

**STATE OF INDIANA
Board of Tax Review**

NEW AGE VIDEO, INC.) On Appeal from the Lake County
) Auditor
Petitioner,)
) Review of the Claim for Enterprise
v.) Zone Personal Property Tax Credit
)
LAKE COUNTY AUDITOR) Petition No. 45-002-96-4-0-10000
)
Respondent.) Assessment Year: 1996

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 New Age Video, Inc. (New Age) is entitled to an Enterprise Zone Business Personal Property Tax Credit (EZ Credit) for the 1996 assessment year.

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. The Petitioner became aware of the denial of the EZ Credit upon receipt of the tax bill (Demand Notice), dated March 6, 1998. Pursuant to Ind. Code § 6-1.1-20.8-3 (b), Mr. Carmelo Reyes on behalf of New Age filed a written request for review of the Claim for Enterprise Zone Business Personal Property Tax Credit (Form EZ-1) by the State.

3. The request for review and attachments are labeled Board Exhibits A.

4. The subject property is located at 5700 East Melton Road, Gary, Calumet Township, Lake County.

Enterprise Zone Business Personal Property Tax Credit

5. In accordance with recent case law, 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). The Tax Court in *Graybar* references *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 State 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. On November 30, 2001, the State sent a letter to New Age giving them the opportunity to address the seven (7) factors. The letter from the State is labeled as Board Exhibit B.

7. Mr. Reyes submitted a written response with attachments on December 27, 2001. The attachments include a letter from Curtis Complete Accounting, Inc. to Lake County Treasurer, dated April 3, 1998, a copy of the Demand Notice on Personal Property Taxes and New Ages personal check for the taxes, a copy of the Form EZ-1, a copy of the request for appeal to the State from New Age, and a copy of a letter on the delinquent property taxes from Ostojic & Ostojic, Attorneys at Law to New Age, dated May 25, 1999. The written response with attachments has been entered into the record as Board Exhibit C.

8. The State also requested the Petitioner present additional information in the November 30, 2001 letter. The State requested a copy of the Form EZB-R and proof of timely filing, a copy of the Form 103, and a copy of the denial of the enterprise zone by the auditor. The requested information was not provided by the Petitioner.

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 State. Ind. Code § 6-1.1-20.8.3 (b).

2. The State 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).

A. Burden

3. 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.
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).

B. 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 State 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 State 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 State 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. 6, above. The factors and the 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.)*

The Petitioner did not address this factor. However, there is no indication that the failure to file a timely 1996 Form EZ-1 did not result from an act of God or the death of the person responsible for the completion of the form. The Petitioner provided a copy of the EZ-1 with a date stamp showing the form was filed with the Calumet Township Assessor on May 14, 1996. However, the statute clearly requires the Form EZ-1 to be filed with the Country Auditor.

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

The Petitioner did not address this factor.

- #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.)*

The Petitioner contends that an employee in the Calumet Township Assessor's office indicated that their office would forward the Form EZ-1 to the County Auditor. However, the Township Assessor's office would not provide a written statement confirming the Petitioner's statements that the assessor's office was going to forward the Form EZ-1 to the County Auditor's office.

- #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.

The Petitioner did not address this factor. There is no indication of when or if the auditor's office actually received the Form EZ-1.

- #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.)

The Petitioner did not address this factor. There is no evidence to show that the local officials would support the approval of the late-filed applications.

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

The Petitioner contends the Form EZ-1 was filed with the Calumet Township Assessor's office on time. The Petitioner feels he should not be penalized for the failure of the Township Assessor's office to forward the Form EZ-1 to the County Auditor.

#7. Any other factor that the State considers relevant.

The Petitioner provided evidence to show that the Form EZ-1 was timely filed with the Calumet Township Assessor. The Petitioner contends that the employees in the township assessor's office told him that they would forward the form to the county auditor. The Petitioner cannot support this contention. The Form EZ-1 clearly states that the form is to be filed with the Auditor of the county where the property is located. Ind. Code § 6-1.1-20.8-2 specifically states, a person that desires to claim the Enterprise Zone Inventory Credit shall file a certified application with the auditor of the county where the property for which the credit is claimed was located.

The Petitioner did not provide any evidence to show whether approval of the application would result in a loss in revenue, or whether the application was considered in determining the assessed value for budget, rate and levy purposes. Nor did the Petitioner

present any evidence that local officials support the approval of the application.

10. After careful consideration of the facts and circumstances of this situation, the State hereby denies New Age's EZ credit for the 1996 assessment year.

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 _____ 2002.

Chairman, Indiana Board of Tax Review