

REPRESENTATIVE FOR PETITIONER: Deborah A Dillinger, Manager – Property Taxes, ALCOA.

REPRESENTATIVES FOR RESPONDENT: Michael P. Statzer, Wayne Township Assessor & Lisa Beach, Chief Deputy Wayne Township Assessor.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

ALCOA CLOSURE SYSTEMS,)	
INTERNATIONAL, INC.,)	Petition Nos.: 89-030-96-3-7-00009
)	89-030-97-1-7-00005
Petitioner,)	County: Wayne
)	
v.)	Township: Wayne
)	
WAYNE TOWNSHIP ASSESSOR)	Personal Property
(WAYNE COUNTY),)	
)	
Respondent.)	Assessment Years: 1996 & 1997
)	

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

March 24, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the “Board”.

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

Issues

1. The issues presented for consideration by the Board was:
ISSUE 1 – Whether the Petitioner was required to use the Alternate Inventory Method for tax years 1996 & 1997.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, Deborah A. Dillinger filed a Form 131 for tax year 1997 and a Form 133 for tax year 1996 on behalf of Alcoa Closure Systems International, Inc. (ACSII)(Petitioner) petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on September 16, 1998 and the Form 133 was filed on October 16, 1997. The determination of the Wayne Property Tax Assessment Board of Appeals (PTABOA) was issued on August 18, 1998 for the Form 131 and on October 2, 1997 for the Form 133.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on August 7, 2002 at the office of the Wayne County Assessor before Brian McKinney, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.¹
4. The following persons were present at the hearing:
For the Petitioner: Deborah A. Dillinger, Manager –Property Taxes, Aluminum Company Of America (ALCOA)
For the Respondent: Michael Statzer, Wayne Township Assessor
Lisa Beach, Chief Deputy Wayne Township Assessor

¹ Both the Township Assessor and Petitioner's Representative signed a waiver of notice for the hearing on the Form 133 petition.

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner: Deborah A. Dillinger

For the Respondent: Michael Statzer and Lisa Beach

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 – 1995 Form 104 and Form 103

Petitioner's Exhibit 2 – 1996 Form 104 and Form 103, as originally filed

Petitioner's Exhibit 3 – 1996 Form 104 and Form 103, as amended August 9, 1997

Petitioner's Exhibit 4 – Copy of H-C Industries personal property returns for 1989, 1993, 1994, 1995

Petitioner's Exhibit 5 – Data sheet report outlining name change for subject to be part of ACSII)

Petitioner's Exhibit 6 – 1997 personal property return filed by ACSII in Wayne Township, Wayne County

Petitioner's Exhibit 7 – 1997 personal property return filed by ACSII in Union Township, Montgomery County

Petitioner's Exhibit 8 – Form 133 and 17T originally filed on August 9, 1997 relating to the 1996 tax year for ACSII

Petitioner's Exhibit 9 – Form 130 filed in response to Form 113

Petitioner's Exhibit 10 – Form 115 dated August 5, 1998, and corrected Form 115 dated August 18.

Petitioner's Exhibit 11 – Form 131 filed by ACSII on September 14, 1998.

Petitioner's Exhibit 12 – 1998 personal property return for Silgan Containers Corporation (subject property, new owner in 1998 through present).

For the Respondent:

Respondent's Exhibit A – Form 133 filed by ACSII for tax year 1996

Respondent's Exhibit B – Form 113 issued by Wayne Township for 1997

Respondent's Exhibit C – Form 115 issued by Wayne County for tax year 1997

Respondent's Exhibit D – Letter from ACSII attached to Form 130 for tax year 1997

Respondent's Exhibit E – Copies of returns for ALCOA for years 1991 – 1995 and returns for ACSII for 1996 and 1997

7. At the hearing, the ALJ asked the Respondent if the alternate method is determined to be incorrect, if they agreed with the new returns filed by ACSII. On August 12, 2002, the ALJ received a letter (Respondent's Exhibit F) from the Respondent. The letter indicated that the Respondents agreed with the assessed values submitted by ACSII should the Board rule in favor of the Petitioner.
8. The following additional items are officially recognized as part of the record of proceedings:
 - A. Form 131 and Form 133 petitions filed in this matter
 - B. Notice of Hearing
 - C. Waiver of 30-day notice for hearing on Form 133 Petition

Jurisdictional Framework

9. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
10. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

Indiana's Personal Property Tax System

11. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
12. 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.

13. 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.

State Review and Petitioner's Burden

14. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
15. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. 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 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
16. The petitioner has a burden to 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 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
17. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory

statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]

18. Essentially, the petitioner must do two things: (1) prove that the existing assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).
19. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case' and, by a 'preponderance of the evidence' proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of Issues

ISSUE 1: Whether the Petitioner was required to use the Alternate Inventory Method for Tax Years 1996 & 1997.

20. The Petitioner contends that ACSII was not required to use the alternate inventory method nor request permission to file under regular method due to a name change and new Federal ID number.

21. The Respondent contends that Petitioner had used the alternate method in previous years and no permission was sought to change method, therefore the Petitioner was required to continue using the alternate method.
22. The applicable rule governing Issue 1 is:
50 IAC 4.2-5-7(a): A manufacturer or processor may elect to value certain inventory by using the alternate inventory method.

(a)(6): “This election must be applied to all locations within this state, except as noted in subsection (7). If this alternative method is elected the taxpayer may not use any other method to value inventory for any subsequent year unless a written request has been approved by the state board prior to the due date of the return.”
23. Evidence and testimony considered particularly relevant to this determination include the following:
- a. From January 22, 1988 through June 30, 1995, the subject facility was known as H-C Industries, Inc. H-C Industries was a subsidiary of ALCOA.
 - b. After June 30, 1995 until the plant was sold in 1998, the subject facility was known as ACSII. As a result of this change, the subject facility had a new Federal ID number.
 - c. ACSII owns two other facilities in the State of Indiana, and both of them use the regular inventory method.

Analysis of ISSUE 1

24. The Petitioner claims that they are required to file using the regular inventory method. 50 IAC 4.2-5-7(a)(6) clearly states that should a manufacturer or processor elect to use the alternate inventory method, this must apply to all locations in the state. In 1996, ACSII was required to file the same way for all property in the State of Indiana. Therefore, ACSII was required to file the same way in Wayne County (subject property) as it did in Marion County and Montgomery County.

25. The Respondents claim that ALCOA did not seek permission to change the method of filing, as required by 50 IAC 4.2-5-7(a)(6), and therefore was required to continue using the alternate method.
26. However, there was a change in name of the subject property from 1995 to 1996. In 1995, the subject had a different name, and different Federal Identification Number and filed the returns for the subject property using the alternate method. In 1996 and 1997, ACSII filed the returns for the subject property under a new Federal Identification Number, using the regular method. A review of both returns indicates that not only was there a name change, but also a change in Federal Identification Number.
27. The Petitioner claims that it was not necessary to seek permission to change from the alternate method because ACSII had never made the election to file using the alternate inventory method. Clearly, according to 50 IAC 4.2-5-7(a)(6), ACSII is required to file in the same manner throughout the State. The method used in other properties was the regular inventory method, and therefore, that should be the method used in the Wayne County property as well.
28. The Petitioner met their burden in this appeal. Accordingly, there is a change in the assessment as a result of this issue.

Summary of Final Determination

Determination of ISSUE 1: *Whether the Petitioner was required to use the Alternate Inventory Method for Tax Years 1996 & 1997.*

29. The Petitioner, ACSII, employs the regular method to value its inventory at other locations in Indiana and, therefore, is bound by statute to employ the regular inventory method for all of its locations. Therefore, a change is made to the assessment as a result of this appeal.

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

Chairman, 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.