

REPRESENTATIVE FOR PETITIONER: Psychiatric Health & Wellness, LLC, Taxpayer

REPRESENTATIVE FOR RESPONDENT: Robert Schwerd, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Psychiatric Health & Wellness, LLC,)	Petition No.:	64-021-19-2-8-00376-21
)		
Petitioner,)	Parcel No.:	64-04-31-401-006.000.023
)		
v.)	County:	Porter
)		
Porter County Assessor,)	Assessment Year:	2018
)		
Respondent.)		

Date APRIL 26, 2022

FINAL DETERMINATION

The Indiana Board of Tax Review, having reviewed the facts and evidence presented in the Parties' arguments, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. INTRODUCTION

1. Petitioner Psychiatric Health & Wellness, LLC,¹ ("PHW") owned personal property but failed to file a business personal property tax return for the 2018 assessment year. As a result, the Assessor estimated its business personal property value and applied no exemption. Because PHW failed to file an appeal with the Assessor, we dismiss.

¹ Though Jill Adams and Franciscan Health Alliance, LLC, are listed as the taxpayer at various points in this appeal, we find these identifications incorrect. Franciscan, through counsel, submitted a notice that it was not a party to this litigation. While Adams is PHW's owner and agent, the property at issue is not hers — it is exclusively the business personal property of PHW.

II. PROCEDURAL HISTORY

2. For the 2018 assessment year, PHW did not file a timely business personal property tax return. After not receiving a return, the Porter County Assessor issued a Form 113 to PHW on July 9, 2018, estimating its business personal property's value at \$18,000.
3. On September 20, 2019, PHW filed a Form 103 for the 2018 assessment year, listing its business personal property's acquisition value at \$1,539. PHW also indicated that its personal property was exempt because it fell below the \$20,000 threshold for taxation.
4. On October 2, 2020, PHW filed a Form 136 application for an exemption for the same personal property and assessment year. The documents were sent by certified mail to the Porter County Treasurer's office, who signed for and accepted the documents. The Porter County Property Tax Assessment Board of Appeals ("PTABOA") never held a hearing on this appeal. On April 21, 2021, PHW filed a Form 132 petition with the Board.
5. On December 8, 2021, our Administrative Law Judge ("ALJ"), Erik Jones, held a telephonic hearing on the petition. Neither he nor the Board inspected the subject property. Adams appeared for PHW. Attorney Robert Schwerd represented the Assessor. Porter County Assessor Jon Snyder and Deputy Assessors Mary Danbek, Peggy Hendron, and Pat Zaborowski also appeared for the Assessor. Adams, Snyder, Danbek, Hendron, and Zaborowski were sworn and testified.
6. PHW offered the following exhibits:²

Petitioner Exhibit A	Memorandum outlining steps taken to resolve personal property dispute,
Petitioner Exhibit B	Lease agreement between PHW and Franciscan Health Alliance,
Petitioner Exhibit C	INBiz.in.gov screen shot showing PHW's address,

² Though the Assessor received copies of PHW's exhibits, copies were not received by the Board by the time of the hearing. The ALJ instructed PHW to re-submit electronic and physical copies of the exhibits to the Board and Assessor promptly after the hearing. PHW complied with this instruction.

Petitioner Exhibit D	Document demonstrating separate Porter County Parcel Numbers for 810 and 830 Michael Drive,
Petitioner Exhibit E	Two pages of Property Record Card (PRC) for 830 Michael Drive (undated),
Petitioner Exhibit F	PHW Form 103 and Form 104 for 2018,
Petitioner Exhibit G	Appeal letter addressed to Jon Snyder, dated Oct. 2, 2020,
Petitioner Exhibit H	Form 136,
Petitioner Exhibit I	Certified Mail Receipt, dated October 3, 2020,
Petitioner Exhibit J	Letter from Paula K. Smithart to Porter County Assessor, dated October 2, 2020,
Petitioner Exhibit K	Collection Notice from American Financial Credit Services (“AFCS”),
Petitioner Exhibit L	E-mail correspondence exchange between Adams, Judy Johnson, and Porter County Assessor office between September 2019 and October 2020.

7. The Assessor offered the following exhibits:

Respondent Exhibit A	INCAMA Chronology for subject property,
Respondent Exhibit B	Form 113, dated July 9, 2018,
Respondent Exhibit C	Form 113, dated July 5, 2019,
Respondent Exhibit D	Form 113, dated July 15, 2020,
Respondent Exhibit E	Assessor Correction Form, dated Aug. 28, 2019
Respondent Exhibit F	Form 103-Short, dated May 5, 2021,
Respondent Exhibit G	Form 104, dated May 5, 2021,
Respondent Exhibit H	Certified Mail Receipt, dated May 11, 2018,
Respondent Exhibit I	USPS tracking receipts, dated Sept. 4-8, 2020,
Respondent Exhibit J	E-Mail correspondence between Adams and Peggy Hendron, dated Aug. 12, 2020, to Sept. 10, 2020,
Respondent Exhibit K	Assessment of Personal Property FAQ, dated Jan. 25, 2017,
Respondent Exhibit L	PowerPoint slides (8) about personal property filing requirements,
Respondent Exhibit M	2018 Taxes and Penalties calculations for Taxpayer,
Respondent Exhibit N	2021 PRC for 830 Michael Drive, in Chesterton,
Respondent Exhibit O	Chronology of Assessor’s actions regarding subject property, prepared by Mary Danbek,
Respondent Exhibit P	Memorandum responding to PHW’s narrative included with appeal, prepared by Deputy Assessor Pat Zaborowski,
Respondent Exhibit Q	Examples of USPS certified mail stamp (2021),
Respondent Exhibit R	Pricing chart for USPS certified mail,
Respondent Exhibit S	USPS delivery history for Petitioner’s Form 103 mailing,
Respondent Exhibit T	Image of receipt signature for Petitioner’s certified mail,
Respondent Exhibit U	Chesterton USPS processing stamp example.

8. The official record also includes the following: (1) all petitions and other documents filed in this appeal; (2) all orders and notices issued by the Board or our ALJ; and (3) an audio recording of the hearing.

III. OBJECTIONS

9. The ALJ ruled on several objections at the hearing, and we adopt his rulings. He also took several objections under advisement, which we address below.

A. Assessor's Objections

10. The Assessor objected to two of PHW's exhibits on hearsay grounds. The first was Exhibit A, a memorandum PHW prepared outlining its interactions with the Assessor prior to its appeal. Because the document was "not prepared in the normal course of business," the Assessor argued it should be excluded. PHW responded that this was merely an outline of its efforts to resolve this dispute prior to an appeal.
11. The second is Exhibit I — a set of certified mail receipts addressed to the Porter County Treasurer's office. The Assessor had no issue with the documents themselves. Rather, it objected to Adams' statement that she was instructed by someone at the Treasurer's office to file PHW's appeal there; and Adams' offer to provide documents supporting that claim to the Board.
12. "Hearsay" is a statement, other than one made while testifying, offered to prove the truth of the matter asserted. Such a statement can be either oral or written. *See* Ind. R. Evid. 801(c). The Board's procedural rules specifically address hearsay evidence:

Hearsay evidence, as defined by [Ind. R. Evid. 801], may be admitted. If the hearsay evidence is not objected to, the evidence may form the basis for a determination. However, if the evidence: (1) is properly objected to; and (2) does not fall within a recognized exception to the hearsay rule; the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 4-6-9(d). The word “may” is discretionary, not mandatory. In other words, though not required, the Board may admit hearsay evidence into the record.

13. We find that Exhibit A and Adams’ Exhibit I statements do not fall within any recognized exception to the hearsay rule. Exhibit A was clearly prepared in anticipation of litigation. Adams’ statement about Exhibit I falls within the definition of hearsay outlined above. However, the Board is permitted to admit hearsay evidence so long as our determination is not based solely on said evidence. We find that both Exhibit A and Adams’ statement are at least minimally relevant to PHW’s claims, and therefore admit both over the Assessor’s objection. Nevertheless, we note that we rely on neither to reach our decision here.

14. The Assessor also objected to PHW’s Exhibits B, D, E, F, G, and H on relevance grounds.
 - Exhibit B is one page of a lease agreement between PHW and nonparty Franciscan Health Alliance that the Assessor argues has no bearing on PHW’s personal property claims.
 - Exhibit D is a webpage printout demonstrating the different parcel numbers for 810 and 830 Michael Drive; again, the Assessor contends these are irrelevant because PHW’s personal property has a separate parcel number.
 - Exhibit E is part of an undated PRC for 830 Michael Drive; the Assessor again disputes the applicability to PHW’s personal property claims.
 - Exhibit F is a Form 103-Short PHW filed in September 2019; the Assessor contends PHW filed its return well past the deadline, and therefore the document has no bearing on PHW’s appeal.
 - Exhibit G is a letter from Adams to the Porter County Assessor. The Assessor again argues that because PHW failed to timely file any exemption request, statements confirming its late filing are irrelevant.

- Exhibit H is a Form 136 PHW filed in October 2020. The Assessor argues PHW should have filed a Form 130 to properly bring this appeal, leaving any other form without relevance.
15. The threshold for relevance is very low, and we find that each exhibit has at least some relevance, though minimal, to PHW's claims. We find that these six objections go more to the weight of the evidence rather than their admissibility and overrule each of them.
 16. The Assessor's final objection was to Exhibit L, a series of emails between Adams and the Assessor dated September 2019 to October 2020, because they did not represent the complete exchange between the two. We again find that this objection goes more to the evidence's weight than its admissibility and overrule it.

B. PHW's Objections

17. PHW also objected to many of the Assessor's exhibits. We begin with two procedural objections raised during the hearing. The first covered Respondent Exhibits O – U. PHW argued that the Board's procedural rules clearly require parties to exchange exhibits at least 15 business days prior to the hearing. These exhibits were exchanged just 11 days before, and therefore violate this rule. We find that PHW misunderstands the relevant rule. Our rule, 52 IAC 4-8-1(b)(2), creates a 15-business day deadline for witness and exhibit lists; exhibit copies need only be exchanged five business days before a hearing. We therefore find Exhibits O – U were properly exchanged and overrule the objections. We acknowledge that the exhibit list accompanying the documents was submitted after the deadline, but we find no prejudice, and PHW has failed to identify any, and we therefore overrule this objection too.
18. PHW also raised a procedural objection to Respondent Exhibit Q, which contains sample certified mail receipts. PHW argued the Assessor never exchanged copies of the exhibit. In response, the Assessor attempted to introduce an unlisted witness to verify the exchange. However, considering the above objection discussion, and because the witness

was not included in any witness list nor sworn at the hearing, the ALJ did not permit the witness to testify. We adopt this decision. Nevertheless, as the ALJ noted during the hearing, the document was served on PHW in an attachment to an e-mail, with the Board copied. We overrule this objection and find the exhibit was properly exchanged.

19. PHW also objected to Respondent's Exhibit A, a timeline of how the Assessor handled PHW's dispute. PHW contended this document was no different than its Exhibit A and should not be admitted. We interpret this as a hearsay objection. The Assessor argued that Exhibit A was different because it was prepared in the normal course of business, not in anticipation of litigation, and in support offered Danbek's testimony. Ind. R. Evid. 803(6)(B) does not exclude "record[s] . . . kept in the course of a regularly conducted activity of a business." Given Danbek's testimony that she prepared the document within the scope of her normal business requirements, we find Exhibit A fits within this definition of non-hearsay and overrule the objection. Regardless, we give no weight to this exhibit in reaching our final determination.

20. Additionally, PHW raised several objections that we interpret to be on relevance grounds:
 - Exhibit C, a Form 113 dated July 5, 2019; PHW claims it had no knowledge it owed any tax on that date.
 - Exhibit E, the Assessor's Correction Worksheet; PHW claims it is incomplete because it does not list the \$25 late fee the Assessor assigned to PHW.
 - Exhibit H, a certified mail receipt dated May 11, 2018; PHW claims this is not the package it mailed to the Assessor.
 - Exhibit I, a USPS tracking history for the same package; Again, PHW claims this is not the package it mailed to the Assessor.
 - Exhibit J, a series of e-mails between Adams and Hendron between August 12, 2020, and September 20, 2020; PHW argues the information included in them is inaccurate.

- Exhibit M, a breakdown of the taxes and penalties PHW owed for the 2018 assessment year; PHW claims they are irrelevant because they fail to show how the Assessor determined the value of its business personal property.
- Exhibit P, a timeline prepared by Zaborowski; PHW argues it too contains inaccurate information.
- Exhibit R, certified mail pricing guides for 2018-20; PHW argues these have no bearing on the value of its business personal property.
- Exhibit S, a USPS tracking history for the package in Exhibit H and I; PHW restated its position that it did not send this package, and therefore the exhibit has no bearing on its appeal.
- Exhibit T, an electronic signature for the same package in Exhibit H and I; PHW again restated it had no bearing on its appeal.
- Exhibit U, a sample USPS internal processing stamp; PHW again argued this exhibit had no bearing on its appeal.

21. Again, we note that the relevance threshold is very low. We find that these objections each go more toward the weight of the evidence rather than their admissibility and overrule each objection. However, we note our concerns about the mailed item that is the focus of Exhibits R, S, and T, and note that we give no weight to these exhibits in reaching our final determination.

IV. FINDINGS OF FACT

22. On January 1, 2018, PHW owned business personal property located in Chesterton, Indiana. According to PHW's documents, this personal property had a total acquisition cost of \$1,539.³ Because this amount is below the statutory threshold of \$20,000, PHW believes it should be exempt from taxation. *Adams testimony; Pet'r Ex. B, H*; Ind. Code § 6-1.1-3-7.2(d).

³ We note that during her testimony, Adams consistently referred to PHW's personal property's "assessed value," personal property within Indiana is calculated with "true tax value" or acquisition cost. Though there are significant differences between the two, we interpret any mention of "assessed value" to mean acquisition cost.

23. PHW's deadline to file its business personal property tax returns for the 2018 assessment year was May 15, 2018. PHW admits that it did not file its business personal property tax return before that date. On July 9, 2018, having not received a return from PHW, the Assessor estimated PHW's personal property value and issued a Form 113 Notice of Assessment. The Assessor valued PHW's property at \$18,000. *Adams testimony; Pet'r Ex. B, F, J; Resp't Ex. B; Ind. Code § 6-1.1-3-1.5.*
24. PHW claims it did not receive the Form 113. However, the Assessor tracks all mail returned to its office, and it never received any mail as "undeliverable" from PHW's address on file. Regardless, PHW took no further action to address its missed filing until September 2019. *Adams testimony; Zaborowski testimony.*
25. On September 20, 2019, PHW filed its Form 103 for the 2018 business personal property with the Assessor. PHW listed the total acquisition cost as \$1,539. Receiving no response from the Assessor, PHW believed the matter was "resolved." *Adams testimony; Pet'r Ex. F.*
26. On July 17, 2020, PHW received a collection notice from American Financial Credit Services ("AFCS") for approximately \$888. The notice listed the tax year as "2018 PAYABLE 2019." PHW received a second notice, also from AFCS, on April 1, 2021, for the same assessment year. In an effort to appeal its 2018 assessment, PHW submitted a Form 136 Application For Property Tax Exemption to the Porter County Treasurer. Because the Form 136 was filed with the Treasurer, rather than the Assessor, it was not brought before the PTABOA. On April 21, 2021, PHW filed a Form 132 petition with the Board. *Adams testimony; Schwerd argument; Pet'r Ex. H, I, K.*

V. CONCLUSIONS OF LAW AND ANALYSIS

27. Indiana's personal property system is a self-assessment system. Each year, every person owning, holding, possessing, or controlling business personal property with a tax situs in

Indiana on January 1 of that year is required to file a personal property tax return (Form 103) with the relevant county Assessor. Ind. Code § 6-1.1-3-7; 50 IAC 4.2-2-2. Unless an extension is requested, returns must be filed by May 15 each year. Ind. Code § 6-1.1-3-1.5; Ind. Code § 6-1.1-3-7(b). Under Indiana Code § 6-1.1-3-7.2, a taxpayer must file a return even if the assets are exempt.

28. If a taxpayer fails to file by the deadline, the Assessor is permitted to estimate the total value of the personal property owned by that taxpayer for that year. Ind. Code § 6-1.1-3-15(c).
29. Once notified of the assessor's estimated assessment, a taxpayer may elect to file a personal property return, subject to any monetary penalties imposed by I.C. § 6-1.1-37-7. Ind. Code § 6-1.1-3-15(c). This section does not include a deadline for the taxpayer to "elect to file" a belated return.
30. Here, it is undisputed that PHW did not file its 2018 personal property returns by the May 15 deadline. This permitted the Assessor to estimate the cost of PHW's personal property for that year and send PHW a Notice of Assessment. In response, PHW elected to file its 2018 return. The Assessor took no action under Ind. Code § 6-1.1-16-2 to change PHW's return, and the exemption should stand.
31. However, we are unable to reach the merits as the appeal is not properly before us.
 - A. **Though PHW filed its appeal on an incorrect Form 136, this error is not fatal to its claims.**
32. The Assessor argues that the Board should dismiss PHW's appeal for two procedural errors. First, because PHW filed its appeal on an incorrect Form 136, rather than the correct Form 130; second, because PHW filed its appeal with the county treasurer rather than the Assessor.

33. We decline to dismiss PHW's appeal for using the wrong form. As an initial matter, we note the legislature's confusing use of the term "exempt" when referring to business personal property under the \$20,000 statutory threshold. While true that the statute allows the personal property to avoid taxation, it is clearly different from those exemptions outlined in Indiana Code § 6-1.1-10-16(a). Rather than filing a separate form (such as a Form 136) to claim the exemption, personal property returns require a taxpayer to indicate on that same form that the property has an acquisition cost below the \$20,000 threshold and the property should not be taxed. Ind. Code § 6-1.1-3-7.2(e); Form 103.
34. However, given the legislature's unclear terminology, it is easy to imagine a taxpayer wanting to appeal their business personal property "exemption" and becoming confused over the correct form to use. Though PHW used the incorrect form here, it nevertheless clearly (if somewhat clumsily) identified exactly the challenge it raised: the assessment year on appeal, the business personal property's cost, and the recovery sought. *See Pet'r Ex. H.*
35. It is well-settled that, absent the legislature's express decision, Indiana courts will not "exalt form over substance." *Word of His Grace Fellowship v. State Bd. Of Tax Comm'rs*, 711 N.E.2d 875, 878 n.2 (Ind. Tax Ct. 1999). This is to promote resolving claims on their merits rather than procedural issues. *Pinkston v. State*, 325 N.E.2d 496, 498-99 (Ind. Ct. App. 1975). Given it is clear what PHW seeks in its appeal, we decline to value form over substance and will not deny PHW's appeal on this issue.

B. Regardless, the Board's narrow statutory authority permits it only to review the decisions of "assessing officials," which does not include county treasurers.

36. A taxpayer wishing to appeal an official's action concerning its personal property must comply with the procedures outlined in Ind. Code § 6-1.1-15-1.1. Specifically, taxpayers are instructed to initiate their appeals by filing a written notice with either the township assessor, or county assessor if the township is not served by a township assessor. Ind. Code § 6-1.1-15-1.1(a) (2018). By extension, the Board's enacting statutes direct it to impartially review all appeals stemming from determinations made by an assessing

official, county PTABOA, or the DLGF. Ind. Code § 6-1.5-4-1; 52 IAC 4-1-3. An “assessing official” is defined as a township assessor (if any), a county assessor, or a member of a county PTABOA. Ind. Code § 6-1.1-1-1.5(a)(1)-(3).


37. Both Forms 131 and 136 explicitly instruct taxpayers to file their appeals with the Assessor.⁴ Despite this, PHW admits that it deliberately filed its appeal with the Porter County Treasurer because it believed the Assessor would be “uncooperative” in resolving the dispute. Doing so, PHW preempted either the Assessor or PTABOA from reviewing the appeal or issuing a decision for the Board’s review. *Adams testimony*; Form 131, 136.
38. PHW’s actions place the Board in a peculiar position. Though we review matters *de novo*, we nevertheless remain a creature of statute. And those statutes specifically identify the decisions — and relevant decision makers — we are permitted to review. Nowhere does the Indiana Code identify county treasurers as assessing officials. PHW has provided no authority (and we have found none) that incorporates county treasurers into the statutory lists above. Accordingly, any treasurer decision, or lack thereof, does not create an avenue for a taxpayer to appeal to the Board. We therefore lack the authority to rule on the merits of PHW’s appeal.
39. Because PHW’s appeal is improperly before us, we do not reach the merits of either party’s claims.

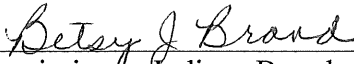
VI. CONCLUSION

40. We find the appeal is improperly before us and dismiss it. We decline to speculate whether PHW can re-file its appeal with the appropriate county official.

⁴ The Form 136 instructs taxpayers to file the appeal in duplicate; it is unclear from the record if PHW followed this direction.

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