

REPRESENTATIVE FOR PETITIONER:

William S. Faulkner, CPA, DuCharme, McMillen & Associates, Inc.

REPRESENTATIVE FOR RESPONDENT:

Jess Reagan Gastineau, Attorney, Office of Corporation Counsel for Marion Co. Ass'r

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Roche Diagnostics Corporation,)	Petition No.: 49-400-12-1-7-01527-17
)	
Petitioner,)	
)	Parcel No.: D107710 (Personal Property)
v.)	
)	
Marion County Assessor,)	County: Marion
)	
Respondent.)	Assessment Year: 2012

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

November 24, 2020

FINAL DETERMINATION

The Indiana Board of Tax Review (“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

1. Petitioner Roche Diagnostics Corporation claims that the Assessor untimely increased its personal property assessment. We agree and uphold the assessment as originally reported.

PROCEDURAL HISTORY

2. On May 7, 2012, Roche filed a business personal property return in 2012 reporting \$227,212,280 in total assets. After adjusting for depreciation and an abatement, Roche's property had an assessed value of \$31,353,820.
3. On May 15, 2014, the Marion County Assessor issued a Form 113/PP based on a TMA audit, which discovered that roughly \$3 million of assets were omitted from Roche's return, and the correct total asset value was \$230,245,815. After adding in the omitted property and considering the abatement, the Assessor determined the property's assessed value was \$32,171,660.
4. Roche appealed the increased assessment on June 27, 2014. On August 25, 2017, the Marion County Property Tax Assessment Board of Appeals (PTABOA) denied Roche any relief. Roche timely filed a Petition for Review of Assessment (Form 131) with the Board.
5. One week before the November 8, 2018, hearing, the Assessor filed a Motion for Summary Judgment. On March 4, 2020, the Board denied the Motion, and re-scheduled the hearing for June 30, 2020.
6. On June 30, 2020, Joseph Stanford, the Board's designated administrative law judge (ALJ), held a telephonic hearing. Neither he nor the Board inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

7. Jerry Stempky, Senior Tax Department Manager for Roche, and Nicholas Getz, Audit Lead Manager for Tax Management Associates (TMA), were sworn and testified.
8. Roche offered the following exhibits:

Petitioner Exhibit 1: 2012 personal property audit findings,

Petitioner Exhibit 2: Form 113/PP, Notice of Assessment Change, issued May 15, 2014,
Petitioner Exhibit 3: Form 130, filed June 27, 2014,
Petitioner Exhibit 4: Form 115, issued August 25, 2017,
Petitioner Exhibit 5: Summary of contentions from Jerry Stempky.

9. The Assessor offered the following exhibits:

Respondent Exhibit R-1: List of omitted assets (both PDF and Excel versions),
Respondent Exhibit R-2: Audit template worksheets; 2011, 2012, and 2013 Forms 113/PP and Forms 122,
Respondent Exhibit R-3: Original hearing notice and granting of continuance request; Petitioner's witness and exhibit lists; Form 131 petition; Form 115; 2012 and 2011 Form 130 petitions and Forms 113/PP; second page of Power of Attorney; PTABOA hearing notice,
Respondent Exhibit R-4: Letter describing audit variances; audit template worksheets; Form 113/PP; 2011 and 2012 Forms 122; handwritten notes; audit engagement letter and a letter requesting evidence; 2012 Form 103 with attachments and asset listings.

10. The parties also timely submitted post-hearing briefs in lieu of closing arguments, which were entered into the record.

11. The record also includes the following:

- (1) all pleadings and documents filed in this appeal;
- (2) all orders and notices issued by the Board or ALJ; and
- (3) the digital recording of the hearing and these findings and conclusions.

12. The property is located at 9115 Hague Road, Indianapolis.

PETITIONER'S CONTENTIONS

13. On its 2012 personal property return, Roche reported \$227,212,280 in total assets. Of this, it reported \$205,509,301 in Pool 2 assets. *Pet'r. Ex 1, 5*. Applying depreciation resulted in a value of \$63,847,740. After claiming a \$32,493,920 abatement, its final

assessed value totaled \$31,353,820. *See Stempky testimony; Pet'r Ex. 1-2, 4, 5.* Neither party disputes Roche was entitled to an abatement.

14. In May 2014, TMA completed an audit of this return, and found the total value of Roche's assets was \$230,245,815, with a corrected Pool 2 amount of \$208,542,836 based on a discovery of 56 assets omitted from the return, totaling just over \$3 million. These assets were normally classified as real estate under Roche's accounting practices. Roche does not dispute this. Despite their value, the omitted assets constitute just 1.3351% of Roche's total cost per books. *Stempky testimony; Pet'r Ex. 5).*
15. Roche argues that this omission is relatively minor and its original return was in substantial compliance, and the Assessor improperly changed the assessment after the statutory deadline. Specifically, since Roche did not omit more than 5% of its cost per books, the relevant statutes governing changes to personal property assessment required the Assessor to change the return no later than October 30, 2012. *Stempky testimony; Faulkner argument; Pet'r Ex. 5; Pet'r Brief* (citing Ind. Code §§ 6-1.1-16-1 and 6-1.1-9-3(a); 50 IAC 4.2-1-1); *Lake County Assessor v. Amoco Sulfur Recovery Corp.*, 930 N.E.2d 1248 (Ind. Tax Ct. 2010). Because the Assessor failed to timely act, the originally reported assessment should be upheld.

RESPONDENT'S CONTENTIONS

16. Roche omitted 56 assets totaling over \$3 million from its personal property return. The omissions included things like wiring for equipment, computer equipment, lighting, signage, shelving, and different types of alarm systems. Roche failed to list these assets, and failed to disclose their costs, tax lives, and acquisition dates. *Getz testimony, Gastineau argument; Resp't Ex. R-1, R-2, R-4; Resp't Brief.*
17. While the nature of Roche's errors is "common," the resulting omissions are "substantial." The Assessor rejects the notion of a "bright-line rule" that an omission of less than 5% is "perfectly fine," because it would lead to taxpayers making a practice of omitting anything up to 5% of the cost of their property. *Getz testimony; Gastineau*

argument. In this case, Roche is essentially asking for a “free pass” on over \$3 million of assets. *Id.*

18. Roche does not dispute the results of the audit. Roche should have listed each asset with its acquisition cost, acquisition date, and tax life. Because Roche failed to do that, its return is not in substantial compliance according to previous Board determinations. *Gastineau argument; Amoco Sulfur Recovery Corp. n/k/a BP Products North America, Inc. v. North Township Assessor, Lake County Assessor and Lake County PTABOA*, Pet. Nos. 45-026-04-1-7-00002, et al. (Ind. Bd. of Tax Rev. August 19, 2009); *Fiserv Solutions, Inc. v. Marion County Assessor*, Pet. Nos. 49-900-10-1-7-01264-17, et al. (Ind. Bd. of Tax Rev. April 10, 2019); *Ingredion, Inc. v. Marion County Assessor*, Pet. Nos. 49-101-12-1-7-00186-18, et al. (January 30, 2020).

BURDEN OF PROOF

19. Generally, a taxpayer seeking review of an assessing official’s determination must make a prima facie case proving both that the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003).
20. In making its case, the taxpayer must explain how each piece of evidence relates to its 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”).
21. If the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to impeach or rebut the taxpayer’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.
22. Here, Roche has not argued that the burden should shift to the Assessor. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with Roche.

ANALYSIS

23. Indiana's personal property tax system is a self-assessment system. During the year at issue, every person owning, holding, possessing, or controlling personal property with a tax situs in Indiana on March 1 was required to file a personal property tax return. Ind. Code § 6-1.1-3-7; 50 IAC 4.2-2-2. With limited exceptions, the person who holds legal title to personal property is its owner for purposes of Indiana's property tax statutes. Ind. Code § 6-1.1-1-9(b); 50 IAC 4.2-2-4(a).
24. Cost is the starting point for determining true tax value for personal property. *See* 50 IAC 4.2-4-2. Generally, the cost of personal property is "the total amount reflected on the books and records of the taxpayer as of the assessment date," plus direct costs and an appropriate portion of indirect costs attributable to its production or acquisition and preparation for use. *Id.* There are exceptions to that rule for, among other things, property that is fully depreciated, retired, or nominally valued. *See* 50 IAC 4.2-4-3.
25. To compute true tax value, a taxpayer must first adjust the cost for any depreciable personal property to its tax basis as defined in the Internal Revenue Code (unadjusted by Sections 167 (depreciation) and 179 (expense deduction) or any credits that diminished its cost basis) if the property's cost per books is different from its tax basis. 50 IAC 4.2-4-4. Each piece of property is then segregated into one of the pools based on its depreciable life for federal income tax purposes. *See* 50 IAC 4.2-4-5. The adjusted cost of each year's acquisitions falling within a given pool is then multiplied by the percentage factor corresponding with that pool's year of acquisition from a table incorporated into the Department of Local Government Finance's (DLGF) regulations. *See* 50 IAC 4.2-4-7. The resulting sum is the true tax value of the personal property, which automatically reflects all adjustments for Indiana property tax purposes, except abnormal obsolescence. *Id.* With a few exceptions, the total valuation of a taxpayer's personal property cannot be less than 30% of adjusted cost, even if applying the depreciation pools would indicate a lower value. *See* 50 IAC 4.2-4-9.

26. Although personal property is self-reported, assessors have the ability to audit personal property returns to ensure compliance. But there are strict time limits on an assessor's ability to change a taxpayer's personal property return, and a PTABOA's ability to issue a final determination, before it becomes final. Indiana Code § 6-1.1-16-1 provides, in relevant part:

(a) Except as provided in section 2 [IC 6-1.1-16-2] of this chapter, an assessing official or county property tax assessment board of appeals may not change the assessed value claimed by a taxpayer on a personal property return unless the assessing official or county property tax assessment board of appeals takes the action and gives the notice required by IC 6-1.1-3-20 within the following periods:

....

(2) A county assessor or county property tax assessment board of appeals must make a change in the assessed value, including the final determination by the board of an assessment changed by an assessing official, and give the notice of the change on or before the later of:

- (A) October 30 of the year for which the assessment is made; or
- (B) five (5) months from the date the personal property return is filed if the return is filed after the filing date for the personal property tax return.

....

(b) Except as provided in section 2 of this chapter, if an assessing official or a county property tax assessment board of appeals fails to change an assessment and give notice of the change within the time prescribed by this section, the assessed value claimed by the taxpayer on the personal property return is final.

....

(d) This section does not apply if the taxpayer:

- (1) fails to file a personal property return which substantially complies with this article and the regulations of the department of local government finance; or
- (2) files a fraudulent personal property return with the intent to evade the payment of property taxes. . . .

Ind. Code § 6-1.1-16-1.

27. In this case, because the deadlines in Ind. Code § 6-1.1-16-1(a)(2) had passed, the Assessor only would be permitted to change the assessment under Ind. Code § 6-1.1-16-1(d). There is no evidence that the return was filed with the intent to evade property

taxes. Thus, we are left to determine whether the return “substantially complies” with the law and the regulations of the DLGF.

28. The Indiana Tax Court addressed the concept of substantial compliance in *Lake County Assessor v. Amoco Sulfur Recovery Corp.* In that case, the DLGF intervened to provide a memorandum in which it interpreted substantial compliance:

[s]ubstantial compliance with [statutory and] regulatory requirements means compliance to the extent necessary to assure the reasonable objectives of the [statute and] regulation are met.

930 N.E.2d at 1251.

29. The Tax Court adopted that interpretation. In February of 2010, before the Tax Court issued the *Amoco Sulfur* decision, but after the tax years at issue in that case, the DLGF enacted 50 IAC 4.2-1-1.1(j) which states:

- (j) "Nonsubstantial compliance" means a tax return that:
- (1) omits five percent (5%) or more of the cost per books of the tangible personal property at the location in the taxing district for which a return is filed;
 - (2) omits leased property and other nonowned personal property assessable under 50 IAC 4.2-2-4(b) where such omitted property exceeds five percent (5%) of the total assessed value of all reported personal property; or
 - (3) is filed with the intent to evade personal property taxes or assessment.

We now examine whether Roche’s return substantially complied with the applicable laws and regulations.

30. The audit shows Roche omitted only 1.3% of its actual cost per books from its return. Thus, it falls outside of the definition of nonsubstantial compliance found in 50 IAC 4.2-1-1.1(j). The Assessor argues this definition should not control because the Tax Court previously rejected a “bright-line rule” of 5%, and Roche omitted “a substantial amount” of assets, over \$3 million, that it should have reported.

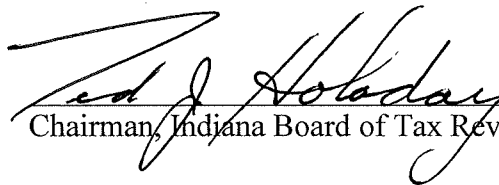
31. The Assessor's argument mischaracterizes the Tax Court's decision. While the Tax Court did reject an argument that substantial compliance should be based on the amount of tax dollars at issue, the Court's reference to a "percentage of the property's overall assessed value" was merely speculation as to one possible way an "amount in controversy" could be measured. Moreover, the Court goes on to note that the power to create such a standard lies with the General Assembly. *Id.* at n.13. *Amoco Sulfur* in no way prohibits either the General Assembly or the DLGF from adopting a standard of nonsubstantial compliance based on a percentage of total costs.
32. Thus, we find it instructive that Roche's return does not meet the DLGF's definition of nonsubstantial compliance. But we note that the DLGF regulation defines only "nonsubstantial compliance," rather than the term "substantially complies" found in the statute. These are not identical, and we can posit situations in which a return could fall outside the definition of "nonsubstantial compliance" but still fail to substantially comply under the statute. But the Assessor did not advance any argument on this point.
33. Indiana's self-assessment system for personal property "relies on a taxpayer to fully and accurately report their taxable property." *Amoco Sulfur*, 930 N.E.2d at 1252. But, contrary to the Assessor's argument, that does not necessarily mean that omitting property from a return automatically means that return fails to substantially comply with the law. The Tax Court goes on to note, "substantial compliance, in itself, suggests something less than full compliance." *Id.* at 1254.
34. The General Assembly clearly intended to give some repose to taxpayers by limiting an assessor's ability to audit returns beyond the five-month deadlines of Ind. Code § 6-1.1-16-1. In this case, the audit shows Roche only omitted 1.3% of its cost per books, clearly falling outside the DLGF's definition of nonsubstantial compliance in 50 IAC 4.2-1-1.1(j). The Assessor asks us to hold larger taxpayers to a different standard. That we cannot do. The Assessor must conduct its audits earlier to increase returns that substantially comply with the statute. In addition, there is no evidence that the returns

were filed with an intent to evade property taxes – the error arose out of certain assets considered real estate under Roche’s accounting, but taxed as personal property under Indiana law. Thus, under these facts, we find Roche’s return substantially complied with the law. For that reason, the return was final when the Assessor failed to audit it within the time frame required by Ind. Code. § 6-1.1-16-1(d).

SUMMARY OF FINAL DETERMINATION

35. Roche’s personal property return substantially complied with the law. Thus, Roche’s reported values were final when the deadlines imposed by Ind. Code. § 6-1.1-16-1(d) had passed, before the Assessor audited the return and changed the assessment. Thus, the assessment must be restored to the originally reported value.

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


Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review


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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.