

ATTORNEYS FOR PETITIONERS:

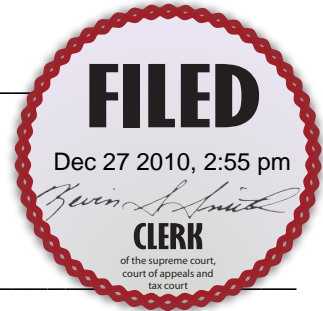
BRIAN P. POPP
LASZLO & POPP, PC
Merrillville, IN

JOHN S. DULL
ATTORNEY AT LAW
Crown Point, IN

ATTORNEYS FOR RESPONDENTS:

JEFFREY T. BENNETT
BRADLEY D. HASLER
MARGARET M. CHRISTENSEN
BINGHAM McHALE LLP
Indianapolis, IN

**IN THE
INDIANA TAX COURT**



LAKE COUNTY ASSESSOR,)
NORTH TOWNSHIP ASSESSOR,)
and LAKE COUNTY PROPERTY TAX)
ASSESSMENT BOARD OF APPEALS,)

Petitioners,)

v.)

AMOCO SULFUR RECOVERY CORP.)
and BP PRODUCTS NORTH)
AMERICA, INC.,)

Respondents.)

Cause No. 49T10-1010-TA-55

ORDER ON RESPONDENTS' MOTION TO DISMISS

NOT FOR PUBLICATION
December 27, 2010

FISHER, J.

The Lake County Assessor, the North Township Assessor, and the Lake County Property Tax Assessment Board of Appeals (hereinafter, "Lake County") have appealed the final determination of the Indiana Board of Tax Review (Indiana Board) regarding the personal property assessment of Amoco Sulfur Recovery Corp. ("Amoco") and BP

Products North America, Inc. (“BP”) (collectively, “the Respondents”) for the 2007 tax year. The matter is currently before the Court on the Respondents’ motion to dismiss.

RELEVANT FACTS AND PROCEDURAL HISTORY

On August 31, 2010, the Indiana Board issued a final determination pertaining to the Respondents’ 2007 personal property assessment. (See *Petrs’ V. Pet. for Judicial Review* (hereinafter, “Pet.”) Attach. at 3-42.) A copy of that final determination was distributed to “BP Products North America”; another copy was distributed to “Amoco Sulfur Recovery Corp. n/k/a BP Products North America.” (See *Pet. Attach.* at 1-2.) BP and Amoco had the same mailing address. (See *Pet. Attach.* at 1-2.) A copy of the final determination was also distributed to Indianapolis attorneys Jeffrey Bennett, Bradley Hasler, and Margaret Christensen, as they represented the Respondents at the Indiana Board hearing.¹ (See *Pet. Attach.* at 3, 42 (footnote added).)

On October 8, 2010, Lake County filed a verified petition for judicial review challenging the Indiana Board’s final determination. The petition, to which a copy of the Indiana Board’s final determination was attached, named both Amoco and BP as respondents in its caption as well as throughout the document itself. (See *Pet.*) In conjunction with the petition’s filing, Lake County issued a summons to “BP Products North America, Inc.” (See *Respts’ Mem. Law Supp. Mot. Dismiss* (hereinafter, “*Respts’ Mem.*”) at 2, Ex. C.) The summons was mailed to (and received by) Jeffrey Bennett at

¹ All three attorneys are with the Indianapolis law firm Bingham McHale LLP. (See *Petrs’ V. Pet. for Judicial Review* (hereinafter, “*Pet.*”) Attach. at 3, 42.)

his Indianapolis law firm.² (See Respts' Mem. at 2, Ex. C (footnote added).)

On October 29, 2010, the Respondents moved to dismiss Lake County's appeal pursuant to Indiana Trial Rule 12(B)(2) (lack of jurisdiction over the person), 12(B)(4) (insufficiency of process), and 12(B)(5) (insufficiency of service of process). (Respts' Mem. at 3.) The Court conducted a hearing on the motion on November 19, 2010. Additional facts will be supplied as necessary.

ANALYSIS AND OPINION

"An original tax appeal from a final determination of the Indiana Board [] is commenced by filing a petition in the Tax Court and filing a written notice of appeal with the Indiana Board[.]" Ind. Tax Court Rule 3(B). With respect to those appeals, "the Tax Court acquires jurisdiction over a party or person who . . . commences or joins in the original tax appeal, is served with a summons or enters an appearance, or who is subjected to the power of the Tax Court under any other law." Ind. Tax Court Rule 4(B)(1). "Service of summons shall be required only with respect to the named respondent³ and any other person whom the petitioner seeks to join as a party . . . [and] shall be made in accordance with the Trial Rules." Tax Ct. R. 4(B)(4) (footnote added).

The Respondents have advanced two arguments as to why this case should be dismissed. First, they maintain that Lake County not only failed to issue a summons, but "fail[ed] to even attempt service[.]" on Amoco. (See Respts' Mem. at 5.) Second,

² Lake County has averred that at the time it filed its appeal with the clerk of courts, it also submitted a summons directed to "Amoco Sulfur Recovery Corp." in care of its attorney, Jeffrey Bennett. (Petr's Aff. of Melanie A. Duscha ¶ 2.)

³ "In original tax appeals initiated by a government official or entity, the named respondent shall be the taxpayer who was a party to the proceeding before the Indiana Board[.]" Ind. Tax Court Rule 4(B)(3).

they maintain that to the extent Lake County issued summons and effected service upon BP, the summons/service were defective and therefore insufficient to confer jurisdiction. (Respts' Mem. at 7-9.) The Court will address these arguments in turn.

1.

With respect to their first argument, the Respondents assert that the Indiana Board issued two final determinations and, as a result, Lake County was required to file two original tax appeals, issuing summons and effecting service upon two respondents – Amoco and BP – individually. (See Respts' Mem. at 1-2, 5-6.) They assert that because Lake County filed one appeal with a summons directed solely to “BP,” the Court now lacks jurisdiction over Amoco. (See Respts' Mem. at 1-2, 5-6.) The Court disagrees.

The Indiana Board issued one final determination in this matter. (See Pet. Attach. at 3-42.) This is no surprise because, for purposes of the administrative process, the Indiana Board consolidated BP and Amoco's “individual” assessment challenges. (See Pet. Attach. at 3-42 (demonstrating that the individual assessment challenges presented the same issue for resolution, and that the Indiana Board referred to both BP and Amoco as “BP”).) Furthermore, it appears from the final determination that the attorneys from Bingham McHale actually presented BP and Amoco's “individual” assessment challenges as one. (See, e.g., Pet. Attach. at 8 (indicating that BP and Amoco presented evidence as the singular entity and property owner, “BP”).) (See also Pet. Attach. at 2 (indicating that Amoco is “now known as” BP).) The issuance of that one final determination – and not its subsequent distribution to BP and Amoco individually – triggered Lake County's appeal rights. Consequently, Lake

County needed to file only one original tax appeal.

Indiana Trial Rule 4.15(F) provides that no summons or service of process shall be set aside if either is “reasonably calculated” to inform the person to be served of the impending action before him. Ind. Trial Rule 4.15(F). “Thus, T.R. 4.15(F) will prevent service of process which is technically deficient from defeating the personal jurisdiction of a court.” *Barrow v. Pennington*, 700 N.E.2d 477, 478 (Ind. Ct. App. 1998) (citations omitted). See also *Gourley v. L.Y.*, 657 N.E.2d 448, 450 (Ind. Ct. App. 1995), *trans. denied* (“personal jurisdiction over a party will obtain by any method of service which comports with due process . . . [t]he minimal requirements of due process require only that notice be served in a manner reasonably calculated to inform the defendant of the pending action”) (citation omitted). While Lake County’s summons and service of process was directed to “BP,” the Court finds that, given the facts before it, they were reasonably calculated to inform Amoco of Lake County’s action against it. See *supra*. See also, e.g., *Krol v. Ind. of Tax Review*, 848 N.E.2d 1185, 1187-88 (Ind. Tax Ct. 2006) (where Court declined to dismiss case – despite the fact proper party was not named in petition’s caption – because there was enough information in the petition, and attached thereto, by which one could determine the proper party); *Gen. Fin. Corp. v. Skinner*, 426 N.E.2d 78, 84 (Ind. Ct. App. 1981) (stating that “Indiana courts refuse to recognize corporations as separate entities where the facts establish [that they] are acting as the same entity” and thus, with respect to service of process, will emphasize “substance over form, facts over ‘procedural complexity’ where justice deserves”) (citations omitted).

2.

Next, the Respondents assert that under either Indiana Trial Rule 4.6 or 5(B), service upon their attorney, Jeffrey Bennett, at his law firm, was insufficient to confer personal jurisdiction over them. (See Respts' Mem. at 7-8.) Again, based on the facts before it, the Court must disagree.

Indiana Trial Rule 4.6 generally provides that service upon an organization may be made upon its executive officer, its appointed agent, or its agent *deemed by law* to have been appointed to receive service. Ind. Trial Rule 4.6(A)(1) (emphasis added). Lake County and the Respondents have extensive history litigating the propriety of the Respondents' personal property tax assessments. In fact, earlier this year the Court issued an opinion regarding the Respondents' personal property tax assessments for the 2004, 2005, and 2006 tax years. See *Lake Cnty. Assessor v. Amoco Sulfur Recovery Corp.*, 930 N.E.2d 1248 (Ind. Tax Ct. 2010), *petition for review transmitted* (Oct. 21, 2010). Both parties acknowledge that in that case, Jeffrey Bennett accepted service for the Respondents. (*Cf.* Petrs' Mem. Law Opp'n Mot. Dismiss at 6 *with* Respts' Reply Mem. at 6.) Given that fact, it was not unreasonable for Lake County to believe that Jeffrey Bennett was authorized to accept service on the Respondents' behalf in this case. Accordingly, the Court finds that Jeffrey Bennett was, for purposes of this case, the Respondents' appointed agent to receive service under Indiana Trial Rule 4.6.⁴

⁴ Given this holding, the Respondents' Trial Rule 5(B) argument is moot.

CONCLUSION

For the foregoing reasons, the Respondents' motion to dismiss is DENIED.

SO ORDERED this 27th day of December, 2010.

Thomas G. Fisher, Judge
Indiana Tax Court

Distribution:

Brian P. Popp
LASZLO & POPP, PC
200 East 80th Place, Suite 200
Merrillville, IN 46410

John S. Dull
Attorney at Law
2293 North Main Street
Crown Point, IN 46307

Jeffrey T. Bennett
Bradley D. Hasler
Margaret M. Christensen
BINGHAM McHALE LLP
8900 Keystone Crossing
Suite 400
Indianapolis, IN 46240