

**STATE OF INDIANA  
Board of Tax Review**

LIBERTY WATER CORPORATION	)	On Appeal from the Department of Local
	)	Government Finance
	)	
Petitioner,	)	
	)	Review of Application for ERA Deduction
v.	)	Petition No. 32-000-98-4-9-00001
	)	
DEPARTMENT OF LOCAL	)	
GOVERNMENT FINANCE <sup>1</sup>	)	
	)	
	)	
Respondent.	)	

**Findings of Fact and Conclusions of Law**

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State, having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**Issue**

Whether all of the equipment claimed by Liberty Water Corporation (Liberty) meets the definition of "new manufacturing" equipment as defined in Ind. Code § 6-1.1-12.1-1(3)(B).

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<sup>1</sup> Pursuant to P.L. 198-2001 the Department of Local Government Finance (DLGF) assumed the duties of the Assessment Division of the State Board of Tax Commissioners (Assessment Division)

## **Findings of Fact**

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. Liberty is a water treatment plant located in Liberty Township, Hendricks County.
3. Liberty's facility was declared an Economic Revitalization Area by the Hendricks County Council on July 5, 1995, in Confirming Resolution No. 95-6.
4. Liberty filed Form 322 ERA/PP, Application for Deduction From Assessed Valuation New Manufacturing Equipment in Economic Revitalization Area (ERA application) on April 21, 1998. The ERA application was for the March 1, 1998 assessment date.
5. On January 27, 1999, the Assessment Division of the SBTC notified Liberty that it was recommending denial of Liberty's ERA deduction. The Assessment Division approved \$0, stating that "equipment not directly used in a manufacturing process does not qualify for deduction".
6. Pursuant to Ind. Code § 6-1.1-12.1-5.5(h), Liberty filed written notice of its intention to appeal. The appeal was filed on February 16, 1999.
7. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held before Hearing Officer Beth Hammer on May 27, 1999. Liberty was represented by H. Robert Beattie, Sr. Tax Specialist, NIPSCO Industries, and Rick Giltner, Director of Purification, Indianapolis Water Company. The Assessment Division of the SBTC was represented by Brenda Harris, ERA Specialist, and Diane Gottschalk.

8. At the hearing, the Request for Hearing was made a part of the record and labeled Board Exhibit A. The Notice of Hearing was labeled as Board Exhibit B. In addition, the following exhibits were submitted into evidence:
  - Petitioner's Exhibit 10 – Fixed Asset Listing.
  - Petitioner's Exhibit 12-A through H – Photographs of the plant and equipment.  
(the Petitioner's Exhibits were labeled by the Petitioner)
  - Respondent's Exhibit 1 – The Assessment Division's ERA file.
9. On August 9, 1999, Marilyn S. Meighen, Senior Administrative Law Judge, requested that the parties submit Proposed Findings of Fact and Conclusions of Law. The request is labeled as Board Exhibit C.
10. The Petitioner submitted Proposed Findings of Fact and Conclusions of Law to the State on August 30, 1999. The Petitioner's Findings of Fact are labeled as Board Exhibit D. The Respondent did not submit Proposed Findings of Fact.
11. At the hearing, the Assessment Division agreed that Liberty is engaged in the direct production of other tangible personal property. The remaining question is whether all of the equipment claimed by Liberty is used in direct production.
12. Liberty considers the treatment plant as one system from the source water supply right up to the customer's home. Liberty claimed all of their water treatment and pumping equipment, the distribution lines that run from the plant to the customer's homes, fire hydrants, a backwash pond, and site work and fencing.
13. The operation at the treatment plant includes pumping water from the wells, chlorinating the raw water, removing iron and manganese from the water, chlorinating the processed water, analyzing the processed water, and pumping the processed water into the distribution system.

14. Liberty's final process to the water is to analyze the chlorine levels. If the chlorine levels are acceptable, the water is pumped into the distribution lines. If the chlorine levels are not acceptable, the water is sent back to the 80,000 gallon tank for additional chlorine treatment and time.
15. Liberty does not have an on site storage tank. The 80,000 gallon tank listed as a storage tank on the equipment list is actually a detention tank. The storage is in the lines.

### **Conclusions of Law**

1. The State is the proper body to hear an appeal of a determination by the Assessment Division of the SBTC of an ERA deduction pursuant to Ind. Code § 6-1.1-12.1-5.5(h).
2. It is a 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.
3. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
4. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving

the taxpayer of his burden of proof would place the State 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).
6. In the event a taxpayer sustains his burden, the burden then shifts to the DLGF to rebut the taxpayer's evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128.

### **Conclusions Regarding the ERA Deduction**

7. The authority and responsibility to determine the amount of an ERA Deduction rests with the Assessment Division of the SBTC (now the DLGF). Ind. Code § 6-1.1-12.1-5.5(e).
8. An owner of "new manufacturing equipment" can qualify for a deduction from assessed value on that equipment. Ind. Code § 6-1.1-12.1-4.5(d). In order to qualify for the ERA Deduction, personal property must meet the definition of "new manufacturing equipment". Ind. Code § 6-1.1-12.1-1(3)(A). Only "new manufacturing equipment" can qualify for the ERA Deduction; personal property not directly used in manufacturing does not qualify. 50 IAC 10-1-6(b). Furthermore, a taxpayer must show that the property for which a deduction is claimed meets the statutory requirements for obtaining the deduction. *American Juice Co., Inc. v. State Board of Tax Commissioners* (Ind. Tax 1988), 527 N.E.2d 1169.
9. In order to meet the definition of "new manufacturing equipment", personal

property must be:

... used in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property ... .

Ind. Code § 6-1.1-12.1-1(3)(B).

10. Although Indiana's courts have not specifically addressed what is meant by the terms "production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing" as found in Ind. Code § 6-1.1-12.1-1(3), those same terms are found in Indiana's sales and use tax statutes (see Ind. Code § 6-2.5-5-3). In the context of the sales and use language, the Indiana Tax Court held that:

... our supreme court held that the terms used in the equipment exemption statute provide a "comprehensive description of the various means of *production*" and "circumscribe [ ] all of the operations or processes by which [a] finished product is derived." *Cave Stone*, 457 N.E.2d at 524 (emphasis added). ... The terms used [ ] have meaning only to the extent that there is production. ... Without the production of goods or, to use the language of the statute, "other tangible personal property," the equipment exemption does not apply.

*Mechanics Laundry & Supply, Inc. v. Indiana Department of State Revenue*, 650 N.E.2d 1223 (Ind. Tax 1995), at 1228.

11. "Qualifying Property" is defined in 50 IAC 10-1-6(b) which states in part:  
Personal property will be qualifying property when it is used within the process that chronologically begins with the material handling equipment that carries or moves the raw material from its on-site storage location to the first machine or production step and ends with the material handling equipment that carries or moves the finished product from its final machine or production step to the in-plant finished goods storage site.
12. The specific question before the State is whether all of the equipment claimed by Liberty is "new manufacturing equipment" and "qualifying property."
13. While Indiana courts have held that tax levying statutes are to be construed against the state and in favor of the taxpayer (see for example, *Indiana*

*Department of State Revenue, Gross Income Tax Division v. Copaert Realty Corp.* (Ind. 1952), 109 N.E.2d 415), statutes authorizing property tax deductions have not been specifically addressed. However, statutes that remove otherwise taxable property from taxation are strictly construed against the taxpayer and in favor of the taxation of the property. *Harlan Sprauge Dawley, Inc. v. Indiana Department of State Revenue* (Ind. Tax 1992), 605 N.E.2d 1222, 1225 (citing *General Motors Corporation v. Indiana Department of State Revenue* (Ind. Tax 1991), 578 N.E.2d 399, 404, *aff'd*, (Ind. 1992), 599 N.E.2d 588) and *Indiana Association of Seventh-Day Adventists v. State Board of Tax Commissioners* (Ind. Tax 1987), 512 N.E.2d. 936. Since the ERA Deduction is not a tax levying statute, but excuses property that would otherwise be taxable from assessment, it makes logical sense to construe the ERA Deduction in the same manner (i.e., strictly).

14. Liberty's operation includes pumping water from the wells, chlorinating the raw water, removing iron and manganese from the water, chlorinating the processed water, analyzing the processed water, and pumping the processed water into the distribution system. Liberty's final process is done in the 80,000 gallon steel tank. The steel tank acts as a detention tank which allows the chlorine time to work. After the chlorine reaches the acceptable level, it is pumped into the transmission lines to the customers.
15. Qualifying equipment begins with the equipment that moves the raw material to the first production step and ends with the equipment that moves the finished product from the final production step to the in-plant finished goods storage site. *See Conclusion #11 above.* In Liberty's case, the qualifying equipment begins with the equipment at the wells, and ends with the chlorine analyzer and pumps. Liberty does not have on site storage.
16. The equipment classified as Transmission & Distribution System is not directly used in the production of goods. This equipment includes all of the pipes and equipment used to transport the processed water from the plant to the individual

customers. The Transmission & Distribution System is not directly used in the production of goods. The Hydrants are fire hydrants and are not directly used in the production of goods. The Backwash Pond is real estate, and therefore does not qualify. In addition, the line item Site work, fencing, and seeding is not directly used in the production of goods and does not qualify.

17. Liberty claimed equipment with a total cost of \$1,011,653 and an assessed value of \$133,020. The State finds that equipment (see below for listing of qualifying assets) with a total cost of \$346,429 qualifies as “new manufacturing equipment” and “qualifying property”. The State approves ERA abatement in the amount of \$46,190 assessed value.

Manufacturing Equipment Qualifying for ERA

Description	Amount	How Property is Used
600 GPM Package Water Treatment Chlorination System	100,066	Water Treatment Equipment
Raw Water & Finished Water Meter	9,999	Water Treatment Equipment
Duplex Constant Pressure Pumps	5,822	Supply Mains
Laboratory Sink & Testing Equipment	22,149	Pumping Equipment
Plant piping & valves	3,911	Laboratory Equipment
Raw Water & Yard Piping	13,860	Water Treatment Equipment
Air Compressor, Air Drying, & Piping	16,517	Supply Mains
Backwash water lift station & force main	5,176	Power Operated Equipment
12" Dia. Tubular Well & SS Screen	4,165	Water Treatment Equipment
12" Dia. Ductile iron raw water main	12,954	Wells & Springs
600 GPM Summersible Well Pump	16,500	Supply Mains
Well discharge piping & valves	8,550	Pumping Equipment
Precast concrete valve vaults	4,500	Supply Mains
Pitless Adapter	5,850	Supply Mains
Concrete Slabs	5,550	Wells & Springs
Develop pump test well #2	3,000	Wells & Springs
Chemical analysis well #2	5,610	Wells & Springs
80,000 Gallon Storage Tank	2,250	Wells & Springs
	100,000	Distribution Reservoirs
Total Cost of equipment	<u><b>\$346,429</b></u>	



**ERA Computation**

Cost of qualifying equipment	346,429
True Tax Value %	<u>0.4</u>
True Tax Value (TTV)	138,572
Assessed Value(1/3 of TTV)*	<u><u>\$46,190</u></u>

\*Prior to the March 1, 2001 assessment date, assessed value was equal to 1/3 of true tax value.

The above stated findings and conclusions 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