

REPRESENTATIVE FOR PETITIONER:  
Bradley Hasler, Bingham, Greenebaum, Doll, LLP

REPRESENTATIVE FOR RESPONDENT:  
Darren C. Chadd, Kirtley, Taylor, Sims, Chadd, & Minnette, P.C.  
Tyler M. Nichols, Kirtley, Taylor, Sims, Chadd, & Minnette, P.C.

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Crown Holdings, Inc.	)	Petition: 54-030-14-1-7-10144-15
	)	
Petitioner,	)	
	)	
v.	)	Business Tangible Personal Property
	)	
Montgomery County Assessor,	)	County: Montgomery
	)	
Respondent	)	
	)	
	)	Assessment Year: 2014

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Appeal from the Final Determination of the  
Montgomery County Property Tax Assessment Board of Appeals

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**May 10, 2016**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”) has reviewed the evidence and arguments. Having considered the issues raised in this case, we find and conclude the following:

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **ISSUE**

Crown Holdings, Inc. (“Petitioner”) appeals the timeliness of the Montgomery County Property Tax Assessment Board of Appeal’s (“PTABOA”) determination that upheld the Assessor’s removal of the deduction for abnormal obsolescence claimed on Petitioner’s personal property return for 2014.

### **PROCEDURAL HISTORY**

1. Petitioner timely filed a 2014 business personal property return (Form 103) on May 15, 2014. Petitioner reported an assessed value of \$1,528,850. That figure was calculated with an adjustment for abnormal obsolescence in the amount of \$702,361.
2. On May 30, 2014, the Assessor issued a Form 113 denying the abnormal obsolescence and increasing the personal property assessment to \$2,231,211. Petitioner timely filed a Form 130 with the Montgomery PTABOA appealing the Assessor’s action. On March 2, 2015, the PTABOA issued its determination denying Petitioner’s abnormal obsolescence adjustment.
3. Petitioner timely filed a Form 131 petition with the Board. The Board has jurisdiction over Crown’s appeal under Indiana Code §§ 6-1.1-1-15 and 6-1.5-4-1.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

4. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held the administrative hearing on February 10, 2016.

5. Mark Rittenhouse and Todd Churchward, tax representatives with Baden Tax Management, were sworn as witnesses for Petitioner.<sup>1</sup> Montgomery County Assessor Sherri Bentley was sworn as a witness for Respondent.
  
6. Petitioner submitted the following exhibits:
 

Petitioner Exhibit P-1:	2014 Form 104, Business Tangible Personal Property Return
Petitioner Exhibit P-2:	2014 Form 103, Business Tangible Personal Property Return (Confidential) <sup>2</sup>
Petitioner Exhibit P-3:	Form 113/PP, Notice of Assessment Change
Petitioner Exhibit P-4:	Form 130, Petition to the PTABOA
Petitioner Exhibit P-5:	Form 115, Notification of Final Assessment Determination
Petitioner Exhibit P-6:	List of proposed PTABOA hearing dates.
  
7. Respondent submitted the following exhibit:
 

Respondent Exhibit RA:	Letter dated September 3, 2014 requesting a continuance.
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8. The following additional items are officially recognized as part of the record of proceedings:
 

Board Exhibit A:	Form 131 Petition with attachments
Board Exhibit B:	Notice of hearing
Board Exhibit C:	Hearing sign-in sheet
Board Exhibit D:	Notice of Appearance by Darren C. Chadd and Tyler M. Nichols
Board Exhibit E:	Notice of Appearance by Bradley D. Hasler.

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<sup>1</sup> Mr. Churchward did not testify during the hearing.

<sup>2</sup>Pursuant to Administrative Rule 9(G)(5), Petitioner submitted exhibit P-2 on green paper.

## SUMMARY OF PETITIONER'S CASE

9. Petitioner contends the PTABOA failed to timely issue a determination on its petition under Indiana Code § 6-1.1-16-1. Petitioner's counsel called Assessor Bentley as a witness. Bentley testified that she reviewed Petitioner's personal property return. Petitioner claimed the assessed value should be \$1,528,850. That figure was calculated with a deduction of \$702,361 for abnormal obsolescence. Bentley did not feel Petitioner provided enough information to grant the abnormal obsolescence adjustment and she disallowed the deduction. Bentley notified Petitioner of the change on a Form 113 dated May 30, 2014. Petitioner filed a Form 130 Petition For Review. The PTABOA issued its determination (on Form 115) that the assessed value was \$2,231,210 on March 2, 2015. No Form 115 was issued prior to that date. *Pet'r Exs. P-1 through P-5; Bentley testimony.*
10. Bentley testified that personal property is a self-assessment system. She has no way of knowing if the taxpayer did or did not have fraudulent intent when it filed the return. *Bentley testimony.*
11. Rittenhouse testified that, when they received the hearing notice for the September 25, 2015 hearing, they sent a letter requesting the hearing be rescheduled due to conflicts between Baden Tax Management and the multiple clients they were to represent at the hearing. According to Rittenhouse, this was the first contact with the assessor's office after receiving the notice. He followed up with phone calls within a week or so thereafter, because the hearing date was approaching and he needed to know if there was a problem with rescheduling. *Resp't Ex. RA; Rittenhouse testimony.*
12. When he finally talked to Bentley, the point was made that the hearing probably would be scheduled after October 30. Rittenhouse testified that he said, "Okay, let's do that." According to Rittenhouse, he was consenting to rescheduling the hearing, but he was not asked to provide any acknowledgement of the October 30 deadline and he does not remember discussing any alternate hearing dates. *Rittenhouse testimony.*

13. On cross-examination, Rittenhouse admitted that everything the Assessor said at the PTABOA hearing concerning their discussions was correct and accurate. *Rittenhouse testimony.*
14. Petitioner argued that there is no evidence that the taxpayer impeded the PTABOA from setting or deciding the case before October 30, 2014. According to Petitioner, in the Verizon decision the Tax Court very clearly explains that filing an appeal and requesting a delay in the proceedings does not constitute waiver. *Hasler argument.*
15. Respondent Exhibit RA did not specifically state the taxpayer waived the PTABOA's October 30 deadline. Petitioner claims it is insufficient to be a waiver. According to Rittenhouse, he was not asked to provide any sort of written acknowledgement about the October 30 deadline. There was no discussion about when any PTABOA hearing would be rescheduled. Further, Exhibit RA is not the type of document that one would expect the Assessor, who was keenly aware of the deadline, to evaluate as a waiver. Waiver is not a realistic conclusion, especially when the Assessor was careful enough to request and receive an express waiver of the 30-day notice for the January 27, 2015 PTABOA hearing. *Resp't Ex. RA; Hasler argument; Bentley testimony.*
16. To create estoppel, the words or conduct of a party must be calculated to mislead the other party. Petitioner claims the Assessor's testimony showed she was eminently aware of the October 30 deadline. There was no suggestion that the law was misrepresented in any way by the taxpayer. According to Petitioner, there can be no estoppel here. *Hasler argument.*
17. Also with respect to the estoppel argument, the PTABOA is a statutorily created body under Indiana Code § 6-1.1-28. The county assessor is a non-voting member of the PTABOA. A quorum of the PTABOA is required to transact business and a majority vote is needed in order for the PTABOA to act. In this case, the representations were made to the Assessor, but she is not the PTABOA. The PTABOA is a separate body that

has its own authority to act. There is no evidence that any representations were made to the members of the PTABOA or that any members of the PTABOA acted differently in reliance on any of these representations. *Hasler argument.*

18. The issue and the deadline facing the PTABOA is not a deadline to hold a hearing. It is a deadline to make a change in the assessment reported on the taxpayer's return. Whether there was a violation of Chapter 16 was not known until the PTABOA issued the Form 115 on March 2, 2015. At that point, and not before that point, the taxpayer learned the PTABOA changed the amount reported by the taxpayer on the taxpayer's return. *Hasler argument.*
19. A person is not able to waive a right before they are in a position to exert it. This was recognized by the Indiana Supreme Court in *Doan v. Fort Wayne*, 252 N.E.2d 415, at 418 (Ind. 1969) and also in the Indiana Tax Court *Verizon* decision for 2007. It was a legal impossibility for a waiver to have occurred before March 2, 2015. According to Petitioner, no evidence close to March 2, 2015, suggests there was any act of acquiescence or waiver on the taxpayer's part to the PTABOA's determination. *Hasler argument.*
20. Finally, Petitioner argues another important point, which is that a taxpayer is not able to confer authority to the PTABOA that is not granted by statute. When a statutory administrative board acts outside the authority granted by the statutes, those actions are void. This principle is found in *State ex rel. Evansville City Coach Lines, Inc. v. Rawlings*, 229 Ind. 552 at 576 (Ind. 1951). According to Petitioner, the PTABOA's statutory authority to change the assessment ended after October 30, 2014. *Hasler argument.*
21. Petitioner filed its personal property return on May 15, 2014. *Pet'r Ex. P-2*. The PTABOA attempted to change the value reported by the taxpayer on its return, but pursuant to Indiana Code § 6-1.1-16-1(a), the PTABOA was required to issue a determination by October 30 of the assessment year. Petitioner argues that because the

PTABOA failed to issue a determination within the time allowed by statute, the assessed value claimed by the taxpayer on the personal property is final. *Hasler argument.*

#### SUMMARY OF RESPONDENT'S CASE

22. A PTABOA hearing was originally scheduled for September 25, 2014. Rittenhouse called the Assessor's office and requested a continuance. Rittenhouse said he was working with multiple clients and would not be able to make that date. He was asked to put the request in writing. During a detailed conversation, they discussed the October 30 deadline. It was Bentley's belief that Petitioner was waiving the deadline although she couldn't say whether he used the word "waive" or not. *Bentley testimony.*
23. The taxpayer requested a continuance with the awareness that a subsequent hearing would not be held within the deadline. The letter from Churchward did not specifically state they were waiving the deadline. In the multiple discussions with Rittenhouse, however, it was very clear that both parties understood the deadline. Rittenhouse was concerned about scheduling issues and assured that going past the deadline was not a problem. It is Respondent's position that by requesting a continuance the taxpayer waived the deadline. *Resp't Ex. RA; Bentley testimony.*
24. Respondent contends that she tried to reschedule the hearing on October 28 and, again, on December 9. Rittenhouse was unable to attend on either date. Finally, they settled on January 27, 2015. Rittenhouse waived the 30-day notice of hearing for that date. But then at the PTABOA hearing Rittenhouse objected and asked the PTABOA to find in his favor because the hearing was outside the deadline. *Bentley testimony.*
25. Respondent did not file a protective appeal as allowed by Indiana Code § 6-1.1-16-2(a). Bentley did not believe this was necessary because Rittenhouse said there would be no problem going past the deadline. Bentley testified that she relied on those assurances. *Bentley testimony; Chadd argument.*

26. There is no dispute about the existence of the October 30 deadline, but the issue is whether it can be waived or is subject to estoppel. In a footnote in the *Allen County/Verizon* case, the Tax Court stated, “The Court will assume, without deciding, that the provisions of Chapter 16 may be waived.”<sup>3</sup> *Chadd argument*.
27. Respondent argues that the *Allen County/Verizon* cases are very different from this case. First, the parties in *Verizon* disputed whether Chapter 15 or Chapter 16 procedures applied, which is not an issue in this case. Second, the Court noted that Verizon had no duty to notify the county of its statutory deadline, but here both parties were aware of the deadline. Third, in *Verizon*, the assessor failed to file an appeal under Ind. Code § 6-1.1-16-4. Here, the assessor testified she did not file an appeal, but she had no reason to do so because she agreed to reschedule the hearing. Fourth, the Court said Verizon did not represent either explicitly or implicitly that it would forgo its rights under Chapter 16 to have the hearing by October 30. Here, the taxpayer did explicitly represent that it would forgo its right. Finally, in *Verizon* the Court said that the county offered nothing to support a reasonable inference that it detrimentally relied on the taxpayer’s actions. Not so in this case where the Assessor directly relied on the taxpayer’s representation that it would not hold the county to the deadline. According to Respondent, this is a completely different case and requires a different result. *Chadd argument*.
28. Both parties were aware of the deadline. This is a matter of the taxpayer requesting a continuance with the understanding the hearing would be outside the deadline. Accordingly, the taxpayer would not hold the Assessor to the deadline. Again, according to Respondent, this case is a completely different scenario than the *Verizon* cases. And for those reasons, Respondent claims waiver and estoppel both apply to this case. *Chadd argument*.
29. In this case the taxpayer intentionally relinquished a known right, that right being to have the hearing and the determination by October 30. Petitioner’s counsel questions whether

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<sup>3</sup> *Allen County Assessor v. Verizon Data Services, Inc.*, 43 N.E.3d 705, n. 4 (Ind. Tax Ct. 2013).



one can waive that right before it exists. But Respondent argues the right that is waived is the right to have a hearing and a determination by October 30. This right did not occur when the PTABOA issued its determination. It existed back when the taxpayer requested the continuance. The taxpayer knew the deadline, asked for a continuance, understood it would result in a determination after the original deadline, and chose to proceed in that manner. According to Respondent, that conduct constitutes a waiver. *Chadd argument.*

30. Respondent also claims estoppel applies because Petitioner should be estopped from denying the request and agreement that it made. The Assessor acted on Petitioner's request for a continuance. She accommodated the request with the taxpayer specifically understanding and agreeing that it would have an impact on the October 30 deadline. Therefore, the taxpayer would not hold the Assessor or the PTABOA to that deadline. Bentley testified that she would not have continued the hearings had she not believed Petitioner waived the deadline. *Chadd argument.*
31. Estoppel requires some degree of being misled. The Assessor was not misled about the deadline or if there was a deadline. But she was misled by the taxpayer saying if she continued the hearing the taxpayer would not hold her to the deadline. Respondent claims she relied on that statement to her detriment. *Chadd argument.*
32. Finally, Respondent argues that this situation raises the doctrine of invited error. A party cannot invite a party to take a certain action and then try to hold it against them. That is what happened here. According to Respondent, the taxpayer asked for a continuance with the understanding it would extend the proceedings past the deadline (an invited error), and now seeks to use that result against Respondent. *Chadd argument.*

## ANALYSIS

33. Indiana's personal property tax system is a self-assessment system. Every person, including any firm, company, partnership, association, corporation, fiduciary, or individual owning, holding, possessing, or controlling personal property with a tax situs in Indiana on March 1 of a year must file a personal property tax return on or before May 15 of that year unless the person obtains a timely extension of time. Ind. Code § 6-1.1-3-7; 50 IAC 4.2-2-2.
34. Indiana Code § 6-1.1-16-1(a)(2) states, "a county assessor, or county property tax assessment board of appeals must make a change in the assessed value, including the final determination by the board of an assessment changed by an assessing official, and give the notice of change on or before the latter of (A) October 30 of the year for which the assessment is made; or (B) five (5) months from the date the personal property return is filed if the return is filed after the filing date for the personal property return."
35. Indiana Code § 6-1.1-16-1(b) states, "if an assessing official or a county property tax assessment board of appeals fails to change an assessment and give notice of the change within the time prescribed by this section, the assessed value claimed by the taxpayer on the personal property return is final."<sup>4</sup>
36. Much of the testimony and argument in this case was focused on whether the taxpayer waived its right to have a hearing and determination by October 30, 2014. This point, however, is not the determinative question. Rather, we find the outcome of this case depends entirely on the statutory powers granted to the PTABOA regarding changes to a taxpayer's self-reported personal property return.

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<sup>4</sup> The deadlines in Indiana Code § 6-1.1-16-1(a) do not apply if a taxpayer: (1) fails to file a return that substantially complies with Ind. Code § 6-1.1 and the DLGF's regulations, or (2) files a fraudulent return with the intent of evading the payment of property taxes. Ind. Code. § 6-1.1-16-1(d). The Assessor, however, makes no claim that the Petitioner acted fraudulently or that the Petitioner's return was not substantially compliant.

37. The PTABOA is a creation of the legislature, and thus has only those powers conveyed it by statute. *See Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904 at 908 (Ind. Tax Ct. 2002) (holding that the State Board of Tax Commissioners, as a creation of the legislature, had only those powers conferred to it by statute). The legislature specifically prescribes the outcome if the PTABOA does not change the assessment by October 30 of the assessment year in question, which in these cases is 2014. Absent any timely appeal by the Assessor, the taxpayer's self-reported assessment becomes final. Thus, any action by the PTABOA outside of its statutory authority, including the untimely changing of the taxpayer's self-reported assessments, is void. *See Whetzel at 908; See also Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999) (finding that a creature of the legislature has only those powers granted by statute); *Popovich v. Ind. Dep't of State Revenue*, 2016 Ind. Tax LEXIS 11 (Ind. Tax Ct. Apr. 14, 2016) (finding that an untimely proposed assessment by the Indiana Department of Revenue was void).
38. Respondent contends the doctrines of estoppel and invited error apply because she was misled by Petitioner's assurances and she relied on them to her detriment. These arguments fail for similar reasons. No action or statement by Petitioner could grant the PTABOA authority beyond that conveyed by the legislature. In addition, we note that Petitioner's self-reported return became final automatically by operation of law. *See Allen Cnty. Assessor v. Verizon Data Servs., Inc.*, 43 N.E.3d 705 at 708 (Ind. Tax Ct. 2015). Thus, there was no forbearance or acquiescence attributable to Petitioner.
39. The Assessor was not without remedy in this case. She could have filed an appeal within 45 days of the October 30 deadline pursuant to Ind. Code § 6-1.1-16-2. Although she may have decided not to do so based on representations from Petitioner, that reliance does not grant the PTABOA additional authority where the legislature has so clearly dictated the outcome.

**SUMMARY OF FINAL DETERMINATION**

40. Indiana Code § 6-1.1-16-1(a)(2) required the PTABOA to issue a determination changing the self-reported assessments, including any determination on Petitioner’s appeals from the Form 113 notice issued by the Assessor, by October 30, 2014. Because the PTABOA failed to issue a final determination changing the assessment within Ind. Code § 6-1.1-16-1(a)(2)’s deadline and the Assessor failed to appeal under Ind. Code § 6-1.1-16-2, Petitioner’s self-reported valuation is final.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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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

**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>>.