STATE OF INDIANA
Board of Tax Review

MIGNONE COMMUNICATIONS, INC.	)	On Appeal from the Department of Local Government Finance
Petitioner,	)	
v.	)	Review of Application for ERA Deduction Petition Nos. 35-005-00-4-9-10000 35-005-00-4-9-10001
DEPARTMENT OF LOCAL GOVERNMENT FINANCE	)	
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 tax abatement calculation by the Department of Local Government Finance (DLGF) is incorrect.

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. Mignone Communications, Inc. (Mignone) is a provider of pre-press services, and is located in Huntington, Indiana (Huntington County, Huntington Township). The Common Council of Huntington approved tax abatement for Mignone, which is located in an economic revitalization area, for a ten-year period.

3. Pursuant to Ind. Code § 6-1.1-12.1-5.7(h)*, Mignone filed written notice of its intention to appeal. The appeal was filed on October 12, 2001. The DLGF determinations concerning the amount of tax abatement allowed are dated September 17, 2001. The tax year under appeal is 2000, which is the second year of the abatement.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held before Hearing Officer Joseph Stanford on March 13, 2002. Thomas A. Karst (Vice President of Finance), Cheryl L. Blinn, and Thomas N. Scheer (Accounting Manager) represented Mignone. Beth Henkel (General Counsel), Lisa L. Acobert (Deputy Commissioner), and Brenda A. Harris (Abatement Specialist) represented the DLGF.

5. The following items are labeled as Board Exhibits:
   Board Ex. A – Written notice of Mignone's intention to appeal.
   Board Ex. B – Notice of hearing.
   Board Ex. C – List of Mignone's witnesses, and Mignone's exhibits.
   Board Ex. D – Summary of Mignone's intended testimony.
   Board Ex. E – DLGF abatement determination.

* Ind. Code § 6-1.1-12.1-5.7 replaces Ind. Code § 6-1.1-12.1-5.5 which was repealed effective 1-1-02.

6. At the hearing, the following exhibits were submitted to the State:
Respondent's Ex. 1 – Ind. Code §§ 6-1.1-12.1-4.5 and -4.6.
Respondent's Ex. 2 – Proposed House Bill No. 1196.

7. The tax abatement determination being appealed awards abatements of $380,670 assessed valuation (Petition 35-005-00-4-9-10000) and $74,800 assessed valuation (Petition 35-005-00-4-9-10001). The Hearing Officer did not view the property.

8. Mignone contends that the 40% true tax value percentage used by the DLGF to calculate the tax abatement is incorrect. Mignone contends the proper percentages are 60% and 56%, which match the pooling schedule percentages for the assets in question. Mignone also contests the five years of abatement shown by the DLGF determination versus ten years allowed by the City Council on its corrected abatement resolutions. *Scheer testimony.*

9. The DLGF defends its position by stating that the abatement calculation is based on a first year deduction limit. This deduction limit is then applied to the calculation for subsequent years. Therefore, the 40% limit established in the first year, 1999, is correctly applied to the 2000 abatement. *Harris testimony.* Ms. Harris agrees that the abatement should be adjusted from five years to the ten years approved by the City Council.

10. Ms. Henkel stated that a bill is currently under consideration in the Indiana legislature (See Respondent's Ex. 2) that would change the law concerning tax abatement and require the exact calculation that Mignone is requesting in the case at bar. Ms. Henkel, however, contends that Mignone's tax abatement was calculated correctly in this case.

11. While Mr. Scheer understands and accepts the DLGF's explanation as a result of this hearing, he contends that the current law is misleading to both taxpayers and assessors.

Conclusions of Law

1. The State is the proper body to hear an appeal of a DLGF determination of an ERA deduction pursuant to Ind. Code § 6-1.1-12.1-5.7(h).

2. In reviewing the actions of the DLGF, 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.

3. 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.

4. 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)).

5. 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.

6. 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).

7. In the event a taxpayer sustains his burden, the burden then shifts to the DLGF to rebut the taxpayer's evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128.

Conclusions Regarding the ERA Deduction

8. The authority and responsibility to determine the amount of an ERA Deduction rests with the DLGF. Ind. Code § 6-1.1-12.1-5.7(e).

9. Mignone has challenged the amount of the deduction calculated by the DLGF. While the true tax value percentage used in the DLGF's calculation is 40%, Mignone contends that the percentage used should equal the percentage that Mignone was required to value the asset on its business personal property return. The evidence and testimony consists of reference to statutes by each party. The parties disagree on the interpretation of these statutes.

10. Pursuant to Ind. Code § 6-1.1-12.1-4.5(d), "the amount of deduction that an owner is entitled to for a particular year equals the product of: (1) the assessed value of the new manufacturing equipment or new research and development equipment, or both, *in the year the equipment is installed;* multiplied by (2) the percentage prescribed in the table set forth in subsection (e)." (Emphasis added). Thus, according to Ind. Code § 6-1.1-12.1-4.5(d), a taxpayer's deduction is limited to the amount computed in the first year of the abatement, or the year

the equipment is installed. A taxpayer is not, then, entitled to an amount equivalent to the true tax value of the equipment as reported on the business personal property return if that amount is greater than the first year's deduction.

11. While this statute requires very little interpretation, further evidence that the DLGF's interpretation is correct comes from a proposed law to change the deduction limitations to exactly what Mignone is requesting in this case (Respondent's Ex. 2). Again, however, the law currently in effect limits Mignone's deduction to that which was received in the first year of the abatement.

12. For the reasons stated, the deduction amount computed by the DLGF is determined to be correct, and no change in the amount is warranted.

13. A change, however, must be made to the number of years of the abatement shown on Petition 35-005-00-4-9-10000 by the DLGF. The DLGF calculation (Board Ex. E at 2) shows the abatement to be five years in length. Abatement Resolution 9-R-00, adopted by the Huntington Common Council on June 13, 2000 (Board Ex. C at 31) clearly states that this is a ten year abatement. In accordance with the resolution, the life of the tax abatement on Petition 35-005-00-4-9-10000 must be shown by the DLGF as ten years. For the second year of abatement, the percentage is 95% for both the five year and ten year abatements, therefore no change is made to the amount of abatement.

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.

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Chairman, Indiana Board of Tax Review