

REPRESENTATIVE FOR PETITIONER: Loretta Benner, Account Manager
Steven Neumann, Account Manager
Rolf Coal and Fuel Corp.

REPRESENTATIVES FOR RESPONDENT: None

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

ROLF COAL AND FUEL CORP.)	
)	
Petitioner)	Review of the Claim for Enterprise
)	Zone Personal Property Tax Credit
)	
v.)	Petition No. 02-091-01-4-0-00001
)	
ALLEN COUNTY AUDITOR)	County: Allen
)	Township: Wayne
)	
Respondent)	Assessment Year: 2001
)	

On Appeal from the Allen 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 Rolf Coal and Fuel Corp. (Rolf Coal) 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. Pursuant to Ind. Code § 6-1.1-20.8-3(b), Mr. Steven Neumann, Account Manager of Rolf Coal, on behalf of Rolf Coal, 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 was filed September 14, 2001. The request for review is labeled Board Exhibit A.
3. The subject property is located at 1702 South Fairfield Avenue, Fort Wayne, Indiana 46802, Wayne Township, Allen County.

Enterprise Zone Business Personal Property Tax Credit

4. In accordance with case law, the Board 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 June 26, 2002, the Board sent a letter to Rolf Coal giving them the opportunity to address the seven (7) factors. The Board's letter is labeled as Board Exhibit B.
7. Ms. Loretta Benner, Account Manager of Rolf Coal submitted a written response with attachments on July 2, 2002. The attachments include an obituary for Norma J. Evertson; a copy of Rolf Coal's Form EZB-R for calendar year of 2000 (no signature or date); a copy of Rolf Coal's Form EZ-1 for March 1, 2001 (no signature or date); and a copy of Rolf Coal's Business Tangible Personal Property Assessment Return Forms 103 and 104 for March 1, 2001 (no signature or date). Ms. Benner's written response with attachments is labeled Board Exhibit C.

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 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).*

According to the Petitioner's letter dated July 2, 2002, the previous Accounting Manager of Rolf Coal & Fuel, Norma Evertson, died June 9, 2001 from an extended illness. During the last few months of Norma's life, her work attendance was very intermittent. If Ms. Evertson had been physically able, the application would have been filed in a timely manner.

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 deductions. *(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 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 Petitioner contends, the application was only filed two days late, there was very little lapse between the deadline and the date on which the application was actually filed. The EZ-1 was delivered to the Auditor on May 18, 2001, it was received in advance of the County Auditor's finalization of 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 did not address this factor. There is no evidence to show that any local officials or the Enterprise Zone Board would support the approval of the late-filed application.

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

The Petitioner did not address this factor.

7. Any other factor that the Board considers relevant.

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 of property tax revenue, or whether any of the local officials would approve of the late filed application.

10. After careful consideration of the facts and circumstances of this situation, the Board hereby denies Rolf Coal'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.