

REPRESENTATIVE FOR PETITIONER:

Veronica Bennu, Attorney

REPRESENTATIVE FOR RESPONDENT:

Eric Bailey, Senior Deputy Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Speedway SuperAmerica, LLC ¹)	Petition Nos.: 49-101-02-1-7-10743
)	49-101-02-1-7-10744
Petitioner,)	49-101-03-1-7-01586
)	49-101-03-1-7-01587
v.)	
)	Marion County
Center Township Assessor,)	Center Township
)	Personal Property
Respondent.)	Assessment Years: 2002 and 2003

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

April 15, 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 cold storage areas (or walk-in coolers) at Petitioner's gas stations/convenience stores real or personal property?²

¹ Speedway SuperAmerica, LLC is a wholly owned subsidiary of Marathon Petroleum Company, LLC. Two of the Petitioner's stores are the subjects of these four appeals.

² 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 December 15, 2006. The Form 131 Petitions were filed with the Marion County Assessor on December 28, 2006.

HEARING FACTS AND OTHER MATTERS OF RECORD

2. Paul Stultz, the designated Administrative Law Judge, held a single administrative hearing for these four 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 - Eric Bailey, Senior 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 did not present any exhibits.

6. The following additional items are recognized as part of the record of proceedings:
- Board Exhibit A - The four 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 four appeals,
 - Board Exhibit F - List of assessments of record and the Petitioner’s proposed assessments for the four appeals.
7. The PTABOA’s determination of the assessed values of the personal property and the assessments proposed by the Petitioner are shown in the following table.

Year	Parcel or Key #	Petition #	Address	Current Assessment	Requested Assessment
2002	A579080	49-101-02-1-7-10743	401 Kentucky Avenue	519,880	483,430
2002	A134958	49-101-02-1-7-10744	1418 West Washington Street	469,270	430,680
2003	A579080	49-101-03-1-7-01586	401 Kentucky Avenue	369,150	345,950
2003	A134958	49-101-03-1-7-01587	1418 West Washington Street	355,050	330,490

ADMINISTRATIVE REVIEW AND THE PETITIONER’S BURDEN

8. 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).
9. 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”).
10. 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

11. The Petitioner presented the following evidence:
 - A. The contested features are real property cold storage rooms. The Respondent erroneously classified those areas as a personal property walk-in coolers during an audit of the Petitioner's personal property returns. *Wendt testimony*.
 - B. All of the Petitioner's stores in Marion County are constructed with the same basic floor plan, although dimensions may vary. *Wendt testimony; Pet'r Ex. 1*. The method of construction and materials used to build the cold storage areas are the same in each store. *Wendt testimony; Pet'r Exs. 1-11*.
 - C. The walk-in storage area is 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*.
 - D. The cold storage areas are intended to be permanent additions to the building. *Wendt testimony*.

12. The Respondent presented the following evidence:
 - A. The walk-in coolers are personal property and were not included as part of the Petitioner's real property assessments. *Bailey testimony.*
 - B. The DVD shows the walk-in coolers are prefabricated. *Bailey testimony.*
13. 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.
14. 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 video establishes the cold storage area is not prefabricated—it was constructed on the site. The photographs and video show the walls are permanently 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 a 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 substantial case that the contested property should be classified as real property.

D. The Respondent merely asserted, without elaboration, the structure is prefabricated and should be classified as personal property. Such unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

SUMMARY OF FINAL DETERMINATION

15. 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.

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>>