REPRESENTATIVES FOR PETITIONER:
Jeffrey Bennett, Bradley Hasler, Sonia Chen, Margaret Christensen,
Bingham McHale, LLP

REPRESENTATIVES FOR RESPONDENT:
John Butler, Parker Poe Adams & Bernstein, LLP
Brian Popp, Lazlo & Popp, PC
John Dull, Lake County Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

AMOCO SULFUR RECOVERY	)	
CORP. n/k/a BP PRODUCTS	)	Petition Nos.: 45-026-04-1-7-00002
NORTH AMERICA, INC.	)	45-026-05-1-7-00001
	)	45-026-06-1-7-00001
Petitioners,	)	45-026-04-1-7-00004
	)	45-026-05-1-7-00003
	)	45-026-06-1-7-00003
v.	)	
	)	
NORTH TOWNSHIP ASSESSOR,	)	Parcel Numbers: 28-800256
LAKE COUNTY ASSESSOR and	)	28-340093
LAKE COUNTY PROPERTY	)	
TAX ASSESSMENT BOARD	)	
OF APPEALS	)	Assessment Years: 2004, 2005, 2006
	)	
	)	
Respondents.	)	

Appeals from Final Determinations of the Lake County Property Tax Assessment Board of Appeals

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FINAL DETERMINATION GRANTING PETITIONER'S MOTION FOR SUMMARY JUDGMENT

In its personal property returns for 2004-2006, Petitioner, BP Products North America, Inc., claimed an exemption for air-pollution-control equipment. In May 2007, following an audit, the Lake County Assessor and North Township Assessor sent BP

Form 113/PP notices informing BP that its assessments for those three years had been substantially increased because some of that equipment did not qualify for exemption. The dispositive issue in this case is whether BP's returns substantially complied with the statutes and regulations governing personal property assessments thereby triggering short (four- or five-month) limits within which the Assessors could change BP's self-reported assessments. If so, the Assessors acted well beyond the statutory limits. Because the undisputed evidence shows that BP followed the mandated reporting procedures and that its returns listed all of its personal property and costs, the Board finds as a matter of law that those returns substantially complied with the relevant statutes and regulations. The Assessors therefore lacked the authority to change BP's self-reported assessments.

I. PROCEDURAL BACKGROUND

On July 6, 2007, BP filed with the Lake County Assessor written notice that it was appealing the personal property assessments reflected on the Form 113/PPs. On December 11, 2007, the Lake County Property Tax Assessment Board of Appeals ("PTABOA") issued written determinations denying BP's claims and upholding the assessments reflected on the Form 113/PPs.

BP then filed Form 131 petitions with the Board. On January 1, 2009, in accordance with the parties' agreed appeal management plan, BP filed its motion for summary judgment. Following various requests for extensions of time, the parties fully briefed BP's motion. On July 20, 2009, the Board, through Commissioner Terry G. Duga and its administrative law judge, David Pardo, held a hearing on that motion. Neither the Board nor any of its members or employees inspected BP's property.

The parties submitted the following materials in support of, and opposition to, BP's motion:

BP:

(1) BP Products North America, Inc.'s Motion for Summary Judgment and Designation of Evidence in Support Thereof;

Ex. A – Affidavit of John A Nichols, including paragraphs 1-13;
Ex. B – Copy of BP's 2004 Business Tangible Personal Property Return for parcel 28-340093, including supplemental schedules attached thereto;
Ex. C – Copy of BP's 2005 Business Tangible Personal Property Return for parcel 28-340093, including supplemental schedules and forms attached thereto;
Ex. D – Copy of BP's 2006 Business Tangible Personal Property Return for parcel 28-340093, including supplemental schedules and forms attached thereto;
Ex. E – Copy of BP's 2004 Business Tangible Personal Property Return for parcel 28-800256, including supplemental schedules and forms attached thereto;
Ex. F – Copy of BP's 2005 Business Tangible Personal Property Return for parcel 28-800256, including supplemental schedules and forms attached thereto;
Ex. G – Copy of BP's 2006 Business Tangible Personal Property Return for parcel 28-800256, including supplemental schedules and forms attached thereto;
Ex. H – Letter by which North Township Assessor grants BP an extension until June 14, 2004, in which to file its 2004 business tangible personal property return;
Ex. I – Letter by which North Township Assessor grants BP an extension until June 14, 2005, in which to file its 2005 business tangible personal property return;
Ex. J – Letter by which North Township Assessor grants BP an extension until June 14, 2006, in which to file its 2006 business tangible personal property return;
Ex. K – Copy of the Form 113 Notice of Change in Assessments issued by Respondents for Assessment Date March 1, 2004, for parcel 28-340093;
Ex. L – Copy of the Form 113 Notice of Change in Assessments issued by Respondents for Assessment Date March 1, 2005 for parcel 28-340093;
Ex. M – Copy of the Form 113 Notice of Change in Assessments issued by Respondents for Assessment Date March 1, 2006, for parcel 28-340093;

Ex. N – Copy of the Form 113 Notice of Change in Assessments issued by Respondents for Assessment Date March 1, 2004, for parcel 28-800256;

Ex. O – Copy of the Form 113 Notice of Change in Assessments Issued by Respondents for Assessment Date March 1, 2005, for parcel 28-800256;

Ex. P – Copy of the Form 113 Notice of Change in Assessments issued by Respondents for Assessment Date March 1, 2006, for parcel 28-800256;

Ex. Q – Lake County's Amended Response to Petitioner, BP Products North America, Inc.'s First Set of Requests for Admission, Interrogatories and Request for Production of Documents to Respondents, Request for Admission No. 7, p. 5, Interrogatory No. 2, p. 9-10, Interrogatory No. 16, p. 15;

Ex. R – Copy of the Form 115 Notification of Final Assessment Determination for Assessment Date March 1, 2004 for parcel 28-340093;

Ex. S – Copy of the Form 115 Notification of Final Assessment Determination for Assessment Date March 1, 2004, for parcel 28-800256.

(2) BP Products North America, Inc.'s Brief in Support of Motion for Summary Judgment;

(3) Petitioner's Reply in Support of Motion for Summary Judgment.

<u>Lake County, North Township Assessor, and PTABOA (collectively "Lake County"):</u>

(1) Respondent's Designation of Evidence in Opposition to Petitioner's Motion for Summary Judgment;

Ex. 1 – The Affidavit of Gerard Muller;

Ex. 2 – BP's Response to Respondents' Second Request for Admission and Fourth Request for Production of Documents to Petitioner; and

Ex. 3 – BP's Rule 30(b)(6) Deposition pages 29-31, 75, 222, 231, 241, 245, 254, 511, 514-15, 693 and 30(b)(6) deposition exhibits 4, 5A and 59.

(2) Brief in Opposition to Petitioner's Motion for Summary Judgment.

The following tables set forth the two parcels' current assessments and the originally reported assessments that BP claims should apply:

Parcel 28-800256

Assessment Date	Current Assessment	BP's Return
March 1, 2004	$3,784,167	$286,810
March 1, 2005	$3,558,724	$286,810
March 1, 2006	$3,553,031	$286,810

Parcel 34-00093

Assessment Date	Current Assessment	BP's Return
March 1, 2004	$131,533,620	$93,447,260
March 1, 2005	$149,858,108	$99,956,570
March 1, 2006	$175,364,946	$112,196,540

II. FACTS

The parties do not dispute the underlying facts. BP owns personal property located at 2815 Indianapolis Blvd. in Whiting. *Ex. A (Nichols affidavit at ¶ 2).* That property has been assigned parcel numbers 28-340093 and 28-800256. *Id*. In each year at issue in this appeal, BP received an extension of time to and including June 14th to file its business tangible personal property returns. *Id. at ¶¶ 5-7; Exs. H-J*. BP filed those returns on June 14, 2004, June 8, 2005, and June 13, 2006, respectively. *Id*.

BP used return forms prescribed by the Department of Local Government Finance ("DLGF"). On each return, BP listed the total cost of all its tangible depreciable property. *Exs. B-G; see also Ex. Q (Lake County's amended response to BP's first set of requests for admission, admission request 7) (admitting, in response to a discovery request, that "BP reported the total costs for each item of equipment for which an air pollution control exemption was claimed on its 2004 property return.").* BP did not omit any personal property from the returns. *Ex. A (Nichols Affidavit) at ¶ 11*. In each

instance, BP followed the instructions on Form 103, Schedule A and deducted from its property's total cost the cost for equipment that it claimed was exempt under Ind. Code § 6-1.1-10-13 as part of a stationary or unlicensed mobile air-pollution-control system. *Exs. B-G.* BP therefore did not include the cost for that equipment in determining the total assessed value for its personal property. *Id*. For each year, BP claimed [REDACTED] of cost as exempt air-pollution-control equipment. *Id*. The total personal property cost that BP reported for each year, including the cost of the equipment that it claimed as exempt, exceeded [REDACTED]. *Id*.

As required by the Form 103 return, BP attached a Form 103-P on which it listed each piece of equipment that it claimed as exempt together with the equipment's acquisition date and cost. *Id*. In many instances, BP described specific equipment simply as [REDACTED] *Id*. BP also described the equipment it claimed as exempt in a variety of other ways. It often used abbreviations or acronyms, such as [REDACTED]. *Id.*

Each Form 103 return and each Form 103-P has a written verification signed by an authorized representative of BP. *Exs. B-G; see also Ex. A (Nichols affidavit) at ¶ 8*. On each Form 103 return, the representative certified under the penalties of perjury that, to the best of his knowledge and belief, the return was true, correct, and complete and reported all tangible personal property held by BP in the township or taxing district on the date of the return. *Id.* On the Form 103-Ps, BP's representative certified that those returns reported the total cost of all personal property claimed by BP as exempt under Ind. Code § 6-1.1-10-13. *Id.* None of the forms was fraudulent or filed with the intent to

evade property taxes. *Ex. A (Nichols affidavit) at ¶ 12); see also summary-judgment-hearing transcript at 13.*[1]

In May 2007, Lake County conducted an audit of the equipment that BP had claimed as exempt air-pollution-control equipment. *See Ex. 1 (Muller affidavit) at ¶ 2*. As part of that audit, Gerald Muller, an engineer with experience in refinery engineering, visited BP's facility, spoke to BP's representatives, and reviewed documents. *Id*. Muller determined that a substantial amount of equipment that BP had claimed as exempt (1) was primarily used to produce a saleable product, and (2) was not used to prevent or eliminate air contamination caused by industrial waste or contaminants. *Id. at ¶ 3*. According to Muller, he could not make those determinations based solely on BP's returns, because "for the most part those returns did not contain enough information to identify the equipment at issue." *Id*.[2]

On May 31, 2007, the North Township Assessor and the Lake County Assessor issued six Notices of Assessment/Change on Forms 113/PP. *Exs. K-P*. Each Form 113/PP contains a similar explanation for why BP's assessment was raised—Lake County's audit revealed that BP claimed an exemption for equipment that was used "primarily in the production of gasoline diesel, and other saleable refinery products" rather than to prevent or eliminate air contamination caused by industrial waste or contaminants. *Id*. The Form 113/PPs for parcel 28-3400093 referred to the equipment in question being used to produce xylene and to reduce and recover sulfur and other

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[1] Commissioner Duga and John J. Butler, counsel for the Lake County, had the following exchange:
MR. DUGA: No one by Lake County is alleging that there's fraud, correct?
MR. BUTLER: The County's position is that BP did not substantially comply with the rules of the DLGF.
MR. DUGA: So there's no question of fraud before us?
MR. BUTLER: We have not alleged fraud, no. *Tr. at 13*.

[2] BP did not designate any evidence to specifically dispute Muller's conclusions because it argues that those conclusions are irrelevant for purposes of its summary judgment motion.

chemical byproducts. *Exs. K-M*. The Form 113/PPs for parcel 28-800256 referenced sulfur but did not mention xylene or other chemical byproducts. *Exs. N-P*. All of the Form 113/PPs said that BP's assessment had been increased by the reported cost of the improperly excluded equipment as depreciated in accordance with Ind. Code. § 6-1.1-3-23. *Exs. K-P; see also Ex. Q (Lake County's amended response to interrogatories, response to interrogatory 16).*

III. CONCLUSIONS OF LAW AND DISCUSSION

A. BP's objection to Lake County's exhibits

Before turning to the merits of BP's summary judgment motion, the Board must address BP's objection to two exhibits that Lake County designated in its response:

- Exhibit 1—the affidavit of Gerald Muller, and
- Exhibit 3—excerpts from the deposition of the representatives that BP designated under Ind. Trial Rule 30(b)(6) together with three exhibits (4, 5A, and 59) from that deposition.

BP objects on grounds that Exhibits 1 and 3 go to the underlying merits of whether BP's equipment qualified for exemption rather than to whether the Assessors acted outside the statutorily allowed time to change BP's assessments. *Petitioner's Reply in Support of Motion for Summary Judgment at 11; see also, Tr. at 34-35(reaffirming objection to Muller affidavit).*

The Board overrules BP's objection. Much of the disputed exhibits contain information that does not go solely to whether BP's property met the qualifications for exemption as air-pollution-control equipment. For example, Muller's affidavit addresses the timing of BP's audit and the deposition excerpts show that BP's representatives could not identify some of the equipment listed on BP's returns. The Board will not sift

through Lake County's exhibits to determine what portions relate solely to the question of whether the equipment that BP claimed as exempt met the statutory qualifications for exemption. That was BP's obligation.

That being said, none of the information contained in Lake County's designated exhibits suffices to create a genuine issue of material fact that would preclude the Board from entering a final determination in favor of BP. To explain why, the Board now turns to the merits of BP's summary judgment motion.

B. Summary judgment standard.

The Board's procedural rules allow parties to file summary judgment motions. 52 IAC 2-6-8. Those motions are made "pursuant to the Indiana Rules of Trial Procedure." *Id*. Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Wittenberg Lutheran Village Endowment Corp. v. Lake County Property Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 487 (Ind. Tax Ct. 2002). Thus, a party moving for summary judgment must show through designated evidence that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. *Coffman v. PSI Energy*, *Inc.,* 815 N.E.2d 522, 526 (Ind. Ct. App. 2004). If the moving party satisfies its burden, the non-moving party cannot rest upon its pleadings, but instead must designate sufficient evidence to show the existence of a genuine issue for trial. *Id.* The Indiana Board of Tax Review must construe all evidence in favor of the non-moving party, and all doubts as to whether a material factual issue exists must be resolved against the moving party. *See Tibbs v. Huber, Hunt, & Nichols, Inc.,* 668 N.E.2d 248, 249 (Ind. 1996).

C. The North Township and Lake County Assessors lacked the authority to change BP's assessments because they did not act within the time limits mandated by Ind. Code § 6-1.1-16-1.

At issue is whether the Assessors had three or more years within which to change BP's self-reported assessments or whether a much shorter window applied. Two statutes—Ind. Code § 6-1.1-16-1 and Ind. Code § 6-1.1-9-3—address that question.

Indiana Code § 6-1.1-16-1 prohibits assessors from changing the assessed value claimed on a personal property return unless they make the change and give the taxpayer the notice required by Ind. Code § 6-1.1-3-20 within either four or five months of the taxpayer filing its return:

- a township assessor must act by the later of September 15th of the assessment year or four months from the date the taxpayer files its return if the return is filed after May 15th, and

- a county assessor or PTABOA must act by the later of October 30th or five months after the taxpayer files its return if the return is filed after May 15th.

§ 6-1.1-16-1(a)(1) – (2) (2008 supp.).[3] But the statute lays out two circumstances where those deadlines do not apply:

> (d) This section does not apply if the taxpayer:
>
> (1) fails to file a personal property return which substantially complies with this article and the regulations of the department of local government finance; or
>
> (2) files a fraudulent personal property return with the intent to evade property taxes.

I.C. § 6-1.1-16-1(d) (2008 supp.).

[3] The current statute is substantially the same as when all the actions at issue in this appeal occurred. In 2008, the Indiana General Assembly amended Ind. Code § 6-1.1-16-1 to make technical changes and to reflect the elimination of assessing duties for many township assessors. *See* P.L. 146-2008 § 144.

The second statute, Ind. Code § 6-1.1-9-3, provides:

> If a taxpayer files a personal property return for a particular year, personal property which is omitted from or undervalued on the return may be assessed, or its assessed value may be increased, only if the notice required by [I.C. § 6-1.1-9-1] is given within three (3) years after the date the return is filed. However, if the taxpayer's personal property return for a particular year substantially complies with the provisions of this article and the regulations of the department of local government finance, an assessing official or a county property tax assessment board of appeals may change the assessed value claimed by the taxpayer on the return only within the time period prescribed in IC 6-1.1-16-1.

I.C. § 6-1.1-9-3(a) (2006 replacement vol.).

As already explained, Lake County does not allege that BP filed a fraudulent return and there is no designated evidence to support such a finding. Thus, the question before the Board boils down to whether BP's returns substantially complied with the statutes and administrative regulations governing personal property assessments. If BP's returns substantially complied, the Assessors lacked the power to change BP's assessments in 2007. If those returns did not substantially comply, the Assessors acted within the statutorily allowed time.[4]

1. BP substantially complied with the relevant statutes and regulations by reporting all of the cost for the equipment that it claimed as exempt in the manner required by the DLGF's forms.

At issue are BP's claims to exempt equipment as part of a stationary or unlicensed mobile air-pollution-control system. Indiana Code section 6-1.1-10-12 creates that

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[4] BP claims that, even if the three-year limitations period described in Ind. Code § 6-1.1-9-3 applies, the changes to its 2004 assessments cannot stand. According to BP, the PTABOA had to issue its determination on BP's assessment appeals within three years of BP having filed its returns. *See Brief in Support of Motion for Summary Judgment at 14-17*. And the PTABOA issued its determination more than three years after BP filed its 2004 returns. Because the Board finds that the shorter limitations periods described in Ind. Code § 6-1.1-16-1 apply, however, it need not reach that question. BP also claims that, by failing to comply with Ind. Code § 6-1.1-16-1, the Assessors violated its due process rights. Again, the Board's resolution of BP's statutory-based claims makes it unnecessary to address BP's due process argument.

exemption and lists several requirements that equipment must meet in order to qualify, including that it must not be "primarily used in the production of property for sale." I.C. § 6-1.1-10-12(a) (2006 replacement vol.). In turn, Indiana Code § 6-1.1-10-13 and the DLGF's regulations lay out the procedures for claiming such an exemption.

The undisputed facts show that BP did everything that it could to comply with Ind. Code § 6-1.1-10-13 and the DLGF's corresponding regulations. Indiana Code § 6-1.1-10-13 calls for a taxpayer to claim an air-pollution-control exemption on its annual personal property return by describing the purportedly exempt property and stating its assessed value. I.C. § 6-1.1-10-13(a) (2006 replacement vol.). The township or county assessor then reviews the taxpayer's claim. I.C. § 6-1.1-10-13(b) (2006 replacement vol.). If the assessor allows the claim, he reduces the assessed value of the taxpayer's personal property by the allowed exemption amount. I.C. § 6-1.1-10-13(c) (2006 replacement vol.). The assessor's action is treated as an assessment and is subject to all the provisions of Ind. Code § 6-1.1 pertaining to notice, review, or appeal of personal property assessments. I.C. § 6-1.1-10-14 (2008 supp.).

The DLGF's regulations, however, do not exactly mirror Ind. Code § 6-1.1-10-13. Those regulations require a taxpayer to claim an air-pollution-control exemption on Form 103-P, which the regulations define as part of the taxpayer's return. 50 IAC 4.2-11-5(b); 50 IAC 4.2-15-11(d).[5] And that form directs taxpayers to list the acquisition date for each piece of equipment along with its tax life and cost. *Exs. B-G*. But unlike the

[5] "In order to ensure consistency, *the personal property return must be regarded as the return forms* (Form 102 or 103 and Form 104 (50 IAC 4.2-2-9) *and all supplemental schedules that are attached to or filed with the return form*. This is the principle of the "complete return package," which contains all of the information the [DLGF] requires to be reported. . . . In order to meet reporting requirements, air pollution control equipment must be shown on either Form 103-P or on Line 4 Schedule A of Form 103 . . . ." 50 IAC 4.2-15-11(d) (emphasis added).

statute, the regulations and forms do not call for the taxpayer to list the equipment's assessed value. *Id.*

BP followed the regulations and Form 103-P's directions by listing each piece of equipment that it claimed as exempt together with the date that it acquired the equipment and the equipment's cost. *Exs. B-G*. Schedule A of Form 103 has a space for reporting the cost of air-pollution-control equipment claimed as exempt, but it calls for the taxpayer to deduct that cost in determining the total cost of its tangible depreciable personal property. *See id*. Again, that is precisely what BP did. *Id*. Thus, although BP did not separately report the assessed value of its air-pollution-control equipment, it followed the DLGF's regulations and forms and reported all the information that was necessary for the Assessors to change BP's self-reported assessments if they disagreed with all or a portion of BP's exemption claims. In fact, when the Assessors issued the Form 113/PPs, they simply used the reported costs from BP's Form 103-Ps and multiplied those costs by the percentages specified in Ind. Code § 6-1.1-3-23 for depreciating "special integrated steel mill or oil refinery/petrochemical equipment." *Exs. K-P*; I.C. § 6-1.1-3-23.

2. BP did not omit or undervalue property simply because it excluded the cost of the equipment that it claimed as exempt from what it reported as the true tax value of its personal property.

Lake County, however, counters that BP did not substantially comply with 50 IAC 4.2-2-5—the regulation that generally lays out a taxpayer's disclosure obligations. In relevant part, that rule provides:

> (a) The taxpayer shall, in completing the returns, make a full and complete disclosure of such information as may be required by the [DLGF],[6] relating to the value, *nature*, and location of all personal property of which they were the owner or which they held, possessed,

[6] The regulation refers to the State Board of Tax Commissioners. All references to the state board, however, must be taken as references to its successor agency. I.C. § 6-1.1-3-22.

> or controlled, in any capacity whatsoever, on the assessment date for the current year.
>
> (b) The owner of any personal property subject to assessment and taxation on the assessment date has the responsibility for reporting such property *for assessment and taxation* on their personal property tax return on Form 102 or Form 103 . . . .

50 IAC 4.2-2-5 (a)-(b) (emphasis added). Because BP claimed an exemption for certain air-pollution-control equipment that the Assessors later determined should not have been exempt, Lake County argues that BP did not report that equipment for *assessment and taxation*. And because BP used what Lake County described as inadequate, and in some instances "cryptic," abbreviations and acronyms to describe its purportedly exempt equipment, Lake County contends that BP did not fully and completely disclose the nature of that equipment.

Of course, the merit of Lake County's position ultimately turns on whether BP substantially complied with the DLGF's disclosure rule. To answer that question, the most obvious starting point would be to define the term "substantially complies." Unfortunately, Indiana's property tax statutes do not define that term. Nor do the DLGF's current regulations—found at 50 IAC 4.2—which were in effect at all times relevant to this appeal.

Before its repeal in 2000, however, 50 IAC 4.2-3-13 offered the following definition:

> (a) Definition of return not in substantial compliance with this article. A property tax return not in substantial compliance with the provisions of this article, is herein defined as a tax return that:
>
> (1) omits five percent (5%) or more of the cost per books of the tangible personal property at the tax situs in the taxing district for which a return is filed;

> (2) omits leased property, consigned inventory, and other non-owned personal property where such omitted property exceeds five percent (5%) of the total assessed value of all reported personal property; or
>
> (3) is filed with the intent to evade personal property taxes or assessment.

50 IAC 4.2-3-13(b) (1996) (repealed by Department of Local Government Finance; filed March 1, 2000, 7:53 a.m.; 23 IR 1616). While the Board hesitates to rely on a repealed definition, some courts have done so under analogous circumstances where a statutory definition was repealed, but not replaced, and the statute continued to use the previously defined term. *See, e.g., U.S. v. Meyers,* 206 F. 387, 391 (8th Cir. 1913) (quoting *Ex Parte Crow Dog*, 109 U.S. 556, 561, 3 S. Ct. 396, 399 (1883) ("It is an admitted rule in the interpretation of statutes that clauses which have been repealed may still be considered in construing the provisions that remain in force."); *Snyder v. Town Hill Motors*, *Inc*., 193 Pa. Super 578, 165 A.2d 293, 295-96 (1960) (using definition of "delivery" from repealed Negotiable Instruments Act to interpret that term as used in Uniform Commercial Code). *But see, e.g., Lockwood v. Dist. of Columbia*, 24 App. D.C. 569, 572 (1905) ("[W]e fail to see how we can look to old and repealed statutes for the definition of an occupation named in the existing statute which omits altogether to define it.").

The Board need not rely solely on that repealed definition, however, because that definition's general principles have a corollary in the statutes and regulations that address when a taxpayer should be penalized for omitting or undervaluing property. Indiana Code § 6-1.1-37-7(e) provides that, if a person reports a total assessed value that is less than he was required to report, and if the amount of the undervaluation exceeds 5% of the value that he should have reported, the county auditor must add a penalty equaling 20%

of the additional taxes finally determined to be due. I.C. § 6-1.1-37-7(e) (2008 supp.).

But

> [i]f a person has complied with all of the requirements for claiming a deduction, an exemption, or an adjustment for abnormal obsolescence, then the increase in assessed value that results from a denial of the deduction, exemption, or adjustment for abnormal obsolescence is not considered to result from an undervaluation for purposes of this subsection.

Id. (emphasis added).

The DLGF's regulations explain the reason for classifying an unsuccessful exemption claim as something other than an undervaluation of property:

> The purpose of the twenty percent (20%) penalty is to ensure a complete disclosure of all information required by the [DLFG] on the prescribed self-assessment personal property form(s). *This enables the township assessor, county board of review, and [DLGF] board to carry out their statutory duties of examining returns each year to determine if they substantially comply with the rules of the [DLGF].* This examination cannot take place if all required information is not shown on the self-assessment return form.
>
> *It is not the purpose of this provision to impose a penalty on a person who has made a complete disclosure of information required on the assessment return form.* Therefore, if the person filing the self-assessment personal property return shows that they are claiming an exemption . . . and has complied with all of the requirements for claiming that exemption . . ., no penalty should be added to the extent of the amounts accounted for on the return form. In considering whether or not a taxpayer has made a full and complete disclosure of information, the complete return package must be considered. A complete return package consists of the return form itself (Form 102 or 103) [50 IAC 4.2-2-9], and all necessary supplemental forms and supporting schedules which must be filed with the return.
>
> *If a person has complied with all the requirements for claiming an exemption . . ., then the increase in assessed value that results from a denial of the exemption . . . is considered to be an interpretive difference* not subject to the twenty percent (20%) penalty for undervaluation for purposes of this subsection. However, all other amounts not fully disclosed through omission or undervaluation which represent property subject to the reporting requirements of this article and the laws of this state are subject to the twenty percent (20%) penalty. . . .

> *It should be noted that when the reporting requirements have been met, but for some reason the exemption is not allowed, the amount disallowed is an interpretive difference* and is not subject to the omitted or undervalued personal property tax penalty. However, when items that would otherwise qualify for an exemption are omitted from the return, the property is taxable, because the exemption was waived, and the omitted and undervalued personal property tax penalty must be applied.

50 IAC 4.2-2-10(d) (emphasis added); *see also* 50 IAC 4.2-15-11(d)(1).

Thus, as shown by the old definition of substantial compliance and the statutes and regulations governing penalties for undervalued property, a taxpayer is chiefly required to disclose all of its depreciable personal property and to accurately report all of that property's cost. So, when a taxpayer, such as BP, follows the DLGF's instructions and reports on a Form 103-P all of the equipment that it claims as exempt together with the equipment's acquisition date and cost, it substantially complies with the DLGF's disclosure rules. That an assessing official later disallows some or all of the taxpayer's claimed exemption reflects an interpretive difference rather than an omission or undervaluation by the taxpayer.

That is because a taxpayer's action in fully reporting the cost of equipment that he claims as exempt, but excluding that cost when calculating the assessed value of his depreciable personal property, simply does not equate to omitting or undervaluing property. Indeed, Ind. Code § 6-1.1-9-3(a)—the statute that Lake County relies on as giving the Assessors three years within which to issue the Form 113/PPs in this case—speaks to assessing property that was omitted from a taxpayer's *return* or increasing the assessment of property that was undervalued on that *return*. Here, there is no dispute that BP included all of its air-pollution-control equipment on the Form 103-P that it filed with each return. And BP fully reported the cost of that property, as evidenced by the fact that

the Assessors used BP's reported costs when they changed BP's assessment for each year.

Lake County, however, responds that Ind. Code § 6-1.1-9-3 must be read in conjunction with Ind. Code § 6-1.1-9-1, which provides:

> If a township assessor (if any), county assessor, or county property tax assessment board of appeals believes that any taxable tangible property *has been omitted from or undervalued on the assessment rolls* or the tax duplicate for any year or years, the official or board shall give written notice under IC 6-1.1-3-20 or IC 6-1.1-4-22 of the assessment or increase in assessment. The notice shall contain a general description of the property and a statement describing the taxpayer's right to a review with the county property tax assessment board of appeals under IC 6-1.1-15-1.

I.C. § 6-1.1-9-1(2008 supp.) (emphasis added). According to Lake County, property that a taxpayer claims as exempt, but that is ultimately determined not to qualify for an exemption, is necessarily omitted from or undervalued on the assessment rolls, because those rolls include only assessed property. Otherwise, notes Lake County, there would be no limitations period for assessors to change an assessment where a taxpayer reported all of the cost of its purportedly exempt equipment but otherwise failed to comply with statutory or administrative requirements for claiming an exemption. To support its position, Lake County points to *BP Products North America, Inc. v. Bd. of Comm'rs of Lake County*, 812 N.E.2d 139 (Ind. Ct. App. 2004).

Lake County's reliance on *BP Products* is misplaced. In that case, the Court of Appeals addressed BP's appeal from a summary judgment granting a writ of production. The writ compelled BP to produce books and records that Lake County had requested for the purposes of auditing BP's 1998-2002 personal property returns. *BP Products*, 812 N.E.2d at 140-41. BP opposed the writ on grounds that the audits were time-barred under Ind. Code § 6-1.1-16-1. *Id.* at 142. The court, however, explained that there was no

statutory time limit on the power to audit and refused to judicially engraft one. *Id*. at 143-144. The court also noted that Ind. Code § 6-1.1-16-1's limits on Lake County's power to change BP's assessments might not apply, and that Lake County might have up to three years to change BP's assessments if its audit found that BP had omitted or undervalued property. *Id*. at 144. But the court did not address the question of whether a taxpayer undervalues or omits property simply by claiming an exemption to which assessors later determine the taxpayer was not entitled.

The Indiana Court of Appeals, however, did address that question in a different case in which it rejected Lake County's reading of the relevant limitations statutes. *Whirlpool Corp. v. State Bd. of Tax Comm'rs*, 167 Ind. App. 216, 338 N.E.2d 501 (1975) (*disapproved on other grounds in Indiana State Bd. of Tax Comm'rs v. Fraternal Order of Eagles, Lodge No. 255*, 521 N.E.2d 678, 681 (Ind. 1988)). In *Whirlpool*, an auditor from the State Board of Tax Commissioners reviewed Whirlpool's books and records, which led the state board to increase Whirlpool's assessment by roughly $10 million. *Whirlpool*, 338 N.E.2d at 503. The increase stemmed from the state board disallowing an exemption for inventory that Whirlpool had claimed was for transshipment outside Indiana. *Id*.

Whirlpool argued that the state board had not acted timely. In support, Whirlpool pointed to Ind. Code § 6-1-31-10 (1971)—the predecessor to Ind. Code § 6-1.1-16-1—which required the state board to make any changes to a personal property assessment no later than October 1st of the year following the assessment or 16 months after the date that the taxpayer filed its return. I.C. § 6-1-31-10 (1971). That mirrors the current statute's deadline for the DLGF to change a taxpayer's self-reported assessment. I.C. § 6-1.1-16-

1(a)(3) (2008 supp.). And like the current statute, the time limits in the predecessor statute applied only to returns filed in substantial compliance with the statutes and regulations governing personal property tax assessments. *See* I.C. § 6-1-31-10 (1971).[7] On the other hand, the state board argued that the three-year limitation period in the predecessor to Ind. Code § 6-1.1-9-3 (Ind. Code 6-1-30-2 (1971))[8] applied. After examining the two statutes, the court held that, *"[s]ince this case does not concern the assessed valuation of undervalued or omitted property, and since Whirlpool's return was in substantial compliance with the Act*, we find the 3-year limitation of IC 1971 6-1-30-2 [predecessor to Ind. Code § 6-1.1-9-3] . . . to be inapplicable. . . ." *Whirlpool*, 338 N.E.2d at 220 (emphasis added). Instead, the court found that the shorter limitation prescribed by Ind. Code § 6-1.1-16-1's predecessor applied. *Id.*

For purposes of Lake County's position, BP and Whirlpool are identically situated. In each case, a government official or entity sought to increase the taxpayer's self-reported assessment by disallowing a claimed exemption. But, as the court's decision necessarily recognized, the mere fact that Whirlpool had reported its inventory

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[7] "'Notwithstanding any other provision of this act . . ., no assessing official or board may change the assessment made in respect to a personal property return which has been filed in *substantial compliance* with this act and the regulations duly adopted by the State Board of Tax Commissioners . . ., unless such assessing official or board shall have given notice thereof as required by section 413 [6-1-23-13] within the following time limitations . . . .'" *Whirlpool*, 338 N.E.2d at 503(quoting I.C. § 6-1-31-10 (1971)) (emphasis added). *See also* I.C. § 6-1-31-13 (1971) (stating that nothing in section 1209 [I.C. § 6-1-31-10] applied to years where a taxpayer failed to file a return in substantial compliance with the provisions of "this act" or the state board's regulations or where a taxpayer filed a fraudulent return with the intent to evade paying taxes).

[8] "In the case of personal property the following limitations to the power of any official to increase the assessed valuation of undervalued or to assess omitted property under section 1101 [6-1-30-1] shall be applicable. Where a taxpayer has filed a return for a particular year as required by this act . . ., no property or value shall be added with respect to the year covered by said return unless the notice required by section 1101[6-1-30-1] is given within the three [3] years immediately following the date on which said return is filed; . . ." Whirlpool, 338 N.E.2d at 503(quoting I.C. 6-1-30-2 (1971)).

as exempt rather than as assessable did not mean that Whirlpool had omitted or undervalued that property on its return.

Even without *Whirlpool*, the Board would reject Lake County's interpretation of Ind. Code § 6-1.1-9-3. Regardless of Ind. Code § 6-1.1-9-1's reference to the assessment rolls, Ind. Code § 6-1.1-9-3 refers to property omitted or undervalued on a taxpayer's *return*. Indeed, Lake County's reading of the limitations statutes as a whole does not reflect what the Board perceives as the General Assembly's intent in enacting those statutes. Lake County argues that assessors should be able to grant an exemption and then have at least three years—and possibly more—to change their minds if they later decide that the property did not qualify. In its response brief, Lake County posited no limits on that power; a taxpayer therefore would be deemed to have substantially complied with the relevant statutes and regulations only if he ultimately proves on appeal that the disputed property was entitled to an exemption. At oral argument, when faced with the question of whether that would render Ind. Code § 6-1.1-16-1's time limits meaningless, Lake County responded that assessors would be bound by those limits where the amount that a taxpayer failed to report as taxable is less than 5% of the taxpayer's total assessment. *See Tr. at 43.* For support, Lake County pointed to *Best Lock Corp. v. Lawrence Twp. Assessor,* Pet. No. 49-400-04-1-7-01662 (Ind. Bd. Tax Rev. Feb. 28, 2008), where the Board looked to 50 IAC 4.2-2-10—the administrative regulation governing when penalties may be assessed—to determine whether a taxpayer's return was in substantial compliance.

But 50 IAC 4.2-2-10, and the statute it interprets, expressly do not apply that 5% standard to situations where a taxpayer has otherwise complied with requirements for claiming an exemption but an assessor nonetheless decides to deny that claim. I.C. § 6-1.1-37-7(e); 50 IAC 4.2-2-10(d). That makes sense. Assessors cannot tell simply by looking at a return whether a taxpayer has undervalued or omitted property. Even if an assessor suspects that might be the case, the assessor does not know the cost of the omitted or undervalued property and therefore cannot change the reported assessment without doing an audit. A penalty serves to decrease the need for audits, and the 5% standard provides a safe harbor for taxpayers who, while trying to comply with reporting requirements, nonetheless make relatively insignificant reporting errors. On the other hand, if a taxpayer fully reports the existence and cost of all its property, including the property it claims as exempt, an assessor who disagrees with the taxpayer's claim can issue a revised assessment without performing an audit. Penalizing the taxpayer would not promote reporting compliance but would simply chill taxpayers from claiming exemptions.

Similarly, Ind. Code § 6-1.1-16-1's time limitations give a taxpayer that has reported all or substantially all of its property and costs—and therefore has eliminated or decreased the need for an audit—some repose. If an assessor disagrees with all or part of the taxpayer's exemption claim, the assessor can simply change the reported assessment without further ado. On the other hand, if the assessor chooses to grant the exemption, the compliant taxpayer can rest easy without the threat that the assessor might change his mind in the distant future.

Finally, Lake County's position that one can determine whether a taxpayer substantially complied with the statutes and regulations governing personal property assessments only after litigating the merits of the taxpayer's exemption claim defeats the purpose of Ind. Code § 6-1.1-16-1. A taxpayer can always overturn an assessor's action by timely appealing that action and showing that it was incorrect. Indiana Code § 6-1.1-16-1 would therefore offer little additional protection. Instead, the Board believes that, once the statute's limitations period has run, the General Assembly intended to free a substantially compliant taxpayer from having to litigate the merits of its self-reported assessment, including the merits of any exemption claimed on the taxpayer's return.

3. BP sufficiently described the nature of the property that it claimed as exempt

Lake County's second main argument—that BP failed to substantially comply with relevant statutes and regulations because it did not adequately describe the nature of its purportedly exempt air-pollution-control equipment—is a little more sympathetic though ultimately unpersuasive. According to Lake County, by using abbreviations and acronyms to describe its equipment, BP failed to provide enough information for the Assessors to have known what that equipment actually was, much less to determine whether it met the statutory requirements for exemption as part of an air-pollution-control system. While the Board agrees that BP's descriptions did not readily show that the equipment necessarily qualified for exemption, it disagrees that BP was required to do so in order to substantially comply with the statutes and regulations governing personal property assessments.

The statute and regulations that govern applying for an air-pollution-control exemption say little about the detail with which a taxpayer must describe the equipment it

claims as exempt. The statute says only that "the owner shall describe and state the assessed value of the property for which the exemption is claimed." I.C. § 6-1.1-10-13(a). The DLGF's regulations say even less. *See* 50 IAC 4.2-15-11(d)(1) ("In order to meet reporting requirements, air pollution control equipment must be shown on either Form 103-P or on Line 4 Schedule A of Form 103. . . . This meets its statutory requirement that it be shown on the return."); *see also* 50 IAC 4.2-11-5.

The more general exemption statutes and rules say a little more. Thus, Ind. Code § 6-1.1-11-3(c) requires an exemption application to "contain . . . [a] description of the property claimed to be exempt in sufficient detail to afford identification." *See also* 50 IAC 4.2-11-4(2)(B)(i)(AA) (using essentially the same language as I.C. § 6-1.1-11-3(c)). But those procedures arguably do not apply to claiming an exemption for air-pollution-control equipment. *See* I.C. § 6-1.1-11-2 ("The procedures contained in this chapter are general. They apply unless other procedures for obtaining a specific exemption are provided by law."). In any event, describing property "in sufficient detail to afford identification" does not equate to providing a description that, on its face, conclusively shows that the equipment meets each element of the claimed exemption.

Also, while Lake County attacks BP's property descriptions as insufficient, it does not say what would have been sufficient. Indeed, that would be a difficult line to draw. Would a description from a manufacturer's catalogue suffice? Would a description that lets an expert decide whether the property meets the statutory exemption requirements suffice, or would it have to be more detailed so that a layman could make that determination? When the General Assembly enacted Ind. Code § 6-1.1-16-1, it set out time limits that significantly proscribe the government officials' ability to disrupt

taxpayers' settled expectations. The Board doubts that the General Assembly intended to have the question of whether those time limits apply hinge on such ill-defined analyses.

One must keep in mind that the subject of this litigation is personal property returns. The assumption that a taxpayer will file returns based upon its books and records rather than filing the books and records themselves, underlies Indiana's self-reporting system. That is why an authorized person must sign each return under the penalties for perjury. 50 IAC 4.2-2-9(e). And the return forms themselves contemplate brevity. *See Exs. B-G*. Form 103, Schedule A does not ask taxpayers to identify any of their property beyond listing the total cost in each depreciation pool. *Id*. Similarly, while Form 103-P provides a space for taxpayers to identify the "type of air control facility" for which they seek an exemption, the space is minimal and does not invite a detailed description. *Id*.

That is not to say that Lake County was left at BP's mercy and had to grant the claimed exemption based solely on the descriptions that BP provided. As BP pointed out, if the Assessors felt that BP's descriptions were too vague to show that the equipment in question qualified for exemption, they could have simply denied BP's exemption claim. Assuming, arguendo, that the descriptions were vague, they were vague the day that BP filed each of its returns. Lake County did not need three years to discover that.

Alternatively, the Assessors could have requested more information from BP. For example, they could have examined BP's personal property and its books and records within the time prescribed by Ind. Code § 6-1.1-16-1. *See* 50 IAC 4.2-3-1. The Assessors also could have examined under oath anyone that they believed knew about the equipment's identity. *Id*. Had BP failed to cooperate with such an investigation, Lake County could more credibly argue that BP failed to substantially comply with the statutes

and regulations governing personal property assessments. But Lake County designated no evidence to show that the Assessors sought to investigate BP's exemption claims before Ind. Code § 6-1.1-16-1's time limits ran, much less that BP failed to cooperate with or otherwise hindered such an investigation. At the summary judgment hearing, Lake County's counsel acknowledged that BP had been claiming an air-pollution-control exemption for over a decade. *Tr. at 62.* Yet, while Lake County performed an accounting audit of BP's return in 2004, it waited until 2007 to investigate whether the property disclosed in BP's Form 103-Ps qualified for exemption. *Tr. at 39-40.* In fact, Lake County's refinery-engineering expert did not visit BP's facility until May 2007.

Lake County, however, points to the facts that BP's own designees for Rule 30(b)(6) depositions (1) prepared a separate document (deposition exhibit 4) with cost centers and appropriation numbers to track the descriptions listed on the return, and (2) could not identify what some of the purportedly exempt air-pollution-control equipment was. *Response brief at 4; Ex. 1 at 75, 222, 231, 238, 245, 254, 51 and Deposition Ex. 4*. The Board fails to see the significance of the first point. The fact that BP prepared a separate document to help with the audit process does nothing to show a lack of compliance. If anything, it shows that BP sought to fully cooperate with Lake County's audit. The second point, though, has a little more merit. Had Lake County audited BP's exemption claim within Ind. Code § 6-1.1-16-1's deadlines, the inability of BP's representatives to identify equipment arguably might have prevented Lake County from being able to act timely. But again, Lake County did not even attempt to audit BP's exemption claims until 2007.

Thus, the Assessors had at least two options other than simply granting BP's claimed exemption. What they could not do was simply fail to act, thereby effectively granting the exemption, and then change their minds long after the statutorily prescribed period for changing BP's self-reported assessment. In enacting Ind. Code § 6-1.1-16-1, the General Assembly intended to enforce the settled expectations of taxpayers who report all of their property and cost and who cooperate with assessors and other officials. The relevant statutes and regulations therefore cannot be read as giving township and county assessors three years—and possibly more—to defeat those expectations by simply changing their minds about exemptions that they have already granted.

The Board in no way means to downplay what may well be a difficult choice for assessing officials. Simply denying an exemption without investigation might lead to unnecessary litigation. On the other hand, fully investigating a large industrial taxpayer's exemption claim within Ind. Code § 6-1.1-16-1's time limits may not be a particularly attractive alternative. In its Form 103-P returns, BP identified [REDACTED] items of equipment with un-depreciated costs running in the [REDACTED] of dollars. Once it started, Lake County apparently did manage to investigate BP's exemption claims within five months.[9] Nonetheless, conducting such an audit in that amount of time likely was, and will continue to be, a difficult task. But it is a task that the General Assembly prescribed.

IV. CONCLUSION

Because the undisputed evidence shows that BP followed the mandated reporting procedures and its returns included all of its personal property and costs, the Board finds

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[9] *See Tr. at 39 (counsel for Lake County stating that Lake County hired Muller in January 2007); Exs. K-P (Form 113/PPs dated May 31, 2007).*

as a matter of law that those returns substantially complied with the statutes and regulations governing personal property assessment. The Lake County and North Township Assessors therefore acted well beyond Ind. Code § 6-1.1-16-1's time limits when they issued Form 113/PPs increasing BP's self-reported personal property assessments for 2004-2006. Thus, under Ind. Code § 6-1.1-16-1(b), the assessments reflected on BP's returns for those years are final. I.C. § 6-1.1-16-1(b).

V. ORDER

The Board Grants BP's Motion for Summary Judgment and issues its final determination in favor of BP. The Board therefore ORDERS that each assessment be changed to the amount reported on BP's Business Tangible Personal Property Return.

So Ordered this **19th** day of **August**, 2009

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>

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