

REPRESENTATIVE FOR PETITIONER:

Greg Myers, President

REPRESENTATIVE FOR RESPONDENT:

Richard R. Smith, Wells County Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Wayne Metals, LLC,	)	Petition No.: 90-012-12-1-7-00002
	)	
Petitioner	)	Business Tangible Personal Property
	)	
v.	)	County: Wells
	)	
Wells County Assessor,	)	Township: Rockcreek
	)	
Respondent.	)	Assessment Year: 2012

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

**October 22, 2013**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, finds and concludes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Introduction**

- Wayne Metals, LLC (“Wayne”) appeals the Assessor’s decision denying its tax abatement after it filed the Certified Deduction Application and underlying Business Tangible Personal Property Return one day late. In this appeal, Wayne asks the Board to

waive its filing deadlines, which the Board lacks the authority to do. That authority, in fact, rests solely with the Town Council of the Town of Markle. Unless and until that entity passes a resolution waiving Wayne's filing noncompliance, the Board must uphold the Assessor's decision.

### **Procedural History**

2. Wayne filed a Form 130 petition with the Wells County Assessor appealing the Assessor's denial of Wayne's tax abatement<sup>1</sup> for the March 1, 2012, assessment date. On December 28, 2012, the Wells County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying Wayne's petition. Wayne timely filed a Form 131 petition with the Board. The Board has jurisdiction over Wayne's appeal pursuant to Indiana Code sections 6-1.1-1-15 and 6-1.5-4-1.
3. On August 15, 2013, Administrative Law Judge ("ALJ") Joseph Stanford held a hearing on Wayne's petition.<sup>2</sup>

### **Hearing Facts and Other Matters of Record**

4. The following people were sworn in and testified:

For Wayne:	Greg Myers, President Kristen D. Morrison, Vice President/Controller
For the Assessor:	Richard R. Smith, County Assessor Beth Singleton, Deputy Assessor
5. Petitioner's Exhibits:

Exhibit 1:	Email, dated January 30, 2013, from Barry Wood to Greg Myers <sup>3</sup>
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<sup>1</sup> "Tax abatement" is a term commonly used to refer to a deduction from the assessed valuation of property located in a designated economic revitalization area.

<sup>2</sup> The hearing was consolidated to include a similar petition for HJM, LLC, a related taxpayer doing business at the same location.

<sup>3</sup> The document appears to show that the email was subsequently forwarded to Kris Morrison and Elissa McGauley.

Exhibit 2: Email correspondence, dated January 3, 2013, between Jeff Humbarger and Greg Myers

6. Respondent's Exhibits:

- Exhibit A: Wayne's originally filed business personal property filing, including a copy of the envelope, Form 104, Form 103, Form 103-N, Form 103-P, Form CF-1/PP (for Resolution 2004-9), Form 103-ERA (for Resolution 2004-9), Form 103-EL (for Resolution 2004-9), Form CF-1/PP (for Resolution 2005-4), Form 103-ERA (for Resolution 2005-4), Form 103-EL (for Resolution 2005-4), Form CF-1/PP (for Resolution 2010-2), Form 103-ERA (for Resolution 2010-2), Form 103-EL (for Resolution 2010-2)<sup>4</sup>
- Exhibit B: Wayne's filing with the Wells County Auditor, including Form CF-1/PP (for Resolution 2004-9), Form 103-ERA (for Resolution 2004-9), Form 103-EL (for Resolution 2004-9), Form CF-1/PP (for Resolution 2005-4), Form 103-ERA (for Resolution 2005-4), Form 103-EL (for Resolution 2005-4), Form CF-1/PP (for Resolution 2010-2), Form 103-ERA (for Resolution 2010-2), Form 103-EL (for Resolution 2010-2)
- Exhibit C: Wayne's amended business personal property filing, including a copy of the envelope, Form 104, Form 103, Form 103-N, Form 103-P, Form CF-1/PP (for Resolution 2004-9), Form 103-ERA (for Resolution 2004-9), Form 103-EL (for Resolution 2004-9), Form CF-1/PP (for Resolution 2005-4), Form 103-ERA (for Resolution 2005-4), Form 103-EL (for Resolution 2005-4), Form CF-1/PP (for Resolution 2010-2), Form 103-ERA (for Resolution 2010-2), Form 103-EL (for Resolution 2010-2)
- Exhibit D: Form 113/PP

7. The Board's exhibits:

- Exhibit A: Form 131 petition  
Exhibit B: Hearing notice  
Exhibit C: Hearing sign-in sheet

8. The business personal property in question is located at 400 East Logan Street, in Markle, Indiana. Neither the Board nor the ALJ inspected the property.

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<sup>4</sup> The Forms 103, 103-N, 103-ERA, and 103-EL are confidential pursuant to Ind. Code § 6-1.1-35-9.

9. The PTABOA determined an assessed value of \$1,123,340. The assessed value of the denied tax abatement is \$365,130. Wayne seeks an additional \$193,380 assessment reduction that stems from the Assessor's denial of its amended return.<sup>5</sup> Thus, Wayne requests an assessment of \$564,830.

### **Administrative Review and the Parties' Burdens**

10. 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); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
11. 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”).
12. If the taxpayer makes a *prima facie* case, the burden shifts to the assessor to offer evidence to rebut or impeach 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.

### **Findings of Fact**

14. The relevant facts are not in dispute. The Town Council of the Town of Markle approved three 10-year tax abatements on new manufacturing equipment for Wayne. *Myers, Smith testimony; see also Resp't. Exs. A-C*. For the March 1, 2012 assessment date, Wayne filed a business personal property return package reporting a depreciable asset assessed value of \$1,123,340 and an abatement deduction of \$644,720, for a final assessed valuation of \$478,620. *Resp't. Ex. A*.

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<sup>5</sup> This amount is net of the difference in tax abatement claims between the original and amended returns.

15. Wayne admits, and the Assessor agrees, that Wayne’s return package, which also included the verified deduction schedule<sup>6</sup> related to the tax abatement, was not timely filed. *Smith, Myers testimony*. The filing deadline was May 15, 2012, and Wayne’s return package was hand-delivered to the Assessor’s office on May 16, one day late. *Id.*; *see also Resp’t. Ex. A* at 1-3. Wayne did not request a timely extension of time to file its return. *Smith testimony*.
16. On September 7, 2012, Wayne filed an amended return package. *Resp’t. Ex. C*. On that return, Wayne reported a depreciable asset assessed value of \$929,960 and an abatement deduction of \$365,130, for a final assessed valuation of \$564,830. *Resp’t. Ex. C*. The Assessor denied the abatement and the amended return because the initial return, from which the amended return stems, was not timely filed. *Resp’t. Ex. D*.
17. Barry Wood, Department of Local Government Finance (“DLGF”), indicated that it is not the intent of the administrative regulation to deny an abatement because of an untimely filing. *Myers testimony; see Pet’r. Ex. 1*. The Town of Markle is willing to grant a waiver of non-compliance, although it has not done so yet because it is concerned with the timeliness issues that the Assessor raised. *Morrison, Myers testimony; see Pet’r. Ex. 2*. It will be very difficult for Wayne to recapture this penalty in today’s economic times. *Morrison testimony*.
18. The Assessor lacks the authority to waive filing deadlines. *Smith argument*.

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<sup>6</sup> The “verified deduction schedule,” or Form 103-ERA, pools the costs and acquisition dates of the assets eligible for tax abatement.

### Conclusions of Law

19. Indiana's personal property tax system is a self-assessment system. Every person, including any firm, company, partnership, association, corporation, fiduciary, or individual owning, holding, possessing, or controlling personal property with a tax situs in Indiana on March 1 of a year must file a personal property tax return on or before May 15 of that year unless the person obtains an extension of time. Ind. Code § 6-1.1-3-7; 50 IAC 4.2-2-2.
20. Additional documentation must be attached to the return to claim a tax abatement. Specifically, to obtain a deduction, a taxpayer must file a verified deduction schedule with a timely-filed personal property return. Ind. Code § 6-1.1-12.1-5.4. The statute is clear that a timely-filed return is a statutory prerequisite for claiming the tax abatement. *See Id.* (stating the deduction is applied in the amount claimed in a certified schedule that a person files with: (1) a *timely* personal property return under IC 6-1.1-3-7(a) or IC 6-1.1-3-7(b)). Emphasis added.
21. Indiana statutes are clear that the personal property return and accompanying abatement filing must be timely for a taxpayer to receive the abatement. Specifically, Indiana Code section 6-1.1-12.1-5.4 indicates that a person who desires to obtain the deduction must file a verified deduction schedule with the person's timely filed personal property return. *Id.* Indiana Code section 6-1.1-1-7 defines the filing date as May 15. Further, Forms 103-EL and 103-ERA, both abatement forms, both state that they must be submitted with a timely-filed Form 103 to receive the deduction. Finally, a taxpayer can only amend a timely-filed personal property return.
22. In this case, the parties agree that neither the verified deduction schedule nor the underlying personal property return were timely filed. Thus, in asking that the Board grant its tax abatement, Wayne is, in effect, asking the Board to waive the filing deadlines.

23. Legal precedent suggests that the Board has jurisdiction and authority to review the untimely filing of a Certified Deduction Application and underlying Business Tangible Personal Property Return. In *State Bd. of Tax Comm'rs. v. New Energy Co.*, 585 N.E.2d 38 (Ind. Ct. App. 1992), the issue before the Court was whether “the Board had the authority to consider New Energy’s application for deduction notwithstanding the untimely filing.” *Id.* at 39.<sup>7</sup> In resolving this issue, the Court of Appeals found that the Board had jurisdiction and authority to consider an untimely filed return.
24. In *Dalton Foundries v. State Bd. of Tax Comm'rs.*, 653 N.E.2d 548 (Ind. Tax Ct. 1995), the issue before the Indiana Tax Court was an untimely filed Resource Recovery System (“RRS”) property tax deduction. The Court found that the assessor had the authority and must consider an untimely application, but did not go so far as to hold that the assessor must grant the deduction.
25. More recently, in *Graybar Elec. Co. v. State Bd. of Tax Commrs.*, 723 N.E.2d 491 (Ind. Tax Ct. 2001), the Tax Court interpreted *New Energy* to mean that the Board may not deny the abatement at issue solely because it was not timely filed.
26. However, it appears the General Assembly has vested in the designating body, in this case the Town of Markle, the discretion to waive non-compliance through resolution. Specifically, Indiana Code section 6-1.1-12.1-11.3 states that a designating body may by resolution waive non-compliance, which includes the failure to timely file a deduction application pursuant to Indiana Code section 6-1.1-12.1-5.4. *See also* Ind. Code § 6-1.1-12.1-9.5; 50 IAC 4.2-11.1-7(a)(5). Thus, because the General Assembly specifically vested such authority in the Town of Markle, the Board does not have the authority to waive the late filing.

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<sup>7</sup> This case was before the Indiana Court of Appeal because the complaint was filed before the Board on June 10, 1986, and the statute enacting the Indiana Tax Court was effective July 1, 1986. *NewEnergy*, 585 N.E.2d at 38, fn. 1. Indiana Court of Appeals opinions are considered persuasive authority in the Indiana Tax Court. *See Uniden Am. Corp. v. Dep't. of State Revenue*, 718 N.E.2d 821, 828 (Ind. Tax Ct. 1999).

27. The Board is not unsympathetic to Wayne, however, Wayne failed to direct the Board's attention to any authority for the proposition that it can waive or ignore the statutory filing deadlines in light of Indiana Code sections 6-1.1-12.1-11.3 and 9.5. Wayne did not timely file its verified deduction schedule or personal property return, and the Assessor correctly denied its tax abatement for that reason.
  
28. With respect to Wayne's amended return, Wayne is not eligible to file an amended return in this case because its original return was not timely filed. In order to file an amended return, the initial return on which the amended return is based, must be timely filed. Specifically, Indiana Code section 6-1.1-3-7.5(a) provides that a taxpayer may amend its "original personal property return" up to 12 months after that return's due date, and 50 IAC 4.2-1-1.1(k) defines an "original personal property return" as a return filed with the proper assessing official by May 15 or, if an extension is granted, the extended filing date. Thus, the statute lacks any provision to amend a late-filed return.

## SUMMARY OF FINAL DETERMINATION

29. Wayne's verified deduction schedule and underlying personal property return were not filed timely, and the Board lacks the authority to waive filing deadlines. The Board therefore affirms the Assessor's decision denying Wayne's tax abatement.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>>.