

REPRESENTATIVE FOR PETITIONER:

Veronica Bennu, Attorney

REPRESENTATIVE FOR RESPONDENT:

Terica Immormino, Deputy Township Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Speedway SuperAmerica, LLC <sup>1</sup>	)	Petitions: See Attached Table 1
	)	
Petitioner,	)	
	)	Marion County
v.	)	Warren Township
	)	
Warren Township Assessor,	)	Personal Property
	)	Assessment Years: 2003 and 2004
Respondent.	)	

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

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**April 14, 2008**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters findings of fact and conclusions of law on the following issue: Are the subject cold storage areas (or walk-in coolers) at the Petitioner's gas stations/convenience stores real or personal property?<sup>2</sup>

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<sup>1</sup> Speedway SuperAmerica, LLC is a wholly owned subsidiary of Marathon Petroleum Company, LLC. Eight of the Petitioner's stores are the subjects of these sixteen appeals.

<sup>2</sup> The Petitioner used the terms "walk-in cooler" and "cold storage area" interchangeably.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **PROCEDURAL HISTORY**

1. The Petitioner filed Forms 131, petitioning the Board for an administrative review from determinations of the Marion County Property Tax Assessment Board of Appeals (PTABOA) that were dated November 17, 2006. The Form 131 Petitions were filed with the Marion County Assessor on December 14, 2006.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

2. Paul Stultz, the designated Administrative Law Judge, held the administrative hearing for these sixteen petitions in Indianapolis on January 16, 2008. He did not conduct an on-site inspection of any property.
3. The following persons were sworn and presented testimony at the hearing:
  - For the Petitioner - DeWayne Wendt, tax consultant, Marathon Petroleum Company, LLC,
  - For the Respondent - Terica Immormino, Deputy Township Assessor.
4. The Petitioner presented the following exhibits:
  - Petitioner Exhibit 1 - Floor plan of one store showing the walk-in cooler,
  - Petitioner Exhibit 2 - Photograph taken inside the cooler,
  - Petitioner Exhibit 3 - Photograph of glass doors and shelving,
  - Petitioner Exhibit 4 - Photograph of shelving and inventory inside the cooler,
  - Petitioner Exhibit 5 - Photograph of glass doors and shelving,
  - Petitioner Exhibit 6 - Photograph of glass doors and shelving,
  - Petitioner Exhibit 7 - Photograph of shelving and inventory inside the cooler,
  - Petitioner Exhibit 8 - Photograph taken inside the cooler,
  - Petitioner Exhibit 9 - Photograph taken inside the cooler,
  - Petitioner Exhibit 10 - Photograph taken inside the cooler,
  - Petitioner Exhibit 11 - DVD of store being constructed.
5. The Respondent presented the following exhibits:
  - Respondent Exhibit 1 - Property record card (PRC) of one of the subject properties,

Respondent Exhibit 2 - PRC of one of the subject properties,  
Respondent Exhibit 3 - PRC of one of the subject properties,  
Respondent Exhibit 4 - PRC of one of the subject properties,  
Respondent Exhibit 5 - PRC of one of the subject properties,  
Respondent Exhibit 6 - PRC of one of the subject properties,  
Respondent Exhibit 7 - PRC of one of the subject properties,  
Respondent Exhibit 8 - PRC of one of the subject properties,  
Respondent Exhibit 9 - PRC of one of the subject properties,  
Respondent Exhibit 10 - PRC of one of the subject properties,  
Respondent Exhibit 11 - PRC of one of the subject properties,  
Respondent Exhibit 12 - PRC of one of the subject properties.

6. The following additional items are recognized as part of the record of proceedings:
  - Board Exhibit A - The 16 Petitions,
  - Board Exhibit B - Notice of Hearings,
  - Board Exhibit C - Hearing sign in sheet,
  - Board Exhibit D - Motion to be admitted pro hac vice and letter granting motion,
  - Board Exhibit E - List of 16 appeals,
  - Board Exhibit F - List of assessments of record and the Petitioner's proposed assessments for the 16 appeals.
  
7. The PTABOA's determination of the assessed values of the personal property and the personal property assessments proposed by the Petitioner are listed on Table 1, which is attached to this determination.

### **OBJECTION**

8. The Petitioner objected to the admission of the property record cards offered by the Respondent because the Respondent did not provide its list of witnesses and exhibits at least 15 business days before the start of the hearing as required by the Board's procedural rules.
  
9. The Board's procedural rules clearly state that each party must provide all other parties a list of the witnesses and exhibits it intends to offer at least 15 business days before any administrative hearing. 52 IAC 2-7-1(b)(2). The Board *may* exclude evidence based on a party's failure to comply with that deadline. 52 IAC 2-7-1(f).

10. The Board's pre-hearing disclosure rules are primarily designed to allow parties to adequately prepare their cases. Here, it is undisputed that the Respondent violated the rules by failing to timely provide the Petitioner with its witness and exhibit lists. Nonetheless, the Petitioner acknowledged that it would suffer no harm from admitting the property record cards. Therefore, the Board overrules this objection.

#### **ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN**

11. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
12. In making its case, the taxpayer must explain how each piece of evidence is relevant to the 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”).
13. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

#### **ANALYSIS**

14. The Petitioner presented the following evidence:
- A. The contested features are real property cold storage rooms. The Respondent erroneously classified those areas as personal property walk-in coolers during an audit of the Petitioner's personal property returns. *Wendt testimony*.

- B. Photographs and a DVD from these sites reveal the techniques used to construct the cold storage areas. *Wendt testimony*. The walk-in storage areas are constructed on-site. Tracks are initially screwed to the floor. The cooler panels are then set into the tracks and interlocked, creating a rubberized seal. The panels are first attached to trusses. Then steel studs are attached for framing and the frame is covered with drywall. The unit is entirely assembled on site. The coolers are not preassembled units that can simply be placed in the desired area. Once a cooler unit is disassembled, it becomes worthless because the integrity of the cooling seals is broken in the process. Accordingly, the coolers are left in a building when an older store is demolished. *Pet'r Ex. 11*.
- C. The cold storage areas are intended to be permanent additions to the building. *Wendt testimony*.

15. The Respondent presented the following evidence:

- A. Pre-fabricated walk-in coolers are classified as personal property. *Immormino testimony*.
- B. The walk-in cooler could be removed and the building would remain standing. *Immormino testimony*.

16. Unfortunately, the original personal property returns and the audit are not in evidence. There is no evidence that proves what the audit's exact changes were or what amount was added to the personal property value as a result of the reclassification of the cold storage areas. In addition, nothing establishes when the changes were made. This lack of information precludes the Board from making a determination of exactly what the corrected assessments should be.

17. Nevertheless, the Petitioner provided sufficient evidence to establish the current assessments should be changed.
- A. Built-in cold storage rooms are classified as real property. Prefabricated, walk-in cold storage areas are classified as personal property. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch.1 at 8-9 (incorporated by reference at 50 IAC 2.3-1-2); 50 IAC 4.2-4-10(d).
  - B. The Petitioner’s evidence establishes the cold storage area is not prefabricated—it was constructed on the site. Additionally, the photographs and video show the walls are attached to the concrete floor. Testimony establishes the contested feature is designed to be a permanent addition to the structure and would be left with the building when it is demolished. It is not the kind of thing that could be successfully moved and used again.
  - C. The Petitioner made a prima facie case the contested property should be classified as real property according to any commonly understood meaning of that term.
  - D. The Respondent offered no substantial explanation or probative evidence to establish these cold storage rooms are prefabricated. Similarly, the Respondent offered no substantial explanation or probative evidence that supports the conclusory testimony that a building would remain standing if the cold storage room were removed. Furthermore, assuming *arguendo* that statement is true, the Respondent failed to establish how that fact might be relevant to classification of the cold storage room as personal property. (Clearly non-load bearing interior walls can be considered part of real estate.) Testimony that provides only unsubstantiated conclusions does not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The Respondent failed to rebut or impeach the Petitioner’s evidence.

## SUMMARY OF FINAL DETERMINATION

18. The Board finds in favor of the Petitioner. The disputed areas in the Petitioner's gas stations/convenience stores must be regarded as built-in cold storage rooms that are classified as real property. The amounts that the audit added for them as personal property must be removed.

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

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Chairman, 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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>

Table 1  
Warren Township

Year	Parcel or Key #	Petition #	Address	Current Assessment	Requested Assessment
2003	G101919	49-701-03-1-7-01657	2615 North Emerson Avenue	377,250	364,080
2003	G104018	49-700-03-1-7-01658	5959 Southeastern Avenue	358,640	341,110
2003	G501947	49-700-03-1-7-01659	1605 North Shadeland Avenue	326,890	311,820
2003	G104176	49-701-03-1-7-01660	5103 East Washington Street	285,520	263,620
2003	G502853	49-700-03-1-7-01661	1005 North Mitthoeffer Road	195,520	189,950
2003	G104598	49-724-03-1-7-01662	11531 Washington Street	318,740	300,400
2003	G503152	49-701-03-1-7-01663	5436 Brookville Road	195,760	191,800
2003	G500362	49-700-03-1-7-01664	1590 North Post Road	125,270	120,440
2004	G101919	49-701-04-1-7-01787	2615 North Emerson Avenue	307,640	293,590
2004	G104018	49-700-04-1-7-01788	5959 Southeastern Avenue	289,830	276,470
2004	G501947	49-700-04-1-7-01789	1605 North Shadeland Avenue	374,920	353,830
2004	G104176	49-701-04-1-7-01790	5103 East Washington Street	348,730	332,310
2004	G502853	49-700-04-1-7-01791	1005 North Mitthoeffer Road	205,800	200,570
2004	G104598	49-724-04-1-7-01792	11531 East Washington Street	264,020	250,050
2004	G503152	49-701-04-1-7-01793	5436 Brookville Road	168,340	163,890
2004	G500362	49-700-04-1-7-01794	1590 North Post Road	125,770	120,940