

STATE OF INDIANA
Board of Tax Review

In the matter of the Petition for Review)
of Assessment, Form 131) Petition No. 82-029-97-1-4-00010

Parcel No. 1143026037015

Assessment Year: 1997

Petitioner: Albert Johann & Sons Co.
 114 W. Illinois St
 Evansville, IN 47710

Petitioner Representative: Herbert Hatt
 121 West Indiana Street, Apt. 2
 Evansville, Indiana 47710

Findings of Fact and Conclusions of Law

The Indiana Board of Tax Review (State Board), having reviewed the facts and evidence, and having considered the issues, now makes the following findings of fact and conclusions of law.

Issues

1. Whether the State Board's Final Determination for the 1989 reassessment dated February 23, 1996, has been applied correctly to the 1995 assessment.
2. Whether the Petitioner has received the correct property exemptions.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-3, Mr. Herbert Hatt, on behalf of Albert Johann & Sons (Petitioner), filed a Form 131 petition requesting a review by the State Board. The Form 131 petition was filed on January 16, 1998. The Vanderburgh County Board of Review's (County Board) Assessment Determination is dated December 11, 1997.
3. Mr. Hatt received from the State Board a Notice of Defect dated January 30, 1998 (Board Exhibit C). The Notice of Defect stated that the Form 131 petition was deemed untimely filed. On February 18, 1998 the State Board received a letter from Mr. Hatt dated February 10, 1998 (Board Exhibit D), with additional evidence to show that the Form 131 petition was indeed timely filed. It should be noted the County Board signed their Assessment Determination on December 11, 1997, but did not mail it until December 17, 1997 (see attachment to Board Exhibit A, copy of Vanderburgh County envelope and well as attachment to Board Exhibit D).
4. On April 6, 1998 the State Board issued a Final Determination (Form 118) on the subject assessment indicating the petition had been withdrawn (denied)(Board Exhibit E). In a letter dated April 24, 1998 to Mr. Hatt from Jane Chrisman, Appeals Coordinator, Ms. Chrisman indicated Final Determination issued on April 6, 1998 was being rescinded due to the Notice of Defect being cured and that the petition would be processed by the Appeals Division (Board Exhibit F).
5. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on May 26, 1999, before Hearing Officer Jennifer Bippus. Testimony and exhibits were received into evidence. Mr. Hatt represented the Petitioner. Ms. Tammy Elkins and Mr. Kris Seger represented Vanderburgh County. Ms. Dorothy Joest represented Pigeon Township.

6. At the hearing, the subject Form 131 petition was made a part of the record and labeled as Board Exhibit A. Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following exhibits were submitted to the State Board:
Petitioner Exhibit A - List of Issues and Case History

Respondent Exhibit A - Response from the County officials
7. The subject property is located at 114-116 W. Illinois St., Evansville, Pigeon Township, Vanderburgh County.
8. The Hearing Officer did not view the subject property.

Issue No. 1 - Whether the State Board's Final Determination for the 1989 reassessment dated February 23, 1996, has been applied correctly to the 1995 assessment.

9. The issue under review is whether the State Board's Final Determination for 1989 had been brought forward and applied to the 1995 assessment.
10. Mr. Hatt testified it was not necessary to read or go over all the issues because he was satisfied with the changes the County had made. Mr. Hatt stated that he felt the Assessor had done their job properly, but he questioned whether the changes were actually reflected on his tax statement. Mr. Hatt further stated his taxes still seemed high and he did not understand why approximately \$5,000 in delinquent taxes was owed.
11. The County officials testified that all the corrections had been made to the property record card.

Issue No. 2 - Whether the Petitioner has received the correct property exemptions.

12. Mr. Hatt testified he did not believe he was receiving the proper exemptions for the subject property.
13. The County officials testified that a Petition for Correction of Error, Form 133, was completed on February 26, 1999, effective for March 1, 1995. The Form 133 applied the proper exemption to the Petitioner's property.

Conclusions of Law

1. The Petitioner is statutorily limited to the issues raised on the Form 130 petition filed with the County Board or issues that are raised as a result of the County Board's action on the Form 130 petition. Ind. Code §§ 6-1.1-15-1, -2.1, and -4. See also the Forms 130 and 131 petitions. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the County Board. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the County Board disagree with the County Board's decision on the Form 130, then a Form 131 petition may be filed with the State Board. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by the County Board and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State Board, however, the Appeals Division of the State Board has the discretion to address issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board*

of Tax Commissioners, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State Board.

2. The Appeals Division is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

A. Indiana's Property Tax System

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.
4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998) (*Town of St. John V*).
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State Board's decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State Board to review the actions of the County Board, but does not require the State Board to review the initial assessment or undertake reassessment of the property. The State Board has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
8. In reviewing the actions of the County Board, the State Board is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State Board is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).
10. Taxpayers are expected to make factual presentations to the State Board regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. “Allegations, unsupported by factual evidence, remain mere

allegations.” *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State Board is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).

11. The taxpayer’s burden in the State Board’s administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. In this way, the taxpayer properly frames the inquiry as to “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Town of St. John V*, 702 N.E. 2d at 1040.
12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State Board is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State Board in the untenable position of making the taxpayer’s case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence.² Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a

taxpayer challenging a State Board determination at the Tax Court level is not “triggered” if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State Board’s final determination even though the taxpayer demonstrates flaws in it).

C. Review of Assessments After *Town of St. John V*

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property’s market value will fail.
16. Although the Courts have declared the cost tables and certain subjective elements of the State Board’s regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.
17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

Issue No. 1 - Whether the State Board’s Final Determination for the 1989 reassessment dated February 23, 1996, has been applied correctly to the 1995 assessment.

18. At the hearing, Mr. Hatt agreed that the property record card correctly reflected the true tax value of the subject property. Although Mr. Hatt agreed that the property record card is now correct, Mr. Hatt opined that the Vanderburgh County officials have incorrectly calculated the amount of delinquent taxes owed.

19. Before reviewing Mr. Hatt's objection to the penalties levied, the State Board must first decide whether it has the authority to hear and decide this appeal. The State Board concludes that it does not have the authority to hear and decide this appeal.
20. The State Board is a creature of statute and therefore only has those powers conferred by statute. *Whetzel v. Department of Local Government Finance*, 2002 WL 64547 (Ind. Tax 2002) citing *Matonovich v. State Board of Tax Commissioners*, 705 N.E. 2d 1093, 1096 (Ind. Tax 1999).
21. When construing a statute, it is equally as important to recognize what the statute does not say as it is to recognize what it does say. *Whetzel*, 2002 WL 64547 citing *City of Evansville v. Zirkelbach*, 662 N.E. 2d 651, 654 (Ind. App. 1996).
22. Therefore, the State Board may only decide if the amount of delinquent taxes owed was correctly calculated if it is statutorily empowered to do so. Ind. Code § 6-1.5-4-1(a) provides for the State Board to give impartial review of all appeals concerning:
 - (1) the assessed valuation of property;
 - (2) property tax deductions;
 - (3) property tax exemptions; or
 - (4) property tax credits;that are made from a determination by an assessing official or a county property tax assessment board of appeals to the State Board under any law.
23. This statute granted power to the State Board to review only appeals concerning matters enumerated therein. The statute does not grant the State Board power to review penalties imposed by the County for late payment of property taxes. *Whetzel*, 2002 WL 64547.

24. Mr. Hatt believes that he can secure State review and objects to the imposition of penalties under Ind. Code § 6-1.1-15-12. The Petitioner in this case filed a Form 131 petition, and Ind. Code §6-1.1-15-12 governs Form 133 petitions.
25. However, this statute states that an auditor is required to correct mathematical errors in computing penalties on taxes. There is nothing in the statute that provides for the determination of whether a penalty was properly imposed. *Whetzel*, 2002 WL 64547, footnote 5.
26. For all the reasons set forth above, the State Board does not have the authority to hear and decide the issue raised by the Petitioner on this Form 131 petition.

Issue No. 2 - Whether the Petitioner has received the correct property exemptions.

27. As stated in Conclusions of Law ¶¶ 9 and 10, “It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief.” “Taxpayers are expected to make factual presentations to the State Board regarding alleged errors in assessment.” “These presentations should outline the alleged errors and support the allegations with evidence.” “Allegations, unsupported by factual evidence, remain mere allegations.”
28. At the hearing, Mr. Hatt offered no evidence to support his opinion that he had not received the correct property exemptions on the subject property.
29. For the reasons set forth above, the Petitioner did not meet his burden on this issue. Accordingly, there is no change in the assessment as a result of this issue.

Issued this ____ day of _____, 2002

By the Indiana Board of Tax Review