

REPRESENTATIVE FOR PETITIONER: Todd Churchward, Certified Public Accountant,  
Baden Tax Management

REPRESENTATIVE FOR RESPONDENT: Kristin L. Rowe, Concord Township Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

KOBELCO COMPRESSORS	)	Petitions: 20-012-00-3-7-00013
(AMERICA) INC.,	)	20-012-01-3-7-00011
	)	
Petitioner,	)	Elkhart County
	)	
v.	)	Concord Township
	)	
CONCORD TOWNSHIP ASSESSOR,	)	2000 and 2001 Personal Property
	)	
Respondent.	)	

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

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**January 11, 2008**

**FINAL DETERMINATION**

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

**Issue: Should the 2000 and 2001 personal property values be changed to reflect the values reported on the “corrected” personal property returns submitted with the Form 133 Petitions?**

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **Procedural History**

1. On March 29, 2004, Kobelco Compressors (America) Inc. (Kobelco) filed Form 133 Petitions for Correction of an Error for 2000 and 2001. Kobelco also submitted corrected Personal Property Forms 103 and 104 with those petitions.
2. The Elkhart County Property Tax Assessment Board of Appeals (PTABOA) denied relief on February 21, 2006.
3. The Petitioner timely appealed the PTABOA determinations on March 21, 2006.

### **Hearing Facts and Other Matters of Record**

4. The subject property consists of depreciable assets and special tools owned by the Petitioner. It is located at a manufacturing facility at 3000 Hammond Avenue in Elkhart.
5. Patti Kindler, the Board's designated Administrative Law Judge, held the hearing in Goshen on October 16, 2007. She did not conduct an on-site inspection of the property.
6. The following persons were sworn and presented testimony at the hearing:  
For the Petitioner – Todd Churchward, Baden Tax Management,  
Kevin O'Neill, President of Kobelco,  
For the Respondent – Kristin L. Rowe, Concord Township Assessor,  
Carol Hochstetler, formerly Deputy Township Assessor.
7. The PTABOA determined the 2000 assessed value of the personal property is \$1,594,190. The PTABOA determined the 2001 assessed value is \$4,953,320.
8. The Petitioner claims the value should be \$1,495,190 for 2000 and \$4,656,330 for 2001.

9. The Petitioner submitted the following exhibits:
  - Petitioner Exhibit 1 – Assertions and responses,
  - Petitioner Exhibit 2 – Spreadsheets summarizing the proposed changes,
  - Petitioner Exhibit 3 – Form 133 Petitions for Correction of an Error for 2000 and 2001,
  - Petitioner Exhibit 4 – “As Corrected” personal property tax returns for 2000 and 2001,
  - Petitioner Exhibit 5 – Power of Attorney,
  - Petitioner Exhibit 10 – Photographs of special tooling items with index.<sup>1</sup>
10. The Respondent did not submit any exhibits.
11. The following additional items are recognized as part of the record of proceedings:
  - Board Exhibit A – Form 133 Petitions with attachments,<sup>2</sup>
  - Board Exhibit B – Notices of Hearing,
  - Board Exhibit C – Hearing sign-in sheet.

### **Objections**

12. The Respondent objected to all of the Petitioner’s exhibits because they were not exchanged before the hearing.
13. In plenary appeals such as this one, the parties must exchange a list of witnesses and exhibits at least 15 business days before the hearing date. They also must exchange summaries of witness testimony and copies of documentary evidence at least 5 business days before the hearing. 52 IAC 2-7-1. In addition to the procedural rule, this exchange requirement was specified in the hearing notice. The purpose of this requirement is to allow both parties to be informed, to avoid surprises, and to assure a more organized, efficient and fair consideration of the issues. Nevertheless, the deadlines for exchange *may* be waived for any materials that previously were submitted at the PTABOA hearing. 52 IAC 2-7-1(d).

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<sup>1</sup> The Petitioner did not offer Exhibits 6 through 9 for the 2000 and 2001 appeals.

<sup>2</sup> Attachments include the “As Originally Filed” and “As Corrected” returns for 2000 and 2001.

14. The Petitioner's representative produced no evidence that the required exchange occurred. He testified that he may have inadvertently mailed copies of the pre-hearing evidence to the Board, rather than to the Respondent. He also testified that the same evidence was presented at the PTABOA hearing. Assessor Rowe testified that she was new to the office and had no idea what was presented at the PTABOA hearing.
15. Petitioner's Exhibit 3 consists of the Form 133 for 2000 and the Form 133 for 2001. These documents show that they were filed on March 29, 2004. They also show that the township assessor disapproved them on May 14, 2004. They should not be documents that surprise the Respondent. The objection to Exhibit 3 is denied. Petitioner's Exhibit 5 is the power of attorney that authorizes representation, a point that is not in dispute. The Respondent has not demonstrated any potential prejudice from admitting this document. Therefore, the objection to Exhibit 5 is denied.
16. The "As Corrected" Personal Property Tax Returns, Petitioner's Exhibit 4, are referenced in the Form 133 Petitions and appear to have been prepared at approximately the same time, on or about March 24 and 26, 2004. Petitioner's Exhibit 2, the spreadsheet that purports to explain the changes between the original returns and the "As Corrected" Returns, lacks anything to indicate when it was prepared. Similarly, the narrative summary explanation of changes in Exhibit 1 lacks anything to indicate when it was prepared. The testimony that Exhibit 1, Exhibit 2 and Exhibit 4 were presented at the PTABOA hearing was not contradicted. Furthermore, the Respondent failed to demonstrate any prejudice will result from admitting these exhibits. Therefore, the objections to Exhibit 1, Exhibit 2 and Exhibit 4 are denied.
17. Petitioner's Exhibit 10 consists of a series of photographs that all are dated October 12, 2007, which is well after the PTABOA hearing. The Petitioner failed to provide any justification for waiving the exchange requirement for Exhibit 10. The objection to Exhibit 10 is sustained. It will not be considered any further in determining the outcome of this case.

### **Petitioner's Contentions**

18. After a detailed review of the taxpayer's 2000 and 2001 personal property returns, errors were discovered in the reporting of special tools and the classification of assets into pools. These asset classification changes require proper reporting on the property tax return. Specifically, the items at issue include application software, special tooling, and real estate improvements not subject to personal property assessment. *Churchward testimony.*
  
19. The Petitioner filed Form 133 Petitions for 2000 and 2001 with corrected personal property returns that make substantial changes to the asset classifications. These returns reflect the changes in the assessments as a result of the revised asset classifications. These asset classification changes would be considered mandatory adjustments within the regulations that require proper reporting on the property tax return, specifically 50 IAC 4.2-6-2(b). *Churchward testimony.*
  
20. There is no disagreement that an amended return must be filed by the November 15<sup>th</sup> deadline. The corrected returns are not amended returns. The returns submitted with the Form 133 Petitions are merely corrected returns that identify and detail the personal property asset classification changes requested. *Churchward testimony.*

### **Respondent's Contentions**

21. The Respondent testified the township officials did not receive the hearing notices for these two appeals, but agreed to proceed with the hearing as scheduled. The Respondent did not address the contentions because she was not the assessor at the time of the assessments and is not familiar with the issues involved. *Rowe testimony.*

## **Administrative Review and the Petitioner's Burden**

22. 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).
23. 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”).
24. 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**

25. The time for amending the Petitioner’s 2000 and 2001 personal property returns clearly passed without any amendments. The Petitioner specifically argued that its “As Corrected” returns were not amendments, but failed to establish that there is any meaningful distinction between “correcting” and “amending” the original returns. The Petitioner failed to specify what, if any, status it claimed the “As Corrected” returns might have. Although those documents apparently were included when the Petitioner filed its Form 133 Petitions, the Petitioner provided no authority that supports filing corrected returns at that time. Those documents have no status beyond how they might illustrate or explain the Form 133 petitions. To get anything less than \$1,594,190 for 2000 and \$4,953,320 for 2001, the Petitioner must first make a prima facie case that establishes what it believes the correct values should be.

26. 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 correction it seeks fits into that category. *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). If there are any such errors regarding the valuation of the Petitioner's 2000 or 2001 personal property, the Petitioner failed to prove them.
27. The Petitioner must present more than just "de minimis" evidence in its effort to prove its position. *See Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1024-1025 (Ind. Tax Ct. 1999).
28. Probative evidence is evidence that serves to prove or disprove a fact. The Petitioner must submit probative evidence that adequately demonstrates all alleged errors. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
29. The Petitioner must sufficiently explain the connection between the evidence and the Petitioner's assertions in order for evidence to be considered material. Conclusory statements are of no value to the Board in evaluating the evidence. *See generally, Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
30. The Petitioner's proposed corrections to its personal property return, together with the spreadsheet summary that lists lines, items, and amounts to be changed, certainly provide detailed, specific information about the changes the Petitioner wants. Unfortunately for the Petitioner, it did not introduce substantial, probative evidence to support the reasons

or to prove that they are factually justified, objective corrections.<sup>3</sup> The Petitioner did not introduce books, records, or federal tax returns to support those changes. The testimony that the Petitioner offered consisted of little more than conclusory statements about where mistakes had been made regarding the current valuation and what the correct numbers should be. Such conclusory evidence is not sufficient to make a prima facie case. *See Whitley Products*, 704 N.E.2d at 1119.

31. When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley*, 704 N.E.2d at 1119.

#### **SUMMARY OF FINAL DETERMINATION**

32. The Petitioner failed to make a prima facie case. There will be no change to the personal property values for 2000 or 2001.

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

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Commissioner, Indiana Board of Tax Review

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<sup>3</sup> For example, the spreadsheet lists specific adjustments for software, real estate, non-value, previously disposed asset, non-betterment, PC, and special tooling, but there are no specific facts in the record to back-up any of them. While according to 50 IAC 4.2-4-5(a) the placement of an asset in the proper pool is based on the asset's depreciable life for federal income tax purposes, the Petitioner did not submit its 2000 or 2001 federal depreciation schedules. If any correction were possible, subjective judgment would be required to make any pooling changes. But that kind of judgment would not be allowed with a Form 133 Petition. *See Barth, Inc. v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1124, 1128-1129 (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)).



**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>