

REPRESENTATIVES FOR PETITIONER:  
Doug Wieten, CFO Bioanalytical Systems  
John Botta, Manager, BAS - Evansville

REPRESENTATIVES FOR RESPONDENT:  
Marrs Township:  
Gerald Nurrenbern, Marrs Township Assessor  
  
LaPorte County:  
Rita Sherretz, Posey County Assessor  
William Butler, PTABOA Member  
Donald Oeth, PTABOA Member

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

BAS EVANSVILLE,	)	Petition No.: 65-008-02-1-7-00001
	)	
Petitioner	)	
	)	County: Posey
v.	)	
	)	Township: Marrs
MARRS TOWNSHIP ASSESSOR,	)	
	)	Personal Property
	)	
Respondent	)	Assessment Year: 2002
	)	

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

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**December 3, 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**

### **Issue**

1. The issue presented for consideration by the Board was:

*Whether the assessment estimated by the township is incorrect.*

### **Procedural History**

2. Pursuant to Ind. Code § 6-1.1-15-3, BAS Evansville filed a Form 131 Petition, petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed with the Board on September 16, 2002. The determination of the PTABOA was issued on August 19, 2002.

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

3. Prior to the hearing, Mr. Wieten submitted a letter to the Board (Petitioner’s Exhibit A) requesting that the subject inventory, monkeys, be classified as tangible personal property for assessment purposes, and valued at \$178,815. The Respondent did not agree with this request and the hearing was held as scheduled.
4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on March 12, 2003 in Mt. Vernon, Indiana before Jennifer Bippus, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
5. The following persons were present at the hearing:

For the Petitioner:

Doug Wieten, CFO Bioanalytical Systems  
John Botta, Manager, BAS Evansville

For the Respondent:

Gerald Nurrenbern, Marris Township Assessor  
Rita Sherretz, Posey County Assessor  
William Butler, PTABOA Member  
Donald Oeth, PTABOA Member

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

For the Petitioner:

Doug Wieten, CFO Bioanalytical Systems  
John Botta, Manager, BAS-Evansville

For the Respondent:

Gerald Nurrenbern, Marris Township Assessor  
Rita Sherretz, Posey County Assessor  
William Butler, PTABOA Member  
Donald Oeth, PTABOA Member

7. The following exhibits were presented at the hearing:

For the Petitioner:

**Petitioner's Exhibit A** – A letter from Mr. Wieten requesting the inventory be considered tangible personal property and valued at \$178,815.

**Petitioner's Exhibit B** – A copy of the BAS Consolidated 2002 Annual Report.

For the Respondent:

**Respondent's Exhibit A** – A copy of the Personal Property Form 103 for BAS-Evansville for the assessment year March 1, 2002.

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

**Board Exhibit A** – Form 131 petition and attachments.

**Board Exhibit B** – A copy of the hearing notice dated January 28, 2003.

**Board Exhibit C** – A copy of the request for additional evidence from the Petitioner dated, March 12, 2003.

**Board Exhibit D** – A copy of the letter requesting additional evidence from the Petitioner, dated March 27, 2003.

**Board Exhibit E** – A copy of the letter requesting additional evidence from the Petitioner, dated April 14, 2003.

9. In addition the following evidence was requested from the Petitioner and received in a timely manner:

**Petitioner's Exhibit C** – Form 1120 – U.S. Corporation Income Tax Return for the Year ended September 30, 2001.

**Petitioner's Exhibit D** – Form IT 20 – Indiana Corporation Income Tax Return for the Year ended September 30, 2001.

**Petitioner's Exhibit E** – A copy of the Income Statement and Balance Sheet for BAS Evansville dated September 2002.

**Petitioner's Exhibit F** – A copy of the Income Statement and Balance Sheet for BAS Evansville dated February 2002.

**Petitioner's Exhibit G** – A letter from the Petitioner, dated April 4, 2003, stating that no more additional evidence is necessary.

**Petitioner's Exhibit H** – A letter from the Petitioner, dated April 23, 2003, stating that there is no more additional evidence to submit.

### **Jurisdictional Framework**

10. 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.
11. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

### **Indiana's Personal Property Tax System**

12. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
13. 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.
14. 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**

15. 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).

16. 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.]
17. 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.]
18. 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.]
19. Essentially, the petitioner must do two things: (1) prove that the 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).
20. 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 the Issue**

#### *Whether the assessment estimated by the township is incorrect*

21. The Petitioner contends that the animals used for testing are not considered either depreciable assets or inventory according to the Indiana Personal Property Regulation.
22. The Respondent contends that the Petitioner has inventory on the property and that such inventory should be listed on the Personal Property Form 103.
23. The applicable rules governing this issue are:

#### **Ind. Code § 6-1.1-3-7**

...a taxpayer shall, on or before the filing date of each year, file a personal property return with the assessor of each township in which the taxpayer personal property is subject to assessment.

#### **50 IAC 4.2-2-1**

A personal property tax return must be filed in each taxing district where property has a tax situs subject to the qualifications contained in this article.

#### **50 IAC 4.3-4-1**

Sec. 1. As used in this rule, “depreciable personal property” means all tangible personal property defined in 50 IAC 4.3-1-1(5) that is used in a trade or business, used for the production of income, or held as an investment that is subject to depreciation for federal income tax purposes, except to the extent that property is treated otherwise in this article.

### **50 IAC 4.3-5-2**

Sec. 2 (a) Generally, all inventory with a tax situs in the state on the assessment date shall be subject to assessment. Certain inventories, have specific exemption procedures noted in 50 IAC 4.3-12. Every person, including any firm, partnership, association, corporation, fiduciary, or individual owning, holding, possessing, or controlling inventory in any capacity whatsoever with a tax situs within the state on the assessment date is required to file a personal property tax return and report such inventory as provided in 50 IAC 4.3-2-2.

(b) The inventory subject to assessment includes all inventory, whether or not in the actual possession of the owner, within the state on the assessment date.

### **50 IAC 4.3-5-3**

Sec. 3. Except as otherwise provided in this article, the cost of inventory as recorded on the regular books and records of the taxpayer on the assessment date must be reported on the personal property return of the taxpayer. The use of “lower of cost or market” method for valuing inventory for book accounting purposes is allowable for Indiana property tax purposes.

### **50 IAC 4.3-5-10**

Sec. 10. The true tax value of inventory is the cost per books of the inventory, a defined in sections 1 and 3 of this rule, increased or reduced as follows:

- (1) The adjustments required to be made pursuant to section 4 (mandatory adjustments) of this rule.
- (2) The value of the unrecorded inventory as determined in section 5 of this rule.
- (3) Reductions for exempt inventory as provided in 50 IAC 4.3-12
- (4) The adjustments, if any, required as a result of the election of the elective inventory valuation method as provided in Section 6 of this rule or the average inventory methods as provided in sections 7 and 8 of this rule.



**50 IAC 4.3-3-1**

Sec. 1 (a) The township assessor shall review returns as required under IC 6-1.1-3-14 and IC 6-1.1-3-15. The township assessor shall notify the taxpayer, on Form 113, if the assessor changes the assessment reported by the taxpayer on the return.

24. Evidence and testimony considered particularly relevant to this determination include the following:
- A. The Petitioner contends that since there are no tangible personal property items produced, there is no inventory to report. *Wieten Testimony.*
  - B. There are other animals on the property used for testing besides the monkeys, but all are short lived and the monkeys are the main animals remaining as of March 1. *Wieten Testimony.*
  - C. The information produced is a hard copy or soft copy of the test results and is not classified as inventory. *Wieten Testimony.*
  - D. The Petitioner contends that the monkeys should be treated as supply items, but not in the way supplies are mentioned in the code section of the Personal Property Rule. *Wieten Testimony.*
  - E. The State Tax Board could not give BAS the abatement requested on the equipment in the building, because the report that is provided from the test results is not classified as tangible personal property. *Wieten Testimony.*
  - F. Based on The State Tax Board's denial of the abatement, the company concluded that the monkeys should not be classified as inventory. *Wieten Testimony.*
  - G. Even though the Petitioner argues that the monkeys should not be classified as inventory, Mr. Wieten tried to resolve the subject hearing prior to the March 12, 2003 hearing by sending a letter requesting that the monkeys be classified as tangible personal property. Mr. Wieten does not believe they fall under the statute as such, but wanted to resolve the petition. \$178,815 was the amount placed as the value for the monkeys in Mr. Wieten's request. *Wieten Testimony, Petitioner's Ex. A.*

- H. The Respondent argues that the monkeys and other animals, along with the supplies needed to keep them in a sterile environment should be classified as inventory. *Sherretz Testimony*.
- I. The Respondent states that office supplies should also be classified as inventory. *Sherretz Testimony*.
- J. The township allowed \$290,769 as inventory on the Form 103. The amount was a guess, since the company had never turned in inventory in the past. *Nurrenbern Testimony*.
- K. The Respondent contends that if the monkeys and other animals are depreciated or capitalized for tax purposes, they should be treated as some type of inventory or asset. *Nurrenbern Testimony*.

#### Analysis of this Issue

- 25. The disagreement in the case at bar is whether there is inventory that needs to be included on the Form 103 – Personal Property Return that BAS Evansville filed with Marrs Township for tax year 2002.
- 26. The Respondent estimated the Petitioner’s inventory assessment pursuant to 50 IAC 4.3-5-2 and 50 IAC 4.3-3-1 (a). The Petitioner contends that there is no inventory to report.
- 27. The requirements set forth for inventory in the 50 IAC 4.3 Personal Property Rule are clear. As stated in 50 IAC 4.3-5-5 inventory includes, but is not limited to, supplies, repair parts, or expendable tools on hand on the assessment date. BAS not only has animals as part of their daily activities, but also has the supplies needed to carry out the project. Office supplies would also fall into the category of taxable inventory.
- 28. The Petitioner must do two things: (1) prove that the assessment of \$290,769 is incorrect; and (2) prove that the specific assessment he seeks of \$0 is correct. (*See ¶ 19*)
- 29. At the hearing, the Petitioner did not submit any forthcoming evidence that the assessment placed on the property by the assessor is incorrect.

30. At the hearing, the ALJ requested the Petitioner submit sufficient records to verify the amount of inventory on hand at March 1, 2002. The ALJ provided the Petitioner with a written Request of Additional Evidence, which specifically requested evidence to verify the inventory of BAS-Evansville on March 1, 2002. The items requested included the 2002 Financial Statement for BAS-Evansville, the 2002 Federal and Indiana Tax Returns, and the 2002 Income and Expense Report for BAS-Evansville.
31. In response to the Request for Additional Evidence, the Petitioner submitted the Form 1120, U.S. Corporation Income Tax Return for year ended September 30, 2001, the Form IT 20 – Indiana Corporation Income Tax Return for the year ended September 30, 2001, a copy of the Income Statement and Balance Sheet for BAS-Evansville, dated September 2002, and a copy of the Income Statement and Balance Sheet for BAS-Evansville, dated February 2002.
32. The Consolidated Schedules on both the Form 1120 and IT 20 show inventory in a consolidated form. There are additional Bioanalytical Systems locations, in addition to the one in question.
33. Based on the evidence submitted by the Petitioner by March 20, 2003, verification cannot be made for the subject assessment of BAS-Evansville from the consolidated returns. In order for the Board to make a more precise calculation, another Request for Additional Evidence was sent on March 27, 2003. The items requested included a description of the assets at the BAS-Evansville location for March 1, 2003, the cost of the assets, the date the assets were acquired, the federal tax life of the assets, a breakdown of all inventory and supplies located at BAS-Evansville location on March 1, 2003, and how the animals are treated for Federal Tax purposes.
34. In response to the Request for Additional Evidence, the Petitioner sent a letter with little information and still claiming that there is no inventory on the property to report.

35. On April 14, 2003, one final letter was sent by the Board to the Petitioner requesting that the Petitioner provide the proof that the assessment for BAS-Evansville is incorrect as stated on the Form 103.
36. On April 25, 2003, the Petitioner sent a letter of response stating that they have proved their case and that there is no inventory to report. The Petitioner further stated that the animals involved in their studies are not treated as fixed assets or inventory, but rather as prepaid expenses of the studies.
37. With regard to the inventory, the only non-consolidated forms, the Income Statements and Balance Sheets for BAS-Evansville do not show inventory. However, the consolidated Form 1120 and IT20 both show inventory.
38. The ALJ requested specific information from the Petitioner regarding a breakdown of the inventory for BAS-Evansville, in order to be able to determine the assessment as of the March 1, 2002 assessment date. The information requested was not presented.
39. The Petitioner has not proven that the assessment of \$290,769 is incorrect. Nor has the Petitioner proven that there is no inventory located at the BAS-Evansville site.

### **Summary of Final Determination**

Determination of ISSUE: *Whether the assessment estimated by the township is incorrect.*

40. The Petitioner failed to meet its burden on this issue. No change is made to the assessment as a result of this issue.

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

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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.**