

**STATE OF INDIANA
Board of Tax Review**

CARL & MARY ANNE WINEINGER,)	On Appeal from the Parke County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petition for Review of Assessment, Form 131
)	Petition Nos. 61-018-01-1-7-00001
PARKE COUNTY PROPERTY TAX)	61-018-01-1-7-00002
ASSESSMENT BOARD OF APPEALS)	Personal Property
and JACKSON 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:

Issues

1. Whether the lawn mower/tractor and two (2) snowmobiles should be assessed as personal property. (Petition # 61-018-01-1-7-00001).

2. Whether there is any personal property of Conegtec Corporation on the property. (Petition # 61-018-01-1-7-00002).

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 § 6-1.1-15-3, Carl & Mary Anne Wineinger (the Petitioners) filed two (2) Form 131 petitions requesting a review by the State. The Form 131 petitions were filed on October 29, 2001. The Parke County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on September 28, 2001¹.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on February 20, 2002 before Hearing Officer Brian McKinney. Testimony and exhibits were received into evidence. Carl Wineinger and Mary Anne Wineinger were self-represented. Norman Frey, Jerimah Cooper, Steven Wineinger, Bradley Rickard, and James Sutherland appeared as witnesses for the Petitioners. Marylin Allen and Barbara Nelson appeared on behalf of the PTABOA. No one appeared on behalf of Jackson Township.

4. At the hearing, the Form 131 petitions were made part of the record and labeled Board Exhibit A. Notice of Hearing on Petition was labeled Board Exhibit B. In addition, the following exhibits were submitted as evidence:
Petitioner's Exhibit A – Binder with information relating to Petition # 61-018-01-1-7-00001.
Petitioner's Exhibit B – Binder with information relating to Petition # 61-018-01-1-7-00002

The Respondent did not present any documentary evidence at the hearing.

¹ The Form 131 must be filed within 30 days of a decision from the PTABOA. In this case, the 30th day (October 28, 2001) fell on a Sunday, and the petition was filed on the next business day (Monday, October 29, 2001), therefore, the Petition is accepted as timely.

5. The appealed personal property is located in Jackson Township, Parke County. The personal property appealed on Petition # 61-018-01-1-7-00001 is located at the home of the Petitioners. The location of the personal property appealed on Petition # 61-018-01-1-7-00002 is a pole barn owned by the Petitioners.
6. On June 1, 2001, Richard Thompson, the Jackson Township Trustee Assessor, sent the Petitioners two (2) Form 9283s (Report of Assessment for Omitted or Undervalued Property Assessment and Assessment Penalties). One of the Form 9283s indicated there was \$7,200 in personal property on one parcel and \$65,000 in personal property on another parcel.
7. The Township Assessor assessed a tractor/lawnmower and two (2) snowmobiles to arrive at the \$7,200 for petition number 61-018-01-1-7-00001. The tractor/lawn mower is used to mow grass and not used in farming the land. The land has not been farmed in years. The two snowmobiles are not in working condition. One is 21 years old; the other is 18 years old. The Petitioner purchased one for \$1,300 and the other for \$1,500. *Wineinger Testimony. Petitioner's Exhibit A, pages 17-23.*
8. The personal property assessed at \$65,000 is supposed to be the property of Conegtec Corporation stored on the Petitioners' land. This is on petition number 61-018-01-1-7-00002. The Petitioner testified that there is not now, nor has there ever been any property of Conegtec Corporation on the properties owned by the Petitioners in this township. Conegtec Corporation is located in Clay County. *Wineinger Testimony. Petitioner's Exhibit B, pages 12-27.*
9. Jerimah Cooper and Steve Wineinger, both employees of Conegtec Corporation, testified that they had never seen any property belonging to Conegtec Corporation on the Petitioners' land. Norman Frye, Bradley Rickard, and James Sutherland also testified that they had never seen any business property on the Petitioners' land.

10. The Petitioners submitted photographs of the pole barn, six (6) signed statements and an e-mail attesting to the fact that no business equipment or inventory was stored at this site. *Petitioner's Exhibit B, pages 14-27.*

Conclusions of Law

1. The Petitioner is statutorily 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. Ind. Code §§ 6-1.1-15-1, -2.1, and -4. See also the Forms 130 and 131 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 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 § 6-1.1-15-12.

A. Burden

3. Ind. Code § 6-1.1-15-12 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *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)).
4. 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.
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 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. 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)).

7. 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.
8. 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).
9. 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 even though the taxpayer demonstrates flaws in it).

Petition #61-018-01-1-7-00001

Lawn Mower/Tractor

10. The Petitioners own a large lawn mower, or bushhog, that is used to cut their grass. This is not used, nor has it been used to farm any of the land the Petitioners own.
11. The Petitioners presented signed statements of 7 persons stating that the Petitioners do not farm their land and have not for years (Petitioner's Exhibit A, pages 16-22).
12. The Petitioners presented probative evidence to shift the burden to the local officials.
13. The Jackson Township Assessor elected not to participate in the hearing scheduled in this matter. Therefore, the Jackson Township Assessor did not present any evidence supporting his assessment. Accordingly, the assessment of the lawn mower as personal property will be changed.

Snowmobiles

14. The Township Assessor also assessed two (2) snowmobiles located on the Petitioners' land. The snowmobiles are considered personal property and must be assessed in accordance with the law.
15. The Township Assessor elected not to appear at the hearing to testify how the snowmobiles were valued for personal property purposes. There is no way of knowing the value assigned by the Township Assessor, therefore, the value of the snowmobiles will be determined from the purchase price given by the Petitioners at the hearing.

16. According to 50 IAC 4.2-15-2, the true tax value of a snowmobile seven (7) years old or older is assessed at 15% of the cost. The Petitioner testified that he paid \$1,300 for one of the snowmobiles and \$1,500 for the other. The values will be multiplied by 15% to arrive at true tax values/assessed values of \$195 and \$225 for a total assessment value of \$420 for the two (2) snowmobiles.
17. The assessment has been changed as a result of this issue.

Petition #61-018001-1-7-00002

Conegtec Property

18. The Township Assessor assigned a value of \$65,000 to business property of Conegtec Corporation alleged to be located on the Petitioners' land. The Township Assessor did not appear at the hearing to testify what property was considered Conegtec property or how the property was valued.
19. The Petitioners' testified that there was no property of Conegtec located on their land now, or on the March 1, 2001 assessment date. The Petitioners presented five (5) witnesses who testified that they knew the Petitioners, had visited their property on many occasions, and have never seen any property of Conegtec on the land.
20. The Petitioners presented probative evidence of error in the assessment of the Jackson Township Assessor. The Jackson Township Assessor elected not to participate in this hearing or present any evidence of the existence of Conegtec property on the Petitioners' land. Accordingly, the Indiana Board of Tax Review finds there is no business personal property of Conegtec located on the Petitioners' land. There is a change in assessment as a result of this issue.

Summary of Changes

21. The lawn mower is not personal property and will be removed from the assessment. The snowmobiles are determined to have an assessed value of \$420. Therefore, the assessed value on Petition # 61-018-01-1-7-00001 is changed from \$7,200 to \$420.

22. There is no business personal property of Conegtec Corporation located on the Petitioners' land. Therefore, the assessed value on Petition # 61-018-01-1-7-00002 is changed from \$65,000 to \$0.

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