

**STATE OF INDIANA
Board of Tax Review**

CTS CORPORATION)	On Appeal from the Tippecanoe County
)	Property Tax Assessment Board of Appeals
Petitioner,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition Nos. 79-026-99-1-7-00007
)	79-026-00-1-7-00006
TIPPECANOE COUNTY PROPERTY)	
TAX ASSESSMENT BOARD OF)	Parcel No. 064-00141-0000 Personal Property
APPEALS And WABASH TOWNSHIP)	
ASSESSOR)	
)	
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 change in CTS Corporation's (CTS) business personal property assessment is illegal because:

- a. the County Assessor failed to make the change within the time requirements set forth by statute,
- b. the Property Tax Assessment Board of Appeals failed to give specific reasons for the denial of the Form 130 petition, and

- c. the assessment was unlawfully determined through an audit by Tax Management Associates (TMA).

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. CTS is located at 1201 Cumberland Avenue, West Lafayette, Indiana (Tippecanoe County, Wabash Township). The administrative law judge did not view the property. The tax years under appeal are 1999 and 2000. The personal property assessed values under appeal are \$2,425,640 for 1999, and \$2,834,380 for 2000.
3. On May 14, 1999, and May 15, 2000, CTS timely filed business tangible personal property returns for the 1999 and 2000 assessment years respectively. The assessed values reported on the returns were \$2,409,042 in 1999 and \$2,815,260 in 2000. *Board Ex. C.*
4. The Tippecanoe County Assessor's Office contracted TMA to perform an audit on the returns filed by CTS in 1999 and 2000. The Tippecanoe County Assessor gave CTS notice of changes in the assessed values of both years' returns on July 30, 2001. *Respondent's Ex. D.*
5. Pursuant to Ind. Code § 6-1.1-15-1, CTS filed a Form 130 petition to the County Board of Review, on August 28, 2001. *Board Ex. A.* On December 28, 2001, the Tippecanoe County PTABOA mailed a Form 115, Notice of Assessment of Personal Property, to CTS, effectively denying the Form 130 petition. *Id.*

6. Pursuant to Ind. Code § 6-1.1-15-3, CTS filed a Form 131 petition with the State, requesting a review of the PTABOA's decision. The Form 131 petition was filed on January 22, 2002. *Id.*
7. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held before Administrative Law Judge Joseph Stanford on April 30, 2002. Cheryl E. Losee (Senior Tax Manager) represented CTS. David W. Luhman (County Attorney), Red Strange (PTABOA member), Lawrence J. Lahrman (PTABOA member), and Bob McKee (County Assessor) represented the Tippecanoe County PTABOA.
8. The following items are labeled as Board Exhibits:
 - Board Ex. A – Form 131 petition and attachments.
 - Board Ex. B – Notice of hearing.
 - Board Ex. C – Business tangible personal property return originally filed by CTS.
9. At the hearing, the following exhibits were submitted to the State:
 - Petitioner's Ex. A – Audit calculation of omitted property.
 - Petitioner's Ex. A-1 – Listing of unreported personal property.
 - Petitioner's Ex. A-2 – 50 Ind. Admin. Code 4.2-3-13.
 - Petitioner's Ex. A-3 – 50 Ind. Admin. Code 4.2-3-13, repealed effective March 31, 2000.
 - Petitioner's Ex. B – Return receipt for filing of 1999 tax return.
 - Petitioner's Ex. C – Return receipt for filing of 2000 tax return.
 - Respondent's Ex. A – Audit calculation of omitted property.
 - Respondent's Ex. B – Report of undervalued property for 1999 assessment.
 - Respondent's Ex. C – Form 113/PP mailed to CTS for 2000 assessment.
 - Respondent's Ex. D – Letter and audit report mailed to CTS on July 30, 2001.
10. CTS contends that the change in assessment by the PTABOA is illegal for three reasons. First, CTS argues that the PTABOA's change was made after the deadlines imposed by Ind. Code § 6-1.1-3-20 and Ind. Code § 6-1.1-9-3. CTS

contends that the tax returns in question were found to be in substantial compliance (less than 1% of the property was omitted) and filed by May 15, so any change in the assessment must have been given by October 30 of the year of assessment. Changes to the 1999 and 2000 assessments were not given to CTS until July 30, 2001. *Losee testimony.*

11. Second, CTS claims that it is harmed in its appeal to the State, because the PTABOA failed to state specific reasons for its denial of the Form 130 petition. CTS argues that Ind. Code § 6-1.1-15-2.1(d) requires the PTABOA to provide a detailed explanation of its determination, and the Tippecanoe County PTABOA failed to do so. While CTS finds no consequences in the law for this circumstance, CTS opines that it should be treated much like a petitioner's defective petition. *Id.*
12. Finally, CTS contends that the Tippecanoe County Assessor lacks the authority to hire TMA to perform an audit. CTS cites to recent determinations in the Indiana Tax Court in *Ispat Inland, Inc. v State Board of Tax Commissioners et al*, 757 N.E. 2d 1078 (Ind. Tax 2001), and by the Superior Court of Tippecanoe County in *Indiana Manufacturer's Association et al v. Tippecanoe County et al*. This issue was not addressed at hearing because, due to the lower court ruling in the *Indiana Manufacturer's Association* case, the TMA auditor could not be present at the hearing.

Conclusions of Law

1. The Petitioner is limited to the issues raised on the Form 130 petition 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 130 petition. 50 IAC 17-5-3. See also the Forms 130 and 131 petitions authorized under Ind. Code §§ 6-1.1-15-1, -2.1, and -4. 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 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by 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 131 petition. *Joyce Sportswear Co. v. State Board 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 131 petition filed with the State.

2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.
3. In reviewing the actions of the County, 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 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's final determination merely because the taxpayer demonstrates flaws in it).

Whether the change to CTS' business personal property assessment is illegal

9. Any one of the three reasons above argued by CTS, if proven, would render the Tippecanoe County PTABOA's change in CTS' assessment illegal. Therefore, the State will examine each of CTS' claims and arguments individually. If the State finds for CTS for any one of the issues listed above, no further analysis of other issues will be necessary.

10. The provisions for increasing personal property assessments are found in Ind. Code § 6-1.1-9-3(a) which states:

If a taxpayer files a personal property return for a particular year, personal property which is omitted from or undervalued on the return may be assessed, or its assessed value may be increased, only if the notice required under section 1 of this chapter is given within three (3) years after the date the return is filed. **However, if the taxpayer's personal property return for a particular year substantially complies with the provisions of this article and the regulations of the state board of tax commissioners, an assessing official or a county property tax assessment board of appeals may change the assessed value claimed by the taxpayer on the return only within the time period prescribed in IC 6-1.1-16-1.**
(Emphasis added).

11. Whether a tax return is in substantial compliance with the provisions and regulations of the State is *not* a subjective issue. The definition of a return not in substantial compliance is found in 50 Ind. Admin. Code 4.2-3-13(b) and defined as a tax return that: 1) omits five percent (5%) or more of the taxpayer's cost per books; or 2) omits non-owned property that exceeds five percent (5%) of the total assessed value of all reported property; or 3) is filed with the intent to evade personal property taxes or assessment.

12. Pursuant to Ind. Code § 6-1.1-16-1(a)(2), the County Assessor or PTABOA must make a change in the assessed value, and give notice of said change, on or before the latter of October 30 of the year of assessment, or five (5) months from the date the return is filed.

13. Pursuant to Ind. Code § 6-1.1-16-2, if the PTABOA fails to change an assessed value and give notice of the change pursuant to Ind. Code § 6-1.1-16-1(a)(2) [see Conclusion # 12 above], the Township or County Assessor may file a petition for review in the manner provided in Ind. Code § 6-1.1-15-3(c).
14. In the case at bar, the returns filed by CTS were clearly in substantial compliance for both 1999 and 2000. The audit report, which was submitted by both parties (Petitioner's & Respondent's Ex. A), shows that CTS omitted only 0.86% of book cost in 1999, and only 0.66% of book cost in 2000. Again, this is not a subjective issue, so Tippecanoe County is not harmed by the lack of the TMA auditor's testimony concerning this issue. The audit report clearly shows that CTS' returns fall within the 5% threshold set forth by 50 Ind. Admin. Code 4.2-3-13. Therefore, the returns are in substantial compliance.
15. As a result, Ind. Code § 6-1.1-16-1(a)(2) requires the County Assessor or Tippecanoe County PTABOA to have given notice of change in CTS' 1999 assessment by October 30, 1999, and to have given notice of change in CTS' 2000 assessment by October 30, 2000. The County Assessor gave notice of change in both years' assessments on July 30, 2001. The County Assessor failed to follow the statutory procedures and meet the deadlines required by statute for increasing the personal property assessment.
16. For this reason, it is hereby determined that the changes to CTS' assessments for 1999 and 2000 should be disregarded. Therefore the remaining issues, whether the PTABOA adequately explained its decision and whether the County Assessor had the authority to hire TMA to conduct the audit, are not relevant issues to this case.
17. The assessments revert back to the assessed values originally reported by CTS, \$2,409,042 in 1999 and \$2,815,260 in 2000.

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