

**STATE OF INDIANA
Board of Tax Review**

MATERIALS HANDLING EQUIPMENT CORPORATION)	On Appeal from the Elkhart County Board of Review
)	
Petitioner,)	
)	
v.)	Petition for Correction of Error, Form 133
)	
ELKHART COUNTY BOARD OF REVIEW And CONCORD TOWNSHIP ASSESSOR)	Petition No. 20-025-97-3-7-00008
)	
Respondents.)	Personal Property

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 Petitioner was billed twice for the same business personal property tax 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, Materials Handling Equipment Corporation (MHEC) filed a Form 133, Petition For Correction of an Error. The Elkhart County Board of Review (Board of Review) denied the Form 133 on September 14, 1998. On September 23, 1998, the Petitioner provided additional information to the Board of Review. On October 6, 1998, the County Auditor's office sent a letter to the Petitioner stating that since the Board of Review has already acted on the petition, no action could be taken on the information. The Petitioner then appealed to the State.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing held on December 18, 2001 before Hearing Officer Joseph Stanford. Testimony was offered at that time. Anthony J. Sage represented the Petitioner. Bob Price represented Concord Township. No one appeared on behalf of Elkhart County.

4. At the hearing, the subject Form 133 petition, and attachments, was made part of the record and labeled Board Ex. A. The Notice of Hearing on Petition is labeled Board Ex. B. Neither party submitted any additional items into evidence.

5. The personal property that is the subject of this appeal is located at 2730 Middlebury Street, Elkhart, Concord Township, Elkhart County. The assessed value of business personal property on the tax bill in question is \$82,140.

6. MHEC is in the business of selling and leasing forklifts. On March 1, 1997, it had equipment located in Elkhart County, Concord Township, at three different customer locations. *Sage Testimony, Board Ex. A.*

7. On April 22, 1997, MHEC filed separate Business Tangible Personal Property Returns for each of the three locations, even though all three customers are located in the same township. The total assessed value in Concord Township for the March 1, 1997 assessment date is \$118,170, broken down as follows:

Accra Pac, Inc.	\$82,140
Health Care Industries	13,840
Kem Krest Corporation	22,190

These amounts agree to the assessed values as reported on the Business Tangible Personal Property Returns. *Id.*

8. On August 27, 1997, Concord Township Assessor Bob Price mailed a Notice of Assessment Change to MHEC, combining the three separate assessed values into one total value of \$118,170. This was the only notice mailed by Mr. Price or received by MHEC. *Sage and Price Testimony, Board Ex. A.*
9. In April, 1998, MHEC received a tax bill for the combined assessed value of \$118,170, and a separate tax bill for the assessed value of \$82,140 located at Accra Pac, Inc. *Sage Testimony, Board Ex. A.* Mr. Sage contends, therefore, that MHEC has erroneously been billed twice for the personal property located at Accra Pac, Inc., because it has also been included in the combined bill. Mr. Price agrees with Mr. Sage, and would have filed a petition himself if he were aware of the error.

Conclusions of Law

1. The Petitioner is limited to the issues raised on the Form 133 petition filed with the State. See 50 IAC 17-5-3, Form 133, and Ind. Code § 6-1.1-15-12. The State 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.

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

A. Burden

3. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the County (or PTABOA), but 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).

B. Whether the Petitioner was billed twice for the same business personal property tax assessment

8. MHEC contends that it was billed twice for property located at Accra Pac, Inc., 2730 Middlebury Street, Elkhart.
9. The evidence submitted with the Form 133 petition (Board Ex. A) includes copies of Business Tangible Personal Property Returns filed at the three locations in Elkhart County. Also included is the Notice of Assessment Change, which combines the three assessments into one total of \$118,170. The assessed value of the property reported at Accra Pac, Inc. is \$82,140.
10. Also attached to the Form 133 petition are the two bills received by MHEC. Duplicate #7517249 correctly shows the combined assessed value of \$118,170. This duplicate, according to the legal description listed on the bill, includes the property located at Accra Pac, Inc. However, a second bill received, Duplicate #7517251, again lists property located at Accra Pac, Inc. The assessed value of

this property is \$82,140. This assessed value is identical to that reported on the Business Tangible Personal Property Return, and listed on the Notice of Assessment Change, as located at Accra Pac, Inc.

11. The evidence is clear, and the testimony undisputed, that the property included on Duplicate #7517251 has already been billed, in its entirety, on Duplicate #7517249.
12. Based on the representations of the parties, the State Board finds that payment of the amount shown to be due on Duplicate #7517251 would amount to double-taxation of the property. The amount of personal property tax owed by MHEC for the 1997 assessment year shall consist only of the amount shown due on Duplicate #7517249.

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 this by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review