

REPRESENTATIVES FOR PETITIONER:

Tamela J. Horkay, Pro Se
Robert L. Horkay, Pro Se

REPRESENTATIVE FOR RESPONDENT:

Jerolyn Ogle, Washington Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Basket Case – Tamela	)	Petition Nos.: 29-014-93-3-7-03005
Horkay,	)	29-014-94-3-7-04004
	)	29-014-95-3-7-05003
Petitioner,	)	29-014-96-3-7-06002
	)	29-014-97-3-7-07001
v.	)	29-014-98-3-7-00011
)	
Jerolyn Ogle,	)	Parcel No.: 0890020000004500
Washington Township	)	County: Hamilton
Assessor,	)	Township: Washington
	)	Assessment Years: 1993 - 1998
Respondent.)	

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

March 30, 2005

FINAL DETERMINATION

The Indiana Board of Tax Review (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 were:
ISSUE 1 – *Whether the Form 133 petitions were properly filed.*
ISSUE 2 – *Whether the Petitioner owned personal property subject to taxation.*

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-12, Tamela Horkay (the “Petitioner”) filed six (6) Form 133 Petitions for Correction of an Error, petitioning the Board to conduct an administrative review of the above petitions. The Form 133 petitions were filed on May 20, 2004. The determinations of the Hamilton County Property Tax Assessment Board of Appeals (the “PTABOA”) were issued on April 28, 2004.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on February 3, 2005, in Noblesville, Indiana before Brian McKinney, the duly designated Administrative Law Judge (the “ALJ”) authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were sworn and presented testimony at the hearing:
For the Petitioner:
Tamela Horkay
Robert Horkay

For the Respondent:
Jerolyn Ogle
5. The following exhibits were presented for the Petitioner:
The Petitioner did not present any documentary evidence at the hearing.

6. The following exhibits were presented for the Respondent:
 - Respondent's Exhibit 1 – Township's Memo to PTABOA regarding denial of the Form 133 Petitions;
 - Respondent's Exhibit 2 – Form 113s sent to Petitioner from 1993 – 1998; and
 - Respondent's Exhibit 3 – Copy of the *White v. Porter County Treasurer*, 671 N.E.2d 1196 (Ind. App. Ct. 1996).

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – The Form 133 petitions; and
 - Board Exhibit B – Notices of Hearing dated December 14, 2004.

8. The subject of this appeal is business personal property assessments made by the township assessor.

9. The ALJ did not conduct an on-site inspection of the subject property.

10. The PTABOA determined the assessed value of the property to be:
 - For 1993: \$1,000;
 - For 1994: \$1,500;
 - For 1995: \$2,250;
 - For 1996: \$3,380;
 - For 1997: \$4,230; and
 - For 1998: \$5,290.

11. The Petitioner contends the assessed value of the property should be zero for all years at issue. The Petitioner contends that they never owned any taxable personal property related to the business at issue.

JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

13. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
15. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

Background

16. The Respondent found the Petitioner's name on a Retail Merchants Certificate list provided by the Indiana Department of Revenue to the township assessor. *Ogle testimony*. Each year the township assessor sent a Business Tangible Personal Property Assessment Return (Form 103) to the Petitioner. *Id.* The Petitioner did not complete the Form 103 and file it with the township assessor. *Id.* The township assessor, believing that a business existed, made an assessment and notified the Petitioner on a Form 113 Notice of Assessment. 50 IAC 4.2-3-1(b).

17. For the years on appeal, 1993 to 1998, the Petitioner did not challenge the Form 113 Notices of Assessment or pay the taxes.
18. In January 2004, the Petitioner filed Form 133 petitions for the years 1993 to 1998.

Issue 1: Whether the Form 133 petitions were properly filed.

19. The Petitioner contends that the Form 133 petitions were timely filed.
20. The Respondent contends that the Form 133 petitions must be filed within three years from the date the taxes were first due on the assessment in question. The Respondent further contends the type of correction sought by the Petitioner is not proper on the Form 133 petition.
21. The Petitioner presented the following evidence and testimony in regard to this issue:
 - A. The Petitioner testified that numerous attempts were made from 1993 through present in an attempt to correct the personal property assessments. The Petitioner acknowledged that the attempts were made through phone conversations and not in writing. *R. Horkay and T. Horkay testimony.*
 - B. The Form 133 petition does not identify a filing deadline. *See Form 133 petition, Board Ex. A.*
22. The Respondent presented the following evidence and testimony in support of the assessments:
 - A. The Indiana Code requires taxpayers to file a Form 133 petition within three years from the date that the taxes were first due on the assessment in question. *Ogle testimony; Respondent Ex. 1.*
 - B. Only specific types of errors are correctable on a Form 133 petition.
 - C. The Respondent quoted *White v. Porter County Treasurer* stating, “While a taxpayer has the right to challenge his property’s value, he must also bear the responsibilities attached to that right.”

23. Ind. Code § 6-1.1-15-12 governs correction of errors and the Form 133 petition. Ind. Code § 6-1.1-15-12 contains no discussion of time limitations or deadlines for correcting an error. The Respondent may be referring to the three-year limit in which a taxpayer has to claim a refund of taxes paid under Ind. Code § 6-1.1-26-1.
24. Because Ind. Code § 6-1.1-15-12 does not contain any time limitations, the issue becomes whether or not the error described by the Petitioner is correctable on a Form 133 petition.
25. Ind. Code § 6-1.1-15-1 is the governing authority when a township assessor makes a change to a personal property assessment. This law, in fact, is printed at the top of the Form 113/PP, which describes the Washington Township Assessor's action the Petitioner is appealing. On the Form 113/PP, taxpayers are informed "[i]f you do not agree with the action the County Property Tax Assessment Board of Appeals will review that action if you file a petition with the County Assessor of this county within forty-five (45) days of this notice. IC 6-1.1-15-1."
26. Ind. Code § 6-1.1-15-1 clearly states if the taxpayer does not agree with the action of the township assessor, the PTABOA will review the action if a petition is filed within forty-five days of the notice. The Petitioner missed the opportunity to appeal pursuant to Ind. Code § 6-1.1-15-1.
27. Instead, the Petitioner filed Form 133 petitions to appeal the assessments. Only specific types of errors are correctable using the Form 133 petition. The procedures for the Form 133 petition are described in Ind. Code § 6-1.1-15-12.
28. The Form 133 petition is available only for those errors that can be corrected without resort to subjective judgment. *Hatcher v. State Board of Tax Commissioners*, 561 N.E. 2d 852 (Ind. Tax 1990); *Reams v. State Board of Tax Commissioners*, 620 N.E. 2d 758 (Ind. Tax 1993).

29. In *Bender v. Indiana State Bd. of Tax Comm'rs*, 676 N.E.2d 1113 (Ind. Tax Ct. 1997), that Tax Court stated:

In *Hatcher* and subsequent cases, this Court had held that where the decision under review is automatically dictated by a simple true or false finding of fact, it is considered objective and properly challenged via Form 133.

Bender, 676 N.E.2d at 1115.

30. The determination of whether or not the Petitioner owned business personal property does not require subjective judgment and is properly addressed on a Form 133 petition.

Issue 2: Whether the Petitioner owned personal property subject to taxation.

31. The Petitioner contends there was never any business in existence for the years in question. *R. Horkay & T. Horkay testimony; Form 133 Petition, Board Ex. A.*
32. The Respondent contends that in 1993 the Petitioner was listed on the Retail Merchants Certificate list provided to the township by the Indiana Department of Revenue. *Ogle testimony*. It is assumed the entities listed on the Retail Merchants Certificate listing have business personal property. *Ogle testimony*.
33. The Petitioner presented the following evidence and testimony in regard to this issue:
- A. The business never really existed. *T. Horkay testimony*. It was home party sales associated with the Longaberger Basket Company. *Id.* The Petitioner was told she needed a license, which was wrong. *Id.* The license started the whole process. *Id.*
- B. There were never any assets or inventory. *Id.* The Petitioner would take the order and receive payment at that time. *Id.* The order was forwarded to the company. *Id.* The company would send the products over to the Petitioner who would deliver the products. *Id.*

- C. The business was not practical. *Id.* The last sale was in 1994. *Id.* The license was returned in 1995 and never renewed. *Id.*
 - D. The Petitioner made several phone calls to the township assessor. *Id.* No written documents were exchanged. *Id.* The Petitioner believed at the end of each phone call the situation was resolved. *Id.*
 - E. The Form 133 petitions were filed in January 2004. *Board Ex. A.*
34. The Respondent presented the following testimony and evidence in support of the assessments:
- A. The Petitioner was picked up from the Retail Merchants Certificate listing provided to the township assessor by the Indiana Department of Revenue. *Ogle testimony.*
 - B. The practice in Washington Township is to send a Form 103 Business Tangible Personal Property Assessment Returns to entities on the listing. *Id.* The Petitioner was sent a Form 103 for each of the years under review. *Id.*
 - C. When the Petitioner failed to file the Form 103 returns, the township assessor made the assessment and notified the Petitioner with a Form 113 Notice of Assessment. *Ogle testimony.*
 - D. The Respondent does not dispute the Petitioner's testimony. *Ogle testimony.*
 - E. Other than the Retail Merchants Certificate listing, there is no reason to believe the Petitioner had any business personal property. *Id.*
 - F. The Respondent is not opposed to removing the assessments for the years on appeal. *Ogle testimony.* However, the Respondent does not believe she has the authority to remove the assessments. *Id.*
35. The Petitioner's testimony indicates that she had no business personal property. *T. Horkay testimony.* The Respondent does not dispute the Petitioner's contention. *Ogle testimony.* In fact, the Respondent removed the assessments on the subject property for assessment years 1999 through 2001. *Id.* The Respondent did not remove the assessments for the years in question due to her belief that she was unable to remove the assessments. *Id.*

36. As stated above, Ind. Code § 6-1.1-15-12 does not restrict the time to correct an error. The Petitioner testified there was no business personal property for the assessment years 1993 through 1998. *T. Horkay testimony*. The Respondent does not dispute the Petitioner's evidence. *Ogle testimony*. If there was no business personal property, there should be no assessments.
37. The assessments should be removed for the years 1993 through 1998.

SUMMARY OF FINAL DETERMINATION

Issue 1: Whether the Form 133 petitions were properly filed.

38. Ind. Code § 6-1.1-15-12 does not restrict the time for correcting an error and the error described does not require subjective judgment. Therefore, the Form 133 petitions are properly filed.

Issue 2: Whether the Petitioner owned personal property subject to taxation.

39. The Petitioner testified there was no business personal property for assessment years 1993 through 1998. The Respondent did not rebut the Petitioner's testimony. The assessments should be removed.

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

Commissioner, 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.