

**STATE OF INDIANA
BOARD OF TAX COMMISSIONERS**

In the Matter of Petition for Review)
of Assessment, Form 131) Petition No.: 49-701-95-1-4-00112

Parcel No.: 7012853

Assessment Year: 1995

Taxpayer: Harry A. Burkart Jr. and Harry Burkart III
 102 Clarendon 3078
 Noblesville, IN 46060

Findings of Fact and Conclusions of Law

The State Board of Tax Commissioners (State Board) makes the following findings of fact and conclusions of law in this appeal.

Issue

1. Whether a reduction in the assessment is needed.

Findings of Fact

1. This administrative appeal comes before the State Board on the Petition for Review of Assessment, Form 131 filed by Harry Burkart Jr. and Harry Burkart III. The Form 131 petition was filed on November 26, 1996. The Marion County Board of Review's (County Board) assessment determination on the underlying Form 130 petition is dated October 25, 1996.

2. On March 4, 1997, a notice of defect was mailed to the Petitioner, at the address on the Form 131 petition. The Petitioner cured this defect within the 30 days allowed, and the first hearing was scheduled at a later date.
3. Pursuant to Ind. Code § 6-11-15-4, an administrative hearing was scheduled for August 27, 1998 at 12:00 o'clock P.M. Notice of said hearing was mailed to Harry Burkart Jr. and Harry Burkart III. Notice of hearing was mailed on August 6, 1998. This notice was mailed to an address that was not listed on the Form 131 petition. The Notice of Hearing was returned as no such address.
4. The hearing was re-scheduled for September 17, 1998 at 3:00 P.M., with notice mailed to the same address as the first Notice of Hearing. Notice of Hearing was mailed on September 3, 1998.
5. The hearing was again rescheduled for October 13, 1998, at 11:15 A.M., and Notice of hearing was mailed to the address listed on the Form 131 petition. This is the same address the Notice of Defect was mailed to on March 4, 1997. The Notice of Hearing was returned marked Not Deliverable/No forwarding order on file.
6. The Petitioners did not contact the State Board or the hearing officer prior to the scheduled hearing date and did not request a continuance of the hearing. Nor did the Petitioners contact the State Board with instructions to correct the address.
7. The Hearing Officer verified that notice of hearing was mailed, with proof of mailing, for the October 13, 1998 hearing. The Hearing Officer also verified that the notice was returned to the State Board as not deliverable, no forwarding order on file.

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 Board to review the actions of the County Board, but does not require the State Board to review the assessment.
3. The courts have long recognized that in the administrative review process, the State Board is clothed with quasi-judicial power and the actions of the State Board are judicial in nature. *Biggs v. Board of Commissioners of Lake County*, 7 Ind. App. 142, 34 N.E. 500 (1893). Thus, the State Board has the ability to decide the administrative appeal based upon the evidence presented.
4. In reviewing the actions of the County Board, the State Board 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).
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 Board 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. “[W]hen a taxpayer challenges a real property assessment, the State Board need not search the property to find errors, the correction of which is beneficial to the taxpayer. Rather, the State Board has every right to expect that any errors in an assessment will be brought to the State Board’s attention by the taxpayer.” *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)).
7. Taxpayers are required “to do something more than simply allege that an error exists in the assessment . . .” *Whitley*, 704 N.E. 2d at 1119.
8. Taxpayers are expected to make detailed factual presentations to the State Board regarding alleged errors in assessment. *Id.* “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)).
9. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State Board can properly refuse to consider the evidence. *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)).
10. The taxpayer’s burden in the State Board’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.
11. If the taxpayer is not required to meet his burden of proof at the State administrative level, then the State Board would be forced to make a case for the

taxpayer. Requiring the State Board to make such a case contradicts established case law. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999); *Whitley, supra*; and *Clark, supra*.

12. Moreover, a waste of time and resources would inevitably occur if taxpayers could simply attack the State Board's methodology in a Tax Court appeal without first making a factual presentation to the State Board. *Whitley, supra*.
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. The local taxing officials do not have the responsibility to make a case until the taxpayer sustains his burden of proof regarding the alleged error in assessment. 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 Board's final determination even though the taxpayer demonstrates flaws in it).
15. 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.
16. If the taxpayer fails to meet his burden of proof at the administrative level, the State Board does not have to support its decision with substantial evidence if that decision is challenged in court. *Whitley*, 704 N.E. 2d at 1116- 21.

17. The Form 131 petition is denied for the failure of the taxpayers to appear at the administrative hearing and present evidence in support of the alleged errors of assessment.