

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

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

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

KOBELCO COMPRESSORS)	Petition: 20-012-02-1-7-00003
(AMERICA) INC.,)	
)	Elkhart County
Petitioner,)	
)	Concord Township
v.)	
)	2002 Personal Property
CONCORD TOWNSHIP ASSESSOR,)	
)	
Respondent.)	

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

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 assessment be changed to reflect the value reported on a “corrected” personal property return submitted with the Form 130 or Form 131 Petitions?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. On March 21, 2003, Kobelco Compressors (America) Inc. filed a written appeal with the Elkhart County Assessor in reaction to a corrected Notice of Assessment/Change (Form 113/PP) dated February 4, 2003.¹
2. On February 10, 2004, the Elkhart County Property Tax Assessment Board of Appeals (PTABOA) issued its determination regarding that appeal.
3. On March 10, 2004, the Petitioner filed a Form 131 Petition for Review of Assessment and elected to opt out of small claims procedures.

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.

¹ Originally, the 2002 personal property regulation did not provide for a 35% inventory reduction or 10% for construction in progress that had existed in previous years. This situation changed. In a non-code provision, each county was required to apply the 10% for construction in progress and the 35% reduction for inventory retroactively. 2002 Ind. Acts 192 § 194.

7. The PTABOA determined the assessed value of the property for 2002 is \$5,352,910.
8. The Petitioner claims the assessed value of the property for 2002 should be \$4,878,800.
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 131 Petition with supporting narrative,
 - Petitioner Exhibit 4 – Form 115 Notification of Final Assessment,
 - Petitioner Exhibit 5 – Form 130 Petition,
 - Petitioner Exhibit 6 – Form 113/PP Notice of Assessment Change (revised),
 - Petitioner Exhibit 7 – Form 113/PP Notice of Assessment Change (original),
 - Petitioner Exhibit 8 – “As Corrected” Personal Property Tax Return,
 - Petitioner Exhibit 9 – Power of Attorney,
 - Petitioner Exhibit 10 – Photographs of special tooling items with index.
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 131 Petition,
 - Board Exhibit B – Notice 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).

14. The Petitioner's representative produced no evidence that the required evidence 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 Exhibits 3, 4, 5, 6, and 7 are all forms that either originated from assessing officials or were filed with them. The notices of assessment change, the Form 130 Petition, the Form 115 notification and the Form 131 Petition should not be documents that surprise the Respondent. The objection to their admission is denied. Petitioner's Exhibit 9 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 admitting Exhibit 9 is denied.
16. The "As Corrected" Personal Property Tax Return, Petitioner's Exhibit 8, is referenced in the Form 130 Petition and appears to have been prepared at that same time, on or about March 20, 2003. Petitioner's Exhibit 2, the spreadsheet that purports to explain the changes between the original return and the "As Corrected" Return, lacks anything to indicate when it was prepared. The testimony that both Exhibit 2 and Exhibit 8 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 objection to Petitioner's Exhibit 2 and Exhibit 8 is denied.
17. Petitioner's Exhibit 1 contains dates and facts that make it clear the document was prepared after the PTABOA hearing. Contrary to the Petitioner's representation, this document could not have been presented at the PTABOA hearing. There is no reason to

waive the exchange requirement for it. The objection to Petitioner's Exhibit 1 is sustained. It will not be considered any further in determining the outcome of this case.

18. 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

19. The appeal of the 2002 assessment was initiated after a Form 113/PP was issued by the assessor's office on January 28, 2003, citing House Bill 1001(ss).² On February 4, 2003, a second Form 113/PP was issued, which stated the 35% deduction was incorrectly figured on the prior Form 113/PP. These notices prompted the filing of the Form 130 Petition along with the corrected personal property return. *Churchward testimony.*
20. The corrected Business Tangible Personal Property Assessment Return (Form 103) was filed in accordance with House Bill 1001(ss), which allows the elective inventory adjustment to be taken on Work in Process and Finished Goods in addition to the 35% valuation allowance on raw materials and supplies. In accordance with House Bill 1001(ss), the true tax value of the personal property for construction in progress (CIP) was recalculated at 10%. Further, after a detailed review of the fixed assets, several items were identified that were incorrectly reported on the 2002 personal property return. These items include real property, repair and maintenance items, application software, and special tooling. *Churchward testimony.*

² The original Form 113/PP showed an adjustment from \$6,494,260 to \$4,211,550 and states the adjustment is based on House Bill 1001. The revised Form 113/PP showed the adjustment based on the inventory reduction of 35% was increased from \$4,211,550 to \$5,352,910. This second Form 113/PP states that the 35% deduction was initially calculated improperly. *Churchward testimony.*

21. The PTABOA's denial was based on the timeliness of the amended personal property return. The PTABOA claimed the amended return had to be filed prior to November 15, 2002. An amended return must be filed by the November 15th deadline. The personal property return attached to the Form 130 Petition, however, is not an amended return. It is a corrected return reflecting all the changes Kobelco requested on the 130 appeal. *Churchward testimony.*
22. The Form 130 Petition was timely filed within the 45 days allowed. The personal property return attached to the Form 130 shows the correction of errors made by the township officials in calculating their proposed changes in accordance with House Bill 1001(ss). It also shows corrections made by the Petitioner after a thorough review of the personal property return. The changes made to the personal property form are mandatory in accordance with 50 IAC 4.2-6-2(b). *Churchward testimony.*
23. The alternative method is an elective method that can be used with taxpayer election and requires the consent of the state to change or opt out. Kobelco did not need a written request to use the elective inventory method because Kobelco has historically used the elective method and continued to use it in 2002. *Churchward testimony.*

Respondent's Contentions

24. An emergency rule of the Department of Local Government Finance (DLGF), issued as an instructional bulletin on September 1, 2002, stated that township assessors were to make changes to business personal property returns to adjust the 35% value on inventory and the CIP on line 57 for equipment not placed in service. This change was in accordance with Ind. Code § 6-1.1-16-1. Kobelco's personal property return was changed as instructed by the DLGF and a Form 113/PP was issued to notify the taxpayer. *Rowe testimony.*

25. After the Form 113/PP was issued, the only corrections that could have been made by the taxpayer would have been to the CIP or the 35% inventory evaluation. Kobelco's "As Corrected" return, however, made numerous changes including lines 56, 58, 61, 62, 64 and asset classifications on lines 23, 24, 25, 26 and 27. In order to make such corrections, the Petitioner would have had to submit an amended personal property return prior to the November 15th deadline. The changes made by the Petitioner were not corrections that were a part of the emergency rule allowing assessors to change the valuation for 2002. *Rowe testimony.*
26. The adjustments shown on Kobelco's "As Corrected" return were not allowable based on the issuance of Form 113/PP. Without filing a timely amended return, the Petitioner's corrections to items other than the 35% inventory adjustment and the CIP were not allowable. *Rowe testimony.*

Administrative Review and the Petitioner's Burden

27. 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 value 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).
28. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested value. *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").
29. 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

30. The Petitioner and the Respondent both focused considerable attention on the process of how the taxpayer's original return could be changed. The Petitioner argued that its "As Corrected" return was *not* an amendment, but provided no authority or substantial support for its position. The Petitioner failed to establish that there is any meaningful distinction between "correcting" and "amending" the original return. The Petitioner failed to cite any specific provision in 2002 Ind. Acts 192 § 194 (a/k/a House Bill 1001(ss)) that allowed the Petitioner to file the "As Corrected" return. The Petitioner failed to specify what, if any, status it claims the "As Corrected" return might have. On the other hand, the Respondent argues that the only way the Petitioner could make all the changes it proposes would be to file a timely amended return, which the Petitioner failed to do. The Respondent appeared to argue that the issues the Petitioner can raise on its Form 130 and Form 131 petitions are limited to only the specific changes that started with the Form 113/PP. The Respondent provided no authority in support of that position. Both sides offered nothing more than conclusory statements about the allowable process for changes. Ultimately, neither party provided the kind of detailed, step-by-step analysis about these related questions for the Board to determine who is correct about that process.
31. Nevertheless, in order to determine whether the Board should order any change, it must determine the status quo—if nothing changes, what is the 2002 taxable value of the property in question? On this point, the admission that the Petitioner did not *amend* with the "As Corrected" return is important. Although the document apparently was included when the Petitioner filed its Form 130, the Petitioner provided no authority that supports filing such a corrected return. That document has no status beyond how it might illustrate or explain the Form 130 and Form 131 Petitions. The status quo is the value of

\$5,352,910, which was the amount established on the Form 113/PP Notice of Change that was issued on February 4, 2003. *Pet'r Ex. 6*. The PTABOA decision affirmed this amount on the Form 115. *Pet'r Ex. 4*. To get anything less, the Petitioner must first make a prima facie case that establishes what it believes the correct value should be.

32. 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).
33. 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).
34. The Petitioner must sufficiently explain the connection between the evidence and the Petitioner's assertions in order for it to be considered material. Conclusory statements are of no value to the Board in its evaluation of the evidence. *See generally, Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
35. 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.³ 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

³ 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.

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.

36. 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

37. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent. There will be no change to the personal property value for 2002.

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

- 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>>