

REPRESENTATIVE FOR PETITIONER: Brian Keslin, CPA
Morris Tulskey & Company, P.C.

REPRESENTATIVES FOR RESPONDENT: None

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

OWENS MOTOR SUPPLY, INC.,)	
)	
Petitioner)	Review of the Claim for Enterprise
)	Zone Personal Property Tax Credit
)	
v.)	Petition No. 46-022-01-4-0-10000
)	
LAPORTE COUNTY AUDITOR)	County: LaPorte
)	Township: Michigan
)	
Respondent)	Assessment Year: 2001
)	

On Appeal from the LaPorte County Auditor

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Findings of Fact and Conclusions of Law

Issue

Whether Owens Motor Supply, Inc. (Owens Motor) is entitled to an Enterprise Zone Business Personal Property Tax Credit (EZ Credit) for the 2001 assessment year.

Findings of Fact and Other Matters of Record

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. Owens Motor became aware of the denial of the EZ Credit upon receipt of their tax bill (Bill No. 000213273). Pursuant to Ind. Code § 6-1.1-20.8-3 (b), Mr. Brian Keslin, CPA of Morris Tulskey & Company, P.C. on behalf of Owens Motor filed a written request for review of the Claim for Enterprise Zone Business Personal Property Tax Credit (Form EZ-1) by the Board. The request for review was filed May 8, 2002. The request for review and attachments are labeled Board Exhibit A.
3. The subject property is located at 100 North Roeske, Michigan City, Michigan Township, LaPorte County.

Enterprise Zone Business Personal Property Tax Credit

4. In accordance with 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 Board 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).

5. The Board 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).
6. On May 23, 2002, the Board sent a letter to Owens Motor and Mr. Keslin giving them the opportunity to address the seven (7) factors. The Board's letter is labeled as Board Exhibit B.
7. Mr. Keslin submitted a written response with attachments on June 21, 2002. The attachments include a Medical Certificate of Death for Elsie Zeidman; a letter from Michigan City Urban Enterprise Association, Inc. to Mr. Brian Keslin, dated June 13, 2002; a copy of the power of attorney from Owens Motor to Brian Keslin, dated June 12, 2002; a copy of the Form EZ-1, dated May 15, 2001; a copy of the Form 103 Business Tangible Personal Property Assessment Return for March 1, 2001; a copy of the Form EZB-E (no signature or date); and a memorandum from the Indiana Department of Commerce to Brian Keslin, dated June 13, 2002.
8. Mr. Keslin submitted a copy of Owen Motor's EZB-R for calendar year 2001 on July 9, 2002.

Conclusion 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 Board. Ind. Code § 6-1.1-20.8-3 (b).

2. The Board 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).

Burden

3. It is 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 Board administrative level for two reasons. First, the Board is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the Board 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).

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 Board 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 Board 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 Board 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 failure to file a timely 2001 Form EZ-1 did not result from an act of God or the death of the person responsible for the completion of the form. However, the facts, as outlined in the May 3, 2002 and June 17, 2002 letter to the Board would indicate that the individual who

was to file the form was not able to perform his duties as Owens Motor's accountant, due to a death in his family. This individual's responsibilities were assigned to Mr. Keslin, who had never prepared the forms. Mr. Keslin indicated that the forms took longer than normal to prepare and were mailed rather than be hand delivered as in the past.

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. However, based on the filing date of the application (May 1, 2002), the credit amount would not have been taken into consideration for budget purposes. Therefore, approval of the late-filed application would result in a loss of property tax revenues.

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 did not address this factor. There is no indication that the Petitioner was given misleading information.

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 Form EZ-1 for the March 1, 2001 assessment date was faxed to the County Auditor on May 1, 2002, one year after the due date. Based on the filing date of the application, the local officials would have been prevented from accurately determining the assessed value for budget, rate and levy purposes.

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 submitted a letter dated June 13, 2002 from the Michigan City Urban Enterprise Association, Inc. (Michigan City UEA). The letter indicated that Owens Motor had previously applied and received an exemption of property tax on inventory for the years 1984 through 1990, and 1993 through 2000. The letter also indicated that the 2002 forms have been timely filed with the auditor's office. In the letter the Michigan City UEA wishes the Petitioner well in their appeal. However, the letter does not specifically state that the Michigan City UEA supports the approval of the late filed application.

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

The Petitioner contends that the Form EZ-1 was lost in the mail. Therefore, the late-filing was not due to the taxpayer's negligence.

7. Any other factor that the Board considers relevant.

The Petitioner contends that the focus should be on the merits that previous applications were filed and approved, the property is located in an enterprise zone, and that due to the recent recession caused by September 11, 2001, that an unexpected tax bill of thousands of dollars could cause a serious financial problem for the company.

As stated previously, the Board considers the totality of the facts and circumstances in determining whether or not to approve a late-filed application. The Petitioner was given the opportunity to present evidence to help the Board determine if it is more equitable to grant or to deny the EZ Credit application. The Petitioner presented no information to show whether the credit amount was taken into consideration for budget purposes, whether the approval would result in a loss or property tax revenue, or whether any of the local officials would support approval of the late filed application even if it would result in the loss of tax revenues.

10. After careful consideration of the facts and circumstances of this situation, the Board hereby denies Owens Motor's EZ Credit for the 2001 assessment year.

The above stated findings of fact and conclusions of law 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

IMPORTANT NOTICE

- APPEAL RIGHTS-

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.