

**STATE OF INDIANA
Board of Tax Review**

ALLISON ENGINE COMPANY, INC.,)	On Appeal from the Marion County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petitions for Correction of Error, Form 133
)	
MARION COUNTY PROPERTY TAX)	Petition Nos.: 49-970-98-3-7-00973
ASSESSMENT BOARD OF APPEALS)	49-970-99-3-7-01095
and WAYNE TOWNSHIP ASSESSOR,)	
)	Personal Property
Respondents.)	

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

Whether the Petitioner incorrectly reported inventory for the March 1, 1998 and 1999 assessment dates by failing to use the elected alternative method to compute the inventory value.

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 § 6-1.1-15-12, the Petitioner filed Form 133 petitions requesting a review by the State. The Form 133 petitions were filed on July 23, 2001. The Property Tax Assessment Board of Appeals (PTABOA) issued its determination for the 1998 assessment date on June 26, 2001. The PTABOA determination for the 1999 assessment date was issued on June 22, 2001.

3. The PTABOA's final determination was issued on a Form 115. The Form 115 states that to appeal, a form 131 must be filed within 30 days. The Petitioner did file a Form 131 petition, however because the original appeal was on a Form 133, the Form 131 filed by the Petitioner will be viewed as a Form 133.

4. Pursuant to Ind. Code § 6-1.1-15-12, a hearing was held on December 20, 2001, before Hearing Officer Brian McKinney. Testimony and evidence were received into evidence. Larry J. Stroble and Jennifer A. Dunfee of Barnes & Thornburg represented the Petitioner. James Chan, Tax Manager of Rolls Royce North America, Inc. appeared as a witness for the Petitioner. No one appeared on behalf of the PTABOA. Jewell F. Powell and Tara B. Acton appeared on behalf of Wayne Township.

5. At the hearing, the Form 133 petitions were made part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition was labeled Board Exhibit B. In addition, the following exhibits were submitted as evidence:
Petitioner Exhibit A – Binder containing 10 tabs.
Petitioner Exhibit B – Legal Brief in support of position.

6. At the conclusion of the hearing, the Petitioner requested 3 weeks to submit proposed findings of fact and conclusions of law. This request was granted, and the Respondent was given 2 weeks to respond to the information submitted by the Petitioner.
7. The Petitioner's proposed findings of fact and conclusions of law were timely received on January 11, 2002. The proposed findings of fact and conclusions of law are labeled as Petitioner Exhibit C. The Petitioner also submitted a supplemental calculation sheet of the manufacturers' alternative method which is labeled as Petitioner Exhibit D.
8. The Respondent sent a letter in response to Petitioner Exhibits C and D. The letter from the Respondent was timely received on January 17, 2002 and is labeled as Respondent Exhibit A.
9. The Petitioner is a manufacturer of gas turbine engines for aero, marine, and industrial power and is located at 2001 South Tibbs Avenue in Indianapolis, Indiana (Wayne Township, Marion County).
10. Rolls Royce North America purchased the assets of Allison Engine Company from General Motors Corporation in December of 1993. In 2000, they formally changed the name from Allison Engine Company to Rolls Royce Corporation.
11. In 1994, the Petitioner elected to report its inventory using the alternative method pursuant to 50 IAC 4.2-5-7. This method was used for reporting inventory for the March 1, 1995, 1996, and 1997 assessment dates.
12. The Petitioner has not submitted a request to the State Board, and the State Board has not approved any request from the Petitioner, to terminate its election to use the alternative method of valuing its inventory.

13. In 1998 and 1999, due to an oversight by a new accounting employee, the alternative method was not used. The Petitioner discovered the oversight when preparing the 2000 returns.
14. The Petitioner filed two Form 133 petitions for the March 1, 1998 and 1999 assessment dates. On the Form 133 petitions, the Petitioner stated that it failed to apply the alternative method of valuing its inventory as required by its previous election. The Petitioner prepared and attached revised Forms 103 to the petitions. The revised Forms 103 were attached for informational purposes, not an attempt to file amended returns.
15. The determination of the PTABOA states that an amended return must be filed within 6 months of the original filing. The PTABOA determined the value to be the same as originally filed by the Petitioner for the March 1, 1998 and 1999 assessment dates respectively.
16. The parties agree that the value of the personal property, if valued under the alternative method, is \$52,008,500 for 1998 and \$55,860,060 for 1999. (Petitioner Exhibit A, Tabs 9 and 10, Respondent Exhibit A)

Conclusions of Law

1. The Petitioner is limited to the issues raised on the Form 133 petitions filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 133 petition. Ind. Code §§ 6-1.1-15-1, -2.1, and -4. See also the Form 133 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 133 process, the levels of review are clearly outlined by statute. The County Auditor can correct certain errors

alleged on the Form 133 petition. Ind. Code 6-1.1-15-12. Two local officials can also correct error. Id. If these local officials do not correct alleged errors, then the Form 133 is referred to and reviewed by the PTABOA. Id. The PTABOA's decision may then be appealed to the State. Id. Taxpayers who raise new issues at the State level of appeal circumvent review of the issues by the local officials and the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State. However, the State has the discretion to address issues not raised on the Form 133 petition. *Joyce Sportswear Co. v. State 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 133 petition filed with the County Auditor.

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

A. Burden

3. In reviewing the actions of the PTABOA, the State 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.
4. 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.

5. Taxpayers are expected to make factual presentations to the State 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 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)).
6. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State 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.
7. 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).
8. 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 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's final determination merely because the taxpayer demonstrates flaws in it).

Alternative Method of Valuation

9. Pursuant to 50 IAC 4.2-5-7, a manufacturer or processor may elect to report its inventory using the alternative inventory method.
10. If the 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.” 50 IAC 4.2-5-7(a)(6)
11. The Petitioner elected the alternative method for the March 1, 1994 assessment date. The Petitioner reported its inventory using the alternative method for the March 1, 1995, 1996, and 1997 assessment dates.
12. The Petitioner opines that it was required by law to report inventory using the alternative valuation method as defined by 50 IAC 4.2-5-7. When the Petitioner discovered that its inventory was not reported using the alternative method for the March 1, 1998 and 1999 assessment dates, the Petitioner filed two Form 133 petitions.
13. The Respondent opines that the Petitioner filed an amended return. An amended return must be filed within 6 months of the original return. The Form 133 petitions were denied because they were not filed within 6 months of the filing of the original returns.
14. The Respondent seems to be arguing this is not an error correctable by way of a Form 133 petition. The Respondent claims it is too late to file amended returns, therefore, the petitions were denied.
15. An amended return and a Form 133 petition are two separate and distinct mechanisms by which a taxpayer may correct an error on its return.

16. Effective January 1, 2002, an amended return, not a Form 133, must be used to correct a personal property return. P.L. 198-2001, § 50. However, that amendment does not apply to these appeals. The Form 133 petitions were filed prior to January 1, 2002.
17. The question remains whether this is the type of error that can be corrected by way of a Form 133 petition. The Petitioner claims the failure to compute the inventory value using the alternative method is both illegal as a matter of law, and a math error. Both types of errors are correctable on a Form 133.
18. The Petitioner elected the alternative method for the March 1, 1994 assessment date. The Petitioner is required to use the alternative method for any subsequent year, unless a written request has been approved by the State Board prior to the due date of the return. The Petitioner did not submit a written request to the State Board to change valuation methods for 1998 or 1999. Accordingly, the Petitioner was required to use the alternate method for those two years.

Summary of Final Determination

19. The Petitioner's inventory is to be computed using the alternative valuation method for the March 1, 1998 and 1999 assessment dates. The assessed value shall be \$52,008,500 for 1998 and \$55,860,060 for 1999.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review