

**STATE OF INDIANA
Board of Tax Review**

BANE CLENE CORPORATION) On Appeal from the Marion County
) Auditor
Petitioner,)
) Review of the Claim for Enterprise
v.) Zone Personal Property Tax Credit
)
MARION COUNTY AUDITOR) Petition No. 49-800-96-4-0-10000
)
Respondent.) Assessment Year: 1996

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 Bane Clene Corporation (Bane) is entitled to an Enterprise Zone Business Personal Property Tax Credit (EZ Credit) for the 1996 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. The Petitioner became aware of the denial of the EZ Credit upon receipt of the tax bill. Mr. Jeffrey K. Eicher, Attorney at Law, on behalf of Bane, while not following the proper procedure outlined in Ind. Code § 6-1.1-20-8.3, did constructively request a review of the EZ Credit on a Form 133. The request for review was filed on May 7, 1997. The request for review was denied by the county on June 25, 1997.
3. The request for review and attachments are labeled Board Exhibit A.
4. The subject property is located at 3940 North Keystone Avenue, Indianapolis, Washington Township, Marion County.

Enterprise Zone Business Personal Property Tax Credit

5. In accordance with recent case law, the State may consider a late-filed application for the Enterprise Zone Business Personal Property Tax Credit. *Graybar Electric Co. v. State Board of Tax Commissioners*, 723 N.E. 2d 491 (Ind. Tax 2000). The Tax Court in *Graybar* references *State Board of Tax Commissioners of Indiana v. New Energy Company of Indiana*, 585 N.E. 2d 38 (Ind. App. 1992). As a result of *New Energy*, the State considers the totality of the facts and circumstances in determining whether or not to approve a late-filed deduction application (see 50 IAC 10-4-2).
6. On November 30, 2001, the State sent a letter to Bane and Mr. Eicher giving them the opportunity to address the seven (7) factors. The letter from the State is labeled as Board Exhibit B.

7. By letter December 9, 2001, Mr. Eicher submitted a request to the State for additional time to address the seven (7) factors. Mr. Eicher's letter has been entered into the record and labeled Board's Exhibit C.
8. By letter December 17, 2001, the State granted Mr. Eicher an extension of time to address the seven (7) factors. February 15, 2002 was established as the deadline to respond. The State's letter has been entered into the record and labeled as Board's Exhibit D.
9. Mr. Eicher submitted written response with attachments on February 14, 2002. The attachments include letters of support from John Gootee, Indianapolis Urban Enterprise Association Inc., Rozelle Boyd, Indianapolis Councilman, District 11, and Stephen Goldsmith, Indianapolis Mayor, a copy of the Form 133, a copy of the Form 131PP, Affidavit of Donna M. Parker, former employee of the Marion County Auditor, a copy of a letter from Marty Womacks, Real Estate Manager for the Marion County Auditor, a copy of the Form EZ-1, and a copy of the Form 103 (Business Tangible Personal Property Assessment Return).

Conclusions of Law

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 filled with the State. Ind. Code § 6-1.1-20.8.3 (b).

2. The State is the proper body to hear an appeal of the action of the County Auditor pursuant to Ind. Code § 6-1.1-20-8-3 (c).

A. Burden

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. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
5. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

B. Enterprise Zone Business Personal Property Tax Credit

6. Pursuant to Ind. Code § 6-1.1-20.8-2, a person that files a timely personal property return must file the application for Enterprise Zone Business Personal Property Tax Credit (Form EZ-1) between March 1 and May 15 of that year in order to obtain the credit. A person that obtains a filing extension under Ind. Code § 6-1.1-3-7 (b) for an assessment year must file the application between March 1 and June 14 of that year in order to obtain the credit.

7. The State has the legal authority to consider a late-filed application for the Enterprise Zone Business Personal Property Tax Credit. *Graybar Electric Co. v. State Board of Tax Commissioners*, 723 N.E. 2d 491 (Ind. Tax 2000). In *Graybar*, the Tax Court references *State Board of Tax Commissioners of Indiana v. New Energy Company of Indiana* (Ind. App. 1992), 585 N.E. 2d 38.
8. In considering a late-filed application, the State shall consider all of the relevant facts and circumstances, and determine if it is more equitable to grant or to deny the EZ credit application.
9. The State has adopted seven (7) factors to guide the exercise of its discretion in determining whether to grant late-filed applications. 50 IAC 10-4-2 (b). The Petitioner was informed of the seven (7) factors and had the opportunity to present evidence on these factors. See Finding No. 6, above. The factors and the response to each factor are as follows...

#1. Whether the failure to timely file the application resulted from an act of God, or from the death or serious illness of the person principally responsible for the filing of the deduction application. *(To the extent possible, the taxpayer should provide documentary evidence supporting its contention.)*

The failure to file a timely 1996 Form EZ-1 did not result from an act of God or the death of the person responsible for the completion of the form. However, the facts, as outlined by the Petitioner in the request for review, indicates the EZ-1 was filed timely with the Washington Township Assessor with instructions for the township to forward the form to the proper agency.

#2. Whether the approval of the late-filed application would result in the loss of property tax revenues to the taxing units affected by the deduction. *(The*

taxpayer should submit a written statement signed by the County Auditor stating whether approval would result in the loss of tax revenues.)

The Petitioner did not address this factor.

- #3. Whether a public official gave misleading information to the taxpayer that was the proximate cause of the late-filing, and whether it was reasonable for the taxpayer to rely on that misleading information. *(To the extent possible, the taxpayer should provide documentary evidence supporting its contention.)*

The Petitioner did not address this factor.

- #4. Whether the lapse between the filing deadline and the date on which the application was actually filed would have prevented local officials from accurately determining the assessed value for budget, rate and levy purposes.

The Petitioner did not address this factor.

- #5. Whether there is substantial evidence that local officials support the approval of the late-filed application, even if such approval would result in a loss in tax revenues. *(The taxpayer should provide written documentary evidence including written statements from local officials, including the local Enterprise Zone Board, indicating support for the approval of the application, notwithstanding the fact that the application was filed late.)*

The Petitioner provided letters from Rozelle Boyd, District 11 Indianapolis Councilman, Stephen Goldsmith, the Mayor of Indianapolis, and John Gootee, Director of Business Development for the Indianapolis Urban Enterprise Association (UEA) that indicate such support.

#6. Whether the late-filing was not due to the taxpayer's negligence.

The Petitioner stated that the forms were filled out on a timely basis and delivered to the Washington Township Assessor's office on May 14, 1996. The Petitioner indicated that instructions were given to the Washington Township Assessor to forward the Forms to the County Auditor. The Petitioner contends that they have filed the Form EZ-1 with the Township Assessor's office in the past without any problems.

#7. Any other factor that the State considers relevant.

The Petitioner submitted an affidavit of Donna Parker, a former employee of the Marion County Auditor who was involved in processing Urban Enterprise Zone exemptions. Ms. Parker stated that she routinely inquired to the Township Assessors whether or not any exemption forms were in their (Township) possession that required processing by the Auditor's office.

10. After careful consideration of the evidence presented, and the circumstances of this situation, the State hereby approves Bane's EZ credit for the 1996 assessment year.

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.

Chairman, Indiana Board of Tax Review