

REPRESENTATIVE FOR PETITIONER: Karyl E. Traeger, Taxpayer and Proprietor  
REPRESENTATIVE FOR RESPONDENT: None

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

THE GREEN DOOR,	)	Review of the Claim for Enterprise
	)	Zone Personal Property Tax Credit
Petitioner	)	
	)	Petition No. 79-000-02-4-0-00001
	)	
v.	)	County: Tippecanoe
	)	
TIPPECANOE COUNTY AUDITOR,	)	Township: Fairfield
	)	
Respondent	)	Assessment Year: 2002
	)	

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On Appeal from the Tippecanoe County Auditor

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**FINAL DETERMINATION**

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

## **Findings of Fact and Conclusions of Law**

### **Issue**

Whether The Green Door Gifts & Interiors (Green Door) is entitled to an Enterprise Zone Business Personal Property Tax Credit (EZ Credit) for the 2002 assessment year.

### **Findings of Fact and Other Matters of Record**

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. Green Door filed the application (Form EZ-1) with the Tippecanoe County Auditor for the EZ Credit. The Tippecanoe County Auditor received and date-stamped the Form EZ-1 on May 28, 2002. An extension for filing was not requested by Green Door. Therefore the Form EZ-1 was due on May 15, 2002. The County Auditor deemed the application as untimely.
3. Pursuant to Ind. Code § 6-1.1-20.8-3(b), Ms. Karyl Traeger, proprietor of Green Door, filed a written request for review of the Claim for Enterprise Zone Business Personal Property Tax Credit (Form EZ-1) by the Board. The request was filed on October 31, 2002. The request for review and attachments are labeled Board Exhibit A.
4. The subject property is located at 834 Main Street, Lafayette, Indiana (Fairfield Township, Tippecanoe County). Green Door is located in an urban enterprise zone.

## Enterprise Zone Business Personal Property Tax Credit

5. 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); *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 Board 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. The Board 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).
7. On December 12, 2002, the Board sent a letter to Green Door giving Ms. Karyl E. Traeger an opportunity to address the seven (7) factors in 50 IAC 10-4-2. The Board's deadline for Green Door's submission was January 13, 2003. The Board's letter is labeled as Board Exhibit B.
8. On January 13, 2003, Green Door sent a letter requesting an extension to respond to the State's inquiry. The extension was approved.
9. On January 16, 2003, Ms. Traeger, on behalf of Green Door submitted a written response with attachments via facsimile. The Board received the Petitioner's subsequent hard copy by mail on January 21, 2003. The attachments include a letter from Ms. Traeger regarding the reason for Green Door's late filing (Attachment A); a copy of a letter from Mr. Robert A. Plantenga, Tippecanoe County Auditor to the Indiana Board of Tax Review dated January 6, 2003 (Attachment B); a letter from Robert C. Reiling, Jr., Chairman of the Lafayette Urban Enterprise Association (LUEA), dated January 10, 2003 (Attachment C); a copy of the subject Form 103, signed by Ms. Traeger on May, 24, 2002

(Attachment D); and a copy of Green Door's Form EZB-R, stamp dated as received on May 25, 2002 (Attachment E); and a letter from Dennis H. Carson, Executive Director of LUEA, dated January 10, 2003 (Attachment F).

### **Conclusions 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 Board. Ind. Code § 6-1.1-20.8-3(b).
2. The Board 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).

### **Burden**

3. It is 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 Board administrative level for two reasons. First, the Board is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the Board 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).

### **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 Board 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 Board 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 Board 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. 7 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).*

**A facsimile from Ms. Traeger dated January 16, 2003 asserts the Form EZ-1 was filed late because Green Door's accountant failed to mark the due date and deliver it on time. Ms. Traeger contends that in the past, Green Door's forms have always been registered with the Auditor on time. However, in Ms. Traeger's original request with the Indiana Board for review of the EZ-1 Inventory Tax Credit (Board Exhibit A), she asserts that Green Door received the subject forms from their accountant prior to May 15<sup>th</sup>, 2002. Ms. Traeger further asserts she was confused by the deadlines and inadvertently filed the subject form after the May 15<sup>th</sup> deadline.**

2. Whether the approval of the late-filed application would result in the loss of property 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.)*

**A letter from the Tippecanoe County Auditor, dated January 6, 2003 indicates that the approval of the late-filed application**

**will not result in the loss of property tax revenues to the taxing unit affected by the deduction.**

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).*

**Green Door asserts that no misleading information was given to the taxpayer from a public official about the filing dates.**

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.

**Green Door's Form EZ-1 was received by the Tippecanoe County Auditor on May 28, 2002. The late-filed application did not prevent local officials from accurately determining the assessed values for budget, rate, and levy purposes.**

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.)*

**There is substantial evidence that the Lafayette Urban Enterprise Association (LUEA) board supports the approval of the late-filed application. According to Robert C. Reiling, Jr., Chairman of (LUEA), Green Door has been an active participant in LUEA for over three years and has met its reinvestment requirements. Mr. Reiling asserts the LUEA board would like to see Green Door approved for the inventory tax credit. The letter indicates that tax credit is important to Green Door's growth and expansion as well as for job creation. In addition, Dennis H. Carson, Executive Director for LUEA submitted a letter in support of Green Door's approval for inventory tax credit stating that Green Door filed their EZB-R on May 25, 2002 before the June 1, 2002 due date, and has met all the required reinvestments in the Lafayette Urban Enterprise Zone. Robert A. Plantenga, Tippecanoe County Auditor stated that while the Indiana Board's approval of the subject application would not impact any county property tax revenues, the opinion of the Auditor's office has been not to support the approval of late-filed EZ-1 applications because other late-filed deductions such as mortgage exemptions are denied the opportunity to appeal.**

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

**Ms. Traeger asserts that Green Door's Form EZ-1 was filed late because their accountant failed to indicate that the subject form was due on May 15<sup>th</sup>, rather than the June 1<sup>st</sup> due date required for the Form EZB-R.**

7. Any other factor that the Board considers relevant.



**Green Door asserts that all the information has been presented in the preceding statements.**

10. After careful consideration of the facts and circumstances of this situation, the Board hereby approves Green Door's enterprise zone credit for the 2002 assessment year.

The above stated findings of fact and conclusions of law 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 \_\_\_\_\_, 2003.

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Chairman, Indiana Board of Tax Review

### **IMPORTANT NOTICE**

#### **- APPEAL RIGHTS-**

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.