

REPRESENTATIVE FOR PETITIONER:
Richard L. Archer, Tax Representative

REPRESENTATIVE FOR RESPONDENT:
Jess Reagan Gastineau, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

FISERV SOLUTIONS, INC.,)	Petition Nos.: 49-900-10-1-7-01264-17
)	49-900-11-1-7-01265-17
Petitioner,)	
)	Parcel No.: I118148
v.)	
)	County: Marion
MARION COUNTY ASSESSOR,)	
)	Assessment Years: 2010 and 2011
Respondent.)	

Appeal from the Final Determinations of
Marion County Property Tax Assessment Board of Appeals

April 10, 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:

INTRODUCTION

1. Fiserv Solutions, Inc., challenged assessments that the Marion County Assessor imposed after auditing its personal property returns for 2010 and 2011. But Fiserv failed to prove that the assessments it self-reported on its 2010 and 2011 personal property returns were correct or what the correct assessments should otherwise be. We therefore find for the Assessor.

PROCEDURAL HISTORY

2. Fiserv filed personal property returns for 2010 and 2011. On March 19, 2013, the Assessor issued Form 113/PP notices increasing Fiserv's self-reported assessments. Fiserv sought review with the Marion County Property Tax Assessment Board of Appeals ("PTABOA"). On June 30, 2017, the PTABOA issued Form 115 notices of its final determinations upholding the increased assessments for each year. Fiserv timely filed Form 131 petitions with the Board.
3. On January 15, 2019, our designated administrative law judge, Joseph Stanford ("ALJ"), held a consolidated hearing on the petitions. Neither he nor the Board inspected the property.
4. Richard L. Archer and Nicholas Getz, a Project Manager for Tax Management Associates ("TMA"), testified under oath.
5. Fiserv submitted the following exhibit:
 - Exhibit P-1: Cover letter, audit documents, and Notices of Assessment
6. The Assessor submitted the following exhibits:
 - Exhibit R-1: Cover letter, audit documents, and Notices of Assessment
 - Exhibit R-2: Email from Archer to Gastineau, dated January 7, 2019
 - Exhibit R-3: Email correspondence between Archer and Rene Bettcher from December 2012 through March 2013
7. The record also includes the following: (1) all pleadings, motions, briefs, and documents filed in these appeals; (2) all orders and notices issued by the Board or our ALJ; and (3) an audio recording of the hearing.
8. The business personal property in question is identified by parcel number I118148 and is located at 2307 Directors Row, in Indianapolis.

9. The PTABOA determined the following assessments:

Year	Value
2010	\$8,736,990
2011	\$9,032,060

10. On its Form 131 petitions, Fiserv requested reversion to the original assessments:

Year	Value
2010	\$7,305,050
2011	\$8,364,310

OBJECTIONS

11. Fiserv objected to Getz’s testimony because the Assessor failed to exchange a witness and exhibit list prior to the hearing. Fiserv also objected to Exhibit R-3 based on the Assessor’s failure to provide a copy of the exhibit before the hearing. The Assessor countered that he was offering both Getz’s testimony and Exhibit R-3 as rebuttal evidence. The ALJ took the objections under advisement.
12. Our procedural rules require parties to exchange 1) copies of documentary evidence at least five business days before a hearing, and 2) a list of witnesses and exhibits at least 15 business days before the hearing. 52 IAC 2-7-1(b). These requirements allows parties to be better informed and to avoid surprises. It also promotes an organized, efficient, and fair consideration of the issues. The Board may exclude evidence or testimony based on a party’s failure to comply with the exchange rule. 52 IAC 2-7-1(f).
13. We start by observing that the Assessor’s attempt to frame Getz’s testimony and Exhibit R-3 as rebuttal evidence does not excuse his failure to comply with our exchange rules. *See Evansville Courier v. Vanderburgh Co. Ass’r*, 78 N.E.3d 746, 752 (Ind. Tax Ct. 2017) (citing *McCullough v. Archbold Ladder Co.*, 605 N.E.2d 175, 179 (Ind. 1993) (emphasis added) “the nondisclosure of a rebuttal witness is excused *only* when that

witness was unknown and unanticipated; known and anticipated witnesses, even if presented in rebuttal, must be identified pursuant to a court order, such as a pretrial order, or to a proper discovery request.”)

14. With regard to Getz’s testimony, we conclude the Assessor should have reasonably anticipated the need to call a TMA employee to explain the audit process and the resulting assessment increases. We therefore sustain the objection and exclude Getz’s testimony from the record.
15. Exhibit R-3 is a series of emails exchanged in 2012-2013 between Archer and an employee of TMA regarding the audit of Fiserv. While Archer was clearly a party to the communication, the fact that the email exchange occurred more than six years prior to the hearing date leads us to conclude that the Assessor’s failure to exchange the exhibit amounted to the type of unfair surprise our exchange rules are intended to prevent. We therefore sustain Fiserv’s objection and exclude Exhibit R-3 as well.

SUMMARY OF FISERV’S CASE

16. In March 2013, TMA completed an audit of Fiserv’s 2010 and 2011 business personal property returns. As a result of the audit, the Assessor sent Fiserv a notice that its assessments were being increased for both years because of various asset omissions. Fiserv contends that because specific assets were not listed in the audit findings, Fiserv cannot determine precisely what TMA claims was omitted, and therefore cannot respond to the audit. *Archer testimony; Pet’r Ex. P-1.*
17. Archer indicated that he had copies of Fiserv’s fixed asset listing and personal property returns, but he did not offer either of the documents. Although Archer did not complete Fiserv’s returns for either year, he reviewed the return for one of the years in question. Thus, while Archer could only guess what TMA added to the assessments, he thought the dispute was likely attributable to a difference between book cost and tax cost, and with differences in classification. Archer felt that some of the book cost versus tax cost

difference would actually result in a decrease in one of the year's assessments. *Archer testimony.*

18. Archer argued that Fiserv correctly calculated its assessments on the personal property returns for both years, and was in substantial compliance with the applicable rules and statutes. Further, he argued that TMA failed to provide any details as to what it added to the assessments. Consequently, Archer argued that Fiserv's 2010 and 2011 assessments should be restored to the amounts Fiserv originally reported. *Archer testimony.*

SUMMARY OF THE ASSESSOR'S CASE

19. The only issue that is properly before the Board is the question of substantial compliance. That is the only issue Fiserv raised on its Form 131 petition, and it did not amend its Form 131 to add new arguments. Thus, the Board's jurisdiction is limited to that issue. *Gastineau argument.*
20. That being the case, Fiserv's argument is really about the statute of limitations. While assessors generally have only five months to change a personal property assessment, the limitation extends to three years if the taxpayer's return is not in substantial compliance. And the Indiana Tax Court has held that substantial compliance not only relates to a dollar threshold, but also to whether the taxpayer has complied with reporting requirements. *Gastineau argument.*
21. According to the Tax Court, substantial compliance means listing each asset with its acquisition cost, acquisition date, and tax life. A return that lists the wrong costs is not substantially compliant. And here, Fiserv admitted to using the wrong tax basis. Therefore, it did not substantially comply with reporting requirements. *Gastineau argument; Resp't Ex. R-2.*
22. Additionally, Fiserv omitted property that was included in its books and records. Omitting or undervaluing property is a failure to substantially comply with reporting

requirements, and extends the Assessor's deadline to change the assessment to three years. *Gastineau argument*.

23. Additionally, if Fiserv's return is fraudulent, there is no statute of limitations, and the deadlines to change an assessment do not apply. The Indiana Department of Revenue ("DOR") lists five elements of a fraudulent tax return: 1) misrepresentation of fact; 2) knowledge; 3) deception; 4) reliance; and 5) injury. According to both DOR and federal tax regulations, Fiserv's personal property return would be considered fraudulent because Fiserv recklessly failed to make sure that it was using the correct tax basis. *Gastineau argument*.
24. If the Board determines that it has jurisdiction to hear Fiserv's arguments regarding its assessments, TMA's audit results were provided to Fiserv, and Fiserv has not rebutted either the classifications or the costs of the assets. *Gastineau argument; Resp't Ex. R-1*.

CONCLUSIONS OF LAW

A. Burden of Proof

25. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case showing both that the current assessment is incorrect and what the correct assessment should be. The taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Ass'r*, 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."). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to rebut or impeach the taxpayer's evidence. *See Am. United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *see also, Meridian Towers*, 805 N.E.2d at 479.

B. Indiana's System for Assessing Personal Property

26. Indiana's personal property tax system is a self-assessment system. Every person owning, holding, possessing, or controlling business personal property with a tax situs in Indiana on March 1 of a year must file a personal property tax return. *See* I.C. § 6-1.1-3-7; 50 IAC 4.2-2-2. With limited exceptions, the person who holds legal title to personal property is its owner for purposes of Indiana's property tax statutes. I.C. § 6-1.1-1-9(b); 50 IAC 4.2-2-4(a).

27. Cost is the starting point for determining true tax value for personal property. *See* 50 IAC 4.2-4-2. Generally, the cost of personal property is "the total amount reflected on the books and records of the taxpayer as of the assessment date," plus direct costs and an appropriate portion of indirect costs attributable to its production or acquisition and preparation for use. *Id.* There are exceptions to that rule for, among other things, property that is fully depreciated, retired, or nominally valued. *See* 50 IAC 4.2-4-3.

28. To compute true tax value, taxpayers must first adjust the cost for any depreciable personal property to its tax basis as defined in the Internal Revenue Code (unadjusted by Sections 167 (depreciation) and 179 (expense deduction) or any credits that diminished its cost basis) if the property's cost per books is different from its tax basis. 50 IAC 4.2-4-4. Each piece of property is then segregated into one of the pools based on its depreciable life for federal income tax purposes. 50 IAC 4.2-4-5. The adjusted cost of each year's acquisitions falling within a given pool is then multiplied by the percentage factor corresponding with that pool's year of acquisition from a table incorporated into the DLGF's regulations. 50 IAC 4.2-4-7. The resulting sum is the true tax value of the personal property, which automatically reflects all adjustments for Indiana property tax purposes, except abnormal obsolescence. *Id.* With a few exceptions, the total valuation of a taxpayer's personal property cannot be less than 30% of adjusted cost, even if applying the depreciation pools would indicate a lower value. 50 IAC 4.2-4-9.

C. Fiserv Failed to Make a Prima Facie Case for Changing the Assessments

29. Fiserv complained that it could not effectively respond to the audit because TMA did not list the specific assets it claimed were omitted from Fiserv's personal property returns. But Fiserv's failure to utilize discovery to determine the differences between its self-reported returns and TMA's audit results does not prove what the correct assessments should be.
30. If Fiserv believed that the assessments it originally self-reported were correct, it should have offered the returns and explained why they were correct. Alternatively, had Fiserv offered proposed returns correcting any errors present in the originals, it could have straightforwardly asked that the assessments be reduced to the amounts reflected in those proposed returns. Because Fiserv offered no evidence to support either its self-reported assessments or any other assessment amounts, it failed to prove that the current assessments are incorrect.
31. Because Fiserv offered no probative evidence to demonstrate the correct assessed values for its personal property, it failed to make a prima facie case for lower assessments.¹ Where a Petitioner has not supported its 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

32. Fiserv failed to show what the correct assessments should be for 2010 and 2011. We therefore find for the Assessor and order no change.

¹ We find no merit to the Assessor's claim that the only argument of Fiserv's that is properly before us is the issue of substantial compliance.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review 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>>.