

REPRESENTATIVE FOR PETITIONER:

Greg Myers, President

REPRESENTATIVE FOR RESPONDENT:

Richard R. Smith, Wells County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

HJM, LLC,)	Petition No.: 90-017-12-1-7-00001
)	
Petitioner)	Business Tangible Personal Property
)	
v.)	County: Wells
)	
Wells County Assessor,)	Township: Rockcreek
)	
Respondent.)	Assessment Year: 2012

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

October 22, 2013

FINAL DETERMINATION

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

Introduction

1. HJM, LLC appeals the Assessor’s decision denying its tax abatement after it filed the Certified Deduction Application and underlying Business Tangible Personal Property Return one day late. In this appeal, HJM asks the Board to waive the statutory filing deadlines, which the Board lacks the authority to do. Such authority rests solely with the

Town Council of the Town of Markle. Unless and until that entity passes a resolution waiving HJM’s filing noncompliance, the Board must uphold the Assessor’s decision.

Procedural History

2. HJM filed a Form 130 petition with the Wells County Assessor appealing the Assessor’s denial of HJM’s tax abatement¹ for the 2012 assessment. On December 28, 2012, the Wells County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying HJM’s petition on the grounds that the Business Tangible Personal Property Returns were not timely filed. HJM timely filed a Form 131 petition with the Board. The Board has jurisdiction over HJM’s appeal under Indiana Code §§ 6-1.1-1-15 and 6-1.5-4-1.
3. On August 15, 2013, Administrative Law Judge (“ALJ”) Joseph Stanford held a hearing on HJM’s petition.²

Hearing Facts and Other Matters of Record

4. The following people were sworn in and testified:

For HJM:	Greg Myers, President Kristen D. Morrison, Vice President/Controller
For the Assessor:	Richard R. Smith, County Assessor Beth Singleton, Deputy Assessor
5. Petitioner’s Exhibits:

Exhibit 1:	Email, dated January 30, 2013, from Barry Wood to Greg Myers ³
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¹ “Tax abatement” is a term commonly used to refer to a deduction from the assessed valuation of property located in a designated economic revitalization area.

² The hearing was consolidated to include a similar petition for Wayne Metals, LLC, a related taxpayer doing business at the same location.

³ The document appears to show that the email was subsequently forwarded to Kris Morrison and Elissa McGauley.

Exhibit 2: Email correspondence, dated January 3, 2013, between Jeff Humbarger and Greg Myers

6. Respondent's Exhibits:

Exhibit A: HJM's business personal property filing, including a copy of the envelope, Form 104, Form 103, Form 103-O, Form 103-ERA, Form CF-1/PP, Resolution 2005-4 of the Town of Markle, Form SB1/PP, and a letter from the Town of Markle to Wayne Metals⁴

Exhibit B: Form 113/PP

7. The Board's Exhibits:

Exhibit A: Form 131 petition

Exhibit B: Hearing notice

Exhibit C: Hearing sign-in sheet

8. The business personal property in question is located at 400 East Logan Street, in Markle, Indiana. Neither the Board nor the ALJ inspected the property.

9. The PTABOA determined an assessed value of \$312,880. The assessed value of the denied tax abatement is \$162,710. Thus, HJM seeks an assessment of \$150,170.

Administrative Review and the Parties' Burdens

10. Generally, a taxpayer seeking review of an assessing official's determination must make a *prima facie* case proving both that the current assessment is incorrect and what the correct assessment should 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).

11. The taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802

⁴ The Forms 103, 103-O, and 103-ERA are confidential pursuant to Ind. Code § 6-1.1-35-9.

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”).

12. 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 American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Findings of Fact

13. The relevant facts are not in dispute. On September 7, 2005, the Town Council of the Town of Markle approved a 10-year tax abatement on new manufacturing equipment for HJM.⁵ *Resp’t Ex. A* at 6-7. For the March 1, 2012 assessment date, HJM filed a Business Tangible Personal Property Return (Form 104) package on May 16, 2012, reporting a depreciable asset assessed value of \$312,880 and an abatement deduction of \$162,710, for a final assessed valuation of \$150,710. *Id.* at 1-11. The Assessor did not dispute the accuracy of any of these amounts.
14. HJM admits, and the Assessor agrees, that HJM’s return package, which also included the verified deduction schedule⁶ related to the tax abatement, was not timely filed. *Smith, Myers testimony*. Specifically, the filing deadline was May 15, 2012, and HJM’s return package was hand-delivered to the Assessor’s office on May 16, one day late. *Id.*; *see also Resp’t Ex. A* at 1, 2, 4. HJM did not request a timely extension of time to file its return. *Smith testimony*. As a result of the late filing, the Assessor denied HJM’s tax abatement. *Id.*; *Resp’t Ex. B*.
15. The Assessor lacks the authority to waive filing deadlines. *Smith testimony*.

⁵ While the resolution specifically names the taxpayer as “Wayne Metals LLC,” nobody disputed that HJM, as a related taxpayer doing business at the same location, is also part of the tax abatement.

⁶ The “verified deduction schedule,” or Form 103-ERA, pools the costs and acquisition dates of the assets eligible for tax abatement.

Conclusions of Law

16. 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 in Indiana on March 1 of a year must file a personal property tax return on or before May 15 of that year unless the person obtains a timely extension of time. Ind. Code § 6-1.1-3-7; 50 IAC 4.2-2-2.
17. Additional documentation must be attached to the return to claim the tax abatement. Specifically, to obtain a deduction, a taxpayer must file a verified deduction schedule with a timely-filed personal property return. Ind. Code § 6-1.1-12.1-5.4. The statute is clear that a timely-filed return is a statutory prerequisite for claiming the tax abatement. *See Id.* (stating the deduction is applied in the amount claimed in a certified schedule that a person files with: (1) a *timely* personal property return under IC 6-1.1-3-7(a) or IC 6-1.1-3-7(b)). Emphasis added.
18. Indiana statutes are clear that the personal property return and accompanying abatement filing must be timely for a taxpayer to get the abatement. *Smith argument.* Specifically, Indiana Code section 6-1.1-12.1-5.4 states that a person who desires to obtain the deduction must file a verified deduction schedule with the person's *timely* filed personal property return. *Id.* Indiana Code section 6-1.1-1-7 defines the filing date as May 15. *Id.* Further, Forms 103-EL and 103-ERA, which are abatement forms, both state that they must be submitted with a timely filed Form 103 to receive the deduction. *Id.*
19. Legal precedent suggests that the Board has jurisdiction and authority to review the untimely filing of a Certified Deduction Application and underlying Business Tangible Personal Property Return. In *State Bd. of Tax Comm'rs. v. New Energy Co.*, 585 N.E.2d 38 (Ind. Ct. App. 1992), the issue before the Court was whether "the Board had the authority to consider New Energy's application for deduction notwithstanding the

untimely filing.” *Id.* at 39.⁷ In resolving this issue, the Court of Appeals found that the Board had jurisdiction and authority to consider an untimely filed return.

20. In *Dalton Foundries v. State Bd. of Tax Comm’rs.*, 653 N.E.2d 548 (Ind. Tax Ct. 1995), the issue before the Indiana Tax Court was an untimely filed Resource Recovery System (“RRS”) property tax deduction. The Court found that the assessor had the authority and must consider an untimely application, but did not go so far as to hold that the assessor must grant the deduction.
21. More recently, in *Graybar Elec. Co. v. State Bd. of Tax Commrs.*, 723 N.E.2d 491 (Ind. Tax Ct. 2001), the Tax Court interpreted *New Energy* to mean that the Board may not deny the abatement at issue solely because it was not timely filed.
22. However, it appears the General Assembly has vested in the designating body, in this case the Town of Markle, the discretion to waive non-compliance through resolution. Specifically, Indiana Code section 6-1.1-12.1-11.3 states that a designating body may by resolution waive non-compliance, which includes the failure to timely file a deduction application pursuant to Indiana Code section 6-1.1-12.1-5.4. *See also* Ind. Code § 6-1.1-12.1-9.5; 50 IAC 4.2-11.1-7(a)(5). Thus, because the General Assembly specifically vested such authority in the Town of Markle, the Board does not have the authority to waive the late filing.
23. Here, the parties agree that neither the verified deduction schedule nor the underlying personal property return were timely filed. Thus, in asking that the Board grant its tax abatement, HJM is, in effect, asking the Board to waive the filing deadlines. The Board is sympathetic to the seemingly harsh consequence of HJM’s failure to timely file Form 104. Nevertheless, the use of the word “shall” by the General Assembly when setting forth the filing deadlines for personal property returns in Indiana Code sections 6-1.1-3-7

⁷ This case was before the Indiana Court of Appeal because the complaint was filed before the Board on June 10, 1986, and the statute enacting the Indiana Tax Court was effective July 1, 1986. *NewEnergy*, 585 N.E.2d at 38, fn. 1. Indiana Court of Appeals opinions are considered persuasive authority in the Indiana Tax Court. *See Uniden Am. Corp. v. Dep’t. of State Revenue*, 718 N.E.2d 821, 828 (Ind. Tax Ct. 1999).

and 6-1.1-1-7 means that filing such a return by on or before the May 15 deadline is mandatory, if a timely extension is not obtained. *Truedell-Bell v. Marion Cty. Treasurer*, 955 N.E.2d 872, 875 (Ind. Tax Ct. 2011). Further, HJM provided the Board no legal authority on which to base this request or on which the Board could excuse or waive the untimely filing. HJM did not timely file its verified deduction schedule or personal property return, and, as such, the Assessor properly denied its tax abatement.

SUMMARY OF FINAL DETERMINATION

24. HJM's verified deduction schedule and underlying personal property return were not timely, and the Board lacks the authority to waive filing deadlines. The Board therefore affirms the Assessor's decision denying HJM's tax abatement.

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>>.