

**STATE OF INDIANA
Board of Tax Review**

HUGH F. & BETTY LEE ROBBINS) On Appeal from the Marion County
) Board of Review
Petitioner,)
)
v.)
) Petition for Correction of Error, Form 133
MARION COUNTY BOARD OF) Petition No. 49-200-97-3-7-00001
REVIEW AND DECATUR TOWNSHIP) Parcel No. B102865 – Personal Property
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 motor home has been valued correctly on the personal property assessment.

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, Hugh and Betty Robbins (Petitioner), filed a Form 133 petition on July 25, 1997. The Marion County Board of Review (County) issued their Final Determination on November 14, 1997. The Form 133 for Correction of Error was subsequently forwarded to the State for review on December 10, 1997.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on October 20, 2001, before Hearing Officer Paul Stultz. Testimony and exhibits were received into evidence. The Petitioner did not attend the hearing. Mr. Charles L. Coleman represented Decatur Township.

4. On September 28, 2001, in lieu of attending the appeal hearing, Mr. Robbins submitted a written statement to the State. The written statement has been entered in to the record and labeled Petitioner's Exhibit 1.

5. At the hearing, the Form 133 petition was made a part of the record and labeled as Board Exhibit A. The Form 117 Notice of Hearing on Petition was labeled as Board Exhibit B. In addition, the following exhibits were submitted into evidence:

Petitioner's Ex. 1 – one page written statement, dated September 28, 2001.

Respondent's Ex. 1 – a copy of the Petitioners' 1997 Individual Tangible Personal Property Assessment (Form 101), a copy of the 1997 Notice of Assessment of Personal Property (Form 113), a copy of the Indiana

Certificate of Vehicle Registration, dated August 5, 1996 and a one page description of the subject property.

Respondent's Ex. 2 – copies of the Individual Tangible Personal Property Assessment (Form 101) for 1993, 1994, 1995, 1996, 1998, 1999, 2000, and 2001, copies of the Notice of Assessment of Personal Property (Form 113) for 1993, 1994, 1995, 1998, 1999, and 2000, copies of the Indiana Certificate of Vehicle Registration, dated August 10, 1993 and August 10, 1994, a copy of Form 133, Correction of Error for March 1, 1995, a copy of a note from Mr. Robbins to the Decatur Township Assessor, and copies of a one page description of the subject property for 1999, 2000, and 2001.

6. The personal property is a 1985 Honey Class C 21-foot motor home located at 4314 Standish Drive, Indianapolis, Decatur Township, Marion County.
7. The assessed value for the subject property as determined by the County for the assessment year of March 1, 1997 is \$2,150.
8. The Hearing Officer did not view the subject property.

Whether the motor home is valued correctly

9. In the Petitioner's written statement, the Petitioner failed to reference the motor home or any specific errors to the assessment. *Petitioner's Exhibit 1.*
10. The 1985 Honey Class C motor home was assessed by the Decatur Township Assessor's office according to the book value from 1993 and 1994. In 1995 the Petitioners filed a complaint (Form 133) to the local officials to reduce the assessed value to \$2,500, the officials accepted the reduction in value. In 1996, the Assessor reduced the 1995 assessment value ten percent (10%), five percent (5%) for the county's average normal depreciation and five percent (5%) for extraordinary repairs. Finally, in 1997, the 1996 assessed value of the motor

home was reduced five percent (5%) for a value of \$2,150. *Coleman testimony. Respondent's Exhibits 1 & 2.*

Conclusions of Law

1. Under the law applicable to these proceedings, the Petitioner is statutorily limited to the issues raised on the Form 133 petition filed with the County Board of Review (County) or issues that are raised as a result of the County's action on the Form 133 petition. Ind. Code §§ 6-1.1-15-1, 2.1, and 4 (Statutes were amended in 2001 but amendments do not apply). See also the Form 133 petition. 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 Assessment 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 Board of Review for determination. If the taxpayer disagrees with the County's decision on the Form 133, then he may appeal to the State 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 County 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, such discretion will not be exercised and the Petitioner is limited to the issue raised on 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. Burden

3. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the County, 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)).
4. In reviewing the actions of the County, 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.
5. 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)).

6. 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.
7. 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).

Whether the motor home is valued correctly

8. Pursuant to Ind. Code § 6-1.1-1-11 (a)(4), personal property is defined as motor vehicles, mobile houses, airplanes, boats not subject to the boat excise tax under Ind. Code § 6-6-11, and trailers not subject to the trailer tax under Ind. Code § 6-6-5.
9. Pursuant to 50 IAC 4.2-15-2 (c), the State prescribes publications for determining the true tax value of motor homes.
10. If the particular make or model is not included in the prescribed publication, the true tax value shall be the cost less a reasonable allowance for depreciation. 50 IAC 4.2-15-2 (e).
11. The Petitioner has been assessed for a 1985 Honey Class C motor home.

12. In the Petitioner's written statement, they failed to address or develop the issue of the motor home being valued incorrectly. No evidence was presented to show the statute or regulation was not properly applied to the assessment. The Petitioner did not make a prima facie case on the evidence presented.
13. To repeat, taxpayers are required "to do something more than simply allege that an error exists in the assessment..." *Whitley*, 704 N.E. 2d at 1119; *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 890, 893 (Ind. Tax 1995).
14. For all reasons stated above, the Petitioner failed to meet his burden of proof in this appeal. Accordingly, no change is made in the assessment as a result of this issue.

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