

**BEFORE THE INDIANA  
STATE BOARD OF TAX COMMISSIONERS**

In The Matter Of:

Petition For Review Of Assessment     )  
Form 131   )   Petition No. 82-027-95-1-4-00282

Parcel No.: 0973117156003

Taxpayer: American Wholesalers Incorporation  
          3300 North Green River Road  
          Evansville, IN 47715

Taxpayer Representative: Richard L. Archer  
                                  Ernst & Young LLP  
                                  One Indiana Square, Suite 3400  
                                  Indianapolis, IN 46204

**Findings of Fact and Conclusions of Law**

The State Board of Tax Commissioners (“State Board”) makes the following findings of fact and conclusions of law in this appeal.

**Findings of Fact**

1. This administrative appeal comes before the State Board on the Petition for Review of Assessment, Form 131 filed on behalf of American Wholesalers, Inc. The Form 131, Petition to the State Board for Review of Assessment was filed on May 19, 1997. The County’s determination on the underlying Form 130 petition was issued April 23, 1997

2. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on March 12, 1999 before Hearing Officer Mary Kay Fischer. The State Board did not issue a determination.
3. Pursuant to Ind. Code § 6-1.1-15-4, an administrative rehearing was scheduled for Tuesday, December 11, 2001 at 10:15 a.m. Notice of said hearing was mailed to American Wholesalers, Inc. at 3300 North Green River Road, Evansville, IN, the address listed on the petition, and to Richard Archer, at Ernst & Young, One Indiana Square, Suite 3400, Indianapolis, IN, the address listed on the power of attorney submitted for purposes of this appeal. Notice of hearing was mailed on November 15, 2001.
4. On Tuesday, December 11, 2001, hearing officer Betsy Brand conducted the administrative hearing on the Form 131 petition. Neither the Petitioner nor its representative appeared at the hearing.
5. The Petitioner and its representative did not contact the State Board or the hearing officer prior to the scheduled hearing date and did not request a continuance of the hearing.
6. The Hearing Officer verified that notices of hearing were mailed, with proof of mailing. The notice of hearing mailed to American Wholesalers, Inc. was returned to the State Board on November 30, 2001. The hearing officer verified that the notice mailed to Richard Archer, Ernst & Young at One Indiana Square, Suite 3400, Indianapolis, IN, was not returned to the State Board as not deliverable.

## Conclusions of Law

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. In addition, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.
  
2. Ind. Code § 6-1.1-15-3 requires the State Board to review the actions of the PTABOA, but does not require the State Board to review the assessment.
  
3. The courts have long recognized that in the administrative review process, the State Board is clothed with quasi-judicial power and the actions of the State Board are judicial in nature. *Biggs v. Board of Commissioners of Lake County*, 7 Ind. App. 142, 34 N.E. 500 (1893). Thus, the State Board has the ability to decide the administrative appeal based upon the evidence presented.
  
4. In reviewing the actions of the County Board (or PTABOA), 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).
  
5. 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).

6. “[W]hen a taxpayer challenges a real property assessment, the State Board need not search the property to find errors, the correction of which is beneficial to the taxpayer. Rather, the State Board has every right to expect that any errors in an assessment will be brought to the State Board’s attention by the taxpayer.” *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)).
7. Taxpayers are required “to do something more than simply allege that an error exists in the assessment . . .” *Whitley*, 704 N.E. 2d at 1119.
8. Taxpayers are expected to make detailed factual presentations to the State Board regarding alleged errors in assessment. *Id.* “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)).
9. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State Board can properly refuse to consider the evidence. *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)).
10. 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.

11. If the taxpayer is not required to meet his burden of proof at the State administrative level, then the State Board would be forced to make a case for the taxpayer. Requiring the State Board to make such a case contradicts established case law. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999); *Whitley, supra*; and *Clark, supra*.
12. Moreover, a waste of time and resources would inevitably occur if taxpayers could simply attack the State Board's methodology in a Tax Court appeal without first making a factual presentation to the State Board. *Whitley, supra*.
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. The local taxing officials do not have the responsibility to make a case until the taxpayer sustains his burden of proof regarding the alleged error in assessment. 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).
15. 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.

16. If the taxpayer fails to meet his burden of proof at the administrative level, the State Board does not have to support its decision with substantial evidence if that decision is challenged in court. *Whitley*, 704 N.E. 2d at 1116- 21.
  
17. The Form 131 petition is denied for the failure of the taxpayer or its representative to appear at the administrative hearing and present evidence in support of the alleged errors of assessment.