# STATE OF INDIANA
# Board of Tax Review

In the matter of the Petition for Review )
of Assessment, Form 131 ) Petition No.: 65-017-95-1-3-00031

Parcel No.: 0020186200

Assessment Year: 1995

Petitioner: Indiana Farm Bureau/Countrymark Cooperative
950 North Meridian 8th Floor
Indianapolis, IN 46204

Petitioner Representative: Michael F. Caron
DuCharme, McMillen & Associates, Inc.
8275 North Allison Pointe Trail, Suite 220
Indianapolis, IN 46250

## 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 tanks should be real estate or personal property.

## 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, the Petitioner filed a petition requesting a review by the State. The Posey County Board of Review's final determination is dated November 14, 1996. The Form 131 petition for a review by the State was filed on December 16, 1996.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on April 8, 1998, before Hearing Officer Dennis Neuhoff. Michael Caron of DuCharme, McMillen & Associates represented the Petitioner. Rita Sherretz, County Assessor, represented the Posey County Board of Review. Margie Grabert represented Black Township. Ron Bennett, County Auditor, was also present at the hearing.

4. Mr. Caron stated that according to his notes the tanks contained materials in process and were personal property. There was no other testimony or evidence presented at the hearing.

5. The property is located at 1200 Refinery Road, Mt. Vernon, Black Township, Posey County.

6. The Hearing Officer viewed the property on June 2, 1998, along with Mr. Mike Burdick who represented the Petitioner.

7. On June 4, 1998, the Hearing Officer had a telephone conversation with Mr. Kip Kleinschmidt about whether personal property tax is being paid on oil tanks.

8. On November 9, 1998, the State sent letters to Ms. Grabert and Mr. Caron requesting additional information. The letters requested copies of the business personal property tax forms (Form 103 & 104) for the assessment years 1994, 1995 and 1996. The letter to Ms. Grabert also requested information regarding the assessment of the tanks prior to 1995 and an explanation of which tanks should be real and which tanks should be personal property. The letter to Mr. Caron also requested that they indicate where the tanks were reported on the business personal property tax forms.

9. On December 18, 1998, after receiving no response from either party, the State sent a second letter to both parties. The letter gave the parties until January 8, 1999, to provide the information requested in the November 9, 1998 letter.

10. On January 7, 1999, the Petitioner provided copies of the business personal property tax returns for the 1994, 1995, and 1996 assessment dates. The property tax returns were marked “amended”. Also included were copies of the front page of Form 133, Petitions for Correction of an Error, for each year. No information was provided to show where the tanks were reported on the tax returns. Nor was any information provided as to whether all tanks were personal property or real property.

11. Also on January 7, 1999, the Township Assessor provided copies of the business personal property tax returns which she had obtained from Petitioner.

12. The business personal property tax returns provided by the Petitioner and the Township Assessor did not match. It appears that the Petitioner filed Form 133 petitions with “amended” returns attached. There is no indication of whether or not the Form 133 petitions were approved and accepted. Nothing was presented to indicate which returns reflect the current business personal property assessment of record.

13. On March 1, 1999, the State requested additional information from the Petitioner. In reviewing the business personal property tax returns and attachments which were submitted, a memo mentioned a "..special ruling that allows us to take these tanks as personal property." The State requested a copy of the "special ruling".

14. On March 5, 1999, the Petitioner sent a letter which stated that "a copy of the "special ruling" regarding the assessment of storage tanks at this facility" was attached. The "special ruling" is a copy of a letter dated November 8, 1977, from Mr. Durwood Strang, a Commissioner of the State Board, to Mr. Charles Stevens, Tax Agent, Indiana Farm Bureau Cooperative. The letter appears to be a response to a question about how to assess "tanks used as part of the manufacturing process". The letter simply states that such tanks are assessed as personal property. At the bottom of the letter, Mr. Stevens advises Mr. James Headrick of Hunnicut & Associates, "that all tanks located at our refinery are part of our manufacturing process and will henceforth be reported as Personal Property."

## 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.

## A. Indiana's Property Tax System

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.

4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John,* 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V)*.

5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V,* 702 N.E. 2d at 1039 – 40.

6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State's decision.

## B. Burden

7. Ind. Code § 6-1.1-15-3 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)).

8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. See 50 IAC 17-6-3. "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.

9. 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.

10. 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)).

11. One manner for the taxpayer to meet its burden in the State's administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners,* 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). 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.

12. 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.

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. 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).

## C. Review of Assessments After *Town of St. John V*

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property's market value will fail.

16. Although the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V,* 702 N.E. 2d at 1043; *Whitley,* 704 N.E. 2d at 1121.

17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

## D. Tanks

18. The use of a unit of machinery, equipment, or structure determines its classification as real or personal property. 50 IAC 2.2-3-1(a).

19. 50 IAC 2.2-3-1(d) states:

> (79) Tanks as follows:
> (A) Storage only, except as indicated in clauses (B) and (C), above or below ground – Real.
> (B) Used as part of a manufacturing process – Personal.
> (C) Underground gasoline tanks at service stations – Personal.

20. The language in 50 IAC 4.2, also know as Regulation No. 16 for the Assessment of Tangible Personal Property, contains the same language as above with regard to the assessment of tanks. See 50 IAC 4.2-4-10(d).

21. In order to determine whether the tanks are properly assessed as real property, it must first be determined how the tanks are used.

22. At the hearing, Mr. Caron stated that his notes indicate that the tanks contained materials in process. Mr. Caron did not indicate that he had direct knowledge or made personal observations of the tanks. Nor did he specify the source of the information contained in his notes. Therefore, no probative evidence has been presented regarding the use of the tanks.

23. Attached to the March 1, 1996, business personal property tax return provided by the Petitioner, is a copy of a fax from Mr. Kleinschmidt to Ms. Theresa Beerman regarding amending the tax return. The fax states in part: “The reason is because I deducted several storage tanks from the personal property tax return (listed 3-1-95) as real estate per the manual; however, we have a special ruling that allows us to take these tanks as personal property.” The fax goes on to state: “These tanks will not be assessed as RE and therefore I must add them back to the 3-1-96 return.” The State notes that Mr. Kleinschmidt refers to the tanks as storage tanks. The State is unable to determine whether or not the tanks were reported as personal property for the year in question.

24. As stated in Finding of Fact No.14, the “special ruling” is a letter from Mr. Durwood Strang, a Commissioner of the State Board, to Mr. Charles Stevens,

Tax Agent, Indiana Farm Bureau Cooperative. The letter appears to be a response to a question about how the assess "tanks used as part of the manufacturing process". The letter simply states that such tanks are assessed as personal property. There are no specific details provided in the letter. There is no ruling or determination by the State that Indiana Farm Bureau's tanks are personal property. In fact at the bottom of the letter, it is Mr. Stevens who determines "that all tanks located at our refinery are part of our manufacturing process and will henceforth be reported as Personal Property."

25. It should also be noted that in the letter dated March 3, 1999, from DuCharme, McMillen & Associates providing the copy of the "special ruling", the tanks are referred to as storage tanks.

26. The Petitioner is required "to do something more than simply allege that an error exists in the assessment …" *Whitley,* 704 N.E. 2d at 1119. The Petitioner is expected to make detailed factual presentation to the State regarding the alleged errors in assessment. *Id.* In the case at hand the Petitioner did not make a factual presentation. In fact, what little testimony and evidence that was presented is conflicting at best. A statement was made at the hearing about the tanks containing materials in process, but there are other references to the tanks as storage tanks. The Petitioner was given several opportunities provide factual evidence, but failed to do so.

27. For all of the above reasons the Petitioner has failed to meet its burden. There is not enough evidence for the State to determine whether the tanks should be assessed as personal property or real property. Therefore, the determination of the County is upheld. There is no change to the assessment.

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.

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Chairman, Indiana Board of Tax Review