

**STATE OF INDIANA
Board of Tax Review**

J & B Real Estate Development)	On Appeal from the Kosciusko County
)	Property Tax Assessment Board of
)	Appeals
Petitioner,)	
)	Petition for Correction of Error, Form 133
v.)	
)	
KOSCIUSKO COUNTY PROPERTY)	Petition No. 43-026-95-3-3-00008
TAX ASSESSMENT BOARD OF)	
APPEALS And TURKEY CREEK)	Parcel No. 008-025-008
TOWNSHIP ASSESSOR)	
)	
Respondents.)	

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 assessor failed to notify the taxpayer of the rehabilitated property deduction pursuant to Ind. Code § 6-1.1-12-22¹.

¹ The Form 133 petition refers to a "rehab credit per Ind. Code § 6-1-12-22". However, based on the attachments the Petitioner is referencing the rehabilitated property tax deduction found in Ind. Code § 6-1.1-12-22.

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(d), M. Drew Miller, on behalf of J & B Real Estate Development (Petitioner), filed a petition requesting a correction of an error for the 1995 tax year. The Form 133 was filed on November 21, 1996. The County Board of Review's Final Determination is dated October 25, 1996.
3. The subject property is located at 207 Chicago Street, Syracuse, Indiana (Turkey Creek Township, Kosciusko County). The assessed value under appeal is \$6,230 (land) and \$283,970 (improvements). The subject is an industrial property.
4. The Petitioner contends, on the Form 133 petition, that the assessor failed to notify it of the availability of a rehabilitated property deduction.
5. The Petitioner was given a Form 11, Notice of Assessment, on November 20, 1995. The reason for revision of assessment listed on the Form 11 is "General Revaluation".
6. The Petitioner filed for the rehabilitation deduction on May 9, 1996.
7. The Petitioner also filed another petition on this parcel for the 1995 assessment year. That petition (#43-026-95-1-4-00013) was a Form 131 and the issues listed were Grade and Obsolescence. The Petitioner and the Township Assessor reached a stipulated agreement on both issues. A Notice of Stipulated Agreement Order of Dismissal was issued on September 11, 2001.

Conclusions of Law

1. The Petitioner is limited to the issues raised in the Form 133 petition filed with the State Board. Ind. Code § 6-1.1-15-1(e) and –3(d). See *also* Form 133 petition requiring the Petitioner to identify the specific error to be corrected. The State Board 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 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. Use fo the Form 133 to appeal the Rehabilitated property deduction pursuant to Ind. Code § 6-1.1-12-22

3. The Petitioner filed the Form 133 petition claiming that through an error of omission by any state or county officer the taxpayer was not given credit for an exemption or deduction permitted by law. The Petitioner explained the error as “assessor failed to notify taxpayer of rehab credit per I.C. 6-1-12-22”. Based on the attachments to the Form 133, the Petitioner is referring to the rehabilitated property deduction found in Ind. Code § 6-1.1-12-22.
4. A Form 133 petition is available only for those errors that can be corrected without resort to subjective judgment. *Reams v. State Board of Tax Commissioners*, 620 N.E. 2d 758 (Ind. Tax 1993).
5. On the Form 133, the Petitioner claims that through error of omission the taxpayer was not given credit for an exemption or deduction permitted by law. Pursuant to 50 IAC 4.2-3-12(g)(3), this provision does not apply to every error that a taxpayer might claim was made in the determination of eligibility for an

exemption or deduction. The statutory language specifies “error of omission”. Consequently, if an exemption or deduction was acted upon by the appropriate officials and was wholly or partially denied the Form 133 does not apply. The Form 133 applies if the exemption or deduction was wholly or partially approved, but there was an omission which resulted in the taxpayer not being given the credit. See *also* STB Instructional Bulletin No. 94-7, Section III.

6. The error described by the Petitioner is not an error of omission as described above.
7. The determination of whether property qualifies for the rehabilitation deduction would require subjective judgment, therefore the Form 133 would not be the proper form of appeal.
8. Pursuant to Ind. Code § 6-1.1-12-25.5, a taxpayer may appeal a ruling that wholly or partially denies a deduction claimed in the same manner that appeals may be taken under Ind. Code § 6-1.1-15.

B. Summary

9. For all of the above reasons, the error described is not correctable on a Form 133 petition. There is no change 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