

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition Nos.: 49-502-12-1-7-00852-17; 49-502-13-1-7-00853-17
Petitioner: H. Dale Biggerstaff & Sons Excavating, Inc.
Respondent: Marion County Assessor
Parcel No.: E121300
Assessment Year: 2012 & 2013

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Marion County Assessor’s Office audited the personal property returns of H. Dale Biggerstaff & Sons Excavating, Inc. (“Biggerstaff”) for the 2012 and 2013 tax years in May of 2014 through a third-party contractor, TMA. Form 113s for each assessment year were issued on September 19, 2014. The Assessor claimed these notices were mailed to Biggerstaff’s accountant, Stephen Wilson, at that time. Wilson testified that he never received them.
2. After receiving its tax bill, Biggerstaff filed petitions for review with the Marion County Assessor’s Office on May 15, 2015.
3. Biggerstaff filed Form 131 petitions with the Board, electing to have its appeal heard under the Board’s small claims procedures.¹ The Assessor did not elect its option to remove.
4. On April 9, 2018, our designated administrative law judge, Timothy Schuster, held a hearing. Neither he nor the Board inspected the property.
5. Gregory P. Schmith appeared for Biggerstaff. Gabe Deaton appeared for the Assessor. Gabe Deaton, Michael A. Biggerstaff, and Stephen Wilson, CPA, testified under oath.
6. The parties agreed that the only dispositive issue before the Board is the timeliness of Biggerstaff’s original appeal (filed May 15, 2015). They further agreed that if the Board finds the petitions were not timely filed, the assessments from the Form 113 will stand.

¹ Although somewhat unclear, we infer from the record that the Marion County Property Tax Assessment Board of Appeals never issued determinations on these appeals.

If the Board finds the appeals were timely filed, they agreed to stipulate to the following assessments for the personal property at issue:

Year	Value
2012	\$279,770
2013	\$299,230

Record

7. The official record for this matter is made up of the following:

a. Exhibits²:

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| Petitioner’s Exhibit A: | 2012 business personal property tax return, |
| Petitioner’s Exhibit B: | 2013 business personal property tax return, |
| Petitioner’s Exhibit D: | 2012 adjustment worksheet, |
| Petitioner’s Exhibit E: | 2013 adjustment worksheet, |
| Petitioner’s Exhibit F: | Letter from Marion County Assessor to Stephen Wilson with audit results, |
| Petitioner’s Exhibit G: | Letter from Michael Biggerstaff to Marion County Treasurer, |
| Petitioner’s Exhibit I: | 2011 invoice to MacAllister Machinery Company, Inc., |
| Petitioner’s Exhibit J: | 2007 sales invoice from MacAllister, |
| Petitioner’s Exhibit K: | Secured promissory note with Volvo, |
| Petitioner’s Exhibit L: | 2006 invoice to MacAllister, |
| Petitioner’s Exhibit M: | 2011 sales invoice from MacAllister, |
| Petitioner’s Exhibit N: | 2009 installment agreement contract, |
| Petitioner’s Exhibit O: | 2003 letter regarding Komatsu Excavator, |
| Petitioner’s Exhibit P: | Letter to Marion County Assessor from Gregory Schmith, |
| Petitioner’s Exhibit Q: | Tentative stipulation agreement. |

Respondent’s Exhibit A: Timeline regarding audit.

c. The record also includes the following: (1) all pleadings and documents filed in the current appeal, (2) all orders and notices issued by the Board or our ALJ, and (3) the digital recording of the hearing.

Objections

8. Biggerstaff objected to a portion of Respondent’s Ex. A on the grounds that it was hearsay. Hearsay its permissible under our rules provided it does not form the sole basis

² Biggerstaff did not submit an Exhibit C or H.

for our determination. We do not rely on this evidence in reaching our determination. Thus, we overrule the objection.

Contentions

9. Summary of Biggerstaff's case:
 - a. Biggerstaff argued that it did not receive notice that its personal property assessments were being increased until it received its tax bill. As discussed above, the Assessor claims that it mailed the Forms 113 to Biggerstaff's accountant, Stephen Wilson. At the hearing, Wilson testified that he never received those notices. In addition, Biggerstaff argued that Indiana law requires an Assessor to send a notice of change of assessment directly to the property owner. Based on these arguments, Biggerstaff claims that under Ind. Code § 6-1.1-15-13 (2015)³ its deadline for appeal ran from when it received its tax bill, and thus the appeals were timely filed. *Pet't Ex. F, M; Wilson testimony.*

10. Summary of the Respondent's case:
 - a. The Assessor argued that Biggerstaff's appeal was untimely. Deaton claimed that the notices were mailed to Stephen Wilson, though he did not purport to have any personal knowledge of the mailing. Deaton also testified that notices are not sent by certified mail. The Assessor argued that it was sufficient to mail the notices to Biggerstaff's accountant because the third party vendor who conducts the audits almost always deals with the accountant who filed the return. Based on this, the Assessor argues that Biggerstaff's deadline to appeal the Forms 113 was November 3, 2014, well before Biggerstaff filed its appeals. *Resp't Ex A; Deaton testimony.*

Analysis

11. The Indiana Legislature empowers assessors and county property tax appeals boards to change or increase assessments if they believe property has been omitted or undervalued. Ind. Code § 6-1.1-9-1. This includes personal property. But, the Indiana Code also requires assessing officials to mail notice to the person if the official changes the valuation or adds personal property. Ind. Code § 6-1.1-3-20; Ind. Code § 6-1.1-9-1. The written notice must state the following: (1) a general description of the property; (2) the amount of the increased or new assessment; and (3) a statement regarding the taxpayer's right to review under Ind. Code § 6-1.1-15-1. *Property Dev. Co. Four, LLC v. Grant Cnty. Assessor*, 31 N.E.3d 1049, 1053 (Ind. T.C. 2015). In addition, the code prohibits an assessing official or board of appeals from changing an assessed value without proper notice. Ind. Code § 6-1.1-16-1.

12. We assume, without deciding, that the Assessor was permitted to mail the notices to Biggerstaff's accountant, Wilson. The Assessor claimed that the notices were mailed to

³ Repealed by P.L. 232-2017, § 20, effective July 1, 2017

Wilson on September 19, 2014, but offered no evidence in support of this claim. The Assessor could have offered evidence of its mailing procedure to create a reasonable inference that the documents were mailed. *See U-Haul Co. of Indiana, Inc. v. Ind. Dep't of State Revenue*, 896 N.E.2d 1253, 1257 (Ind. Tax Ct. 2008) (finding that the Indiana Department of Revenue's designated evidence created a reasonable inference that it timely mailed a proposed assessment.) But the Assessor did not offer any such evidence.

13. In contrast, Biggerstaff offered the testimony of Stephen Wilson, the purported recipient of the mailings, who testified that he never received the notices. Under these circumstances, we find Biggerstaff's evidence more persuasive. Thus, Biggerstaff only received proper notice when it received its tax bill. Ind. Code § 6-1.1-15-13 (2015). For that reason, we find Biggerstaff's appeals were timely filed.

FINAL DETERMINATION

14. As discussed above, the parties agreed to stipulated assessments depending on the outcome of our decision on the timeliness of these appeals. Based on that agreement, the assessments are changed to the following values:

Year	Value
2012	\$279,770
2013	\$299,230

ISSUED: 10-9-2018

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>>.