

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>JOE AND JOYCE PERCOCO, DBA PERCOCO MARBLE AND TILE CO, INC.,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 44676</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on September 26, 2006, Debra A. Baumbach and MaryKay Kelley presiding. Petitioner appeared pro se. Respondent was represented by Eugene Kottenstette, Esq. Petitioner is requesting an abatement/refund of personal property taxes on the subject property for tax year 2004.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**1280 W. Bayaud Avenue, Denver, Colorado
Denver County Schedule No. 291-083-004**

The subject property consists of personal property for a marble and tile company.

FINDINGS OF FACT:

1. For the past 19 years, the accounting firm of Hutchison, Horn & Co. has prepared tax related documents for Percoco Marble and Tile. For the 2004 tax year, the accounting firm completed Petitioner’s Personal Property Declaration Schedule, attached a copy of the depreciation schedule filed with the 2003 corporate tax return, and mailed it to the Denver County Assessor on March 31, 2004. The accountant related the regularity with which Petitioner’s Personal Property Declaration Schedule has been completed and filed for the past 19 years.

2. Petitioner's Exhibit A contains a letter from Joyce L. Peluso declaring that the Assessor's Office had stated that they might have lost the Declaration Schedule.

3. Respondent testified that a 2004 Notice of Valuation (NOV) was mailed to Petitioner. Petitioner testified that the 2004 Notice of Valuation was never received. Respondent's witness testified that they do not keep copies of NOV's. Respondent therefore was unable to enter the 2004 NOV into evidence.

4. Respondent's witness also testified that they attempt to contact companies that regularly fail to file a Declaration Schedule multiple times. However, they admitted that they did not contact the Petitioner beyond the original mailing of the schedule to be completed.

5. Petitioner received a tax bill in January 2005 showing an actual value of \$578,852.00 for tax year 2004, an increase of \$259,642.00 over the 2003 actual value. Petitioner and the accountant subsequently contacted the County by telephone and in writing regarding the 2004 valuation. Petitioner filed for abatement on January 20, 2005. The petition for abatement was denied.

6. Respondent asserts that the value assigned to the subject property for tax year 2004 was based on "best information available" (BIA). Respondent's witness explained that it is the County Assessor's policy to calculate BIA values by multiplying the value declared on the previous year's Declaration Schedule by 100%.

7. Respondent assigned an actual value of \$578,852.00 for tax year 2004. Petitioner is requesting a value of \$345,000.00.

CONCLUSIONS OF LAW:

1. Petitioner presented sufficient probative evidence and testimony to prove that the value assigned to the subject property for tax year 2004 was incorrect.

2. Respondent contends that Petitioner's 2004 Declaration Schedule was never received. Respondent further contends that Petitioner created a presumption of incompetence by failing to mail the Declaration Schedule by registered mail, certified mail or certificate of mailing. We disagree. Taxpayers are not bound by law or instructed on the Personal Property Declaration Schedule to use registered mail, certified mail or certificate of mailing. Furthermore, Petitioner's long history of timely filing Personal Property Declaration Schedules creates a reasonable assumption that the 2004 Declaration Schedule was mailed before the deadline.

3. Respondent contends that the Petitioner's request for abatement is illegal because the Declaration Schedule was not received by the Denver County Assessor and because the valuation was not appealed during the proper time frame. We disagree. Since Petitioner did not receive the 2004 NOV, Petitioner was neither informed of its right to protest the valuation nor the deadline by

which any protest must be filed. In the interest of justice and fairness, Petitioner's appeal rights through the abatement process should be preserved.

4. The Board believes that the taxpayer properly and timely sent its Declaration Schedule to the County. Accordingly, the issuance of a BIA NOV was improper. As a result, taxpayers' petition for abatement was timely filed as the time for filing the petition for abatement is not governed by the rules applicable to BIA NOVs.

5. The Board further finds that, even if a BIA were appropriate in this case, Respondent's "method" of BIA valuation is inconsistent with the following excerpts from Volume V, pages 3.29 through 3.30 of the Assessor's Reference Library (ARL):

ESTIMATING ACTUAL VALUE

If an itemized list was submitted in previous years . . . the assessor may already have sufficient information to determine the value. **In all cases, BIA valuations should only be made after research or comparison of the subject property with the valuations of similar properties** (*emphasis added*).

A BIA valuation is not an arbitrary valuation, an excessive valuation, or a penalty imposed upon the taxpayers (*emphasis added*).

DATA SOURCES

The assessor has a variety of data sources available when determining values according to the "Best Information Available" (BIA). They include the following:

Subject Property Records

Other sources of data include assessment and related accounting records for the same business from previous years. These records may be used in valuing the business this year based on the best information available. **If proper allowances are made for normal trends regarding additions and deletions**, a business may be its own bet comparable when estimating BIA values for the current assessment year (*emphasis added*).

6. When compared to Petitioner's normal trends regarding additions and deletions, which were available to Respondent from the 19 consecutive years wherein they timely filed Personal Property Declaration Schedules, the 2004 assigned value of \$578,852.00 constitutes a value that is arbitrary and excessive.

<u>Tax Year</u>	<u>Actual Value</u>
2002	\$335,690.00
2003	\$319,210.00
2005	\$354,080.00

7. The Board declares this matter to be of statewide concern.

ORDER:

The Board retains jurisdiction in this matter for two weeks from the date of this decision, by which time the Respondent must notify the Board in writing as to the adjusted value of the subject property for tax year 2004 based on Petitioner's 2004 Personal Property Declaration Schedule. The Board will then issue a final order based on the adjusted value.

DATED and MAILED this 31st day of October 2006.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach
Debra A. Baumbach

MaryKay Kelley
MaryKay Kelley

This decision was put on the record

OCT 31 2006

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Penny S. Lowenthal
Penny S. Lowenthal



**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 44676

Petitioner:

**JOE AND JOYCE PERCOCO
DBA PERCOCO MARBLE AND TILE CO., INC.,**

v.

Respondent:

DENVER COUNTY BOARD OF COMMISSIONERS.

FINAL ORDER

THE BOARD OF ASSESSMENT APPEALS retained jurisdiction in this matter pending receipt of Respondent's revised value for the subject property for tax year 2004 based on Petitioner's 2004 Personal Property Declaration Schedule.

The Board received Respondent's Response on November 14, 2006 indicating an actual value of \$347,556.00 for the subject property.

ORDER:

The Board's interim Order dated October 31, 2006 is incorporated herein by this reference.

Respondent is ordered to cause an abatement/refund to Petitioner based on a 2004 actual value for the subject property of \$347,556.00.

The Denver County Assessor is directed to change his/her records accordingly.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

In addition, if the decision of the Board is against the Respondent, the Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when

the Respondent alleges procedural errors or errors of law by the Board of Assessment Appeals.

If the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, the Respondent may petition the Court of Appeals for judicial review of such questions with 45 days from the date of this decision.

DATED and MAILED this 16th day of November 2006.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

MaryKay Kelley

MaryKay Kelley

This decision was put on the record

NOV 15 2006

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Penny S. Lowenthal
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