

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

Petition Numbers: 47-009-06-1-7-00001
47-009-07-1-7-00001
47-009-08-1-7-00001
Petitioner: AEL Financial, LLC
Respondent: Lawrence County Assessor
Parcel Number: 47-110-23747-00; 11-1408
Assessment Years: 2006, 2007, 2008

The Indiana Board of Tax Review (the “Board”) issues this determination in the above matter, finding and concluding as follows:

Procedural History

1. On January 28, 2010, the Petitioner mailed a letter to the Lawrence County Assessor and filed three Form 130 petitions seeking an abatement of personal property taxes for 2006-2008. According to the Petitioner, both it and another entity paid taxes for the same personal property in those years. *Bd. Ex. A*. On March 26, 2010, the Petitioner filed three Form 130 petitions making the same allegations. *Resp’t Exs. 1-3*.
2. On April 26, 2010, the Lawrence County Property Tax Assessment Board of Appeals (“PTABOA”) issued three defect notices, indicating that the Form 130 petitions were “not applicable due to the Form 103 Business Tangible Personal Property Assessment Return being a timely filed self assessment form....The proper way to have handled this situation would have been to file an amended return six months after the original due date.” *Resp’t Exs. 8-10*.
3. Almost eleven months later, on March 15, 2011, the Petitioner filed three Form 131 petitions with the Board. The Petitioner elected to have its appeals heard under the Board’s small claims procedures.
4. On June 18, 2013, the Board held a hearing through its administrative law judge, Jaime S. Harris. Neither she nor the Board inspected the property.
5. Robert Nicoll, Operations Manager at AEL Financial, LLC, was sworn and testified for the Petitioner. County Assessor April Stapp Collins and Deputy Assessor Cheryl Blackwell were sworn and testified for the Respondent.

6. On its business personal property tax returns the Petitioner reported values of \$197,100 for 2006, \$275,940 for 2007, and \$206,950 for 2008.

Record

7. The official record contains the following:

- a) Digital recording of the hearing,
- b) Exhibits:

- Petitioner Exhibit 1: Summary of Transaction Documents,
- Petitioner Exhibit 2: Master Lease Agreement between General Motors Corp. and Pacific Rim Capital, Inc.,
- Petitioner Exhibit 3: Purchase and Sale Agreement and Assignment of Lease between Pacific Rim Capital, Inc. and Summit PRC Financial Services, Inc.,
- Petitioner Exhibit 4: Promissory Note from Summit PRC Financial Services, Inc. to American Enterprise Leasing, Inc.,
- Petitioner Exhibit 5: Assignment of Lease without Recourse from American Enterprise Leasing, Inc. to Petitioner,
- Petitioner Exhibit 6: August 12, 2012 letter from Katie Miller with records relating to personal property taxes paid by Summit Funding Group, Inc. for 2006-2008,
- Petitioner Exhibit 7: The Petitioner's Business Tangible Personal Property Assessment Returns for 2006-2008 with attachments, tax statements, and copies of checks to the Lawrence County Treasurer,
- Petitioner Exhibit 8: Form 130 petitions for 2006-2008,
- Petitioner Exhibit 9: Various e-mails and letters relating to the property taxes at issue,

- Respondent Exhibit 1: Form 130 petition for 2006,
- Respondent Exhibit 2: Form 130 petition for 2007,
- Respondent Exhibit 3: Form 130 petition for 2008,
- Respondent Exhibit 4: Copy of envelope from Property Tax Dept. in Portland, OR postmarked March 15, 2010, and Form 131 petitions for 2006-2008 assessment years,
- Respondent Exhibit 5: Tax Statement for 2006 pay 2007,
- Respondent Exhibit 6: Tax Statement for 2007 pay 2008,
- Respondent Exhibit 7: Tax Statement for 2008 pay 2009,
- Respondent Exhibit 8: Form 138 notice of defect for 2006,
- Respondent Exhibit 9: Form 138 notice of defect for 2007,
- Respondent Exhibit 10: Form 138 notice of defect for 2008,
- Respondent Exhibit 11: Copy of return receipt from Petitioner dated April 30, 2010,
- Respondent Exhibit 12: Form 131 petition for 2006,

Respondent Exhibit 13: Form 131 petition for 2007,
Respondent Exhibit 14: Form 131 petition for 2008,
Respondent Exhibit 15: March 7, 2011 letter from Kevin Carroll to the Board,
Respondent Exhibit 16: Copy of envelope from Property Tax Dept. in Portland, OR
postmarked March 9, 2011,
Respondent Exhibit 17: Summary of the Assessor's position,

Board Exhibit A: Form 131 petitions,
Board Exhibit B: Hearing notices,
Board Exhibit C: Hearing sign-in sheet,
Board Exhibit D: June 12, 2012 Pre-Hearing Order,

c) These Findings and Conclusions.

Parties' Contentions

8. Summary of the Petitioner's case:

- a) The Petitioner is a national equipment finance company. It occasionally works with brokers such as Summit PRC Financial Services, Inc.
- b) In the summer of 2005, Summit bought a Toyota FA1050 horizontal machine center (the "Equipment") that Pacific Rim Capital, Inc. had leased to General Motors Corporation under schedule 193 of a master lease agreement. To finance that purchase, American Enterprise Leasing, Inc. loaned Summit \$492,742 (out of the total sale price of \$636,000). In return, Summit gave American Enterprise a promissory note and a security interest both in the Equipment and in Summit's rights under the lease. In January 2006, American Enterprise assigned its security interest in the Equipment and lease to the Petitioner. *See Nicoll testimony; see also, Pet'r Exs. 1-5.*
- c) Both the Petitioner and Summit reported the Equipment for assessment and taxation in 2006-2008. The two companies described the Equipment a little differently on their personal property returns. For example, they reported different costs because the Petitioner's tax preparer used the amount that American Enterprise loaned to Summit instead of the Equipment's actual purchase price. In any case, the companies' returns addressed the same property with the same serial number leased under the same schedule to the master lease between General Motors and Pacific Rim. And both the Petitioner and Summit paid taxes on the property. As the Equipment's owner, Summit—not the Petitioner—was responsible for the taxes. The Petitioner simply made a mistake in filing its returns. *Nicoll testimony; Pet'r Exs. 1, 8-9.*
- d) The Petitioner's witness, Robert Nicoll, acknowledged that the Petitioner did not file an amended return. He also acknowledged that the Petitioner did not timely file its appeals. Unfortunately, the Petitioner did not discover its mistake until December 15,

2009, and it began the appeal process less than 45 days later. But in light of the double taxation, the county should return the approximately \$24,000 that the Petitioner wrongly paid. That is a lot of money for a small business, and the Petitioner made an honest mistake. *See Nicoll testimony and argument; Pet'r Exs. 1, 8-9.*

9. Summary of the Respondent's case:
 - a) Personal property taxes are based on self-reported assessments contained in taxpayers' business tangible personal property returns. Assessors can change a taxpayer's self-reported assessment, in which case the taxpayer has the right to file an appeal within 45 days. But no local official changed the Petitioner's self-reported assessment for any of the years at issue. Thus, the Petitioner could not correct the assessments by filing Form 130 petitions. Instead, the Petitioner needed to file amended returns within the relevant statutory deadlines. The Assessor, however, did not receive any amended returns. *Collins testimony.*
 - b) Even if filing a Form 130 petition were appropriate, the Petitioner did not file its petitions until April 2010—more than a year after the date that the taxes for each challenged assessment were first due. And the Respondent sent out defect notices to which the Petitioner never responded. The next document that the Respondent received was a March 7, 2011 letter from the Petitioner asking the Respondent to review proposed Form 131 petitions. That letter was sent almost a year after the defect notices went out. *Collins testimony; see also, Resp't Exs. 1-16.*
 - c) Finally, the property described in the Petitioner's returns does not match the property described in Summit's returns—the purchase dates, machine and serial numbers, and beginning cost are different. *Collins testimony.*

Analysis

10. The Petitioner is not entitled to relief. The Board reaches that conclusion for the following reasons:
 - a) The Petitioner may have made a mistake when it reported the Equipment for assessment and taxation in 2006-2008. Unfortunately, the Petitioner did not take the statutorily required steps to correct that mistake.
 - b) Indiana's personal property tax system is based on taxpayers' self-assessments. Every person owning, holding, possessing, or controlling personal property that has an Indiana tax situs on March 1 of a year must file a personal property tax return. 50 IAC 4.2-2-2; *see also*, I.C. § 6-1.1-3-7.
 - c) If an assessing official believes that a taxpayer's return is inaccurate, the official must notify the taxpayer of his changes, and the taxpayer can then seek review of that determination. *See* I.C. § 6-1.1-3-20 (requiring an assessing official to give notice if

he changes the valuation on a taxpayer's return); I.C. § 6-1.1-15-1(a)-(c) (providing that a taxpayer may seek review of an assessor's action within 45 days of being given notice of that action).

d) By contrast, if a taxpayer wants to correct errors in its own self-reported assessment, it must file an amended return. At the times relevant to these appeals, the statute governing amended returns provided, in relevant part:

(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.

....

(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.*

I.C. § 6-1.1-3-7.5 (repl. vol. 2006) (emphasis added). The requirement for filing an amended return applies even where, as the Petitioner has alleged happened in this case, an error in the original return leads to double taxation. *See* I.C. § 6-1.1-15-12(a) and (g).¹

e) The undisputed evidence shows that the Petitioner reported the Equipment for assessment on its personal property returns. No assessing official changed the Petitioner's self-reported assessments. Thus, to the extent the Petitioner believes that it erred in filing its returns, its remedy was not to file appeals under Ind. Code § 6-

¹ County auditors are directed by statute to correct various errors in tax duplicates, including that "taxes on the same property were charged more than one (1) time in the same year." I.C. § 6-1.1-15-12(a)(3). But the statute further provides, "A taxpayer that files a personal property tax return under IC 6-1.1-3 may not petition under this section for the correction of an error made by the taxpayer on the taxpayer's personal property tax return. If the taxpayer wishes to correct an error made by the taxpayer on the taxpayer's personal property tax return, the taxpayer must instead file an amended personal property tax return under IC 6-1.1-3-7.5." I.C. § 6-1.1-15-12(g).

1.1-15-1, but rather to file amended returns. Unfortunately, the Petitioner failed to do so. Under those circumstances, the Petitioner is not entitled to any relief.

Conclusion

11. While the Petitioner may have erred in reporting the Equipment for assessment and taxation, its remedy was to file amended returns. Because the Petitioner failed to do so, it is not entitled to relief.

Final Determination

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

ISSUED: October 28, 2013

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.