

**STATE OF INDIANA
Board of Tax Review**

| | |
|--------------------------|--------------------------------------|
| DEPENDABLE BRAKE SYSTEMS |) On Appeal from the Allen County |
| |) Auditor |
| Petitioner, |) |
| |) Review of the Claim for Enterprise |
| v. |) Zone Personal Property Tax Credit |
| |) |
| ALLEN COUNTY AUDITOR |) Petition No. 02-091-97-4-0-20000 |
| |) |
| Respondent. |) Assessment Year: 1997 |

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 Dependable Brake Systems (Dependable Brake) is entitled to an Enterprise Zone Business Personal Property Tax Credit (EZ Credit) for the 1997 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. Pursuant to Ind. Code § 6-1.1-20.8-3 (b), Mr. Arnold M. Blatt of Blatt Kleinbaum Summerfield & Kelner, Ltd., on behalf of Dependable Brake, filed a written request for review of the Claim for Enterprise Zone Business Personal Property Tax Credit (Form EZ-1) by the State. The request was postmarked August 26, 1997. The County Auditor denied the Form EZ-1 on July 29, 1997.
3. The request for review and attachments are labeled Board Exhibit A.
4. The subject property is located at 1415 South Lafayette, Fort Wayne, Wayne Township, Allen 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 Dependable Brake giving them the opportunity to address the seven (7) factors. The letter sent from the State is labeled as Board Exhibit B.

7. By letter December 27, 2001, Mr. Michael Condon of Blatt Kleinbaum Summerfield & Kelner, Ltd., submitted a request to the State for additional time to address the seven (7) factors. Mr. Condon's letter has been entered into the record as Board Exhibit C.
8. By letter January 4, 2002, the State granted Mr. Condon an extension to address the seven (7) factors. January 31, 2002 was established as the deadline to respond. The State's letter has been entered into the record as Board Exhibit D.
9. Mr. Condon submitted written response with attachments on January 21, 2002. The attachments include a copy of Mr. Condon's request for additional time to address the seven (7) factors (December 27, 2001), a copy of the letter from the State approving Mr. Condon's extension (January 4, 2002), a copy of the letter from the State requesting Dependable Brake to address the seven (7) factors (November 30, 2001), a copy of Mr. Blatt's letter to the State requesting a review of the EZ-1 denial, a copy of the 1996 Enterprise Zone Business Registration Form (EZB-R), a copy of the Form EZ-1, a copy of the Allen County Auditor's denial of the 1997 Form EZ-1, a copy of EZB-E approved extension for filing EZB-R from Keith Cheney, State Enterprise Zone Program (June 24, 1997), a copy of the approved 1997 Form EZB-R, and a copy of the 1997 Forms 104, 103 and 103N (Business Tangible Personal Property Assessment Returns). The written response with attachments has been entered into the record as Board Exhibit E.

Conclusion 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 No. 6, 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.)*

The Petitioner did not address this factor. There is no indication that the failure to timely file resulted from an act of

God, or from death or serious illness of the person responsible for the completion of the form.

- #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 Forms 103, 104 and EZ-1 were due May 15. If the Petitioner had requested an extension to file, those Forms could have been granted an extension until June 14. The original due date of the Form EZB-R was May 31. An extension to file the Form EZB-R was granted to July 15. The Petitioner made an error by assuming that extension granted for the EZB-R also extended to the Forms 103, 104 and EZ-1. (Note: In the Petitioner's letter, the Petitioner uses 1996 dates, however the year on appeal is 1997).

The Petitioner believes the application late filing should not have prevented local officials from determining the assessed values for

budget purposes, as the Forms 103, 104 and EZ-1 were filed less than 30 days late.

#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 did not address this factor.

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

The Petitioner did not address this factor. However, in the letter dated January 30, 2002, the Petitioner admits they made an error. The Petitioner thought the extension for the EZB-R extended the due dates for the Forms 103, 104, and EZ-1.

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

The Petitioner would ask the State to consider:

- a) **The company is an out of state firm doing business in Indiana, therefore, we are not familiar with your rules governing the timely filing.**
- b) **The intention of the Enterprise Zone is to give tax credits as incentives to do business in this area. We have done business in your area for many years and the credit does help the company remain competitive.**

10. The Petitioner addressed only 2 of the 7 factors. In response to Factor #7, the Petitioner requests consideration for the company because it is an out of state firm. However, the Petitioner has a responsibility to know the rules and regulations of a state it does business in. The State points to the Form EZ-1

which clearly states that with an extension the Form EZ-1 must be filed between March 1 and June 14. The Form EZ-1 also provides references to the Ind. Code cites governing the Enterprise Zone Credit.

11. After careful consideration of the facts and circumstances of this situation, the State hereby denies Dependable Brake's EZ credit for the 1997 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