

**STATE OF INDIANA
Board of Tax Review**

GOSPEL HOLINESS CHURCH,)	On Appeal from the Marion County
)	Board of Review
Petitioner,)	
)	
v.)	
)	Petition for Review of Exemption, Form 132
)	Petition No. 49-900-96-2-8-00047
MARION COUNTY BOARD OF)	
REVIEW,)	
)	
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 property is exempt from taxation under Ind. Code § 6-1.1-10-16.

Findings of Fact

1. This administrative appeal comes before the State on the Petition for Review of Exemption, Form 132, filed by or on behalf of Gospel Holiness Church on

September 20, 1996. The Form 132 petition was filed seeking review by the State of the Marion County Board of Review's (County Board) final determination on the underlying Form 136 petition issued on August 23, 1996.

2. Pursuant to Ind. Code § 6-11-15-4, an administrative hearing was scheduled for May 7, 1997 at 10:30 o'clock A.M. Notice of said hearing was mailed to Gospel Holiness at the address listed on the petition.
3. On May 7, 1997, Hearing Officer Kay Schwade conducted the administrative hearing on the Form 132 petition. Neither the Petitioner nor their representative appeared at the hearing.
4. Neither the Petitioner nor their representative contacted the State Board or the Hearing Officer prior to the scheduled hearing date and request a continuance of the hearing.

Conclusions of Law

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. In addition, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.
2. 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.
3. In reviewing the actions of the County Board (or 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.

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. See also Ind. Code § 4-21.5-2-4(a)(10).
5. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Id.* These presentations should both outline the alleged errors and support 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 taxpayers 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’s burden in the State’s administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. 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.
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 facia case. In order to establish a prima facia 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).
10. The Form 132 petition is denied for the failure of the taxpayer or their representatives to appear at the administrative hearing and present evidence in support of the alleged errors of 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.

Chairman, Indiana Board of Tax Review