

**STATE OF INDIANA
Board of Tax Review**

BAE SYSTEMS CONTROLS, INC.) On Appeal from the Allen County
) Auditor
Petitioner,)
) Review of the Claim for Enterprise
v.) Zone Personal Property Tax Credit
)
ALLEN COUNTY AUDITOR) Petition No. 02-091-01-4-0-10000
)
Respondent.) Assessment Year: 2001

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following.

Issue

Whether BAE Systems Controls, Inc. (BAE) properly corrected the defect in its enterprise zone property tax credit appeal for the 2001 assessment year.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. On June 4, 2001, BAE filed Form EZ-1 with the Allen County Auditor's office.
3. On July 26, 2001, the Allen County Auditor's office notified BAE that its claim for the enterprise zone personal property tax credit was denied. The claim was denied due to the application being filed late.
4. On September 5, 2001, the State received a letter requesting a review of BAE's enterprise zone property tax credit. The letter dated September 4, 2001, was received by facsimile.
5. On September 6, 2001, the State returned the faxed request for review to BAE. A letter was sent citing to 50 IAC 17-4-1 and Ind. Code § 6-1.1-20.8-3(b). The letter explained that appeals may not be filed by facsimile, and also explained the procedures for appealing the denial of the enterprise zone tax credit.
6. On September 14, 2001, the State received the original copy of the appeal letter dated September 4, 2001.
7. On April 30, 2002, the State sent BAE a Notice of Defect. The Notice of Defect requested evidence to show that the request for review was filed within the statutory time limit.
8. On May 31, 2002, the State received BAE's response to the Notice of Defect. BAE contends that due to the ambiguous nature of the County Auditor's denial, the appeal be accepted as timely filed. BAE contends that the denial did not reference how the appeal must be filed, nor did it distinguish between thirty business days or thirty calendar days.

Conclusion

1. Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the

review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the filing of a Form EZ-1, the levels of review are clearly outlined by statute. First, the Form EZ-1 is filed with the County and acted upon by the County Auditor. Ind. Code § 6-1.1-20.8. If the taxpayer disagrees with the County Auditor's action on the Form EZ-1, then a written request for review may be filed with the State. Ind. Code § 6-1.1-20.8-3 (b).

2. In reviewing the actions of the County Auditor, the State is entitled to presume that its actions are correct. "Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies." *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome the presumption of correctness to prevail in the appeal.
3. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.
4. Pursuant to Ind. Code § 6-1.1-20.8-3(b):

If the county auditor determines that an applicant is not eligible, an applicant may appeal for a review of the application by the state board of tax commissioners. An appeal is perfected by the filing of a written request for review with the state board of tax commissioners no later than thirty (30) days after the date on the county auditor's notice. The request must:

 - (1) state the name of the applicant;
 - (2) identify the application; and
 - (3) state the reasons the applicant believes that the county auditor's decision is incorrect.

5. Pursuant to 50 IAC 17-4-1, the filing of appeal petitions must be made by 1) personal delivery; 2) deposit in the United States mail; or 3) registered or certified mail. Appeal petitions may not be filed by facsimile.
6. Under the trial rules (which have been held to apply to the State), for the purpose of computing time, "days" means calendar days except if the last day is a weekend or holiday, in which case the next business day is the last day.
7. The county auditor's determination is dated July 26, 2001. The properly filed request for review was received by the State on September 14, 2001. The request for review was not received within 30 days of the county auditor's determination.
8. The Petitioner did not provide evidence to show the request for review was timely filed. The defect has not been corrected. The request for review is denied.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2002.

Commissioner, Indiana Board of Tax Review