

**STATE OF INDIANA  
Board of Tax Review**

RANDALL J BRINNEMAN /DBA	) On Appeal from the Lake County
EARTH MAGIC	) Auditor
	)
Petitioner,	)
	) Review of the Enterprise Zone
v.	) Tax Credit
	)
LAKE COUNTY AUDITOR	) Petition No. 45-023-96-4-0-10000
	)
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.

**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. Pursuant to Ind. Code § 6-1.1-20.8-3(b), Mr. Randall J. Brinneman, Proprietor of Earth Magic, filed a written request for review of the Claim for Enterprise Zone Business Personal Property Tax Credit (Form EZ-1) by the State. The request was filed September 17, 1997.
3. In accordance with the Tax Court decision *Graybar Electric Co. v. State Board of Tax Commissioners*, 723 N.E. 2d 491 (Ind. Tax 2000), the State by letter dated November 30, 2001 requested the Petitioner address the seven (7) factors outlined in 50 IAC 10-4-2.
4. Neither the Petitioner nor his representative contacted the State prior to the December 31, 2001 deadline date outlined by the State's November 30, 2001 letter.
5. The State verified its letter was mailed, with proof of mailing, and also verified that the letter was not returned to the State as not deliverable.
6. On April 15, 2002, the State issued to the Petitioner an Order of Dismissal with attached Findings of Fact and Conclusions of Law as a result of the Petitioner's failure to respond. The Order of Dismissal allowed the Petitioner to submit to the State within ten (10) days a written objection requesting the Order be vacated and set aside.
7. The Order of Dismissal was returned to the State as not deliverable. The State reviewed the Petitioner's file and found no notification of an address change. The State did find an old letter in the file from Mr. Gregory Green, CPA, Mannia Green, LLP.
8. On May 10, 2002, the State issued a second Order of Dismissal with attached Findings of Fact and Conclusions of Law as a result of the Petitioner's failure to

respond. This second order was sent to the Petitioner and to Mr. Gregory Green of Mannia Green.

9. By fax dated May 20, 2002, Mr. Gregory Green, CPA, Mannia Green, LLP requested additional time to respond to the Order of Dismissal and to file supporting documentation on the seven (7) factors outlined in 50 IAC 10-4-2.
10. The second Order of Dismissal addressed to the Petitioner was returned to the State as not deliverable on May 22, 2002.
11. By letter dated May 23, 2002, the State set aside the Order of Dismissal issued on May 10, 2002. The State granted the Petitioner an additional thirty (30) days to address the seven (7) factors outlined in 50 IAC 10-4-2. (*Graybar Electric Co. v. State Board of Tax Commissioner's* 723 N.E. 2d 491 (Ind. Tax 2000)).
12. Neither the Petitioner nor his representative contacted the State prior to the June 24, 2002 deadline date outlined by the State's May 23, 2002 letter.
13. The subject property is located at 6624 Indianapolis Boulevard, Hammond, Indiana 46320, North Township, Lake County.

### **Conclusions of Law**

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. In addition, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.
2. 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).

3. In reviewing the actions of the County Auditor, the State is entitled to presume that its actions are correct. "Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies." *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome the presumption of correctness to prevail in the appeal.
4. 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. See also Ind. Code § 4-21.5-2-4 (a)(10) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).
5. 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.

6. 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.
  
7. 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.
  
8. The request for review of the EZ credit application is denied for failure of the Petitioner or his representatives to respond and address the seven (7) factors outlined in 50 IAC 10-4-2.

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