

REPRESENTATIVE FOR PETITIONER:

Veronica Bennu, Attorney

REPRESENTATIVE FOR RESPONDENT:

Molly Richardson, Deputy Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Marathon Ashland Petroleum, LLC,)	Petitions: 49-600-03-1-7-01615
)	49-600-04-1-7-01700
Petitioner,)	49-601-03-1-7-01616
)	49-601-04-1-7-01701
v.)	
)	Marion County
Pike Township Assessor,)	Pike Township
)	
Respondent.)	Personal Property
)	Assessment Years: 2003 and 2004
)	

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

April 24, 2008

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters findings of fact and conclusions of law on the following issue: Are the cold storage areas (or walk-in coolers) at the Petitioner’s gas stations/convenience stores real or personal property?¹

¹ The Petitioner used the terms “walk-in cooler” and “cold storage area” interchangeably.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. The Petitioner filed Forms 131, petitioning the Board to conduct an administrative review of the above petitions. The Forms 131 were filed on December 15, 2006, with the Marion County Assessor. The determinations of the Marion County Property Tax Assessment Board of Appeals (PTABOA) are dated November 17, 2006.

HEARING FACTS AND OTHER MATTERS OF RECORD

2. Paul Stultz, the designated Administrative Law Judge, held the administrative hearing for these four petitions in Indianapolis on March 18, 2008. The properties are located in Indianapolis at 4720 W. 56th Street and 3801 N. High School Road. The Administrative Law Judge did not conduct an on-site inspection of either property.
3. The following persons were sworn and presented testimony at the hearing:
For the Petitioner - DeWayne Wendt, tax consultant, Marathon Petroleum, LLC,
For the Respondent - Molly Richardson, Deputy Township Assessor,
John Shelton, area manager, Tax Management Associates.
4. The Petitioner did not present any exhibits.
5. The Respondent presented the following exhibits:
Respondent Exhibit 1 - Property record card for parcel 6-006024,
Respondent Exhibit 2 - Property record card for parcel 6-007554,
Respondent Exhibit 3 - REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 —
VERSION A, appendix G at 4 (incorporated by reference at
50 IAC 2.3-1-2).
6. The following additional items are recognized as part of the record of proceedings:
Board Exhibit A - The four Petitions,
Board Exhibit B - Notices of Hearing,
Board Exhibit C - Hearing Sign in Sheet,
Board Exhibit D - Board approval to appear pro hac vice,

Board Exhibit E - Motion to be admitted pro hac vice,
 Board Exhibit F - List of the assessments of record and the Petitioner’s proposed assessments,
 Board Exhibit G - List of four appeals.

7. The PTABOA’s determination of the assessed values of the personal property and the assessments proposed by the Petitioner are shown in the following table.

Table 1
 Pike Township

Year	Parcel or Key #	Petition #	Address	Current Assessment	Requested Assessment
2003	F529145	49-600-03-1-7-01615	4720 West 56th Street	\$95,170	\$86,550
2004	F529145	49-600-04-1-7-01700	4720 West 56th Street	\$98,990	\$90,370
2003	F507750	49-601-03-1-7-01616	3801 N. High School Road	\$90,740	\$85,430
2004	F507750	49-601-04-1-7-01701	3801 N. High School Road	\$98,930	\$93,620

ADMINISTRATIVE REVIEW AND THE PETITIONER’S BURDEN

8. 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).
9. 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. Washington 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”).
10. 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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

11. The Petitioner presented the following evidence in regard to this issue:
 - A. The contested feature is a real property cold storage room. The Respondent erroneously classified this area as a personal property walk-in cooler during an audit of the Petitioner's personal property returns. *Wendt testimony.*
 - B. The Petitioner's tax consultant went to both locations under appeal and also observed the construction of a Speedway store in Marion County. The method of construction and materials used to build the cold storage areas under review are similar to those used to build the Speedway store. The materials used to construct the cold storage rooms, such as the panels, tracks, and cooler doors, arrive at the building site separately. The tracks are set in place and nailed to the concrete floor. The cold storage areas are built to be a permanent part of the building. When one of the stores is closed, the cold storage rooms are demolished with the rest of the real property. *Wendt testimony.*

12. The Respondent presented the following evidence in regard to this issue:
 - A. The costs of the walk-in coolers, including the walls, are assessed as personal property. The only costs included in the personal property assessments for these items are the costs the Petitioner capitalized for the walk-in coolers. *Shelton testimony.*
 - B. The property record cards show the cold storage rooms are not assessed as real property. *Richardson testimony.* One property was assessed using the General Commercial Mercantile (GCM) convenience market model. The other property was assessed using the GCM convenience market and GCM auto service models. *Id.;* *Resp't Exs. 1, 2.* The General Commercial Industrial small shop model would have

- been used if the walk-in coolers had been included in the real property assessments.
Richardson testimony.
- C. The walk-in cooler arrives as a kit and then it is placed inside the building. It is not part of the real property. *Richardson testimony.*
 - D. Cold storage rooms are larger than the areas under appeal. The exterior walls of the building usually form the boundaries of a cold storage room and often the refrigerated area is separated from the remainder of the building by plastic flaps rather than solid doors. *Shelton testimony.*
13. Unfortunately, the original personal property returns and the audit are not in evidence. There is no evidence that proves what the audit's exact changes were or what amount was added to the personal property value as a result of the reclassification of the cold storage areas. In addition, nothing establishes when the changes were made. This lack of information precludes the Board from making a determination of exactly what the corrected assessments should be.
14. Nevertheless, the Petitioner provided sufficient evidence to establish the current assessments should be changed.
- A. Built-in cold storage rooms are classified as real property. Prefabricated, walk-in cold storage areas are classified as personal property. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch.1 at 8-9 (incorporated by reference at 50 IAC 2.3-1-2); 50 IAC 4.2-4-10(d).
 - B. The Petitioner's evidence establishes the cold storage area was constructed on the site as a built-in part of the building. The walls are permanently attached to the building. They are not movable partitions. The evidence further establishes the contested feature is a permanent addition to the structure and would be left with a building

when it is demolished. It is not the kind of thing that could be successfully moved and used again.

- C. The Petitioner made a case the disputed features should be classified as real property under any commonly understood meaning of that term.
- D. The Respondent failed to present probative evidence to support its conclusory testimony that the components are simply prefabricated kits that are placed into the buildings. Furthermore, it offered no substantial explanation or authority to support its argument that the size of the contested areas supports the classification of the cooler units as personal property. Such unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- E. The cold storage areas should be classified as real property.

SUMMARY OF FINAL DETERMINATION

- 15. The Board finds in favor of the Petitioner. The disputed areas in the Petitioner's gas stations/convenience stores must be regarded as built-in cold storage rooms that are classified as real property. The amounts that the audit added for them as personal property must be removed.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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, 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>>