

**STATE OF INDIANA
Board of Tax Review**

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| HUB DISTRIBUTING, INC. |) | On Appeal from the Lake County |
| |) | Property Tax Assessment Board |
| |) | of Appeals |
| Petitioner, |) | |
| |) | |
| v. |) | Petition for Correction of Error, Form 133 |
| |) | Petition No. 45-030-99-3-7-00001. |
| LAKE COUNTY PROPERTY |) | Personal Property |
| TAX ASSESSMENT BOARD OF |) | |
| APPEALS And ROSS TOWNSHIP |) | |
| ASSESSOR |) | |
| |) | |
| Respondent. |) | |

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 personal property was erroneously assessed.

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, Hub Distributing, Inc. filed a Form 133 petition requesting a review by the State. The Lake County PTABOA Form 115, Notification of Final Assessment Determination, was issued on October 25, 2001. The Form 133 petition was received by the State on November 26, 2001.
3. Pursuant to Ind. Code § 6-11-15-4, an administrative hearing was scheduled for April 8, 2002 at 9:00 o'clock A.M. in Crown Point, IN. Notice of said hearing was mailed to Hub Distributing, Inc. at the address listed on the petition. The notice was mailed on February 15, 2002.
4. On April 8, 2002, administrative law judge Ellen Yuhan conducted the administrative hearing on the Form 131 petition. Neither the Petitioner nor his representative appeared at the hearing.
5. The Petitioner and his representative did not contact the State or the administrative law judge prior to the scheduled hearing date and did not request a continuance of the hearing.
6. The administrative law judge verified that notices of hearing were mailed, with proof of mailing, and also verified that the notices were not returned to the State as undeliverable.

Conclusions of Law

1. The Petitioner is statutorily limited to the issues raised on the Form 133 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 133 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. Tax 1996); *County board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 133 process, the levels of review are clearly outlined by statute. First, the county auditor may correct an error described under subsection (a)(6), (a)(7), or (a)(8) only if the correction is first approved by at least two of the following officials: (1) The township assessor, (2) The county auditor, (3) the county assessor. If two of these officials do not approve such a correction, the county auditor shall refer the matter to the county PTABOA for determination. If the taxpayer disagrees with the PTABOA's decision on the Form 133, then he may appeal to the division of appeals for a final administrative determination. Ind. Code § 6-1.1-15-12. Form 133 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 133 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, the State will decide whether the issue raised on the Form 133 petitions is the type of alleged error that can be corrected by way of such petition.

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.

3. The State is entitled to presume that the local assessment is 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 the agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995).
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). (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).
5. “. . . [W]hen a taxpayer challenges a real property assessment, the State need not search the property to find errors, the correction of which is beneficial to the taxpayer. Rather, the State has every right to expect that any errors in an assessment will be brought to the State’s attention by the taxpayer.” *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1997), petition for review filed January 19, 1999, (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
6. Taxpayers are required “to do something more than simply allege that an error exists in the assessment” *Whitley*, 704 N.E. 2d at 1119.
7. Taxpayers are expected to make detailed factual presentations to the State 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)).

8. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State 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)).
9. In order to meet his burden in the State's administrative proceedings, the taxpayer must present probative evidence in order to make a prima facie case. 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).
10. The local taxing officials do not even have the responsibility to make a case until the taxpayer sustains his burden of proof regarding the alleged error in the assessment. 2 Charles H. Koch, Jr. at § 5.1; 73 C.J.S. at § 128. *See also Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State 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).
11. The Form 133 petition is denied for the failure of the taxpayer or its 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