

REPRESENTATIVE FOR PETITIONER:

Bradley J. Adamsky, Newby, Lewis, Kaminski & Jones, LLP

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

CALUMET PHOTO	)	Petition No.:	45-023-00-3-7-00189
SERVICE, INC.	)		
	)		
Petitioner,	)	County:	Lake
	)	Township:	North
v.	)		
	)		
NORTH TOWNSHIP ASSESSOR,	)	Personal Property	
& LAKE COUNTY PROPERTY	)		
TAX ASSESSMENT BOARD	)	Assessment Year: 2000	
OF APPEALS	)		
	)		
Respondent.	)		

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Appeal from the Final Determination of  
Lake Property Tax Assessment Board of Appeals

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**January \_\_, 2007**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

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

### **Issue**

1. The issue presented for consideration by the Board was whether the Petition for Correction of an Error, Form 133 (Form 133), filed in 2004 is applicable for correcting a mathematical error on the Petitioner's 2000 Business Tangible Personal Property Assessment Return, Form 103L, and, if so, whether the evidence supports the Petitioner's correction of error.

### **Procedural History**

2. On January 15, 2004, Bradley Adamsky with Newby, Lewis, Kaminski & Jones, LLP, on behalf of Calumet Photo Service (the Petitioner), filed a Form 133 petition to correct a mathematical error in its March 1, 2000, personal property return.
3. Local officials disapproved the Form 133 petition and forwarded the petition to the Lake County Property Tax Assessment Board of Appeals (PTABOA). On December 22, 2004, the PTABOA issued its final determination denying the Form 133 petition and upholding the personal property assessed value of \$51,210. The Petitioner re-filed the Form 133 petition to the Board on January 31, 2005.

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

4. Pursuant to Ind. Codes § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Dalene McMillen, held a hearing in the matter on October 24, 2006, in Crown Point, Indiana.
5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Richard L. DeAngelo, Secretary/Treasurer Calumet Photo Services

Bradley J. Adamsky, Attorney for Petitioner

6. No one appeared on behalf of North Township or Lake County.
7. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Consisted of the following items:

- Letter from Bradley Adamsky to the Board, dated October 16, 2006;
- Letter from Bradley Adamsky to Stephen Stiglich, Lake County Auditor, dated January 31, 2005;
- Letter from Bradley Adamsky to Peter Benjamin, dated January 14, 2004;
- Petition for Correction of an Error – Form 133;
- Department of Local Government Finance (the DLGF) Continuing Education Article, dated February 2003;
- Power of Attorney from Richard DeAngelo to Bradley Adamsky;
- PTABOA Notification of Final Determination, dated December 22, 2004;
- Postmarked envelope addressed to Bradley Adamsky from PTABOA;
- Inventory sheet, dated May 20, 1997;
- Depreciation and Amortization – Form 4562 for 2001;
- Account receivable and payable sheet, dated December 31, 2002;
- Tax statements for 1998, 1999, 2001, and 2002;
- Personal Property Return Forms 104 and 103L for 1994, 1995,<sup>1</sup> and 1996;

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<sup>1</sup> The Petitioner's personal property return submitted for 1995 contained only the Form 104 and the first page of the Form 103L.

- Personal Property Return 103 – short form 1999;
- Petition for Correction of Error – Form 133 for March 1, 2000;
- Original and Amended Personal Property Return Forms 104 and 103L for 2000;
- Petition for Correction of Error – Form 133 for March 1, 2001;
- Original and Amended Personal Property Return Forms 104 and 103L for 2001;
- Business Tangible Personal Property – Form 105 and Notice of Assessment/Change – Form 113/PP for 2002; and
- Business Tangible Personal Property – Form 105, Personal Property Return 104 and 103L for 2003.

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A - Form 133 petition,  
 Board Exhibit B - Notice of Hearing dated August 15, 2006,  
 Board Exhibit C - Hearing sign-in sheet.

9. The subject property is personal property (equipment and inventory) located at 6745 Calumet Avenue, Hammond, North Township, in Lake County.

10. The ALJ did not conduct an on-site inspection of the subject property.

11. For the 2000 assessment year, the PTABOA determined the assessed value of the personal property to be \$51,210.

12. For the 2000 assessment year, the Petitioner contends the assessed value of the personal property should be \$10,530.

## **Jurisdictional Framework**

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning (1) the assessed valuation of tangible property, (2) property tax deductions, and (3) 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 Petitioner's Burden**

14. 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
15. 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 Township 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”).
16. 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.

## Discussion of the Issue

17. The Petitioner contends that it timely filed a Petition for Correction of An Error – Form 133 for the 2000 assessment year and that, based on its correction of a mathematical error, the Petitioner’s personal property tax assessment should be reduced to \$10,530. *Adamsky argument; Board Exhibit A.*
  
18. Summary of Petitioner’s contentions in support of this issue:
  - a. The Petitioner contends that it filed a Petition for Correction of An Error – Form 133 for the 2000 assessment year on January 15, 2004. *Adamsky argument; Board Exhibit A.* Although the Petitioner admits that an amendment restricts the correction of errors on a taxpayer’s personal property return to filing an amended return, the Petitioner argues that the amendment only applies to personal property returns filed for the March 1, 2002, assessment year or filed for later assessment years. *Adamsky argument; Petitioner Exhibit 1, pages 9 and 10.*
  
  - b. The Petitioner contends that it made an error in its personal property taxes for the tax assessment year of 2000 (payable 2001). *Adamsky argument.* The Petitioner’s witness testified that the business was going through various changes at the time of the assessment and one of those changes was the hiring of a new accountant. *DeAngelo testimony.* According to Mr. DeAngelo, in transferring records of the assets and inventory for the business, the new accountant inadvertently received lists of assets and inventory that had been removed from service and disposed of prior to the 2000 assessment date. *Id.*
  
  - c. The Petitioner contends that they became aware of the error upon paying the property taxes on the personal property and submitted a corrected personal property return for the 2000 assessment year that changed the assessed value from

\$51,210 to \$10,530. *Adamsky argument; Petitioner Exhibit 1, pages 43 - 47.* In support of its contention that an error existed in the 2000 personal property assessment, the Petitioner submitted personal property returns for 1994, 1995, 1996, and 1999, showing that the value of its personal property had been consistently reported between \$9,200 and \$13,260. *See Petitioner Exhibit 1, pages 22 -35.*

### **Analysis of the Issue**

19. Personal property includes all “tangible property (other than real property) which is being: (A) held in the ordinary course of a trade or business; (B) held, used or consumed in connection with the production of income; or (C) held as an investment.” *See Ind. Code § 6-1.1-1-11.*
20. Indiana’s personal property tax system is a self-assessment system. “Every person, including any firm, company, partnership, association, corporation, fiduciary, or individual owning, holding, possessing, or controlling personal property with a tax situs within Indiana on March 1 of any year is required to file a personal property tax return on or before May 15 of that year unless an extension of time to file is obtained.” *See 50 IAC 4.2-2-2.*
21. The Petitioner filed a Correction of Error, Form 133, petition for the 2000 assessment year (payable 2001) on January 15, 2004. *Adamsky argument; DeAngelo testimony.* The Petitioner contends that filing a Form 133 in 2004 is the proper procedure to use to correct a 2000 personal property return. *Adamsky argument.* The PTABOA denied any change in assessment. *Board Exhibit A.* The Petitioner contends that the PTABOA denied the request on the basis of the Petitioner’s use of a Form 133 for filing. *Adamsky argument.*

22. The Legislature amended Ind. Code § 6-1.1-15-12 in 2000 to prohibit a taxpayer that files a personal property return from petitioning for a correction of error on that return. 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 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 tax return under IC 6-1.1-3-7.5.”). The Petitioner contends that the PTABOA denied its requested reduction because the Petitioner did not file an amended tax return.<sup>2</sup> Despite the fact that the Respondent did not attend the hearing or argue that the Petitioner’s filing was improper, the Board notes that the Legislature established in House Enrolled Act 1499 that the amendments to Ind. Code § 6-1.1-15-12, only “apply to property taxes due and payable after December 31, 2002.” HEA 1499, Sec. 112 (2000). Thus, the Petitioner’s Form 133 petition is a proper form to file to claim a change on a personal property tax return for the assessment year of 2000.<sup>3</sup>
23. The Petitioner testified that after paying its personal property taxes for 2000, the Petitioner discovered an error and filed a Form 133 petition and Amended Form 104 and Form 103 forms changing the value of its personal property from \$51,210 to \$10,530.<sup>4</sup> *Adamsky argument.* The Petitioner’s witness testified that, due to changes in its business, the Petitioner hired a new accountant. *DeAngelo testimony.* According to Mr.

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<sup>2</sup> We note that the Petitioner could not, in fact, file an amended return because the six month time period for filing amendments for the 2000 assessment year had passed.

<sup>3</sup> The DLGF’s interpretation of the requirements of Ind. Code § 6-1.1-15-12(g) in a February 2003 article, supports this position. *See Petitioner Exhibit 1*, page 9 and 10. According to the DLGF, “[t]he use of the Form 133, to correct personal property assessments, is no longer permitted beginning with the March 1, 2002, assessment date. For assessment dates prior to March 1, 2002, the processing procedures have not changed.”

<sup>4</sup> A Form 133 petition is available only for those errors that can be corrected without resort to subjective judgment. *Hatcher v. State Board of Tax Commissioners*, 561 N.E.2d 852 (Ind. Tax Ct. 1990); *Reams v. State Board of Tax Commissioners*, 620 N.E.2d 758 (Ind. Tax Ct. 1993). As set forth in Ind. Code § 6-1.1-15-12(a)(7), an error may be corrected through the filing of the Form 133 if “there was a mathematical error in computing an assessment.” We make no specific finding as to whether the Petitioner’s error in filing can be seen as a mathematical error. The Board notes only that there is no argument to the contrary. The Board, therefore, accepts the filing as proper.



DeAngelo, when records were transferred, the new accountant inadvertently received lists of assets and inventory that had been removed from service and disposed of prior to the 2000 assessment date. *Id.* Thus, the Petitioner contends, the amount of personal property reported on the Petitioner's original Form 103 and Form 104 filings included personal property it no longer owned. *Id.*

24. The Petitioner contends that the correct personal property assessment is \$10,530. *DeAngelo testimony; Adamsky argument.* In support of this contention, the Petitioner submitted personal property returns from 1994, 1995, 1996 and 1999 showing that the Petitioner's personal property was valued at \$9,200, \$10,380, \$10,580 and \$13,260, respectively in those years. *See Petitioner Exhibit 1*, pages 22 - 35.
25. The Petitioner raised a prima facie case that its personal property assessment should be \$10,530 for the 2000 assessment year. 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 v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, neither the Respondent, nor a party representing the Respondent, appeared at the hearing. Nor did the Respondent submit any documentation in lieu of its appearance to rebut or impeach the Petitioner's claims and evidence. Thus, the Petitioner's case stands unchallenged.

### **Summary of Final Determination**

26. The Petitioner established a prima facie case that the Correction of Error, Form 133 petition was the proper form to file to correct a personal property tax return for the 2000 assessment year and that the value of its personal property for 2000 is \$10,530. The Respondent failed to rebut Petitioner's evidence. The Board finds in favor of the Petitioner.

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

**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](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>.