

**STATE OF INDIANA  
Board of Tax Review**

|                             |   |   |
|-----------------------------|---|---|
| INLAND MORTGAGE CORP. k/n/a | ) | On Appeal from the Marion County            |
| IRWIN MORTGAGE CORP.,       | ) | Board of Review                             |
|                             | ) |   |
| Petitioner,                 | ) |   |
|                             | ) |   |
| v.                          | ) | Petition for Review of Assessment, Form 131 |
|                             | ) | Petition No. 49-800-96-1-5-90000            |
| MARION COUNTY BOARD OF      | ) | Request for Refund of Penalty               |
| REVIEW and WASHINGTON       | ) |   |
| TOWNSHIP ASSESSOR,          | ) |   |
|                             | ) |   |
| Respondents.                | ) |   |

**Findings of Fact and Conclusions of Law**

The Indiana Board of Tax Review (State Board), having reviewed the facts and evidence, and having considered the issues, now makes the following findings of fact and conclusions of law.

**Issues**

1. Whether the Marion County Treasurer follows proper procedure regarding collection of property tax payments and late payment penalties.
2. Whether the imposition of penalties for late payment of property taxes is excessive and disproportionate in violation of Article I, § 16 of the Indiana Constitution and the Eighth Amendment to the United States Constitution.

**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 § 6-1.1-15-3, Mary Titsworth Chandler of Wooden & McLaughlin LLP on behalf of Inland Mortgage (Petitioner) filed a Form 131 petition requesting a review by the Appeals Division. The Form 131 petition was filed on January 27, 1998.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on November 16, 1999 before Hearing Officers Ken Daly and Marilyn Meighen. Testimony and exhibits were received into evidence. Dale Eikenberry, with Wooden & McLaughlin LLP, Bob Griffith, David Thompson, Bill Meyer and Andy Seiwert, Office of Corp. Counsel represented the Petitioner. Greg Jordan, Marion County Treasurer, A. Peter Amundson, Washington Township Assessor, and Monty Combs with the Marion County Treasurer's Office represented Marion County and Washington Township.
4. At the hearing, the subject Form 131 petition was made a part of the record and labeled Board Exhibit A. Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following exhibits were submitted as evidence to the State Board:  
Petitioner Exhibit A – Property System Cash Balancing Report by parcel number  
dated May 14, 1997 and July 18, 1997  
Petitioner Exhibit B – Basis for Claim  
Petitioner Exhibit C – Affidavit of Tonya Osborne
5. It was determined the parcels involved in this appeal are scattered throughout Marion County. On November 4, 1999 the State Board issued a letter to all other townships informing them of the hearing scheduled for November 16, 1999 and for them to attend and submit any evidence they deemed pertinent to the issue of penalties imposed. This letter is labeled Board Exhibit C.
6. At the hearing, Hearing Officer Meighen requested additional information from the Petitioner pertaining to the mortgage forms and representative payment

letter. Petitioner was given two (2) weeks from the date of the hearing to respond. On November 22, 1999 the State Board received the information requested and is labeled as Petitioner Exhibit D.

7. The Petitioner is a mortgage company who escrows their customer's monies for the payment of property taxes. Their customer base in this appeal is in excess of 6,000 parcels. *Petitioner Exhibit A.*
8. Ind. Code § 6-1.1-22-9(a) states, "Except as provided in Ind. Code § 6-1.1-7-7 and subsection (b), the property taxes assessed for a year under this article are due in two (2) equal installments on May 10 and November 10 of the following year."
9. The Petitioner was required to pay property taxes in an aggregate amount by May 10, 1997. Since May 10, 1997 fell on a Saturday the taxes were then due and payable by the next succeeding day that was not a Saturday, a Sunday, national legal holiday recognized by the federal government, or a statewide holiday. Ind. Code § 6-1.1-37-10(b). In this case, the property tax payment was due on Monday May 12, 1997.
10. The Petitioner prior to the due date prepared the tax payment checks along with a magnetic tape of its loan customers to be sent to the Marion County Treasurer's Office. This information was to be bundled together for drop off to United Parcel Service (UPS) no later than May 12, 1997. On the morning of May 13, 1997 it was discovered the checks and magnetic tape were not delivered to the UPS drop off on May 12, 1997 as planned, because the employee responsible for this action was out of the office ill. *Eikenberry testimony, Petitioner Exhibit C.*
11. Upon the discovery of the failure to complete this process, the checks and magnetic tape were hand delivered to the Marion County Treasurer's Office on the morning of Tuesday May 13, 1997. It was at this juncture that the Petitioner

was informed that the payment was considered delinquent. *Eikenberry testimony, Petitioner Exhibit C.*

12. Ind. Code § 6-1.1-37-10(a) states in part, “If an installment of property taxes is not completely paid on or before the due date, a penalty equal to 10% of the amount of delinquent taxes shall be added to the unpaid portion in the year of the initial delinquency.”
13. It is the Petitioner’s contention that Ind. Code § 6-1.1-37-10 as written and applied is unconstitutional under the Indiana Constitution, Article I, § 16. That it also violates the Eighth Amendment to the United States Constitution. *Eikenberry testimony & Petitioner Exhibit B.*
14. It is the contention of the Petitioner that the penalty is disproportioned to the nature of the offense and since no harm was done to the County, it is therefore excessive. The Petitioner attempts to make a differentiation between being a single day late as opposed to a year late. The Petitioner feels the penalty should be graduated based on the date on which the delinquent tax is paid. *Eikenberry testimony & Petitioner Exhibit B.*
15. The Respondent voices a concern for setting a precedent if the penalty is voided. The penalty applied is the same 10% regardless if it is an individual taxpayer or a corporation. The Petitioner is being treated fairly and in a consistent manner as it relates to property tax penalties. *Jordan testimony.*

### **Conclusions of Law**

1. The Petitioner is statutorily limited to the issues raised on the Form 130 petition filed with the County Board of Review (County Board) or issues that are raised as a result of the County Board’s action on the Form 130 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. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the County Board. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the County Board disagree with the County Board's decision on the Form 130, then a Form 131 petition may be filed with the State Board. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by the County Board and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State Board, however, the State Board has the discretion to address issues not raised on the Form 131 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 issues raised on the Form 131 petition filed with the State Board.

2. The State Board is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

#### **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 Board’s decision.

### **B. Burden**

7. 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 initial assessment or undertake reassessment of the property. The State Board 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 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). 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. 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).
10. Taxpayers are expected to make factual presentations to the State Board 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 Board 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 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.
12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State Board is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State Board 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.<sup>2</sup> 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).

### **C. State Boards Statutory Authority**

15. Before the State Board addresses the issues in this appeal, the State Board must first determine whether or not it has authority to decide the issues in this appeal.
16. The State Board is a creation of the Legislature and therefore, only has those powers conferred by statute. *Whetzel v. Department of Local Government Finance*, 2002 WL 64547, (Ind. Tax 2002) citing *Matonovich v. State Board of Tax Commissioners*, 705 N.E. 2d 1093, 1096 (Ind. Tax 1999) & *Hoogenboom-Nofziger v. State Board of Tax Commissioners*, 715 N.E. 2d 1018, 1021 (Ind. Tax 1999).



17. When construing a statute, it is equally as important to recognize what the statute does not say as it is to recognize what it does say. *Whetzel*, 2002 WL 64547, citing *City of Evansville v. Zirkelbach*, 662 N.E. 2d 651, 654 (Ind. App. 1996).
18. Therefore, the State Board can only decide whether the Petitioner owed the penalty if it is statutorily empowered to do so. The State Board was empowered to review appeals concerning the following: (1) the assessed valuation of tangible property; (2) property tax deductions; (3) property tax exemptions; or (4) property tax credits; that were made from a determination by an assessing official or county PTABOA to the State Board under any law. Ind. Code § 6-1.5-4-1(a).
19. This statute granted the State Board power to review only appeals concerning matters enumerated therein. The statute did not grant any power to the State Board to review penalties imposed by the County for the late payment of property taxes, or whether the correct procedure for collecting payments and penalties was followed by a county.<sup>1</sup>
20. Accordingly, the State Board does not have the authority to decide the issues raised in this appeal.

Issued this \_\_\_\_ day of \_\_\_\_\_, 2002  
By the Indiana Board of Tax Review

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<sup>1</sup> The Petitioner filed a Form 131 petition in this appeal. The statute governing the Form 133 petition does reference penalties, however the statute states that the auditor is required to correct mathematical errors in computing penalties on taxes. Ind. Code § 6-1.1-15-12(4). However, there is nothing in the statute that provides for the determination of whether a penalty was properly imposed.