



INDIANA TAX COURT
ORAL ARGUMENT AT A GLANCE
NOTRE DAME SCHOOL OF LAW

Thermo-Cycler Industries, Inc.
Petitioner

v.

Indiana Department of State Revenue
Respondent

Case No. 71T10-1110-TA-62

**HEARING ON MOTIONS FOR
SUMMARY JUDGMENT**
Wednesday, November 30, 2016
1:00 p.m.

BACKGROUND

Thermo-Cycler, Inc. manufactures heating equipment in LaPorte County, Indiana. In July 2010, the Indiana Department of State Revenue notified Thermo-Cycler that it would be conducting a “compliance” audit for tax years 2007 through 2009 in August and indicated that it wanted to review, among other things, Thermo-Cycler’s federal income tax returns, sales reports showing total and exempt sales, and withholding tax forms. At Thermo-Cycler’s request, however, the audit start date was postponed several times. Moreover, Thermo-Cycler never provided the Department with any of the records it requested.

In April 2011, the Department issued proposed sales/use tax assessments against Thermo-Cycler for the 2008, 2009, and 2010 tax years. The assessments were based on the “best information available” to the Department’s auditor. More specifically, the Department’s assessments were based on figures it culled from Thermo-Cycler’s 2007 through 2009 federal tax returns.

Thermo-Cycler protested the proposed assessments, claiming they were void as a matter of law. After conducting a hearing on the protest, the Department issued a Letter of Findings on July 18, 2011, that sustained in part Thermo-Cycler’s protest, subject to a supplemental audit. After the supplemental audit was completed, the Department issued revised proposed assessments.

Thermo-Cycler filed an original tax appeal with the Tax Court on October 19, 2011. Both Thermo-Cycler and the Department moved for summary judgment on July 19, 2016.¹

STANDARD OF REVIEW

This Court reviews the Department's final determinations regarding proposed assessments de novo. IND. CODE § 6-8.1-5-1(i) (2016).

¹ In 2013, while the case was pending, the Department conducted a second supplemental audit of Thermo-Cycler and adjusted the proposed assessments again.

Accordingly, the Court is not bound by the evidence or the issues presented at the administrative level. See Horseshoe Hammond, LLC v. Indiana Dep't of State Revenue, 865 N.E.2d 725, 727 (Ind. Tax Ct.2007), review denied.

Summary judgment is proper only when the designated evidence demonstrates that no genuine issues of material fact² exist and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C). When this Court determines a motion for summary judgment, it can consider only that material deemed appropriate by Indiana Trial Rule 56(E). See McCutchan v. Blanck, 846 N.E.2d 256, 260 (Ind. Ct. App. 2006) (citation omitted). When it is necessary for the Court to weigh that designated evidence, summary judgment is inappropriate. Bochnowski v. Peoples Fed. Sav. & Loan Ass'n, 571 N.E.2d 282, 285 (Ind. 1991) (citation omitted). Indeed, summary judgment is neither a substitute for trial nor a means for resolving factual disputes or conflicting inferences following from undisputed facts. See Owens Corning Fiberglass Corp. v. Cobb, 754 N.E.2d 905, 909 (Ind. 2001) (citations omitted).

LAW

The Department has the primary responsibility for the administration, collection, and enforcement of Indiana's listed taxes. See IND. CODE § 6-8.1-1-1, -3-1 (2016). Accordingly, the Department "may audit any returns filed in respect to the listed taxes . . . and may investigate any matters relating to the listed taxes." IND. CODE § 6-8.1-3-12(a) (2016). "Every person subject to a listed tax must keep books and records so the [D]epartment can determine the amount, if any, of the person's liability for that tax by reviewing those books and records." IND. CODE § 6-8.1-5-4(a) (2016). A person must allow inspection of the books and records and returns by the Department at all reasonable times. I.C. § 6-8.1-5-4(c). When a person fails to maintain or provide the Department with records, or when the Department reasonably believes that that person has not reported the proper amount of tax due, "the Department may determine the [person's]

² A genuine issue of material fact exists when a fact concerning an issue that would dispose of the case is in dispute or when the undisputed facts support conflicting inferences as to the resolution of an issue. Miller Pipeline Corp. v. Indiana Dep't of State Revenue, 995 N.E.2d 733, 734 n. 1 (Ind. Tax Ct. 2013).

tax liability based on the best information available to [it].” IND. CODE § 6-8.1-5-1(b) (2016); Elmer v. Indiana Dep’t of State Revenue, 42 N.E.3d 185, 194 n.12 (Ind. Tax Ct. 2015) (citations omitted).

PARTIES’ POSITIONS

Thermo-Cycler

Thermo-Cycler maintains that the Department’s proposed assessments are void for three reasons. First, it contends that because the Department initially indicated it was conducting a “compliance” audit, it could have had no reasonable belief that Thermo-Cycler had underreported the proper amount of sales/use tax due. As a result, the Department was not authorized to conduct a sales/use tax “best information audit.” Second, Thermo-Cycler maintains that to the extent it did not produce the records as requested by the Department, the Department failed to follow Indiana Code § 6-8.1-3-12(d) and obtain a court order from the local county court to procure the records. Finally, Thermo-Cycler explains that because the scope of the initial audit was tax years 2007 through 2009, it had no notice that the Department would issue a proposed assessment for tax year 2010, as well as rely on Thermo-Cycler’s 2010 federal tax return to calculate its tax liabilities. As a result, Thermo-Cycler claims the Department violated its rights to due process and equal privileges and immunities under both the U.S. and Indiana Constitutions.

The Department

The Department maintains that Thermo-Cycler has been nothing but evasive: it has failed to cooperate in scheduling the audit and it has failed to produce the requested records. As a result, the Department maintains it was well within its statutory authority to rely on Thermo-Cycler’s federal tax returns in conducting its best information audit.

TAX COURT

Facts and History

- The General Assembly established the Tax Court effective July 1, 1986. See IND. CODE § 33-26-1-1. The General Assembly's purpose in creating the Court was to place tax related disputes into one court of expertise, thereby providing a single, authoritative judicial voice in state tax matters. See State v. Sproles, 672 N.E.2d 1353, 1357 (Ind. 1996).
- Since its inception, the Tax Court has had two judges. Judge Thomas G. Fisher served from July 1986 to January 17, 2011. The current judge, Martha Blood Wentworth, has served since January 17, 2011.
- The Tax Court has exclusive jurisdiction over any case that arises under the Indiana tax laws and that is an initial appeal of a final determination made by the Indiana Department of State Revenue or the Indiana Board of Tax Review. In addition, the Tax Court has jurisdiction over certain appeals from the Department of Local Government Finance. The Tax Court also hears appeals of inheritance tax determinations from the courts of probate jurisdiction.
- Prior to its creation, the cases over which the Tax Court now has jurisdiction were heard in the Circuit or Superior Courts; specifically, property tax cases were heard in the counties in which the property was located; all other cases were heard in the taxpayer's county of residence or place of business.
- The Tax Court is a traveling court. It hears cases in the following counties: Marion, Lake, St. Joseph, Allen, Vigo, Vanderburgh, and Jefferson.
- The Tax Court is a court of record. Any trials it conducts are without a jury.

TAX COURT JUDGE

The Honorable Martha Blood Wentworth was appointed by Governor Mitch Daniels to succeed the state's first Tax Court judge, the Honorable Thomas G. Fisher, upon his retirement. For more than 12 years immediately prior to her appointment, she was a Director at Deloitte Tax

LLP where she led Deloitte's Indiana Multistate Tax Services. Prior to joining Deloitte, she practiced law with the Indianapolis firm Hall, Render, Killian, Heath & Lyman, PC.

Judge Wentworth is a graduate of Bennett College in Millbrook, New York where she received an Associate of Arts degree, and she has received 3 degrees from Indiana University in Bloomington: a bachelor's degree (B.S. 1971), a master's degree (M.S. 1977), and her law degree awarded *cum laude* (J.D. 1990) together with the honorary Order of Barristers award. After obtaining her master's degree, she started her own business in Bloomington, and after graduating from law school, she began her legal career as judicial law clerk to Judge Fisher at the Indiana Tax Court.

Judge Wentworth has been active in various professional, educational, and business organizations. She is a member of the American, Indiana, Florida, and Indianapolis Bar Associations. She served as Chair of the Indiana State Bar Association Taxation Section in 1998-1999 and remains a member of its governing council. Judge Wentworth is an adjunct professor at Indiana University where she has taught state and local taxation for 17 years at the Kelley School of Business and at the McKinney and the Maurer Schools of Law. Since taking the bench, Judge Wentworth has become a member of the Indiana Judges Association, and she was appointed by Chief Justice Dickson to serve as Chair of the Indiana Pro Bono Commission effective July 1, 2012.

A native of Grosse Pointe, Michigan, Judge Wentworth has lived in Indiana most of her adult life. Her various community activities include lifelong support of the Girl Scouts, including seven years as a Girl Scout leader, and past leader of Deloitte's Indianapolis diversity program. She has two adult daughters and two wonderful grandsons.

ATTORNEYS FOR THE PARTIES

For Petitioner:

Andrew Wolf, The Wolf Law Office, Michigan City, Indiana

Andy has been practicing law since 2002, earning his J.D. from the Ohio Northern University Pettit College of Law, where he participated in the Innocence Project and the Volunteer Tax Assistance Program. While a student, he also externed for the Honorable Evelyn Lundberg Stratton of the Ohio Supreme Court.

Andy practices principally in business transactions and litigation and domestic relations matters. He is admitted to practice in Indiana and Michigan, several U.S. District Courts, the U.S. Court of Appeals for both the 6th and 7th Circuits, and the U.S. Court of Claims for Veterans Appeals. Earlier this year, Andy was named the Volunteer Lawyer Network 2015 County Award Winner for LaPorte County.

For Respondent:

Jessica Reagan Gastineau, Deputy Attorney General, Indianapolis, Indiana

Jess is a Deputy Attorney General in the Tax Litigation Section of the Office of the Attorney General of Indiana. She began as an intern during law school and became a litigator, representing and advising the Indiana Department of Revenue and other state agencies with respect to tax matters. Her practice includes corporate income tax, financial institutions tax, sales and use tax, budget issues, and property tax. She has resolved over 100 cases in county courts, the Indiana Tax Court, and the Indiana Supreme Court. Representative cases include Indiana Dep't of State Revenue v. UPS, 969 N.E.2d 596 (Ind. 2012) and Jamestown Homes v. St. Joseph County Assessor, 909 N.E.2d 1138 (Ind. Tax Ct. 2009), review denied. Jess received her J.D. from the Indiana University Maurer School of Law in 2007.

Evan Bartel, Deputy Attorney General, Indianapolis, Indiana

Evan is a Deputy Attorney General in the Office of the Indiana Attorney General's Tax Litigation Division. He represents the Indiana Department of Revenue and county property tax assessors in front of both the Indiana Tax Court and various trial-level courts. He originally joined the OAG as a graduate law clerk in early 2013, and was hired as an attorney that November.

Evan earned his J.D. from the Indiana University Robert H. McKinney School of Law in May of 2013. While in law school he participated in the Staton Moot Court Competition and the Volunteer Income Tax Assistance Program. He was also awarded the Michael J. Sacopulos Tax Award for excelling in his tax coursework. Prior to attending law school, Evan studied at Ball State University where he earned his undergraduate degree in accounting and economics.

Winston Lin, Deputy Attorney General, Indianapolis, Indiana

Winston is a Deputy Attorney General in the Tax Litigation section of the Office of the Indiana Attorney General. In this role, he has represented the Indiana Department of State Revenue and county assessors before the Indiana Tax Court and the Indiana Supreme Court in matters such as corporate and individual income tax, sales and use tax, and property tax.

He received his J.D. from the Indiana University Maurer School of Law, where he was a managing editor of the Indiana Law Journal and a participant in the Sherman Minton Moot Court competition. He co-authored an article on the Great Recession in the United States with Professor Dau-Schmidt in the Hofstra Labor & Employment Law Journal.