REPRESENTATIVE FOR PETITIONER:
Marilyn Meighen, Meighen & Associates, PC.

REPRESENTATIVE FOR RESPONDENT:
John Shelton, Tax Management Associates.

INDIANA BOARD OF TAX REVIEW

Evansville Chrysler, Kia, Mazda, Volvo,	)	Petition Nos.:	82-027-05-1-7-14967
	)		
Petitioner,	)	Parcel No.:	09-09-21580 PP
	)		
v.	)	County:	Vanderburgh
	)		
Vanderburgh County Assessor,	)	Township:	Knight
	)		
Respondent.	)	Assessment Year:	2005

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

May 4, 2011

FINAL DETERMINATION

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

ISSUES

1. The issues presented for consideration by the Board is whether the county timely adjusted the 2005 assessed value of the Petitioner's personal property and, if so, whether the

assessed value of the property is overstated because the county adjusted the Petitioner's self-reported value upward by $797,920 as the result of an audit.

PROCEDURAL HISTORY

2. On May 12, 2005, the Petitioner, Evansville Chrysler, Kia, Mazda, Volvo, filed a 2005 business personal property return (Form 103 Long) with the Knight Township Assessor reporting the assessed value of its personal property as $2,331,860.

3. On December 3, 2007, the Knight Township Assessor issued a Form 113 increasing the value of the Petitioner's personal property to $3,129,780.

4. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner's representative, Frank S. Kelley of Nexus Group, filed a letter with the Vanderburgh County Assessor, Jonathan Weaver, seeking review of the Petitioner's 2005 personal property assessment on January 2, 2008. The Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA) held a hearing on the matter on October 19, 2009, and issued notice of its decision in October of 2009.[1] Pursuant to Indiana Code § 6-1.1-15-3, Mr. Kelley filed a Form 131, Petition for Review of Assessment, on November 12, 2009, petitioning the Board to conduct an administrative review of the above petition.

HEARING FACTS AND OTHER MATTERS OF RECORD

5. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Rick Barter, held a hearing on the Petitioner's appeal on November 23, 2010, in Evansville, Indiana.

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[1] The date stamped on the Petitioner's copy of the Form 115 is not legible. As was noted by the Petitioner's counselor during the hearing, however, the signatures on the form are clearly dated October 19, 2009, as is the date of the PTABOA hearing at the top of that page. Therefore, the Board accepts that the Form 115 was mailed on or near that date.

6. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Frank S. Kelly, Nexus Group,
Marilyn Bellessa, CEO, Evansville Chrysler, Kia, Mazda, Volvo,

For the Respondent:

John Shelton, Tax Management Associates,
Tiffany Collins, PTABOA clerk, Vanderburgh County Assessor's Office.

7. The Petitioner presented the following evidence:[2]

Petitioner Exhibit A-1 – Form 103-Long Business Tangible Personal Property Assessment Return,
Petitioner Exhibit A-2 – Form 103-N,
Petitioner Exhibit A-3 – Form 103-W,
Petitioner Exhibit A-4 – Form 106 Schedule of Adjustments,
Petitioner Exhibit B-1 – Form 113 and December 3, 2007, letter from the township assessor,
Petitioner Exhibit C – Copy of Ind. Codes § 6-1.1-2-1, § 6-1.1-1-11, § 6-1.1-1-15, § 6-1.1-1-19, and HEA 1001 amending Ind. Code §6-1.1-16-1,
Petitioner Exhibit D – Black's Law Dictionary, definition of "intangible" and "intangible asset,"
Petitioner Exhibit E – Inventory computations,
Petitioner Exhibit F – Warranty value computations,
Petitioner Exhibit G – Auto brand value computations,
Petitioner Exhibit H – Tax Management Associates audit,
Petitioner Exhibit I – Copy of *Daimler Chrysler Corp. v. Levin,* 881 N.E.2d 840 (Ohio 2008),
Petitioner Exhibit J – Copy of *Lake Co. Assessor v. AMOCO Sulfer Recovery Corp,* 930 N.E.2d 1248 (Ind. Tax Ct. 2010),
Petitioner Exhibit K – Copy of a letter dated May 3, 2006, from Al Folz to Frank Kelly,
Petitioner Exhibit L – Copy of a letter dated January 5, 2007, from Al Folz to Frank Kelly,
Petitioner Exhibit M – Brand and warranty data computations,

[2] The Petitioner's counsel, Ms. Meighen, requested that exhibits A-1 through A-4 and Exhibits B, E, F, G, and H be considered confidential because they contain personal property income and expense data.

8. The Respondent presented the following evidence:

Respondent Exhibit 1 –	Copy of the Petitioner's Form 103-Long,
Respondent Exhibit 2 –	Copy of the Petitioner's Form 103-N,
Respondent Exhibit 3 –	Copy of the Petitioner's Form 103-W,
Respondent Exhibit 4 –	Copy of the Petitioner's Form 106,
Respondent Exhibit 5-A –	Copy of a letter dated December 3, 2007, from Al Folz to Frank Kelly,
Respondent Exhibit 5-B –	Copy of the Form 113 dated December 3, 2007,
Respondent Exhibit 5-C –	Copy of Tax Management Associates' audit report dated November 12, 2007,
Respondent Exhibit 5-D –	Copy of a letter from Al Folz to Frank Kelly, dated January 5, 2007,
Respondent Exhibit 5-E –	Copy of a letter from Al Folz to Evansville Chrysler, Kia, Mazda, Volvo, dated May 3, 2006,
Respondent Exhibit 6 –	Copy of 50 IAC 4.2-1-1,

9. In addition to the compact disk recording of the hearing labeled Evansville Chrysler Kia, the following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

   Board Exhibit A – Form 131 petitions with attachments,
   Board Exhibit B – Notice of Hearing,
   Board Exhibit C – Hearing sign-in sheet,

10. The property under appeal is the personal property and inventory of Evansville Chrysler, Kia, Mazda, Volvo located at 4000 E. Division Street, Knight Township, Vanderburgh County, Evansville, Indiana.

11. The ALJ did not conduct an on-site inspection of the property.

12. For 2005, the PTABOA determined the assessed value of the Petitioner's personal property to be $3,129,780.

13. For 2005 the Petitioner requested an assessed value of $2,331,860.

JURISDICTIONAL FRAMEWORK

14. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

15. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor,* 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs,* 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

16. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor,* 802 N.E.2d 1018, 1022 (Ind. Tax Ct., 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board…through every element of the analysis").

17. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley,* 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's case. *Id; Meridian Towers,* 805 N.E.2d at 479.

PETITIONER'S CONTENTIONS

18. The Petitioner contends that the assessor failed to timely adjust its 2005 personal property returns under Indiana Code § 6-1.1-16-1. *Meighen argument; Petitioner Exhibit C.* The Petitioner's counsel called the county's contractor, John Shelton, as a fact witness.

Meighen argument. Mr. Shelton testified that the Petitioner's 2004, 2005 and 2006 personal property tax returns were audited because the county routinely audited all returns reporting over $50,000 in personal property. *Shelton testimony.* According to Mr. Shelton, the assessor first contacted the Petitioner in a letter dated May 3, 2006. *Id.* Tax Management Associates then requested the Petitioner's records in a letter dated January 5, 2007. *Id.; Respondent Exhibit 5-D.* Mr. Shelton testified that the assessor issued a Form 113 increasing the value of the Petitioner's personal property. *Shelton testimony; Petitioner Exhibit B.* Although the Form 113 was dated December 3, 2007, the Petitioner's witness, Mr. Kelly, testified that it was not mailed until December 26, 2007. *Kelly testimony.*

19. The Petitioner's counsel argues that the county's attempt to increase the Petitioner's property's assessed value was untimely. *Meighen argument.* According to Ms. Meighen, if the township sought to make a change to the Petitioner's 2005 personal property return, it had until September 15, 2005, or four months from the date the tax returns were filed to make the change. *Id.* Similarly, if the county or PTABOA chose to make a change to the Petitioner's 2005 personal property return, the county or PTABOA must have made that change by the latter of October 15, 2005, or five months from the date the tax returns were filed. *Id.* Because the assessing officials failed to meet the statutory deadlines, Ms. Meighen argues, the taxpayer's self-assessed values stand as reported. *Id.* Thus, Ms. Meighen concludes, the Petitioner's 2005 personal property should be assessed for $2,331,860. *Id.*

20. Ms. Meighen admitted that the deadlines in Indiana Code § 6-1.1-16-1 for an assessor to change a taxpayer's personal property return do not apply if a taxpayer fails to "substantially comply" with the tax laws or if the return was fraudulently filed in an attempt to evade taxes. *Meighen argument.* Ms. Meighen argues, however, that neither exception applies here. *Id.* While the Respondent appears to link "substantial compliance" to an "under-reporting" threshold of five percent, Ms. Meighen argues that no standard has been legislated and the Tax Court declined to adopt such a measure. *Id.; citing Lake Cty. Ass'r v. AMOCO Sulfer Recovery Corp.,* 930 N.E.2d 1248 (Ind. Tax Ct.

2010). Rather than linking "substantial compliance" with any certain value, Ms. Meighen contends, a taxpayer's "substantial compliance" is judged by whether the taxpayer submitted sufficient information for the assessor to preliminarily determine if it agrees with the taxpayer's self-reported value. *Meighen argument.*

21. The Petitioner further contends that its self-reported personal property assessment was correct. *Meighen argument.* Mr. Kelly testified that 50 IAC 12-2-1-1(h) refers only to "tangible" property. *Kelly testimony.* Thus, Mr. Kelly argues, the value of intangible property is not assessable and is not reported on a taxpayer's personal property tax forms. *Id.* As an example, Ms. Meighen cites 50 IAC 4.2-4-3 addressing computer equipment, wherein the rules state that "if the value recorded on the books and records reflects charges for customer support services such as educational services, maintenance, or application software that relate to future periods and not to the value of the tangible personal property, the charges may be deducted as nonassessable intangible personal property (to the extent that a separate charge or value can be identified)." *Meighen argument.*

22. Mr. Kelly testified that intangible property is property that lacks physical form. *Kelly testimony.* According to Ms. Meighen, each car in the Petitioner's new car inventory is a "mixed transaction" because the vehicle includes both tangible property and intangible property including the warranty and the value of the vehicle's brand. *Meighen argument.* Thus, Ms. Meighen contends, the adjustments that the Petitioner made on the its 2005 personal property tax return to remove the value of the warranties and the brand value from new cars in inventory were proper. *Id.* In support of her argument that warranties are intangible property, Ms. Meighen submitted the Ohio Supreme Court decision in *DaimlerChrylser Corp. v. Levin,* 881 N.E.2d 840 (Oh. 2008). *Id.; Petitioner Exhibit I.*

23. To determine the value of each car's warranty, Mr. Kelly testified that he priced insurance from publicly available sources. *Kelly testimony.* Further, Mr. Kelly based his "brand value" adjustments on calculations using a formula he developed in conjunction with an Indiana University professor. *Id.* According to Mr. Kelly, the Petitioner's personal property returns informed the assessor that adjustments to the property's value

were made to reflect the tangible values of the vehicles. *Id.* In response to cross examination, however, Mr. Kelly admitted that he had not sought approval from the Department of Local Government Finance to make the adjustments despite the fact that no such adjustment had ever been made to a car dealer's inventory prior to the Petitioner's 2005 personal property tax return. *Id.*

24. Finally, Ms. Meighen argues that no penalty should be assessed to the Petitioner if the Board determines that the vehicle warranty and the value of the vehicle's brand are not intangible property and should be assessed. *Meighen argument.* According to Ms. Meighen, the disagreement between the audit company and the Petitioner's representative did not represent non-compliance but merely an interpretive difference that might have resulted in some errors on the return. *Id.*

RESPONDENT'S CONTENTION

25. The Respondent's witness contends that the subject property's 2005 assessment, as amended by the county following an audit, was correct. *Shelton argument.* According to Mr. Shelton, "every vehicle, toaster, anything you buy from a retailer has some sort of guarantee or warranty attached to it" and he had never seen an adjustment for brand value or a warranty for any product. *Id.* Thus, he argues, the Petitioner's adjustments for the value of the vehicles' brand names and their warranty value, as well as the Petitioner's approximate 39 percent adjustment based on vehicles sold to out-of-state residents, were inappropriate under Indiana law.[3] *Id.* Because a taxpayer is required to report the total cost of its property, Mr. Shelton concludes that the Petitioner failed to substantially comply with the personal property tax laws. *Id.*

26. Moreover, because the Petitioner omitted more than 5% of their cost per books, Mr. Shelton argues, the assessor's changes to the taxpayer's return were timely. *Shelton argument.* According to Mr. Shelton, the Indiana Code provides a three year window

[3] Mr. Shelton testified that based on "a number of court cases" the Petitioner was not entitled to the interstate commerce exemption, but he did not remove the 39% exemption because the auditor did not deny the exemption and it was "beyond the three year limit." *Shelton testimony.*

from the date of filing to add omitted property to the taxpayer's return. *Id.* The Petitioner's return was out of compliance with the statutes and the rules imposed by the state and therefore, Mr. Shelton argues, the county had until May 15, 2008, to reassess the Petitioner's personal property. *Id.*

ANALYSIS

27. At the time relevant to this assessment, personal property included all "tangible property (other than real property) which is being: (A) held in the ordinary course of a trade or business; (B) held, used, or consumed in connection with the production of income; or (C) held as an investment." *See* Ind. Code § 6-1.1-1-11 (2005). 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 within Indiana on March 1 of any year is required to file a personal property tax return on or before May 15 of that year unless an extension of time to file is obtained." *See* 50 IAC 4.2-2-2.

28. The Petitioner filed its 2005 personal property return in a timely manner.[4] On May 3, 2006, the Knight Township Assessor sent a letter to Mr. Kelly notifying him that he would be contacted by Tax Management Associates to review the Petitioner's personal property returns. After the audit, the assessor issued a Form 113, increasing the Petitioner's personal property tax assessment in December of 2007. The Petitioner's counsel argues that the assessor failed to change the Petitioner's personal property tax assessment timely and therefore the amount reported on the Petitioner's 2005 tax return is final.

29. Indiana Code § 6-1.1-16-1 reads in pertinent part:

    (1) A township or county assessing official must make a change in the assessed value and give notice of the change on or before the latter of:

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[4] Although the "date received" stamped by the township assessor's office is May 16, 2005, the signatures on the Form 103-Long and the attachments, Form 103-N, Form 103-W and Form 106 are all dated May 12, 2005, and Ms. Meighen argued the returns were submitted to the township by mail on that date. The Respondent did not dispute this argument.

(A) September 15 of the year for which the assessment is made; or
(B) four (4) months from the date the personal property return is filed if the return is filed after May 15 of the year for which the assessment is made.

(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 a township or county assessing officials, or county property tax assessment board of appeals, and give notice of the 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 May 15 of the year for which the assessment is made.

Ind. Code § 6-1.1-16-1(a).[5] However, "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(d).

30. In *Lake County Assessor v. AMOCO Sulfur Recovery Corp.*, 930 N.E.2d 1248 (Ind. Tax Ct. 2010), *trans. denied,* the Tax Court addressed the exception to the statutory deadlines to change a taxpayer's personal property returns. 930 N.E. 2d 1248. In that case, the Tax Court found that substantial compliance depends on whether the taxpayer's "complete return package substantially undermined the objectives" of the personal property statutes and regulations. *Id.* at 1251-1252. The Court noted that "Indiana's personal property tax system is a self-assessment system" and, "[a]s a result, the system relies on taxpayers to fully and accurately report their taxable property." *Id.* at 1252. The regulations require that "a taxpayer 'make a full and complete disclosure of such information as may be required by the [DLGF], relating to the value, nature, and location of all [its] personal property' when completing personal property tax returns." *Id., citing* 50 IAC 4.2-2-5(a) (2004).

[5] The statute was substantively the same at the time the Petitioner filed its personal property return and at the time the assessor made the changes to the Petitioner's personal property assessment. There were only minor language changes made in 2008. *See* P.L.146-2008, Sec. 144.

31. In *AMOCO,* the taxpayer claimed an exemption for equipment it argued was "part of a stationary or unlicensed mobile air pollution control system of a private … refining… facility [and was] not primarily used in the production of property for sales." 930 N.E.2d at 1252. The assessor argued that the taxpayer used "unintelligible" acronyms and "cryptic codes" to describe its equipment and therefore "he was unable to discern the 'nature' (i.e., how the equipment was used and whether it did, in fact, qualify for the exemption) of the equipment." *Id.* at 1253. The Tax Court, however, found that "a taxpayer need not provide a description of its property that instantaneously demonstrates to the Assessor that the equipment qualifies for the exemption or how the property is used within the air pollution control system[;] rather, a taxpayer simply needs to provide property descriptions that identify the property with particularity." *Id.* Judge Fisher held that despite the fact that the taxpayer assigned various labels to its equipment, "its distinct cost and acquisition date data shows that it claimed an exemption on the same pieces of equipment during the 2004 through 2006 tax years" and the fact that its deponent could not explain what eleven of its descriptors referenced did not render the taxpayer's return "substantially non-compliant." *Id.* at 1253-1254. The Court declined to define "substantial compliance" based on the "amount in controversy" because "when the reporting requirements are met, but for some reason the exemption is not allowed, the amount disallowed is an interpretative difference and is not subject to the omitted or undervalued personal property tax penalty." *Id.* at 1255, *citing* 50 IAC 4.2-2-10(d)(1) (2004).

32. The regulations require that a taxpayer "fully and accurately record the required data on its personal property tax returns." 930 N.E.2d at 1255. Here, however, the taxpayer's representative failed to accurately record the full book value of its vehicles. Mr. Kelly claims that he reported the value of the "tangible" part of the automobiles, but the only notice the Petitioner's representative provided to the assessor that he was claiming an indisputably novel deduction on the Petitioner's behalf was a single line on a Form 106 that stated "Per 50 IAC 4.2 and other relevant statutes and regulations, inventory values (Line 4 – Stock in trade) have been adjusted to reflect tangible values as required." *Petitioner Exhibit A4.* Mr. Kelly did not state that he was making deductions to book

value to “remove the value of intangible property” from the Petitioner’s inventory. Nor did he provide any schedule that showed the book cost of each new car and his deductions for “brand value” and “warranty value.” In fact, Form 106 has a place to record the “total adjustment claimed by taxpayer.” This box is empty on the Petitioner’s form.

33. Had the taxpayer provided the inventory computations in Petitioner Exhibits E, F and G with its tax return, the assessor would have had sufficient information to identify the deduction that the taxpayer was attempting to claim. But those documents were not part of the personal property filing and, in fact, were only presented to the assessor during the audit. Had Mr. Kelly even noted on the Form 106 that he adjusted the book value of stock in trade to remove the value of the intangible aspects of the Petitioner’s property, the assessor would have been put on notice that the Petitioner was pursuing this novel claim. However, Mr. Kelly’s statement that he made an adjustment “to reflect tangible values” of the Petitioner’s inventory fails to provide sufficient information to alert the assessor that he was adjusting the book values of the Petitioner’s new cars to remove the purportedly “intangible” values of the vehicles’ brands and warranties. Moreover, no where on the Petitioner’s tax returns does there appear to be any identification of the amount of those “adjustments.” Therefore, even if the assessor had sufficient information to determine whether Mr. Kelly’s adjustments were proper, Mr. Kelly provided insufficient information for the assessor to change the Petitioner’s tax returns because the actual costs reported in the taxpayer’s books and records were never reported on the Petitioner’s personal property tax returns.

34. This is far different from the *AMOCO* situation where all the taxpayer’s equipment was identified and the appropriate costs were recorded. *See* 930 N.E.2d at 1256 (“There is no dispute that BP’s Returns listed each piece of property for which it claimed an exemption and included the property’s actual cost, acquisition date, and tax life”). The assessor there only argued that the descriptions of the various pieces of equipment were insufficient to identify each item and determine whether the exemption applied. That is not the case here. Here, Mr. Kelly reported reduced values for the Petitioner’s “stock in

trade" on its inventory schedule as if the reported values were the actual book values of the Petitioner's vehicles.

35. There was nothing on the face of the return to tell the assessor that an adjustment was made to remove the value of the brand and warranty from each new vehicle in the Petitioner's inventory. Nor were the values of such adjustments reported on the Petitioner's returns. Because the assessor would simply have to guess what the "adjustment" was for and how much of an adjustment Mr. Kelly had claimed on the Petitioner's inventory, the Board finds that the Petitioner's tax returns failed to "sufficiently comply" with Indiana law and therefore the assessor's changes to the tax returns were timely under Indiana Code § 6-1.1-16-1(d).[6]

36. Although the Tax Court rejected an automobile dealership's claim that its inventory of new and used vehicles sold to out-of-state customers qualified for the interstate commerce exemption,[7] the Respondent's representative failed to pursue an argument that the Board should deny this exemption on the Petitioner's 2005 personal property assessment. Therefore, the Board will only determine the propriety of the taxpayer's deductions for the "brand value" and "warranty value" of its new vehicle inventory.

37. The Petitioner's counsel agrees that 50 IAC 4.2-1-1(h) defines personal property to include "motor vehicles". *Meighen argument.* However, she argues, only "tangible" personal property is taxable. *Id.* Thus, she contends, the value of the intangible aspects

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[6] The fact that the trigger for the assessor's audit was that the taxpayer's personal property exceeded $50,000 does not change this analysis. Had the taxpayer's representative fully reported the Petitioner's book cost and clearly shown the deduction he was seeking to make on the taxpayer's behalf, the assessor may have chosen to immediately audit the taxpayer's books or may have simply increased the assessment at the time it received the Petitioner's personal property returns.

[7] *See Studebaker Buick Pontiac GMC, Inc. v. Wayne Twp. Assessor*, No. 49T10-0612-TA-105, (Ind. Tax Ct. December 23, 2008) (unpublished decision), *Jim Hadley Chevrolet-Cadillac, Inc. v. Madison Twp. Assessor*, No. 49T10-0611-TA-97, (Ind. Tax Ct. December 23, 2008) (unpublished decision), *Victory Chevrolet Cadillac. v. Wayne Twp. Assessor*, No. 49T10-0612-TA-104, (Ind. Tax Ct. December 23, 2008) (unpublished decision). In fact, the Board ruled that this exemption was not applicable to an automobile dealership long before the Petitioner's representative even filed the Petitioner's personal property tax returns in 2006. *See e.g., Craig Buick Pontiac GMC Toyota v. Madison Twp. Ass'r,* Petition No. 39-011-03-1-7-00003(Ind. Bd. of Tax Rev., Feb. 15, 2005); *Jordan Toyota, Volvo, Mitsubishi, Kia v. Penn Twp. Ass'r,* Petition No. 71-023-03-1-7-08076 (Ind. Bd. of Tax Rev., Jan. 13, 2005); and *McCubbin Ford, Inc. v. Madison Twp. Ass'r.,* Petition No. 39-011-03-1-7-00174 (Ind. Bd. of Tax Rev., February 15, 2005).

of a vehicle, including the value of the vehicle's brand and the value of the warranty that accompanies the purchase of a vehicle, is non-assessable. *Id.* In support of her contention that the warranty value of a vehicle is intangible and therefore not assessable, Ms. Meighen offered the case of *DaimlerChrylser Corp. v. Levin,* 881 N.E.2d 840 (Oh. 2008). *Id.; Petitioner Exhibit I.* The *DaimlerChrylser Corp.* case, however, is not particularly helpful to the Petitioner because "Ohio's sales and use tax law treats warranties as an intangible right that is purchased separately from the vehicle." 881 N.E.2d at 842 (vehicle buyers rather than vehicle manufacturers were the "consumer" for purposes of a use tax with respect to repair parts and services for "goodwill" repairs performed outside of the car's warranty). The Petitioner pointed to no comparable Indiana law. Nor was the Board able to find one. Ms. Meighen did not submit any case that addressed "brand value."

38. The primary goal of statutory construction is to determine and give effect to the Legislature's intent. *State v. Oddi-Smith*, 878 N.E.2d 1245, 1248 (Ind. 2008). Therefore, when interpreting a statutory provision, the Board must examine the statute as a whole and avoid "excessive reliance upon a strict literal meaning or the selective reading of individual words." *Id.* Finally, the Board must presume that the Legislature intended for the language to be applied logically and consistent with the underlying goals and policies of the statute. *Id.* These rules are equally applicable to the interpretation of administrative regulations**.** *U.S. Outdoor Adver. Co., Inc. v. Indiana Dep't. of Transp*., 714 N.E.2d 1244, 1256 (Ind. Ct. App. 1999).

39. Here, the Board need not reach the issue of whether "brand value" or a vehicle warranty separately constitute intangible property because the Board finds that a motor vehicle is tangible property and the vehicle's brand and its warranty are so intrinsically bound in that vehicle as to be inseparable from that tangible property. The Petitioner presented nothing from this state's statutes or regulations to suggest that the intangible aspects of property were meant to be treated differently for the purpose of an assessment.

40. Although the Board was unable to find any Indiana cases on point, the Indiana Tax Court addressed an analogous situation of a mixed transaction involving a sale of a product and

a sale of a service in relation to sales and use tax. According to the Court in *Chrome Deposit Corp. v. Indiana Dep't of State Revenue,* 557 N.E.2d 1110, 1114 (Ind. Tax Ct. 1990), *aff'd*, 578 N.E.2d 643 (Ind. 1991), a "mixed transaction" can occur where tangible personal property is sold in order to complete a service contract, or where services are provided in order to complete the sale of tangible personal property." In that case, Judge Fisher held that a customer's purpose determines whether a mixed transaction is for services or for sales of goods. *Id.* The Court applied a "but for" test to determine the true object of a mixed transaction and found that "but for its customers' desire to purchase the chromium sleeve, Chrome Deposit would not render the incidental services of attaching the sleeve to the work roll . . . on behalf of its customers." *Id.* Thus, this Court found that the contract was for the sale of a chromium sleeve and the services provided to attach that sleeve to iron rolls were merely incidental to the sale. *Id. See also Indiana Dep't of State Revenue, Gross Income Tax Div. v. Klink,* 232 Ind. 473, 112 N.E.2d 581, 583 (Ind. 1953) (finding that the services of hauling and spreading soil lime and marl on farmer's fields were incidental to the actual purpose of the transaction - the sale of lime and marl). Arguably, "but for" a customer's purchase of a vehicle, he or she would have no independent use for the vehicle's warranty or brand.

41. The majority of jurisdictions support a finding that intangible property that is so intertwined with tangible property is not severable from the value of the property for the purpose of tax assessment. *See e.g. Roehm v. Orange County*, 32 Cal. 2d 280, 196 P.2d 550, 554 (Cal. 1948). The Board holds that to be the case with the brand value and warranty value of the Petitioner's new car inventory. To the extent those items may be intangible, they are so intertwined with the product itself as to be assessable.[8] *See also American Multi-Cinema, Inc. v. City of Westminster*, 910 P.2d 64 (Colo. App. Ct. 1995)

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[8] Similarly, the value of the patent, or design and engineering of a vehicle even the "technology and know-how" are simply a part of the automobile itself – which is indisputably intangible person property. *See McNamara v. Electrode Corp.*, 418 So. 2d 652 (La. App. 1st Cir.), *writ denied*, 420 So. 2d 986 (La. 1982) ("In the instant case, any know-how or technology is certainly inseparable from the hardware (anodes). The anodes simply cannot be leased without the accompanying technology and know-how and are not even transferred to the lessee until various secrecy and other lease agreements have been signed. The alleged technology or know-how is an inseparable part of the hardware (anode) and for that reason must be included as part of the total price of the lease of anodes. No breakdown between 'intangible technology' and 'tangible personal property' is allowable in the instant case").

("there can be no question but that [a reel] of motion picture film, or a cassette of a video film, is [taxable as] an item of tangible personal property" even though its possessor also obtains the intangible right to view and exhibit the film); *Cinemark USA, Inc. v. Seest*, 190 P.3d 793 (Colo. App. Ct. 2003) (while concluding that use of film reels was taxable as tangible personal property, the court noted that "the corporeal film reel also possesses two intangible interests: the limited copyright license to display the movie; and the movie's intellectual and artistic value. . . . [T]hese hybrid interests are not meaningfully separable"); *Glenridge Development Co. v. City of Augusta*, 662 A.2d 928, 931 (Me. 1995) (intangible property that is inextricably intertwined with a tangible asset may be considered in determining the just value of the tangible property); *but see Adams Outdoor Adver., Ltd. v. City of Madison*, 294 Wis. 2d 441 (Wis. 2006) (concluding that the City's reliance upon the "inextricably intertwined concept" was misplaced. "The concept of inextricable intertwinement allows business value to be included within the assessment of real property where the income-generating capability can be transferred with the real estate." The court held that the concept does not apply to personal property tax assessments).

42. Under the regulations in effect at the time that the Petitioner filed its personal property return, "motor vehicles" were specifically defined as personal property. 50 IAC 4.2-1-2(h)(4) (2003). Contrary to the Petitioner's argument that the reference to "all other tangible property" in subsection (h)(6) proves that the intangible portions of the motor vehicle is therefore exempt from taxation, the Board finds that the reference to "all other tangible property" does little more than reinforce that a motor vehicle is tangible. To assume from that regulation that an automobile should nevertheless be separated into both tangible property and intangible property is too far of a reach for the Board to take absent clear legislative direction. As the Respondent's representative argues, virtually all products that are sold by retailers include a brand name and some form of warranty – indeed even a patent upon which the product is based and a design upon which the property is built. If the legislature in its statutes governing personal property assessment or the department of local government finance in its regulations intended to parse the

value of a product by the value of the tangible aspects of the property and the value of the intangible aspects of the property, they would have so indicated.

43. The Petitioner failed to raise a prima facie case that the assessor's changes to its 2005 personal property tax returns were in error.[9] Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

44. The Petitioner failed to raise a prima facie case that the 2005 assessed value of its personal property was overstated. The Board finds in favor of the Respondent and holds that the property's 2005 value should be $3,129,780.

This 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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[9] The Board notes that it does not have jurisdiction over any penalty imposed on the taxpayer. *See Whetzel v. Dep't of Local Gov't Fin.,* 761 N.E.2d 904 (Ind. Tax Ct. 2002). Indiana Code § 6-1.5-4-1 only gives the Board authority to determine appeals concerning assessed valuation, deductions and exemptions. The code does not empower the Board to review penalties imposed by a county.

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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

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html.