

**STATE OF INDIANA
Board of Tax Review**

COMMUNITY HEALTH PHARMACY/ FRANKLIN PHARMACY) On Appeal from the LaPorte County) Auditor
)
Petitioner,)
)
v.) Claim for Enterprise Zone Business) Personal Property Tax Credit
LAPORTE COUNTY AUDITOR)
) Petition No. 46-021-01-4-0-00001
Respondent.)

REHEARING 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 Community Health Pharmacy/Franklin Pharmacy is entitled to an Enterprise Zone Business Personal Property Tax Credit (EZ Credit) 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 herein shall be considered a finding of fact.

2. Community Health Pharmacy/Franklin Pharmacy (Community) is a business located at 1517 Franklin Street, Michigan City, Michigan Township, LaPorte County. Community is located in an urban enterprise zone.
3. Community filed the application (Form EZ-1) for the EZ Credit. The LaPorte County Auditor received the Form EZ-1 on May 29, 2001. The LaPorte County Auditor issued the denial of the EZ Credit on June 11, 2001.
4. On July 9, 2001, Community requested that the State accept the Form EZ-1 as timely filed due to reasonable cause.
5. On August 16, 2001, the State sent a letter to Community informing it of the factors in 50 IAC 10-4-2. The State will consider the facts and circumstances in determining whether or not to approve a late-filed application. The State requested that each of the factors be addressed with a written statement and supporting documentation. In addition, the State requested that a copy of the Form 103 be submitted as well as a copy of the Form EZB-R and proof that such was timely filed. The information was to be submitted by September 13, 2001.
6. On September 6, 2001, Community submitted the requested information. Community addressed the factors and included a copy of the Form 103, a copy of the Form EZB-R, and a copy of the Form EZ-1.
7. On July 11, 2002, the State issued its Final Determination denying the Petitioner's EZ credit.

8. On July 22, 2002, the Petitioner requested a rehearing. In the request for rehearing, the Petitioner addressed the remaining factors that were not addressed originally.
9. On August 8, 2002, the State notified the Petitioner that the request for rehearing was granted.

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 filed 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 Nos. 5 and 8, above. The factors and the Petitioner's 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.)*

During the year the taxpayer had high turnover of staff involved with the financial and accounting functions of the entity. This caused a delay in the filing and an oversight of requesting extension for the 2001 Form EZ-1. However, the form was filed and received by the LaPorte County Auditor before the extended due date of June 14, 2001.

#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 approval of the late-filed application would not result in the loss of property tax revenues to the taxing units affected by the deduction. The company has participated in the Enterprise Zone Program for several years and filed its application within the extended due date of the form. The assessed value of the company

would be included in the assessor's valuation, due to the minimal lapse of time between the original due date and the date in which the form was actually filed, and therefore would not result in the loss of property tax revenues.

- #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.)*

A public official did not give misleading information to the taxpayer that was the proximate cause of the late-filing. Therefore, this item is not applicable.

- #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 lapse of time between the filing deadline and the date on which the application was actually filed would not have prevented local officials from accurately determining the assessed value for budget, rate and levy purposes because it was filed by the extended due date.

- #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.)*

There is substantial evidence that local officials support the approval of the late-filed application. Such approval does not result in a loss in tax revenues, as

supported in statement 2. Enclosed, please find written documentary evidence from the Michigan City Urban Enterprise Association. The letter states that Community timely filed form EZ-1 for the years 1994-2000, and they support Community in their appeal.

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

The late filing is not due the taxpayer's negligence. As provided in statement 1, due to a high turnover of financial staff during the year an oversight of requesting an extension for the 2001 Form EZ-1 occurred.

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

Form EZ-1 was filed and received by the LaPorte County Auditor before the extended due date of June 14, 2001.

10. After careful consideration of the evidence presented, and the circumstances of this situation, the State hereby grants the Petitioner's EZ credit for the 2001 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