

REPRESENTATIVE FOR PETITIONER:
Bradley Hasler, Bingham Greenbaum Doll LLP
REPRESENTATIVE FOR RESPONDENT:
Susan Engelberth, Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Dalton Corporation)	Petition Nos.: 43-032-17-1-7-00590-18
)	
Petitioner,)	
)	
v.)	Parcel No.: 43-004-204005-10
)	
Kosciusko County Assessor,)	County: Kosciusko
)	
Respondent.)	Assessment Years: 2017

February 26, 2019

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

I. INTRODUCTION

1. Indiana Code § 6-1.1-16-1(a)(2) sets a deadline for a county property tax assessment board of appeals to enter a final determination of a personal property assessment changed by an assessor. Otherwise, the taxpayer’s self-reported assessment becomes final. The Kosciusko County Assessor changed Dalton Corporation’s self-reported assessment by disallowing Dalton’s claimed adjustment for abnormal obsolescence. Because the Kosciusko County Property Tax Assessment Board of Appeals (“PTABOA”) did not timely enter its final determination, Dalton’s self-reported assessment, including its adjustment for abnormal obsolescence, is final.

II. PROCEDURAL HISTORY

2. We begin with a brief procedural history outlining how the appeal came before us and what happened at our hearing. In our findings of fact, we set out additional procedural facts that relate to our disposition of the appeal.
3. On April 18, 2018, the PTABOA issued its Form 115 determination upholding the assessment determined by the Assessor. Dalton responded by timely filing a Form 131 petition with us.
4. On November 28, 2018, our designated administrative law judge, Jeremy Owens (“ALJ”), held a hearing on Dalton’s petition. Neither he nor the Board inspected the property. The following people were sworn in and testified: Kosciusko County Assessor Susan Engelberth and her deputies, Jennifer Day and Kristy Meyer.¹
5. Dalton submitted the following exhibits:
 - Exhibit P1: 2017 Form 104 – Business Tangible Personal Property Return
 - Exhibit P2: 2017 Form 103 - Long – Business Tangible Personal Property Return with attachments and schedules (Confidential)
 - Exhibit P3: Form 113/PP Notice of Assessment/Change and attachments (Confidential)
 - Exhibit P4: Form 130 petition
 - Exhibit P5: Form 114 notice of PTABOA hearing
 - Exhibit P6: Form 115 notice of PTABOA determination
6. The Assessor submitted the following exhibits²:
 - Exhibit A: Form 130 petition
 - Exhibit B: Form 131 petition
 - Exhibit C: Form 113/PP notice and attachments
 - Exhibit D: 2017 Form 104 return, 2017 Form 103-Long return with attachments and schedules, March 22, 2017 letter to Wayne Township Assessor’s office with attachments (Confidential)
 - Exhibit E: Form 106 schedules for 2005-2017 (Confidential)

¹ Todd Churchward and Leslie Richards were sworn in but did not testify.

² The Assessor did not offer any exhibits identified as Q, R, or T.

- Exhibit F: 50 IAC 4.2-4-7 through 50 IAC 4.2-4-8
- Exhibit G: 50 IAC 4.2-9-1 through 50 IAC 4.2-9-7
- Exhibit H: August 21, 2009 memo from Barry Wood
- Exhibit I: August 19, 2011 memo from Barry Wood
- Exhibit J: Understanding the Inutility Penalty, Explanation offered by Steve Mckinney
- Exhibit K: *Applied Extrusion Technologies, Inc. v. Vigo Cnty. Ass'r*, pet. no. 84-012-06-1-7-00001 (IBTR Aug. 17, 2009)
- Exhibit L: *Koppers Inc. v. Calumet Twp. Ass'r*, pet. no. 45-001-05-1-7-00001 (IBTR June 16, 2010)
- Exhibit M: *Evansville Courier Co. Inc. v. Vanderburgh Cnty. Ass'r*, pet. nos. 82-029-11-1-7-02728 etc. (IBTR Sep't 19, 2016)
- Exhibit N: *Harbor Food Plaza Inc. v. State Bd. of Tax Comm'rs*, 638 N.E.2d 898 (Ind. Tax Ct. 1994)
- Exhibit O: Emails between Ginger Dwyer and Jennifer Day (Confidential)
- Exhibit P: Summer 2012 Assessor's Conference Auditing Personal Property Returns
- Exhibit S: 50 IAC 4.2-4-2

7. The record also includes the following: (1) all petitions, motions, briefs, and other documents filed in these appeals; (2) all orders and notices issued by the Board or our ALJ; and (3) a digital recording of the hearing.³

III. OBJECTIONS

8. The ALJ took two objections under advisement. The Assessor objected to Dalton citing to Tax Court and Board decisions in its closing argument because Dalton did not offer copies of those decisions as exhibits. We overrule the objection. Citations to published court decisions or decisions posted on our website are not evidentiary. Parties are free to cite to those decisions to support their legal arguments whether or not they provide courtesy copies.
9. For its part, Dalton objected to all but the last three pages of Exhibit E—Dalton's Form 106 schedules claiming an abnormal obsolescence adjustment for 2005 through 2017.

³ There were some technical issues in recording the hearing. The ALJ noted to the parties each time there was a problem. It does not appear that anything was lost, and the recording appears to be complete.

Dalton argued that the schedules for years before 2017 were irrelevant. We overrule the objection. The Assessor offered the exhibit to show that, for 13 consecutive years, Dalton made virtually identical claims as to why its property suffered from abnormal obsolescence. That fact is relevant to the Assessor's position that any loss to the value of Dalton's property was foreseeable and recurring and therefore not cognizable as abnormal obsolescence. Although a separate procedural issue—the PTABOA's failure to timely issue a final determination on the Assessor's change to Dalton's self-reported assessment—ultimately moots that substantive question, the exhibit is still admissible.

IV. FINDINGS OF FACT

10. Dalton filed its Form 104 business tangible personal property return, together with various other forms and schedules, including a Form 103-Long return and a Form 106 schedule laying out its claim for an abnormal obsolescence adjustment. Dalton filed those documents on or before May 15, 2017, the filing date specified by Ind. Code § 6-1.1-3-1.5. *Exs. P1-P2, D.*
11. Dalton's finance director and the certified tax representative who prepared Dalton's returns both certified under the penalty of perjury (1) that the return and accompanying schedules and attachments were true, correct, and complete, and (2) that those documents were prepared in accordance with Ind. Code § 6-1.1 and corresponding regulations. *Exs. P1, D.*
12. Dalton reported the acquisition costs for its property. After claiming three exemptions, and making various adjustments, none of which are at issue here, Dalton reported the true tax value as [REDACTED] Dalton then claimed an adjustment of [REDACTED] for abnormal obsolescence, which reduced the total true tax value to \$6,181,201. Dalton further reduced that number by \$260,060 to account for an economic revitalization area ("ERA") deduction, leaving a total assessment of \$5,921,140. *Exs. P1-P2, D.*

13. On October 27, 2017, the Assessor issued a Form 113 notice notifying Dalton that she had changed the assessed value of its personal property before the ERA deduction to \$14,709,850. She arrived at that number simply by removing Dalton's abnormal obsolescence adjustment (and rounding). *Engelberth testimony; Exs. P3, C.*
14. Dalton responded by timely filing a Form 130 petition appealing the Assessor's change to its assessment. The PTABOA set a hearing for April 16, 2018. On April 18, 2018, it issued a Form 115 determination upholding the Assessor's change to Dalton's self-reported assessment. *Exs. P4-P6; Engelberth testimony.*

V. CONCLUSIONS OF LAW

15. Dalton argues that in order to change Dalton's self-reported assessment, the PTABOA had to issue its final determination by October 30, 2017, and that the PTABOA's failure to do so made Dalton's self-reported assessment final. We agree.
16. Indiana Code § 6-1.1-16 dictates that result. The first section of that chapter provides, in relevant part:

Sec 1. (a) Except as provided in section 2 [IC 6-1.1-16-2] of this chapter, an assessing official or county property tax assessment board of appeals may not change the assessed value claimed by a taxpayer on a personal property return unless the assessing official or county property tax assessment board of appeals takes the action and gives the notice required by IC 6-1.1-3-20 within the following periods:

....

(2) 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 the change on or before the later 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 tax return.*

....

(b) *Except as provided in section 2 of this chapter, 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.*

....

(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 the payment of property taxes. . . .

Ind. Code § 6-1.1-16-1 (emphasis added). Section 2 allows an assessor to seek review with the Board if a property tax assessment board of appeals fails to act within Section 1(a)(2)'s deadlines. I.C. § 6-1.1-16-2(a). The 45-day deadline for seeking that review runs from the last day the PTABOA was permitted to act. *Id.*; I.C. § 6-1.1-15-3(d).

17. The Indiana Tax Court has held that Ind. Code § 6-1.1-16-1(a)(2)'s plain language applies to a county property tax assessment board of appeals when, like here, it acts as a “quasi-adjudicator” in the appeal process. *See Washington Twp. Ass'r v. Verizon Data Services, Inc.*, 43 N.E.3d 697, 701-03 (Ind. Tax Ct. 2015). Because Dalton filed its return by the filing date specified in Ind. Code § 6-1.1-3-1.5, the PTABOA's deadline to issue a final determination on the Assessor's change to Dalton's self-reported assessment was October 30, 2017. The PTABOA did not issue its determination until more than seven months later. Despite the PTABOA missing that deadline, the Assessor could have sought to preserve her assessment by seeking review under section 2 (Ind. Code § 6-1.1-16-2). But she failed to do so.

18. Nor did the Assessor claim that Dalton's return was fraudulent or that it failed to substantially comply with Indiana's property tax statutes and regulations. Instead, she argued only (1) that Dalton's property did not suffer from abnormal obsolescence, and (2) that even if it did, Dalton did not properly quantify the obsolescence. Even if she is

correct, those are interpretive differences; they do not amount to a failure to substantially comply with applicable statutes and regulations.

19. As the Indiana Tax Court has explained, substantial compliance in the context of Ind. Code § 6-1.1-16-1(d) focuses on a taxpayer's disclosure and reporting, not on whether the taxpayer is ultimately entitled to the adjustment, deduction, or exemption it seeks. *Lake Co. Ass'r v. Amoco Sulfur Recovery Corp.*, 930 N.E.2d 1248 (Ind. Tax Ct. 2010). In *Amoco Sulfur*, the taxpayer ("BP")⁴ claimed an exemption for the cost of equipment it believed was part of an air-pollution-control system ("APCS"). BP reported the actual cost of all its depreciable personal property and then deducted the cost of the APCS equipment to arrive at a total assessed value. After hiring an expert to help determine the propriety of BP's claimed exemption, the Lake County Assessor issued notice disallowing the exemption and raising the assessment. *Id.* at 1249-50. The notice was issued well past Ind. Code § 6-1.1-16-1(a)(2)'s deadline. We granted summary judgment to BP and ordered the assessments reduced to the amounts reported on its returns.

20. The assessor sought judicial review, claiming BP had failed to substantially comply with the APCS exemption statute and the DLGF's regulations. While the case was pending before the Tax Court, the DLGF intervened to express its interpretation of "substantial compliance." *Amoco Sulfur*, 930 N.E.2d at 1251. Citing *Hamill v. City of Carmel*, 757 N.E.2d 162, 165 (Ind. Ct. App. 2001), the DLGF explained, "substantial compliance with [statutory and] regulatory requirements means compliance to the extent necessary to assure the reasonable objectives of the [statute and] regulation are met." *Id.* at 1252. Thus, the Tax Court examined whether BP's complete return package, which 50 IAC 4.2-2-10(d) defined as "the return form . . . and all necessary supplemental forms and supporting schedules which must be filed with the return," substantially undermined the objectives of the statutes and regulations related to claiming an APCS exemption. *Id.* at 1251-52 (quoting 50 IAC 4.2-2-10(d) (2004)).

⁴ There were multiple taxpayers, which the Court referred to collectively as "BP."

21. The Court found Ind. Code § 6-1.1-37-7 and 50 IAC 4.2-2-10(d), both of which dealt with imposing penalties, helpful to its analysis because “they both emphasize the importance of the full disclosure and accurate reporting requirements and reveal what kind of taxpayer actions or reporting errors run afoul of those requirements.” *Id.* at 1256 n.14. The regulation stated, “when the *reporting* requirements [are] 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.” *Id.* at 1255 (*quoting* 50 IAC 4.2-2-10(d)(1)) (emphasis in original); 50 IAC 4.2-9-5.⁵ As the Court explained, “Indiana’s personal property tax system is not designed to penalize those taxpayers who claim an exemption in error but have nonetheless complied with its recordation requirements.” *Id.* at 1255-56. Thus, even assuming BP’s exemption claim was “in error,” the Court held that the assessor did not show BP’s returns failed to comply either with the general reporting statutes and regulations or with the statutes addressing the APCS exemption. *Id.* at 1256.
22. Following the Tax Court’s decision in *Amoco Sulfur*, the DLGF promulgated a new rule, defining “Nonsubstantial compliance” as a tax return that:

- (1) omits five percent (5%) or more of the cost per books of the tangible personal property at the location in the taxing district for which a return is filed;
- (2) omits leased property and other nonowned personal property assessable under 50 IAC 4.2-2-4(b) 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.

⁵ The DLGF amended 50 IAC 4.2-2-10 on February 26, 2010. Subsection (d) no longer includes the language the Tax Court cited. But 50 IAC 4.2-9-5, which deals with reporting abnormal obsolescence, contains very similar language: “[w]hen the reporting requirements for an adjustment for abnormal obsolescence have been met (a full disclosure), but for some reason the adjustment is not allowed or the value is changed, the amount disallowed is considered to be an interpretive difference and is not subject to the undervalued personal property tax penalty as set forth in 50 IAC 4.2-2-10(d).” 50 IAC 4.2-9-5.

50 IAC 4.2-1-1.1(j).⁶ This definition reinforces what the Tax Court held in *Amoco Sulfur*—substantial compliance focuses on disclosure and reporting rather than on whether a taxpayer is ultimately entitled to an exemption, deduction, or adjustment.

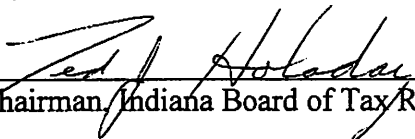
23. Again, the Assessor does not allege Dalton failed to comply with any reporting requirements. Like BP, Dalton reported all of its cost. It then deducted the amount of its claimed obsolescence adjustment from its final assessment, just as BP excluded the value of its purportedly exempt property from its final assessment. The disagreements over whether Dalton's property suffered from abnormal obsolescence and how Dalton quantified its adjustment are interpretive differences. *See* 50 IAC 4.2-9-5. Those interpretive differences did not substantially undermine the objectives of the property tax statutes or the regulations related to claiming the adjustment. To the contrary, because Dalton disclosed the cost of its personal property, the Assessor was easily able to change the assessment when she disagreed with Dalton's obsolescence claim.
24. Thus, Dalton's self-reported assessment became final once the Assessor's time for seeking review with us under Ind. Code § 6-1.1-16-2(a) expired. *See* I.C. § 6-1.1-16-1(b).

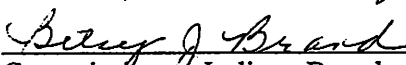
VI. CONCLUSION

25. The PTABOA did not enter its final determination on the Assessor's change to Dalton's self-reported assessment by the deadline specified under Ind. Code § 6-1.1-16-1(a)(2). And the Assessor does not allege that Dalton's return was fraudulent or failed to substantially comply with relevant statutes and regulations. Dalton's self-reported assessment is therefore final.

⁶ The DLGF's personal property regulations previously contained an almost identical definition. *See* 50 IAC 4.2-3-13(b) (1996) (repealed by DLGF; filed March 1, 2000, 7:53 a.m.; 23 IR 1616).

The Board issues this Final Determination of the above-captioned matter on the date first written above.


Chairman, Indiana Board of Tax Review


Commissioner, Indiana Board of Tax Review


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>>.