-1.1-12.1-2.5 with a 5-year deduction for personal property that specifically excluded special tooling. While the 2002 Resolutions say that they "amend" the 1998 Resolution, the Respondents contend that statutory authority prohibited changing the length of the deduction period or any specifics of an ERA resolution. The Respondents contend the 2002 Resolutions are effectively new resolutions that add special tooling and a 10-year deduction schedule, but the 2002 Resolutions cannot relate back to the 1998 Resolution. The new provisions cannot apply to equipment or special tooling that was acquired before the 2002 Resolutions. Only new equipment and special tools acquired after the 2002 Resolutions should be on the 10-year schedule to compute the ERA deduction. Therefore, the deduction for the property covered by the 1998 Resolution must be calculated separately from the deduction for the property covered by the 2002 Resolutions. As a result, the currently allowed deductions should not be changed.

ADMINISTRATIVE REVIEW AND BURDEN

14. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case. *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. *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. All ERA deductions are governed by Ind. Code § 6-1.1-12.1. The method for calculating the deduction for personal property, including new manufacturing equipment and special tools, is found in Ind. Code § 6-1.1-12.1-4.5. There are specific percentages for the allowable deduction each year. These percentages decrease over time and depend on the number of years determined by the designating body. Ind. Code § 6-1.1-12.1-4.5(e). The percentage drops more quickly when the designated period for the deduction is less. The provision that is most relevant to determining this appeal states:

(g) For an economic revitalization area designated before July 1, 2000, the designating body shall determine whether a property owner whose statement of benefits is approved after April 30, 1991, is entitled to a deduction for five (5) or ten (10) years. For an economic revitalization area designated after June 30, 2000, the designating body shall determine the number of years the deduction is allowed. However, the deduction may not be allowed for more than ten (10) years. This determination shall be made:

(1) as part of the resolution adopted under section 2.5 of this chapter; or
(2) by resolution adopted within sixty (60) days after receiving a copy of a property owner's certified deduction application from the county auditor. A certified copy of the resolution shall be sent to the county auditor. *A determination about the number of years the deduction is allowed that is made under subdivision (1) is final and may not be changed by following the procedure under subdivision (2).*

Indiana Code § 6-1.1-12.1-4.5(g) (emphasis added).

18. Identification of the 2002 Resolution as amendments to the 1998 Resolution and Petitioner's arguments conflict with Ind. Code § 6-1.1-12.1-4.5. Subsection (g) specifically prohibits changing the number of years for a deduction from the number designated in the original resolution. To the extent that the Scott County Council might have intended to change the deduction term for personal property covered by the 1998 Resolution from 5 to 10 years, it is prohibited by statute from doing so. The Petitioner provided no authority or substantial argument regarding that prohibition, which cannot simply be ignored. Similarly, the Petitioner provided no authority or substantial argument that special tooling could be added to the 1998 Resolution by the 2002 Resolutions. Such an action is contrary to the express intent of the statute that allows a deduction for *new* equipment.
19. The Respondents are correct that the 2002 Resolutions must be treated as new authorizations (allowing special tooling and a 10-year deduction period) that are effective for property acquired from that point forward. Therefore, the deduction for property that qualified under the 1998 Resolution must be determined separately from the deduction for property that qualified under the 2002 Resolutions. The Petitioner provided no substantial basis for treating the changes as part of the original 1998 Resolution and applying them to property acquired before the 2002 Resolutions.
20. The stipulation agreement between the Petitioner and the DLGF for 2003 is not probative evidence that the Petitioner's application of the deduction is correct. In fact, the stipulation agreement specifically states that the "assessed value, deduction, or

abatement...reflected by this stipulation does not in fact represent a final determination of the appropriate or accurate assessed value, deduction, or abatement under the applicable assessment rules.” That agreement is not probative evidence of what the basis for future deductions and assessments should be. In addition, the agreement plainly states that it is not to be used as evidence in appeals because it reflects a compromise between the parties. Indiana’s Supreme Court has held that “[t]he law encourages parties to engage in settlement negotiations in several ways. It prohibits the use of settlement terms or even settlement negotiations to prove liability for or invalidity of a claim or its amount.” *Dep’t of Local Gov’t Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227, (Ind. 2005). The strong policy justification for denying settlements precedential effect in a property tax case is that allowing parties to use the settlement would have a chilling effect on the incentive of the parties to resolve cases outside of the courtroom. *Id.* at 1228.

21. The Petitioner failed to prove that the Respondents improperly applied the ERA deductions for 2005 and 2006.

SUMMARY OF FINAL DETERMINATION

22. The Board finds in favor of the Respondents. 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.

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>

Attachment A

Petitioner Exhibits for Petition # 72-003-05-1-7-00001

Petitioner Exhibit 1: Narrative

Petitioner Exhibit 2: ERA abatement analysis for 2005

Petitioner Exhibit 3: History of abatement

Petitioner Exhibit 4: 2005 property tax return,

Petitioner Exhibit 5: 2005 Form 322 ERA/PPME

Petitioner Exhibit 6: SB-1 Forms and Resolutions

Petitioner Exhibit 7: Department of Local Government Finance (DLGF) stipulation agreement
for 2003 Assessment

Petitioner Exhibit 8: DLGF Final Determination for 2002

Petitioner Exhibit 9: DLGF Final Determination for 2001

Petitioner Exhibit 10: DLGF memo May 20, 2005

Petitioner Exhibit 11: Form 131 Petition

Petitioner Exhibit 12: Form 115 PTABOA Findings

Petitioner Exhibit 13: Form 130 Petition

Petitioner Exhibit 14: DLGF memo May 2006

Petitioner Exhibit 15: Power of Attorney

Petitioner Exhibit 16: Summary of oral presentation

Attachment B

Petitioner Exhibits for Petition # 72-003-06-1-7-00002

Petitioner Exhibit 1: Narrative

Petitioner Exhibit 2: ERA abatement analysis for 2006

Petitioner Exhibit 3: History of abatement

Petitioner Exhibit 4: 2006 property tax return

Petitioner Exhibit 5: 103-ERA Forms for 2006

Petitioner Exhibit 6: SB-1 Forms and Resolutions

Petitioner Exhibit 7: Department of Local Government Finance (DLGF) stipulation agreement
for 2003 Assessment

Petitioner Exhibit 8: DLGF Final Determination for 2002

Petitioner Exhibit 9: DLGF Final Determination for 2001

Petitioner Exhibit 10: DLGF memo May 20, 2005

Petitioner Exhibit 11: Form 131 Petition

Petitioner Exhibit 12: Form 115 PTABOA Findings

Petitioner Exhibit 13: Form 130 Petition

Petitioner Exhibit 14: Power of Attorney

Petitioner Exhibit 15: DLGF memo May 2006

Attachment C

Respondent Exhibits for Petition # 72-003-05-1-7-00001 and Petition #72-003-06-1-7-00002

Respondent Exhibit A: Authorization for representation (Rigsby)
Respondent Exhibit B: Authorization for representation (Binkley)
Respondent Exhibit C-1: Resolution dated April 21, 1998
Respondent Exhibit C-2: Resolution dated April 16, 2002
Respondent Exhibit C-3: Resolution dated August 20, 2002
Respondent Exhibit D-1: County Council Meeting dated April 21, 1998
Respondent Exhibit D-2: County Council Meeting dated April 16, 2002
Respondent Exhibit D-3: County Council Meeting dated August 20, 2002
Respondent Exhibit E: Indiana Code § 6-1.1-12.1
Respondent Exhibit F-1: Personal Property Return March 1, 2000
Respondent Exhibit F-2: Personal Property Return March 1, 2001
Respondent Exhibit F-3: Personal Property Return March 1, 2002
Respondent Exhibit F-4: Personal Property Return March 1, 2003 (“As Amended”)
Respondent Exhibit F-5: Personal Property Return March 1, 2004
Respondent Exhibit F-6: Personal Property Return March 1, 2005
Respondent Exhibit F-7: Personal Property Return March 1, 2006
Respondent Exhibit G-1a: ERA Deduction Form 322 for March 1, 2000
Respondent Exhibit G-1b: ERA Deduction Form 322 for March 1, 2001
Respondent Exhibit G-1: ERA Deduction Form 322 for March 1, 2002
Respondent Exhibit G-2: ERA Deduction Form 322 for March 1, 2003
Respondent Exhibit G-3: ERA Deduction Form 322 for March 1, 2004
Respondent Exhibit G-4: ERA Deduction Form 322 for March 1, 2005
Respondent Exhibit G-5: ERA Deduction Form 103-ERA for March 1, 2006
Respondent Exhibit H: Final Determinations for 2000, 2001, 2002, and 2003
Respondent Exhibit I: Personal Property Tax Statements with County Form 17T
Respondent Exhibit J: Forms 130, 131, and 115 for March 1, 2005
Respondent Exhibit K: Forms 130, 131, and 115 for March 1, 2006