REPRESENTATIVE FOR PETITIONERS: Paul Jones, Jones Pyatt Law, LLC

REPRESENTATIVESFOR RESPONDENT: Marilyn Meighen, Attorney at Law
Brian Cusimano, Attorney at Law
Ayn Engle, Attorney at Law

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Wheels LT,	)	Petition Nos.: 45-002-16-1-7-01218-19
	)	45-002-17-1-7-01217-19
Petitioner,	)	45-002-18-1-7-01216-19
	)	
v.	)	Personal Property
	)	
Lake County Assessor,	)	County: Lake
	)	
Respondent.	)	Assessment Years: 2016-2018

June 18, 2021

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Introduction

1. These appeals stem from an audit of Wheels LT's business personal property that, put charitably, was less than ideal. The auditor was unclear in communicating what she needed, Wheels was less than forthcoming in its responses, and the resulting increased assessments might not have accurately reflected the property's true tax value. At bottom, however, Wheels' complaints are challenges to the assessed values, and Wheels needed to bring its appeals within 45 days after statutorily compliant notices of the assessment increases were mailed. While the parties hotly dispute whether such notices were ever

mailed, we find that statutorily compliant Form 133/PP notices and audit summaries were mailed on September 6, 2018—more than 10 months before Wheels filed its appeal petitions. And we reject Wheels' attempts to avail itself of a longer limitations period by characterizing its appeals as challenges to something other than the increased assessed values.

II. Procedural History

A. Filings below

2. For the 2016-2018 assessment years, Wheels timely filed personal property assessment returns for its business personal property. In April 2018, it filed an amended return for 2017. Those returns reported the following assessments:

Year	Total Cost	True Tax Value
2016	[redacted]	
2017		
2017 (amended)		
2018		

3. As a result of an audit, the Calumet Township Assessor increased Wheels' assessment for each year:

Year	Original	Final
2016	[redacted]	
2017		
2018		

4. The parties dispute exactly when the Township Assessor increased the assessments and when Wheels was notified of those increases. We will discuss that dispute further in later sections of this determination. In any case, on August 28, 2019, Wheels filed Form 130 petitions challenging the increased assessments. In each petition it filled out both section II, alleging that its current assessment was incorrect, and section III, alleging five different types of error:

- The assessment was against the wrong person;
- There was an error in the approval, denial, or omission of a deduction, credit; exemption, abatement, or tax cap;
- There was a clerical, mathematical, or typographical mistake;
- There was an error in the description of the property; and

- There was an issue with the legality or constitutionality of a property tax or assessment.

More specifically, Wheels claimed:

> The County improperly issued the attached Form 113 notice/change of assessment. The assessment is issued improperly, fails to apply applicable exemptions, constitutes an error, fails to properly describe the property at issue and is illegal and unconstitutional. The assessment was not properly signed, authorized or approved. The assessment lacks any basis in the facts or law. The assessment is illegal as a matter of law, procedurally deficient, contrary to law, and violates the Indiana and U.S. Constitution[s].

Pet'r Ex. AA.

5. Almost two months later, on October 22, 2019, the Township Assessor sent a letter to Wheels' counsel indicating that "this matter does not qualify for a Section III (correction of error")-type appeal" and that Wheels' "statutory rights" to challenge the "Form 113 PP Personal Property assessment" had expired.[1]

B. Appeals before the Board

6. On December 6, 2019, Wheels filed Form 131 petitions with us, repeating some, but not all, of the allegations from its Form 130 petitions.

1. Summary judgment motions

7. Less than five months later, on April 28, 2020, Wheels filed a motion for summary judgment and accompanying designations for all three petitions. Wheels argued that the assessments were illegal as a matter of law because they were arbitrary and unsupported and because the Township Assessor violated statutes governing notice required for

[1] It does not appear that the Lake County Property Tax Assessment Board of Appeals ("PTABOA") ever acted on Wheels' Form 130 petitions. While Ind. Code § 6-1.1-15-1.2(k) allows a taxpayer to appeal directly to the Board if more than 180 days have passed since the taxpayer filed its Form 130 petitions without the PTATBOA having issued a determination, Wheels filed its Form 131 petitions with us less than four months after filing its Form 130 petitions. Nonetheless, more than 180 days had passed between Wheels filing its Form 130 petitions and our hearing. And nobody claims that the appeals are not properly before us.

assessing omitted or undervalued property. Wheels designated an affidavit from Faraz Khan, its tax director, who affirmed, among other things, that:

- Samantha Steele, who claimed to be the Calumet Township Assessor's audit consultant, emailed unsigned Form 113s assessing omitted personal property and claiming that information regarding leasehold improvements had not been provided;
- Although Steele said she had mailed the Form 113s, Wheels only received unsigned, emailed copies;
- Wheels never received signed Form 113s, Steele's work papers, or documentation of mailing despite asking for those things; and
- Wheels did not have any leasehold improvements.

Wheels also designated the unsigned Form 113s referenced in Khan's affidavit. More than 30 days passed without the Assessor either responding to Wheels' motion or seeking an extension of time to do so. *Pet'r Ex. AA*.

8. Our designated administrative law judge, Erik Jones ("ALJ"), set Wheels' motion for an October 22, 2020 hearing. On October 2, the Assessor moved to continue the hearing and for an enlargement of time to respond to Wheels' motion, to which Wheels objected. Ten days later, the Assessor filed her own summary judgment motion and designations. She argued that Wheels' appeals were untimely because it did not file them until more than 45 days after Form 113s and Steele's audit summaries were mailed.

9. The ALJ issued an order converting the summary judgment hearing to a status conference. At that conference, he informed the parties that we would set the appeals for a hearing on the merits where they could raise all issues. In doing so, the ALJ effectively denied both motions.

2. Hearing on the merits

10. The hearing, which was held remotely through a video-conferencing application, began on December 17, 2020. Owing to a power outage, the hearing was not completed until February 8, 2021. Neither the ALJ nor the Board inspected Wheels' personal property.

11. Paul Jones appeared as counsel for Wheels. Marilyn Meighen appeared as counsel for the Assessor. Samantha Steele, Faraz Khan, and William Faulkner were sworn as witnesses and testified.

12. Wheels submitted the following exhibits:

Petitioner's Exhibit A	Petitioner's Business Personal Property Tax Return for 2016 (confidential),
Petitioner's Exhibit B	Petitioner's Business Personal Property Tax Return for 2017 (confidential),
Petitioner's Exhibit C	Petitioner's Amended Business Personal Property Tax Return for 2017 (confidential),
Petitioner's Exhibit D	Form 113/PP for 2017 assessment dated July 17, 2018,
Petitioner's Exhibit E	Petitioner's Business Personal Property Tax Return for 2018 (confidential)
Petitioner's Exhibit F	MS Excel Sheets from Wheels listing of Assets for 2016,
Petitioner's Exhibit G	MS Excel Sheets from Wheels listing of Assets for 2017,
Petitioner's Exhibit H	MS Excel Sheets from Wheels listing of Assets for 2018,
Petitioner's Exhibit I	Audit Letter Dated June 20, 2018,
Petitioner's Exhibit J	Email chain between Levi McMahon and Samantha Steele – July 17, 2018,
Petitioner's Exhibit K	Email chain between Wheels representatives and Steele – July 17, 2018 to September 21, 2018,
Petitioner's Exhibit L	Email chain between Levi McMahon and Samantha Steele – July 17, 2018 to August 6, 2018,
Petitioner's Exhibit M	Email chain between Steele, Rose Butterly, and Elzbieta Trampke – August 27, 2018 to September 19, 2018,
Petitioner's Exhibit N	Email chain between Wheels representatives and Steele – July 17, 2018 to September 28, 2018,
Petitioner's Exhibit O	Email chain between Wheels representatives and Steele – July 17, 2018 to November 7, 2018,
Petitioner's Exhibit P	Email chain between Steele and Wheels representatives – July 17, 2018 to November 7, 2018, including unsigned Forms 113/PP for 2016-2018,
Petitioner's Exhibit Q	Email chain between Wheels representatives and Steele – July 17, 2018 to November 7, 2018,
Petitioner's Exhibit R	Email from Alex Muniz to Steele – April 24, 2019,
Petitioner's Exhibit S	Email chain between Steele and Wheels representatives – August 27, 2018 to April 26, 2019,
Petitioner's Exhibit T	Email chain between Wheels Representatives and Steele – August 27, 2018 to April 26, 2019,
Petitioner's Exhibit U	Email from Faraz Khan to Michelle Banks – July 15, 2019,

Petitioner's Exhibit V	Email chain between Steele and Paul Jones – April 28-29, 2020, including attached Excel spreadsheets (V1-V8),
Petitioner's Exhibit W	Affidavit of Faraz Khan,
Petitioner's Exhibit X	Vehicle Lease by and between Wheels and US Steel (confidential),
Petitioner's Exhibit Y	Copy of Petitioner's Motion for Summary Judgment – April 28, 2020,
Petitioner's Exhibit Z	Copy of Assessor's Motion for Summary Judgment and Brief– October 11, 2020,
Petitioner's Exhibit AA	Copy of Assessor's Designation of Evidence – October 11, 2020, including Assessor's Exhibits A-1 through A-9 and Exhibit B.

13. The Assessor submitted the following exhibits:

Respondent's Exhibit A	2016 Business Personal Property Return (confidential),
Respondent's Exhibit B	2017 Business Personal Property Return (confidential),
Respondent's Exhibit C	Amended 2017 Business Personal Property Return (confidential),
Respondent's Exhibit D	2018 Business Personal Property Return (confidential),
Respondent's Exhibit E	Email String – August 27, 2018 to September 19, 2019,
Respondent's Exhibit A-3	2016 & 2017 Audit Summary,
Respondent's Exhibit A-4	2018 Audit Summary,
Respondent's Exhibit F	Email String – September 4, 2018 to September 6, 2018,
Respondent's Exhibit A-5	Form 113/PP for Assessment Year 2016,
Respondent's Exhibit A-6	Form 113/PP for Assessment Year 2017,
Respondent's Exhibit A-7	Form 113/PP for Assessment Year 2018,
Respondent's Exhibit G	Tracking Spreadsheet,
Respondent's Exhibit H	Email String – July 11,2019 to April 29, 2020,
Respondent's Exhibit I	2019 Business Personal Property Return (confidential)

14. The record also includes the following: (1) all pleadings, motions, briefs, and documents filed in these appeals; (2) all orders and notices issued by the Board and our ALJ; and (3) a transcript of the hearing.

III. Objections

15. During the Assessor's cross-examination of Khan, Wheels made two objections that the ALJ took under advisement. The first objection regarding Wheels' 2020 personal property return was premature. The Assessor, however, neither asked any questions about the return's contents nor offered the return as an exhibit, which effectively mooted

the objection. *Tr. at 92-93.* Wheels also objected to the Assessor offering what counsel represented was a Form 113 for the 2020 assessment date. Khan, however, testified that he had never seen the document, and the Assessor did not offer it as an exhibit. *Tr. at 93-94.* So that objection was mooted as well.

IV. Findings of Fact

A. Wheels' returns

16. Wheels is a private company that focuses on leasing commercial fleets. It does not lease to consumers; instead, it leases vehicles and related equipment to large companies. Wheels and its clients enter master leases that outline general terms. A client may then lease portions of Wheels' fleet, which are added to the master lease through addenda. The master lease remains unchanged. *Tr. at 28-29, 69-70.*

17. Wheels timely filed return packets for the 2016-2018 tax years concerning vehicles leased to U.S. Steel.[2] Each packet included multiple forms, including a Form 103-Long return, and other documents (including a Form 103-O) that listed vehicles, acquisition years and costs, model numbers, descriptions and VIN or serial numbers, and location. In each Form 103-Long return, Wheels reported total cost. It did not claim any exemptions. It used depreciation Pool 2 to depreciate all its reported cost, and then adjusted the resulting value upward to equal 30% of cost, arriving at the following true tax values:

Year	Total Cost	True Tax Value
2016	[redacted]	
2017		
2018		

Pet'r Exs. A-B, E; Tr. at 79-86.

[2] Vehicles subject to the motor vehicle excise tax or commercial vehicle excise tax are not subject to taxation under Article 1.1. I.C. § 6-1.1-2-7(b)(2), (5). Wheels reported the vehicles for taxation as personal property and makes no claim that they are exempted on grounds that they are subject to excise tax.

18. On April 25, 2018, Wheels filed an amended return for the 2017 assessment year. In that amended return, it elected to use depreciation Pool 5—which may be used for "special integrated steel mill equipment or oil refinery/petrochemical equipment"—to depreciate all its cost. Because Wheels was using Pool 5, it did not adjust the resulting value even though it was below 30% of its total cost. It reported the following reduced true tax value:

Year	Cost	True Tax Value
2017 (amended)	[redacted]	

A little less than three months later, on July 16, 2018, the Township Assessor mailed a Form 113 indicating that the assessed value for 2017 had been changed to the amount reported on Wheels' amended return. *Pet'r Exs. C-D; Tr. at 30-31, 84.*

19. In 2019 Wheels again filed a return depreciating all its cost in Pool 2. According to Khan, Wheels intended to elect Pool 5 every year. It did not make the election on its original returns, however, because it wanted to receive a benefit (presumably a refund) rather than pass the tax break from using Pool 5 on to U.S. Steel. Unfortunately for Wheels, it had significant turnover in its tax department. Indeed, five different employees worked on the audit and on Wheels' attempts to reopen the audit. Because of the turnover, the effects of the global pandemic from COVID-19, and other issues, Wheels never filed amended returns for 2016, 2018, or 2019. It welcomed the audit of its 2016-2018 returns, which it believed would offer it the chance to depreciate its property using Pool 5 for the years it failed to file amended returns. *Tr. at 82, 86-88, 91.*

B. The audit

20. On June 20, 2018, the Township Assessor sent a letter to Wheels informing Wheels that its 2016-2018 returns were being audited and providing contact information for Samantha Steele of Leanor Group, the firm she had contracted to perform the audit. In the letter, the Township Assessor asked Wheels to give Steele its "chart of accounts," trial balances, federal income tax returns and depreciation schedules, its most recent schedules on fixed

assets, and "any other documentation necessary to reconcile reported figures with the financial records." At hearing, Steele explained that the trial balances would help show what Wheels paid for the assets and would allow her to tie the asset list to what Wheels was claiming as each asset's value. Similarly, federal depreciation schedules would, among other things, help verify the cost and acquisition dates for the assets and hopefully provide an all-inclusive list of what was at the assessment site on the assessment dates. *Pet'r Ex. I; Tr. at 114.*

21. Khan and Steele viewed the audit differently. Khan viewed the audit as a negotiation that was only in its infancy at the time Steele completed her work. Steele, by contrast, had a policy of completing audits within 90 days because, among other things, she was sensitive to various deadlines for local assessing officials. Those different viewpoints, together with significant turnover and disorganization within Wheels' tax department, probably caused some of the communication issues that plagued the audit. *See Tr. at 34, 38-39, 40, 42-43, 105, 134-36.*

22. Over the ensuing month and a half after the Township Assessor mailed the initial audit letter, Steele communicated with Levi McMahon, a senior tax accountant for Wheels. In his initial email to Steele, McMahon said that Wheels did not have trial balances or a separate federal tax return for the U.S. Steel location. And he explained that Wheels' federal tax depreciation schedules would not include a list of assets because Wheels traded vehicles in like-kind exchanges. McMahon did say that he could provide a list of assets at U.S. Steel on the assessment date with costs as of their acquisition dates, which would be supported by invoices. He later provided spreadsheets with fixed asset lists. *Pet'r Ex. L.*

23. The assets listed in the spreadsheets differed slightly from the assets listed in Wheels' returns. And they did not include things Steele normally would see with vehicles, such as hitches, toolboxes. There is no evidence that either McMahon or anyone else at Wheels ever provided invoices or bills of sale for the vehicles. *Pet'r Exs. A, L; Tr. at 114-19.*

24. In further communications, McMahon told Steele that Wheels amended its 2017 return and intended to amend its 2018 return as well. He gave her a copy of the Form 113 issued in response to the amended 2017 return. In a series of emails between August 4 and August 6, 2018, Steele asked for lease agreements with U.S. Steel from 2013 forward. In response, McMahon explained that Wheels did not have a lease agreement for each vehicle, but that it had a contract with U.S. Steel stating who was responsible for the taxes and asked if that was what Steele wanted. Steele replied "Both," and shortly thereafter indicated that "the contract and leases are all I need for now." McMahon reminded her that Wheels did not have "leases on these. We just have the contracts." Steele replied, "Thank you." Wheels never provided Steele with the master lease between it and U.S. Steel nor any of the addenda for individual vehicles. According to Khan, "we never got to that point in the audit, in our view." *Pet'r Ex. L; Tr. at 105.*

25. Steele had no further contact with McMahon, who left Wheels' employment. He apparently did not leave easily accessible records from which other members of Wheels' tax department could determine the status of the audit, what Steele had requested, or what McMahon had provided to Steele. McMahon did give Steele contact information for Elzbieta Trampka, another senior tax accountant for Wheels. *Pet'r Ex. Q.*

26. Having heard nothing further from Wheels, on August 27, 2018, Steele emailed Trampka indicating that she wanted to wrap up the audit as soon as possible and that she needed additional information. Steele asked for a copy of the "operating agreement and/or contracts." *Pet'r Ex. M; Resp't Ex. E; Tr. at 134-35.*

27. Steele found some minor inconsistencies between the assets reported on Wheels' returns and those listed in McMahon's spreadsheet. And she was troubled by not having what she called Wheels' "operating agreement" or lease with U.S. Steel or any information to corroborate the reported costs for Wheels' vehicles. She therefore resorted to internet research—including Kelly Bluebook and Google online purchases—concerning the

market value for the vehicles listed in Wheels' documents. In many cases, she found that those values were significantly higher than what Wheels reported. In other cases, they were only about 20% higher. Steele decided to uniformly increase Wheels' reported costs by 20% for each year. *Pet'r Ex. A-3 – A-5; Resp't Ex. N; Tr. at 120-27, 146-49.*

28. She then used Pool 2 to depreciate the increased costs. While Steele knew that Wheels was seeking Pool 5 depreciation for all three years and acknowledged that an assessor's decision to put assets in Pool 5 for a previous year could be a "starting point," she did not think she had sufficient information to substantiate using Pool 5 for 2016 and 2018. In any case, she did not agree that the Form 113 issued following Wheels' amended return for 2017 represented the Township Assessor's approval of the assessment reported in that return, explaining that the Township Assessor would not have had any documentation to either approve or disapprove the assessment. Steele was less clear in explaining why she did not use Pool 5 for 2017. *Tr. at 123-25, 154-59.*

C. Notice of increased assessments

29. On September 4, 2018, Steele sent Form 113s with the increased assessments to Michelle Banks, a deputy in the Township Assessor's office, for the Township Assessor to sign. Steele indicated that she would then mail the Form 113s to Wheels. The top of each Form 113 informs the taxpayer of its appeal rights, including the 45-day deadline to file an appeal. The forms also list the location of the personal property, the assessment reported in Wheels' return (the original, rather than the amended return for 2017) and the increased value. Under the area provided for "Description or Reasons" the forms note that Leanor Group had completed its audit and that the findings "have resulted in the original assessment being undervalued." They further indicate, "[t]axpayer failed to provide documentation on leasehold improvements after repeated attempts." At hearing, Steele explained that the reference to leasehold improvements was a typo resulting from her computer autocorrecting what she meant to say, which was "lease." *Resp't Exs. A-5-A-7, F; Tr. at 145-46.*

30. Banks emailed the signed forms to Steele on September 6. Under "date of notice" they list September 4, 2018. The same day she received the signed forms, Steele placed them and her audit summaries into envelopes addressed to Wheels at the same address listed on its returns. The audit summaries included lists of the assets being assessed as well as the reported and audited costs, but they did not include her market research. Steele mailed the envelopes via first class mail. She then noted September 6 as the mailing date on a spreadsheet that she keeps for each audit assignment. She described the circumstances surrounding the mailing, including which post office she used. Her memory of that detail was jogged by bank statements reflecting that she withdrew money from a bank across the street so she could get soup from her favorite restaurant, which only takes cash. *Resp't Exs. F-G, AA at A (Steele Affidavit), A-3 – A-4; Tr. at 127-31, 137, 149-50, 152-53, 157-58.*

31. Although Khan did not believe that Wheels received the signed Form 113s until after it filed these appeals, he admitted that he had no proof of that fact. Indeed, Wheels received the Form 113s sometime on or before September 19, 2018. Steele testified that Rose Butterly, Wheels' tax supervisor, called her on that date and acknowledged receiving the Form 113s, although she disagreed with the assessment increase. Steele told Butterly that Wheels still had 45 days from September 6 to put in an appeal to "hold their spot for the option to be able to, you know, fix this if that was the case that it needed to be corrected." *Resp't Ex. E*; *Tr. at 100, 113, 132-34.*

32. Butterly wanted to know what information Steele would need to reopen the audit. Because Steele was waiting in line to pick up her daughter at school and wasn't in front of her computer, she told Butterly to email her so she could send Butterly a copy of the audit letter. The telephone call was followed by an email exchange discussing McMahon's spreadsheet and the information requested in the audit letter. Nobody rebutted Steele's testimony about her telephone conversation with Butterly. Butterly did not testify. *Resp't Ex. E*; *Tr. 132-34.*

C. Further communications

33. At hearing, when Steele was asked why she continued to communicate with Wheels if she had already mailed the Form 113s, she explained that the goal was to ensure the assessment is correct and that there would be future assessments that needed to be accurate. Plus, Wheels was from out of state and processes can differ in other states, so she was trying to be as helpful as possible. *Tr. at 113, 133-34.*

34. There were a few communications between representatives of Wheels and Steele over the next 10 months. First, on September 28, 2018, Trampka emailed Steele indicating that Wheels had been able to retrieve some data, explaining that most of what Steele had asked for would not apply to Wheels' business, and asking if the spreadsheets McMahon had provided were not what Steele wanted. *Pet'r Ex. M; Tr. at 38.*

35. Next, on November 7, 2018, Trampka emailed Steele asking her to "please let us know where you stand." Steele promptly responded with an email attaching unsigned copies of the Form 113s and informing Trampka that they were sent out September 4th. Steele testified that she attached unsigned, rather than signed, copies because she was quickly looking for what Trampka had asked for and did not pay attention to whether the copies she was sending were signed. Similarly, Steele explained that she was looking at the date on the forms when she wrote that they were mailed on September 4 rather than September 6 (a later email from Steele to a deputy township assessor also had an error referring to the mailing date as September 5). Trampka responded that she disagreed with the assessments. *Pet'r Exs. H, O-P; Tr. at 136, 151-52, 161.*

36. Wheels did not communicate with Steele again until April 24, 2019, when Alex Muniz, yet another senior tax accountant for Wheels, asked for the audit paperwork. Steele responded with an email explaining that she had repeatedly asked for supporting documents from Wheels and that she had resorted to market data when she did not receive it. Muniz replied by copying Steele with an earlier email from McMahon and asking her to help him understand what documents Wheels had failed to provide.

According to Khan, Steele again asked for contracts and copies of bills of sale in May, although Wheels did not offer a copy of an email with that request or indicate who it was made to. Ultimately, Wheels set up a meeting with Steele for July 11, 2019. Although Steele apparently forgot to calendar the meeting, she spoke with Khan and other Wheels employees over the telephone. Steele told them that she would consider Wheels' information for the future, but that they had failed to appeal the assessments within 45 days and that they needed to speak to the Township Assessor. *Exs. R-T, U; Tr. at 44-47, 66-68.*

V. Conclusions of Law and Analysis

A. Wheels' challenges to the assessed values are time-barred because it failed to file Form 130 petitions within 45-days after statutorily compliant notices of increases to its self-reported assessments were mailed.

37. Despite Wheels' arguments to the contrary, its appeals boil down to challenges to the assessed values the Township Assessor assigned to its property after Steele's audit. To understand why that is true—and hence why Wheels' claims were untimely—we begin with some background on how personal property assessments are determined and the rules for appealing those assessments.

1. Indiana has a self-reporting system, but local assessing officials may audit returns and increase assessments of omitted or undervalued property upon mailing proper notice.

38. Cost normally is the starting point for determining the true tax value for personal property. *See* 50 IAC 4.2-4-2. Generally, the cost of personal property is "the total amount reflected on the books and records of the taxpayer as of the assessment date," plus direct costs and an appropriate portion of indirect costs attributable to its production or acquisition and preparation for use. *Id.* For leased property (including motor vehicles to the extent taxable as personal property), however, a taxpayer must use the property's "base year value." 50 IAC 4.2-4-7(d); 50 IAC 4.2-8-7(a). Base year value means "the amount, measured in money, that a willing buyer in an arm's length transaction would pay to acquire the item of tangible personal property subject to the lease under

consideration at the time the lease or bailment was first consummated." 50 IAC 4.2-8-7(a)-(b). In applying that definition to specific factual situations, the base year value will be deemed to be "the amount stated in the agreement as the amount which the lessee would have had to pay to acquire the leased property instead of leasing the property," unless the DLGF determines that the amount is unrealistically low in relation to the other terms contained in the agreement. 50 IAC 4.2-8-7(b). If that alternative acquisition cost is not shown in the agreement, the DLGF's regulations provide different methods (in order of preference) for determining base year value, starting with the "factory delivered price . . . plus freight, installation costs, and a profit factor," and moving to things such as the present value of the lease payments at inception. 50 IAC 4.2-8-7(c)-(e).

39. To compute true tax value for leased property, a taxpayer must segregate each asset into one of four depreciation pools based on its useful life. 50 IAC 4.2-8-8 -9. With a few exceptions, the total valuation of a taxpayer's leased personal property cannot be less than 30% of the adjusted cost of all its depreciable personal property, even if applying the depreciation pools would indicate a lower value. 50 IAC 4.2-8-9(c); 50 IAC 4.2-4-9.

40. A taxpayer may also elect to calculate the true tax value of property that qualifies as "special integrated steel mill equipment" in a fifth depreciation pool (Pool 5). I.C. § 6-1.1-3-23; 50 IAC 4.2-4-9.1 (repealed Nov. 2, 2020). The depreciation factors in that pool automatically reflect all adjustments for depreciation and obsolescence, including abnormal obsolescence, which can be claimed in addition to the depreciation indicated for property in the other four pools. 50 IAC 4.2-4-9.1(d); 50 IAC 4.2-4-8. The 30% floor does not apply to Pool 5 property. 50 IAC 4.2-4-9.1(e).

41. Unlike Indiana's system for assessing real property, its system for personal property operates through self-assessment. Every person owning, holding, possessing, or controlling business personal property with a tax situs in Indiana on January 1 of a year must file a personal property tax return. *See* I.C. § 6-1.1-2-1.5(a)(2); I.C. § 6-1.1-3-7; 50 IAC 4.2-2-2. Returns must be filed by May 15 each year, although the taxpayer may

request a 30-day extension. I.C. § 6-1.1-3-1.5; I.C. § 6-1.1-3-7(b). A taxpayer may also file an amended return within 12 months after the filing date of its original return. I.C. § 6-1.1-3-7.5(a).

42. If a township assessor, county assessor, or county PTABOA believes that a taxpayer's personal property has been omitted or undervalued on the assessment rolls or tax duplicate, that official may increase the assessment. I.C. § 6-1.1-9-1. But the official must give written notice under Ind. Code § 6-1.1-3-20 of the assessment or increase. That notice "shall contain a general description of the property and a statement describing the taxpayer's right to a review with the county property tax assessment board of appeals under IC 6-1.1-15-1.1." I.C. § 6-1.1-9-1. An assessor has three years from the filing date to give the required notice. I.C. § 6-1.1-9-3. If the return substantially complies with Article 1.1 and the DLGF's regulations, Ind. Code § 6-1.1-16-1 provides a much shorter deadline for an assessor to give the required notice (for a township assessor, by September 30 of the assessment year if a taxpayer filed the return on the filing date, or four months from filing if the taxpayer filed the return after that date). I.C. § 6-1.1-9-3; I.C. § 6-1.1-16-1(a)(1). Wheels does not allege that the shorter deadline under Ind. Code § 6-1.1-16-1(a)(1) applies, nor did it make factual or legal arguments to support such a claim.

2. For the assessment dates at issue, there were two different limitations periods for appeals: (1) 45 days from the date notice of assessment or tax statement was mailed, where a taxpayer claims an error in the assessed value of its property, and (2) a much longer period where a taxpayer appeals errors identified in Ind. Code § 6-1.1-15-1.1(a)(2)-(6).

43. 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. At the times relevant to these appeals, a taxpayer challenging the assessed value of its tangible property for an assessment date before January 1, 2019, had to file notice of its appeal by the earlier of (1) 45 days after the date notice of the assessment was mailed, or (2) 45 days after the date the tax statement was mailed. I.C. § 6-1.1-15-1.1(a)(1), (b)(1) (2018). By contrast, a taxpayer could raise five other categories of error by filing notice of its appeal within

three years after the taxes were first due: assessments against the wrong person; errors in the approval, denial or omission of a deduction, credit, exemption, abatement, or tax cap; clerical, mathematical, or typographical mistakes; errors in the description of the property; and claims regarding the legality or constitutionality of the assessment. I.C. § 6-1.1-15-1.1(a)(2)-(6), (b) (2018).

3. Wheels' petitions were untimely to contest the increased values, and with one minor exception, it did not raise colorable claims under Ind. Code § 6-1.1-15-1.1(a)(2)-(6).

44. Wheels completed Sections II and III of its Form 130 petitions, indicating that it was appealing the assessed value of its personal property as well as alleging all the other narrowly defined categories of error listed under Ind. Code § 6-1.1-15-1.1(a). Because Wheels did not file its petitions within 45 days of Form 113 notices of assessment being mailed, it did not timely appeal its property's assessed value under Ind. Code § 6-1.1-15-1.1(a)(1). And it did not raise actionable claims of error under Ind. Code § 6-1.1-15-1.1(a)(2)-(6).

a. Steele's testimony that she mailed the Form 113s and audit summaries on September 4, 2018, is more credible than the alternative inferences that Wheels promotes.

45. We base our first conclusion on the fact that Steele mailed the signed Form 113s to Wheels' address via first class mail on September 6, 2018. Those Form 113s advise Wheels of the increase to its self-reported assessments. They also generally describe the property being assessed as business personal property located at the address for U.S. Steel's Gary Works, and they reference Wheels' self-reported assessments for the property. The audit summaries mailed with the Form 113s include asset lists. Granted, a note at the bottom of each form confusingly references Wheels' failure to provide documentation on "leasehold improvements" during the audit, when Steele meant to refer to "leases." Nonetheless, those Form 113s sufficed to trigger the 45-day deadline for Wheels to appeal the property's assessed value as determined by the Township Assessor.

46. Wheels disputes that Steele mailed the signed Form 113s, pointing to inconsistencies between Steele's testimony that she mailed them on September 6, 2018 and (1) emails where she alternately claimed to have mailed those notices on September 4 and 5, and (2) her forwarding of unsigned Form 113s on November 7, 2018. Wheels also argues that Steele's continued correspondence with its representatives about the audit and continued requests for documents—which extended past the date the 45-day limitations period would have run had Steele mailed the Form 113s on September 6, 2018—show that Steele had not mailed those notices. Had she done so, argues Wheels, there would have been no need for those conversations because the assessment increases from the audit would have been final.

47. In a vacuum, the facts Wheels cites might raise an inference that Steele did not mail the Form 113s. But we find that Steele's credible testimony to the contrary outweighs that inference and suffices to prove that she mailed the Form 113s and audit summaries on September 6, 2018. *See Indiana Sugars v. State Bd. of Tax Comm'rs*, 683 N.E. 2d 1383, (Ind. Tax Ct. 1997) (finding that direct testimony by someone with personal knowledge is reasonable evidence of mailing).

48. Steele forwarded Form 113s to the Township Assessor for her signature on September 4, 2018 and received the signed forms back on September 6. Steele remembered mailing the documents and offered details about surrounding circumstances that jogged her memory. She contemporaneously noted mailing the documents in a spreadsheet she kept for the audit. And she testified without contradiction that on September 19, 2018, she spoke to Butterly, who acknowledged Wheels had received the Form 113s. An email exchange between Steele and Butterly confirms that the telephone call happened, although it says little about what was discussed.[3]

[3] Wheels includes Ind. Code § 6-1.1-36-1.5 in the "notice" statutes that it claims the Township Assessor violated. One of the statute's subsections provides that if a document is sent via U.S. Mail but is not received by the recipient, the person who sent the document is considered to have *filed* it if the person can show by reasonable evidence that the document was mailed before the due date and files a duplicate within 30 days of being notified that the document was not received. I.C. § 6-1.1-36-1.5. That statute, however, governs when documents, such as a "form, a return, or a writing of any type" are considered "filed" by their "due date[s]." I.C. § 6-1.1-36-1.5(a). Thus, it applies to filings by taxpayers and others with government agencies rather than to notices issued by those agencies.

49. While Steele did send two emails referring to different mailing dates, we give little weight to that inconsistency. Those dates were within two days of the date she testified she mailed the Form 113s. Indeed, the Form 113s are dated September 4, which is the date she forwarded the documents for the Township Assessor's signature. And Steele plausibly explained why she inadvertently gave those differing dates. As for her continued communications with Wheels' representatives about the audit, Steele explained that at first, there was still time for Wheels to appeal and she wanted to ensure the assessments were correct. In any case, there would be future assessments and she was trying to be as helpful as possible given that Wheels was from out of state and processes can be different in other states.

50. Wheels nonetheless argues that Trampka's November 7, 2018 email exchange with Steele where she received unsigned copies of the Form 113s and expressed Wheels' disagreement with the increased assessments served as a timely appeal. We disagree. We need not decide whether an email to a contractor substantially complies with the statutory requirement for an appeal to be filed with the Township Assessor on the form (Form 130) designated by the DLGF (see I.C. § 6-1.1-15-1.1(a)), because Trampka's email was more than 45 days after Steele mailed the Form 113s.

51. Wheels apparently argues that Steele's continued communications misled it into thinking that the audit was still open. It does not cite to waiver or estoppel much less make any arguments under those equitable doctrines. In any case, Steele explained to Butterly that Wheels needed to file an appeal within 45 days of September 6 to "hold their spot for the option to be able to, you know, fix this if that was the case that it needed to be corrected." *Tr. at 113, 134.* While Wheels' receipt of the Form 113s and the substance of Steele's communication may have been lost in the internal disarray of Wheels' tax department at

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Even if the statute applied, Buttery confirmed that Wheels received the Form 113s and audit summaries, so the need for the Township Assessor to "file" duplicates would not have been triggered.

the time, they preclude any potential claim that Wheels was misled into allowing the appeal period to expire.

b. Except for claiming a typographical error, which does not lead to any change in the property's assessed value or Wheels' tax liability, Wheels did not raise any colorable claims of error under Ind. Code § 6-1.1-15-1.1(a)(2)-(6).

52. Wheels seeks to circumvent its failure to timely appeal its property's assessed values by characterizing its appeals as claims of error that may be raised anytime within three years of when taxes were first due. While Wheels originally checked the boxes for all five categories of claims under Ind. Code § 6-1.1-15-1.1(a)(2)-(6), at hearing and in post-hearing briefing it limited itself to arguing that it was denied an exemption, deduction, abatement, credit, or tax cap; that there was a typographical mistake and an error in the description of its property; and that the audit and assessment were illegal and unconstitutional.

i. Use of Pool 5 is an assessment methodology rather than an exemption, and Wheels consciously decided not to elect Pool 5 for two of the years under appeal. In any case, Wheels did not show that its property qualified as integrated steel mill equipment.

53. We start with Wheels' claim that it was erroneously denied an exemption, deduction, abatement, credit, or tax cap. Wheels did not claim any of those things on its returns, during the audit, at the hearing, or in its post-hearing briefing. The closest it came was counsel's reference in opening argument to Wheels having been denied a "405" exemption. Wheels does not explain what a "405" exemption is, although we assume the reference in the transcript is an error and that counsel actually referred to a "Pool 5 exemption." But Pool 5 does not exempt property from taxation. It instead provides a method a taxpayer may elect for depreciating certain qualifying equipment, and any challenge to an assessor failing to use that method is a challenge to the property's assessed value. In any case, Wheels did not elect Pool 5 treatment for 2016 or 2018. *See* I.C. § 6-1.1-3-23(g) ("election to value special integrated steel mill or oil refinery/petrochemical equipment under this section . . . must be made by reporting the

equipment under this section on a business personal property tax return."). So if Pool 5 were an exemption, Wheels would have waived the right to claim it for those years. *See* I.C. § 6-1.1-11-1 (providing that a property owner waives an exemption by failing to follow the statutory procedures for obtaining it).

54. Pointing to Ind. Code § 6-1.1-9-10, Wheels nonetheless contends that Steele and the Township Assessor should have used Pool 5 to depreciate its cost. At the time Steele completed her audit and mailed the Form 113s, that statute required an assessing official or its contractor to correct overreporting errors discovered during an audit but did not provide a mechanism for appeal:

> (a) If in the course of a review of a taxpayer's personal property assessment under this chapter an assessing official or the assessing official's representative or contractor discovers an error indicating that the taxpayer has overreported a personal property assessment, the assessing official shall:
> (1) adjust the personal property assessment to correct the error; and
> (2) process a refund or credit for any resulting overpayment.
> (b) Application of subsection (a) is subject to the restrictions of IC 6-1.1-11-1.

I.C. § 6-1.1-9-10 (2018). Effective January 1, 2019, the legislature amended the statute to add subsection (c), which provides a taxpayer with two remedies if it believes an assessor failed to correct its overreporting of an assessment: the taxpayer may file an appeal under Ind. Code § 6-1.1-15-1.1 for a credit to offset any resulting overpayment against its current personal property tax liability, or it may file a refund claim under Ind. Code § 6-1.1-26-1.1. I.C. § 6-1.1-9-10(c); 2020 Ind. Acts 154, § 3 (retroactive).

55. Leaving aside the question of whether Wheels could take advantage of the newly enacted appeal mechanism, there are several problems with its reasoning, not the least of which is characterizing its choice to use Pool 2 as an "error" that resulted in it "overreport[ing]" its assessment. As Khan explained, Wheels consciously decided not to elect Pool 5 treatment on its 2016 and 2018 returns. The fact that Wheels let the deadline to file amended returns electing Pool 5 treatment lapse does not somehow make its choice to use Pool 2 an error. If anything, it is akin to the failure to claim an exemption, which by

making Ind. Code § 6-1.1-9-10 subject to Ind. Code § 6-1.1-11-1, the legislature excepted as grounds for correcting overreported assessments.

56. Even if Wheels could somehow characterize its conscious decision not to elect Pool 5 depreciation as a reporting error, Wheels did not prove it was entitled to use Pool 5. Recall that the Pool 5 election under Ind. Code § 6-1.1-3-23 applies to "special integrated steel mill equipment." As explained by the Tax Court, Ind. Code § 6-1.1-3-23(b)(7) defines such equipment as "depreciable personal property, other than special tools and permanently retired depreciable personal property[ ] that: (i) is owned, leased, or used by an integrated steel mill or an entity that is at least fifty percent (50%) owned by an affiliate of an integrated steel mill; and (ii) falls within Asset Class 33.4 as set forth in IRS Rev. Proc. 87-56, 1987-2 C.B. *674*[.]" *Spencer Cnty. Ass'r v. AK Steel Corp.*, 61 N.E.3d 406, 411 n. 2 (Ind. Tax Ct. 2016) (emphasis added).[4] Asset Class 33.4, in turn describes assets used in specific activities:

> Includes assets used in the smelting, reduction, and refining of iron and steel from ore, pig, or scrap; the rolling, drawing and alloying of steel; the manufacture of nails, spikes, structural shapes, tubing, wire, and cable. Includes assets used by steel service centers, ferrous metal forges, and assets used in coke production, regardless of ownership. Also includes related land improvements and all special tools used in the above activities.

IRS Rev. Proc. 87-56, 1987-2 C.B. 674.

57. Wheels offered nothing to show how the vehicles it leased to U.S. Steel were used, much less that they were used for any of the specific activities described in Asset Class 33.4. Wheels instead appears to believe that the Form 113 issued by the Township Assessor listing the reduced assessment reported in its amended return for 2017 represents a binding, irrevocable determination that its equipment qualifies for Pool 5. To the extent the Form 113 represents the Township Assessor's approval of Wheels' election of Pool 5 depreciation for 2017 (something the Assessor disputes, arguing that the Form 113 was

[4] The statute refers to 2 C.B. *647*. The Tax Court apparently recognized that the statute contained a typographical error, transposing "674" to "647."

merely the Township Assessor's way of notifying the Lake County Auditor of Wheels' amended self-reported assessment), it was neither binding for 2016 and 2018 nor irrevocable for 2017. Indiana Code § 6-1.1-9-1 gave the Township Assessor the authority to reassess property she believed was undervalued. She exercised that authority in September 2018 when she issued the second Form 113 for the 2017 assessment year.

58. Thus, even if we viewed Wheels' claim that Pool 5 should have been used to depreciate its property as something other than a challenge to the assessed value determined by the Township Assessor and reported on the Form 113s, that claim would still fail.

ii. Wheels' purported claims regarding legality and constitutionality merely reiterate allegations that the Form 113s and audit summaries were not mailed and repackage Wheels' challenges to assessed value.

59. Wheels' claims regarding the legality and constitutionality of the assessments similarly fail. As for its constitutional claims, Wheels points to the fourteenth amendment to the United States Constitution and Article 1 section 12 of the Indiana Constitution, alleging that it was denied procedural due process. *See Pet'r Post Hrg. Brief at 18-19.* Wheels premises its due process claim as well as most of its claims of illegality on its contention that signed Form 113s were not mailed and that it only received the signed forms through the course of this litigation. As discussed above, we find that Steele mailed the signed Form 113s on September 6, 2018, and that Wheels received them on or before September 19, 2018.

60. Wheels bases the rest of its argument that the assessments were illegal on what it describes as the arbitrariness of Steele's audit. It grounds its argument on claims that (1) Steele did not provide work papers detailing how she assessed the allegedly omitted property but instead referred only to Wheels' failure to provide information on leasehold improvements that it did not have, (2) that McMahon fully cooperated with Steele during

the audit, and (3) that Steele used market research instead of acquisition costs to increase the assessments.[5] *Post Hrg. Brief at 17-21.*

61. As for the first ground, Wheels points to no statutory or regulatory provision requiring an assessor to provide an auditor's work papers when giving notice of an increased assessment. Even if there were such a requirement, Steele testified without contradiction that she mailed her audit summaries with the Form 113s. And as explained above, we find that the description of Wheels' property was sufficient for purposes of the notice statutes despite the typo referring to Wheels' failure to provide documentation on its "leasehold improvements."

62. Turning to the last two grounds, it might be at least partially true that McMahon largely cooperated with Steele's requests as he understood them and that Steele should have more clearly communicated her need for, and the significance of, the lease agreement and addenda. It also might be true that her use of market research was an impermissible way to determine base year values for the leased property. Of course, Wheels never provided Steele with its master lease or any of the vehicle addenda—documents that the DLGF's regulations make crucial for determining base year values. And Khan cavalierly justified that failure by saying he didn't think the audit had "reached that point."

63. But all that is beside the point. The methodology of the audit is part and parcel of the Township Assessor's decision to increase the assessment. As our Supreme Court explained in interpreting the since repealed correction-of-error statute (Ind. Code § 6-1.1-15-12) and regulations, taxpayers could not use the old Form 133 and its elongated limitations period as a way around the need to timely appeal the methodology used to determine an assessment. *Lake Cnty. Prop. Tax Assessment Bd. of Appeals v. BP Amoco Corp.*, 820 N.E.2d 1231, 1233-37 (Ind. 2005*); Lake Cnty. Prop. Tax Assessment Bd. of*

[5] Wheels makes the last two arguments at various points in its post-hearing brief, including under the section where it argues that it had been denied a deduction, credit, exemption, abatement, or tax cap. *See Pet'r Post Hrg. Brief at 19-21.* Because Wheels does not attempt to explain how McMahon's cooperation or Steele's alleged misuse of market research even remotely relates to a deduction, credit, exemption, abatement, or tax cap, we address those arguments in discussing Wheels' claims concerning the constitutionality and legality of the assessments.

Appeals v. U.S. Steel Corp., 820 N.E.2d 1237, 1239-40 (Ind. 2005). The legislature reinforced that holding when it repealed the old correction-of-error statute and recodified it under Ind. Code § 6-1.1-15-1.1 and Ind. Code § 6-1.1-15-12.1. The statute now clearly bifurcates the limitations periods for appeals between challenges to assessed value and all other appealable errors. If Wheels wanted to contest the increased valuation, it needed to file its appeal within the time specified for doing so.

iii. Correcting the typo referring to leasehold improvements does not affect the assessed value of Wheels' property or Wheels' tax liability.

64. Steele admitted Wheels' final ground under Section III of the Form 130 petition—that the Form 113s contain a typographical error. She acknowledged that her reference to leasehold improvements should have read "leases." Correcting that error, however, has no bearing on the assessed values set forth in the Form 113s or on Wheels' tax liability.

B. We lack authority to order the Township Assessor to reopen the audit.

65. Finally, Wheels argues that even if it is not entitled to have the 2017 assessment revert to what it reported on its amended return and to have the 2016 and 2018 assessments corrected to reflect its originally reported costs depreciated under Pool 5, we should order the audit to be reopened. Pointing to facts and arguments it made elsewhere—including what it describes as McMahon's cooperation with Steele and Steele's departure from assessment regulations—Wheels claims that the facts paint a picture of a company that was cooperating with Steele and trying to timely resolve the audit. Under those circumstances, Wheels argues that the Assessor would not be prejudiced and that the audit should be reopened to allow more accurate assessments.

66. Even if we agreed with Wheels' charitable characterization of its cooperation with Steele, it points to no law giving us the authority to order the relief it seeks. At most, it points to an excerpt from *Marion Cnty. Ass'r v. Stutz Bus. Ctr.*, in which the Tax Court denied a taxpayer's motion to dismiss an assessor's petition for judicial review. *Marion Cnty. Ass'r v. Stutz Bus. Ctr*, 119 N.E.3d 239 (Ind. Tax Ct. 2019). At issue was whether the

assessor's service of process on the taxpayer's attorney rather than on the taxpayer directly amounted to timely service. The Court held that the assessor substantially complied with the rules governing service of process because the service was reasonably calculated to inform the taxpayer that the appeal had been initiated. *Id.* at 243-44. The Court explained that its holding comported with its longstanding policy to decide cases on their merits and that "procedural technicalities" should not defeat justice. *Id.* at 244. The Court cited to a decision from the Indiana Supreme Court explaining that technical rules must be examined closely when it appears that involving them might "defeat justice," especially where nobody would be prejudiced in allowing a case to proceed. *Id.* (*quoting American States Ins. Co. v. State Ex rel Jennings*, 258 Ind. 637, 283 N.E.2d 529, 531 (1972)).

67. Failing to meet the statutory deadline for contesting assessments, as Wheels did here, is no mere "procedural technicality," and Wheels did not substantially comply with the deadline. Even if we believed (and we do not) that equity justified reopening the audit, we lack the authority to order that relief.

C. Because Wheels did not meet the high burden it bore as the party moving for summary judgment, the Assessor's failure to timely respond to Wheels' motion is moot.

68. Finally, Wheels points to the Assessor's failure to respond to its summary judgment motion until five months after the motion was filed. Wheels does not explain the significance it attaches to that fact other than arguing "if we're talking about timing . . . there's issues in that regard as well as in terms of the responsiveness of the Assessor's office." *Tr. at 186.* We fail to see how the Assessor's tardiness in responding to Wheels' summary judgment motion relates to any of the issues on which Wheels grounds its appeals. And if Wheels is arguing that such tardiness entitled Wheels to summary judgment, we disagree.

69. Our procedural rules allow parties to move for summary judgment or partial summary judgment "pursuant to the Indiana Rules of Trial Procedure." 52 IAC 4-7-3(a). Thus,

they explicitly incorporate Trial Rule 56—the rule governing summary judgment proceedings. In interpreting Trial Rule 56, the Indiana Supreme Court has adopted a "bright line" rule concerning responsive filings:

> [W]hen a nonmoving party fails to respond to a motion for summary judgment within 30 days by either filing a response, requesting a continuance under Trial Rule 56(I), or filing an affidavit under Trial Rule 56(F), the trial court cannot consider summary judgment filings of that party subsequent to the 30-day period.

Homeq Servicing Corp. v. Baker, 883 N.E.2d 95, 98 (Ind. 2008) (*citing Borsuk v. Town of St. John*, 820 N.E.2d 118, 123 n.5 (Ind. 2005)).

70. Nonetheless, a court is not required to grant an unopposed motion for summary judgment. *Murphy v. Curtis*, 930 N.E.2d 1228, 1233 (Ind. Ct. App. 2010). To the contrary, "summary judgment is awarded on the merits of the motion, not on technicalities." *Id.* (*quoting Parks v. State*, 789 N.E.2d 40, 48 (Ind. Ct. App. 2003). And in Indiana, summary judgment is a "relatively high bar." *Hughley v. State*, 15 N.E.3d 1000, 1004 (Ind. 2014). As our state supreme court has recognized, summary judgment is a blunt instrument that deprives the non-prevailing party its day in court. *Id.* at 1003. Indiana law therefore "essentially consciously errs on the side of letting marginal cases proceed to trial on the merits, rather than risk short-circuiting meritorious claims." *Id.* A movant has the initial burden to show the absence of any genuine issue of fact as to a determinative issue. *Id.* Unlike in federal court, a movant does not meet that burden merely by showing that the party carrying the burden of proof lacks evidence on a necessary element; rather, Indiana law imposes the "more onerous burden" on the movant to affirmatively negate its opponent's claim. *Id.* at 1003 (*quoting Jarboe v. Landmark Cmty. Newspapers of Ind., Inc*, 644 N.E.2d 118, 123 (Ind. 1994)).

71. With that guidance in mind, Wheels did not meet either its burden of showing the lack of a genuine issue of material fact as to a determinative issue or that it was entitled to judgment as a matter of law. Wheels argued that the assessments were defective and illegal as a matter of law because (1) the Township Assessor violated statutes governing

notice required for assessing omitted or undervalued property, and (2) given the Form 113s' references to leasehold improvements and the lack of accompanying workpapers, the changes to the assessment were unsupported and arbitrary. *See Petitioner's Motion for Summary Judgment, at 5.*

72. As for the allegations of defective notice, Wheels was faced with the almost insurmountable task of proving a negative—that assessment notices were not mailed—without offering any statements or other evidence from the people with actual knowledge of whether that was the case. While Khan's affirmations that Wheels did not receive Form 113s through the mail and that Steele did not provide proof of mailing may have raised inferences that those forms were not mailed, those affirmations did not foreclose reasonable countervailing inferences. To the contrary, Khan affirmed that Steele said she had mailed the Form 113s. Wheels' summary judgment motion and designations also focused on the fact that the emailed Form 113s were not signed. But Khan's affidavit does not foreclose the reasonable inference that the forms Steele claimed to have mailed were signed. In any case, although the Form 113s have a box for the assessor's signature, nothing in the notice statutes that Wheels asks us to strictly interpret mention an assessor's signature as a requirement of proper notice. To be sure, best practice dictates that the forms be signed. But Wheels does not point to any authority for the proposition that the absence of a signature invalidates an assessment.

73. Similarly, Wheels' designated evidence did not eliminate any genuine issue of material fact as to whether local officials mailed other sufficient notice, such as a tax bill. Indeed, Wheels waited almost 10 months after receiving the email with the unsigned Form 113s before filing its appeals. That creates an inference that Wheels was prompted to appeal when it received a tax bill for the increased assessments. That bill could have served as notice if it contained the required information. *See Prop. Dev. Co. Four, LLC v. Grant Cnty. Ass'r,* 31 N.E.3d 1049, 1054 (Ind. Tax Ct. 2015), *reh'g den.* 42 N.E.3d 182 (2015)(explaining that "the timely mailing of an annual tax bill may itself satisfy the

notice requirements of Indiana Code § 6-1.1-9-1," but finding that the tax bills were not timely mailed).

VI. Conclusion

74. The audit that led the Township Assessor to increase Wheels' self-reported assessments for 2016-2018 may well have been founded on improper methodology. But if Wheels wanted to challenge the increased values, it needed to file appeals within 45 days after proper notices of the assessment increases were mailed. Because we find that Steele mailed statutorily compliant Form 113s and accompanying audit summaries more than 10 months before Wheels filed its appeal petitions, its challenges to the assessments were untimely. And with one exception, Wheels' attempts to squeeze its claims into the narrow categories of error listed under Ind. Code § 6-1.1-15-1.1(a)(2)-(6) are unconvincing. As for that exception, we order the Assessor to correct the typographical error referring to "leasehold improvements" instead of "lease[s]," although that correction will not affect the assessed value of Wheels' property or Wheels' tax liability. In all other respects, we find for the Assessor and order no change.

Ted J. Holaday
Chairman, Indiana Board of Tax Review

Betsy J. Brand
Commissioner, Indiana Board of Tax Review

Jonathan R. Elrod
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>.