

REPRESENTATIVE FOR PETITIONER: Todd Churchward, Baden Tax Management

REPRESENTATIVES FOR RESPONDENT: Donald Goetz, Licking Township Assessor
Fred Tobey, Blackford County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

KEY PLASTICS, INC.,)	Petition No.: 05-006-99-3-7-30000
)	
Petitioner,)	Personal property
)	
v.)	Blackford County
)	
LICKING TOWNSHIP ASSESSOR,)	Licking Township
)	
Respondent.)	Assessment Year: 1999

Appeal from the Final Determination of the
Blackford County Property Tax Assessment Board of Appeals

January 26, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts, evidence, and arguments presented in this case. Having considered the issues, the Board now enters the findings of fact and conclusions of law that follow.

Issue 1: Do Ind. Code § 6-1.1-15-12(g) and Ind. Code § 6-1.1-3-7.5 prohibit a petition for correction of error and require a timely amended return when a taxpayer wishes to correct a 1999 personal property tax return?

Issue 2: If a petition for correction of error can be used regarding a 1999 personal property tax return, did the Petitioner establish that its original return contained objective errors in how it reported special tools that can be corrected at this time?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. Pursuant to Ind. Code § 6-1.1-15-12, Todd Churchward filed a Form 133 Petition for Correction of an Error on behalf of Key Plastics, Inc. and submitted Corrected Personal Property Forms 103 and 104 with that petition on or about August 13, 2002. The Blackford County Property Tax Assessment Board of Appeals (PTABOA) denied relief on or about December 10, 2003.¹ The Petitioner furnished its Form 133 Petition to the Board on April 1, 2004. This appeal is considered as a Form 133 petition.
2. On July 25, 2006, Todd Churchward, representative for the Petitioner, and Donald Goetz, Licking Township Assessor, participated in a telephonic pre-hearing conference conducted by Administrative Law Judge Patti Kindler (the ALJ) authorized by the Board. The ALJ ordered briefing on the issue of timeliness of the appeal according to Ind. Code § 6-1.1-15-12(g) and scheduled an administrative hearing in this matter for October 11, 2006. *Bd. Ex. D.*
3. On August 21, 2006, the Petitioner submitted a brief addressing the timeliness of the appeal. This brief is in the record as Petitioner Exhibit 11.
4. The Respondent did not submit a brief. On August 24, 2006, the Blackford County Assessor submitted a rebuttal to the Petitioner's brief. That rebuttal is in the record as Respondent Exhibit 12.

¹ Respondent's Exhibits 4 and 5 show that the PTABOA improperly used a Form 115 to notify the Petitioner about the denial, rather than using the section of the Form 133 intended for that purpose. The Form 115 states that it is to be used as a result of filing Form 130 and advises that a Form 131 should be filed if one does not agree with the PTABOA action. Accordingly, Key Plastics filed a Form 131 Petition for Review of Assessment on January 6, 2004. When the Board requested a copy of the Form 130 to attach to the Form 131, it was advised that there had been no Form 130, but rather, the matter was initiated with a Form 133. The Form 131 raises the same issue as the Form 133, and is clearly the result of the PTABOA's improper use of a Form 115 to give notice that it disapproved the Petition for Correction of an Error, Form 133. In addition to the Form 133 and Form 131 Petitions, Board Exhibit A contains the Notice of Defect Form and the Petitioner's transmittal letter, which help to explain this rather confused and complicated procedural background.

HEARING FACTS AND OTHER MATTERS OF RECORD

5. The ALJ held the hearing in Hartford City on October 11, 2006.

6. The following persons were sworn as witnesses and presented testimony at the hearing:

For the Petitioner - Todd Churchward, C.P.A., Baden Tax Management,
For the Respondent - Donald Goetz, Licking Township Assessor,
Fred Tobey, Blackford County Assessor.

7. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Petitioner’s narrative,
Petitioner Exhibit 2 – Form 133, Petition for Correction of an Error,
Petitioner Exhibit 3 – Revised 1999 personal property tax return,
Petitioner Exhibit 4 – Original 1999 personal property tax return,
Petitioner Exhibit 5 – Form 115, Notification of Final Assessment Determination,
Petitioner Exhibit 6 – Form 131, Petition for Review of Assessment,
Petitioner Exhibit 7 – Power of Attorney,
Petitioner Exhibit 8 – Federal income tax depreciation schedule for 2002,
Petitioner Exhibit 9 – Special tools list,
Petitioner Exhibit 10 – 50 IAC 4.2 (Regulation 16) code references,
Petitioner Exhibit 11 – Pre-hearing brief.

8. The Respondent presented the following exhibits:

Respondent Exhibit 1 – Summary of Comments,
Respondent Exhibit 2 – Original personal property return filed May 20, 1999,
Respondent Exhibit 3 – Form 133 Petition with new schedule of personal
property,
Respondent Exhibit 4 – Assessor action on Form 133,
Respondent Exhibit 5 – Form 115, Notification of Final Assessment
Determination,
Respondent Exhibit 6 – Special tools list,
Respondent Exhibit 7 – Department of Local Government Finance continuing
education article on special tooling dated February 2004,
Respondent Exhibit 8 – Photograph of rack transporters,
Respondent Exhibit 9 – Federal income tax depreciation schedule for 2002,
Respondent Exhibit 10 – 50 IAC 4.2-3-12 (Regulation 16, pages 20 and 21)
regarding mathematical errors,
Respondent Exhibit 11 – 50 IAC 4.2-6-2 (Regulation 16, page 43) definition of
special tools,
Respondent Exhibit 12 – Rebuttal to Petitioner’s pre-hearing Brief.

9. The following additional items are part of the record of proceedings:
 - Board Exhibit A – Form 133 Petition with attachments,²
 - Board Exhibit B – Notices of Hearing on Petition,
 - Board Exhibit C – Hearing sign-in sheet,
 - Board Exhibit D – Pre-hearing order.
10. Key Plastics manufactures and paints automobile door handles. The subject property consists of certain depreciable assets and special tools owned by the Petitioner and located at 1615 West McDonald Street in Hartford City.
11. The ALJ did not view the property.
12. The PTABOA determined the assessed value of the personal property is \$2,507,110.
13. According to the Petitioner, the assessed value of the property should be \$1,873,630.
14. The Petitioner presented the following evidence and contentions:
 - a) The General Assembly changed Ind. Code § 6-1.1-15-12(g) to provide that “a taxpayer that files a personal property tax return under I.C. 6-1.1-3 may not petition under this section for the correction of an error made by the taxpayer on the taxpayer’s personal property tax return. If the taxpayer wishes to correct an error made by the taxpayer on the taxpayer’s personal property tax return, the taxpayer must instead file an amended personal property return under I.C. 6-1.1-3-7.5.” *Petitioner Exhibit 11*. House Enrolled Act 1499, Section 112, specifies that the changes to Ind. Code § 6-1.1-15-12 apply to property taxes due and payable after December 31, 2002. Therefore, the revised statute is not applicable because the year at issue is 1999. *Id.*

² Attachments to the Form 133 Petition include the Form 131 Petition and the original and corrected personal property returns for 1999.

- b) Key Plastics manufactures and paints door handles for various automobiles, each with a unique design, which requires the tooling to be unique to each particular model. *Churchward testimony; Pet'r Ex. 1.* After a review of the taxpayer's 1999 depreciation schedules, errors were discovered in the reporting of the amount of special tools and the classification of assets into pools. *Id.* Key Plastics' original personal property tax filing was incorrect because the depreciable lives of its assets were based on "book lives" rather than federal income tax lives and special tools were erroneously included in the pooling schedules. *Churchward testimony; Pet'r Ex. 6 at 4.*
- c) The Petitioner filed a Form 133 with corrected personal property returns making substantial changes to the pooling lives of the assets and the amount of special tools reported on the original personal property assessment. *Pet'r Exs. 2-4.* The use of the Form 133 Petition is appropriate because 50 IAC 4.2-3-12 specifically provides that mandatory adjustments may be made through a Form 133 filing. *Churchward testimony.* Mandatory adjustments are defined in 50 IAC 4.2-2-10(d) and include both special tooling and pooling schedules. *Id.; Pet'r Ex. 1.*
- d) The depreciable life utilized for federal income tax purposes determines the pool for Indiana property tax purposes.³ *Churchward testimony.* Most of the assets were reported in Pool 3 on the original return. *Id.; Pet'r Ex. 4.* The assets at issue all have a federal tax life of seven years or less and should have been reported in Pool 2 rather than in Pool 3. *Churchward testimony; Pet'r Ex. 3.*
- e) The Petitioner was unable to locate its 1999 federal tax return; therefore it provided the 2002 federal depreciation schedule to support the revised personal property return. *Churchward testimony; Pet'r Ex. 8.* Once an asset is assigned a

³ The adjusted cost of depreciable personal property must be segregated for Indiana property tax purposes into one of four pools on the Indiana Business Tangible Personal Property Assessment Return, Form 103 – Long Form. Pool 2 is for assets with a 5 through 8 year life. Pool 3 is for assets with a 9 through 12 year life. 50 IAC 4.2-4-5.

federal life, that federal life does not change. The 2002 tax schedule is evidence that the items are in the proper pooling schedules on the revised 1999 return. *Id.*

- f) The amount of special tools reported on the original return also was incorrect and incomplete. *Churchward testimony*. 50 IAC 4.2-6-2(b) provides that “[s]pecial tools’ includes, but is not limited to, tools, dies, jigs, fixtures, gauges, molds and patterns acquired or made for the production of products or product models which are of such specialized nature that their utility generally ceases with the modification or discontinuance of such products or product models....” *Pet’r Ex. 1*. The Petitioner’s primary special tool items include various tooling, molds, fixtures and paint racks, all of which are designed for a specific vehicle model door handle. *Churchward testimony; Pet’r Ex. 3*. The Petitioner’s revised list of special tools contains errors. For example, some paint rack castors included on the list are not special tools. Although some items on the list meet the definition of special tooling, other items do not meet the definition. Other items “could be possibly interpreted either way.” *Churchward testimony; Pet’r Ex. 9*.
- g) The Department of Local Government Finance continuing education article regarding special tooling submitted by the Respondent should not be given as much weight as the regulations because it was issued in 2004, several years after the assessment date. *Churchward testimony*. The regulations define special tooling and specifically include jigs, tools, dies, molds, fixtures, gauges, and patterns, several of which are listed on Key Plastics’ revised personal property return. *Id.*

15. The Respondent presented the following evidence and contentions:

- a) The Petitioner’s brief contained errors regarding the date of the PTABOA hearing and the parties who denied the Form 133 Petition. "The 133 Petition Signatures of Disapproval was signed by the then County Auditor, County Assessor and

Licking Township Assessor on December 12, 2002. The PTABOA hearing took place on October 6, 2003." *Resp't Ex. 12.*

- b) The Form 133 Petition for Correction of an Error cannot be used to revise pools or special tools lists. These are subjective judgments and do not represent mathematical errors in the assessment. *Goetz testimony.*

- c) Without the submission of Key Plastics' 1999 federal tax returns, sufficient evidence was not presented to show that the pools and the amount of special tooling listed on the revised personal property returns are correct. *Goetz testimony.* The PTABOA requested the 1999 federal tax return to verify the pooling schedules and the federal tax lives reported by the Petitioner on the revised personal property forms but it was not provided. *Id.; Tobey testimony.* The Petitioner has shown no evidence of a mathematical error on the original return. Therefore, the Form 133 Petition cannot be used for pooling or special tools reporting errors. *Goetz testimony; Resp't Ex. 1.*

- d) The Petitioner is referring to the penalty section of the code when it describes mandatory adjustments. *Goetz testimony.* The personal property regulations give examples of the meaning of mathematical errors, which include errors in addition, subtraction, multiplication, or division, made in the process of taking numbers initially entered into the assessment computation and developing them into an assessed value. *Goetz testimony; Resp't Ex. 10.* The Petitioner claims mathematical errors, but it is incorrect about what constitutes a mathematical error based on the regulation. *Id.* The Petitioner discussed pooling errors and special tool errors, but presented no evidence of mathematical errors. *Goetz testimony; Pet'r Ex. 1.*

- e) The continuing education article issued by the Department of Local Government Finance clarified the definition of special tools, instructing assessors that personal property qualifies as special tools only if it is assigned a special tools asset class

from Appendix B of Internal Revenue Service (IRS) Publication 946 and is depreciated as a special tool for federal tax purposes. *Goetz testimony; Resp't Ex.*

7. All but one of the special tools claimed by Key Plastics is being depreciated for federal tax purposes over seven years rather than three years as specified in IRS Publication 946. *Id.*

- f) Some of the special tools listed by Key Plastics are outside the definition of special tools contained in 50 IAC 4.2-6-2(b). *Goetz testimony; Resp't Ex. 11.* The castors and rack carriers shown in the photograph were included on the revised special tools list when obviously they are used in the transportation of parts. They are not special tools. *Goetz testimony; Resp't Ex. 8.* The Petitioner admits that not all the items on the revised special tools list should have been included. This fact establishes that the corrected 1999 personal property return submitted by the Petitioner is not accurate. *Tobey testimony.*

JURISDICTION

16. The Indiana Board must conduct an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

17. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

18. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
19. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

Issue 1

20. The current statutes that govern corrections for a personal property tax return are:

Ind. Code § 6-1.1-15-12(g)

A taxpayer that files a personal property tax return under IC 6-1.1-3 may not petition under this section for correction of an error made by the taxpayer on the taxpayer’s personal property return. If the taxpayer wishes to correct an error made by the taxpayer on the taxpayer’s personal property tax return, the taxpayer must instead file an amended personal property tax return under IC 6-1.1-3-7.5.

Ind. Code § 6-1.1-3-7.5

Sec. 7.5 (a) A taxpayer may file an amended personal property tax return, in conformity with the rules adopted by the department of local government finance, not more than six (6) months after the later of the following:

- (1) The filing date for the original personal property tax return, if the taxpayer is not granted an extension in which to file under section 7 of this chapter.
- (2) The extension date for the original personal property tax return, if the taxpayer is granted an extension under section 7 of this chapter.

21. These two provisions were added in 2001 and apply to property taxes due and payable after December 31, 2002. P. L. 198-2001, Sec. 112. The 1999 taxes were due and payable before that legislation took effect.

22. Thus, Ind. Code §§ 6-1.1-15-12(g) and 6-1.1-3-7.5 do not apply to this case. The Board concludes that a Form 133 Petition for a Correction of Error could be used as a vehicle to change a personal property return for 1999.

Issue 2

23. A Form 133 Petition is available only for those errors that can be corrected without resort to subjective judgment. A taxpayer who files a 133 Petition must be able to show with probative evidence that the error it seeks to correct is an objective error and not a subjective error. *Hatcher v. State Bd. of Tax Comm'rs*, 561 N.E.2d 852 (Ind. Tax Ct. 1990); *Reams v. State Bd. of Tax Comm'rs*, 620 N.E.2d 758 (Ind. Tax Ct. 1993).
24. The placement of an asset in the proper pool is based upon the asset's depreciable life utilized for federal income tax purposes. 50 IAC 4.2-4-5(a). The Petitioner did not submit its 1999 federal depreciation schedule, but relied on its 2002 schedule. *Pet'r Ex. 8*. The Petitioner failed to establish the probative value of its 2002 depreciation schedule.⁴
25. Subjective judgment would be required to correct the alleged pooling error, but such changes are not allowed with a Form 133 Petition. *See Barth, Inc. v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1124 (Ind. Tax Ct. 2001) (citing *Rinker Boat Co. v. State Bd. of Tax Comm'rs*, 722 N.E.2d 919, 924 (Ind. Tax Ct. 1999)).
26. The Petitioner also failed to meet its burden of proof with respect to the specific items and amounts it identified as special tools. The Petitioner acknowledged that some assets that do not qualify are included on its revised special tools list. The Petitioner's acknowledgment that some items on the list "could be possibly interpreted either way"

⁴ The 1999 depreciation schedule would have varied in some degree from the 2002 depreciation schedule. For example, the 2002 tax depreciation schedule identifies assets that were not placed in service until 2000, 2001, and 2002. *Pet'r Ex. 8 at 3, 21, and 22*. Similarly, assets present on the 1999 schedule may have been retired prior to 2002.

further demonstrates that subjective judgment is required to determine the correct value of the special tools, which is not allowed in a Form 133 Petition. *See Barth*, 756 N.E.2d at 1124. The evidence is insufficient to establish the correct amount of special tools that should be reported as an objective, verifiable fact.

SUMMARY OF FINAL DETERMINATION

27. The Form 133 Petition for a Correction of Error was available as a method of appealing the 1999 assessment.
28. The Petitioner failed to prove that the alleged errors are objective errors. Because subjective judgment would be required to make the requested changes, they may not be addressed with a Form 133 Petition. The assessment will not change.

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

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.