STATE OF INDIANA
Board of Tax Review

In the matter of the Petition for)
Correction of Error, Form 133) Petition Nos.: 29-012-91-3-3-00020
29-012-92-3-3-00021
29-012-93-3-3-00022
29-012-94-3-3-00023

Parcel No. : 10-07-32-00-00-013.001

Assessment Year(s): 1991, 1992, 1993 and 1994

Petitioner: Harger Farms, Inc.
3566 E. Conner Street
Noblesville, IN 46060

Petitioner Representative: True Tax Management Corporation
12141 Admirals Pointe Circle
Indianapolis, IN 46236

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 several buildings on the subject property qualify for a 50% reduction because they are pre-engineered steel frame structures.

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 § 6-1.1-15-12, the Petitioner filed Form 133 petitions requesting a review by the State. The Hamilton County Property Tax Assessment Board of Appeals (PTABOA) disapproved the subject Form 133 Correction of Error petitions on May 27, 1999. The Petitioner subsequently requested a review by the State.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on January 23, 2001 before Hearing Officer Debra Eads. Testimony and exhibits were received into evidence. Dale Armbruster of True Tax Management and James Harger represented the Petitioner. Debbie Folkerts, County Assessor and Lori Harmon represented Hamilton County. Jim Pee represented Noblesville Township.

4. At the hearing the subject Form 133s were made a part of the record and labeled as Board Exhibits A. The Notices of Hearing on Petitions were labeled Board Exhibits B. In addition, the following items were submitted to the State:
   Petitioner Exhibit 1 – Interior and exterior photos of the subject buildings
   Petitioner Exhibit 2 – State Final Determination of 10-07-32-00-00-013.001 for the 1995 assessment year
   Petitioner Exhibit 3 – Property record cards for subject property
   Petitioner Exhibit 4 – Property records for subject property with Petitioner pricing adjustments
   Petitioner Exhibit 5 – Erection instructions for one subject building
   Petitioner Exhibit 6 – Cover sheet for erection instructions for other buildings

   Respondent Exhibit 1 – Field-listing document for building not included in the

pricing for the subject property

5. The subject property is located at 3566 E. Conner Street, Noblesville, Indiana (Noblesville Township, Hamilton County).

6. The Hearing Officer did not conduct an on-site inspection of the subject property.

Testimony and Evidence

7. The parties agreed that $418,140 was the appealed value and that the only issue under appeal is the pre-engineered steel frame construction issue. (Personal Property issues included on Form 133s were previously corrected to the Petitioners satisfaction)

8. Each of the subject buildings (31, 33, 15, 16, 16A, 16B, 22 and 19) were purchased as a "kit" and delivered to the site for construction. These buildings contain 26 gauge metal skinned walls, some tubular steel support beams, 12 gauge cold form cee channels, roof beams with tapered columns, 14 to 16 gauge purlins and girders, minimal roof pitch and "X" bracing. All these characteristics are elements of pre-engineered and pre-designed pole buildings. Mr. Harger testified that this description is accurate for the subject buildings other than the reference to "pole" buildings; the subject buildings are steel frame rather than pole construction. *Harger and Armbruster Testimony*.

9. The building identified by the Petitioner as the office/shop building was built in 1991 but was not assessed until 1994 and should therefore be added to the assessment for the years under appeal. *Pee Testimony*. Mr. Armbruster acknowledged that the office/shop building had not been properly assessed and should be added to the assessment for the years under appeal, however, he had not added the building to the Petitioner recommended pricing (Petitioner Exhibit 4).

10. It had previously been the impression of the County that the subject petitions had been withdrawn because the corrections being sought by the Petitioner combined with the addition of the missing building (office/shop) would result in an increase in assessment. The county was not prepared to offer evidence that the buildings should not qualify for the –50% adjustment for pre-engineered buildings (and was not interested in requesting additional time to present such evidence), but the county was also not prepared to stipulate to the "kit" status of the subject buildings. *Harmon Testimony*.

11. Mr. Armbruster testified that the result would not be an increase if the "kit" –50% deduction is applied and therefore the Petitioner had not withdrawn the petitions.

12. A general discussion between the parties concerned whether any buildings had been razed during the appeal assessment period (1991 to 1994). Mr. Harger testified that no buildings were razed during that time period and that the buildings of concern (5, 6, 7, 8, 9, 27 and 39) were all removed prior to 1991 and should not be included in the assessments under appeal.

Conclusions of Law

1. The Petitioner is limited to the issues raised in the Form 133 petition filed with the State. Ind. Code § 6-1.1-15-12. *See also* Form 133 petition requiring the Petitioner to identify the specific grounds for appeal. The State has the discretion to address any issue once an appeal has been filed by the taxpayer. *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 in the Form 133 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. 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. "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. 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.

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.

Whether several buildings on the subject's property record card, qualify for a 50% reduction due to pre-engineered steel frame construction.

18. The buildings, which are subject in this appeal (Buildings #15, 16, 16A, 16B, 19, 22, 31 and 33) are presently valued from the GCI pricing schedule as either light warehouse or light utility storage structures. It is the Petitioner's contention that these buildings fit the characteristics necessary for buildings to qualify for a negative 50% adjustment to the base rate as described in the State's Instructional Bulletin 91-8. See Findings of Fact ¶8. To this end the Petitioner also presented interior and exterior photographs and Erection Instructions (Petitioner's Exhibits 1, 5, and 6).

19. In addition, the Petitioner submitted into evidence a 1995 State Final Determination (Petitioner's Exhibit 2) on the same property under review in this appeal. In this determination the State valued the same buildings (#15, 16, 16A, 16B, 19, 22, 31 and 33) from the GCK pricing schedule. For structures to be valued from the GCK schedule, they had to meet the following criteria: (1) whether the structure is pole-framed, (2) whether the structure is pre-engineered, (3) whether the structure is for commercial or industrial use, and (4) whether the structure is a special purpose designed building. 50 IAC 2.2-10-6.1(a)(1)(D)

20. Before applying the evidence to reduce the contested assessment, the State must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.

21. It should first be noted, that the State will not change the assessment on the structures under review on the basis of it's Final Determination for the tax year 1995. However, evidence from years other than the assessment year can be considered to establish a fact existing on the assessment date in question. *Governour's Square Apartments v. State Board of Tax Commissioners*, 528 N.E. 2d 864, 866 (Ind. Tax 1987).

22. The Petitioner specifically points to the State's Instructional Bulletin 91-8 as the only instructions available to value the structures under review. However, at the time the State introduced Instructional Bulletin 92-1 that also dealt with structures having the characteristics described in Instructional Bulletin 91-8.

23. The State's Instructional Bulletin 91-8 instructed assessors to give qualifying structures a 50% reduction in the base rate with no regard to the structure's interior components. The State's Instructional Bulletin 92-1, however, instructs assessors to determine the base price, determine the interior components adjustments, subtract these interior components from the base price, divide the result by 50%, then add applicable interior components back at 100% to the adjusted base rate. This calculation results in a 50% reduction being made to the base rate.

24. Instructional Bulletin 91-8 is dated October 1, 1991 and was issued to help assessing officials identify which improvements qualify for the 50% reduction in the base rate. These changes in assessments were to be effective for March 1, 1991.

25. Instructional Bulletin 92-1 is dated August 28, 1992 and gave local officials instructions on handling appeals by taxpayers that felt their qualifying structures

were not reassessed as required by Instructional Bulletin 91-8. As previously stated, Instructional Bulletin 92-1 gave a more detailed method to be used to assess qualifying structures for the 50% reduction. If a taxpayer's qualifying structure was not reassessed, and the taxpayer appealed, Instructional Bulletin 92-1 was to be used to value such a structure.

26. As previously stated in Conclusions of Law ¶7 – 14:
    a. The burden of proof is on the person petitioning the agency for relief;
    b. That taxpayers are to make factual presentations regarding alleged errors and with these presentations the taxpayer must support the allegations with evidence; and
    c. To meet their burden, the taxpayer must present probative evidence in order to make a prima facie case.

27. The Petitioner presented testimony and evidence (photographs, State Final Determination, construction instructions) indicating that an error in assessment exists. The Petitioner testified the subject structures contained 26 gauge metal skinned walls, some tubular steel support beams, 12 gauge cold form cee channels, roof beams with tapered columns, 14 to 16 gauge purlins and girders, minimal roof pitch and "X" bracing. All of the components described by the Petitioner can be found in the State's Instructional Bulletin 91-8.

28. In the event a taxpayer sustains his burden, the burden then shifts to the local officials to rebut the taxpayer's evidence and to justify it's own decision with evidence.

29. The Respondents indicated that they were not prepared to offer evidence on this issue nor were they interested in requesting additional time to respond or to consider stipulating to the "kit" status of the structures.

30. Based on the fact that the Petitioner presented evidence and undisputed testimony, that shifted the burden to the local officials, and the fact that the local

officials failed in their burden to support their assessment, it is determined the Petitioner has shown that the subject structures warrant a 50% adjustment to the base rates.

31. It is further determined that the subject structures be valued in the following manner:
    a. For the 1991 appeal – a 50% adjustment to the base rate based on Instructional Bulletin 91-8
    b. For the 1992, 1993 and 1994 appeals – a 50% adjustment to the base rate based on Instructional Bulletin 92-1

32. A change in the assessment is made as a result of this issue.

Other Findings

A. Adding a Building and Removal of Other Buildings

33. At the hearing, the parties discussed the existence of a building built in 1991 but not assessed until 1994. The parties agreed to add this structure to the assessments for the years under appeal. See Findings of Fact ¶9. This building is to be assessed as industrial office (2,325 square feet) and utility storage (6,975 square feet) and valued in the same manner as stated in Conclusions of Law ¶31.

34. The parties also agreed that certain buildings (Buildings #5, 6, 7, 8, 9, 27 and 39) should be removed from the assessment for the years under appeal.

35. A change is made to the assessment as a result of these findings.

B. Physical Depreciation

36. The commercial and industrial depreciation schedules are included in 50 IAC 2.1-5-1, however, as per Instructional Bulletin 91-8 structures that qualify to receive a 50% reduction in their base rate should also be depreciated from the 30-Year Life Expectancy Table.

37. A review of the depreciation schedules applied by the County shows that the 30-Year Table was used to depreciate the structures under review. No change in the assessment is made as a result of this finding.

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