

**STATE OF INDIANA
Board of Tax Review**

THE NATIONAL CITY BANK OF EVANSVILLE)	On Appeal from the Vanderburgh County Board of Review
)	
Petitioner,)	
)	Petitions for Correction of an Error, Form 133
v.)	
)	Petition Nos. 82-020-92-3-7-00013
VANDERBURGH COUNTY)	82-020-93-3-7-00021
BOARD OF REVIEW And)	82-020-94-3-7-00025
CENTER TOWNSHIP ASSESSOR)	
)	Personal Property
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 Petitioner incorrectly included application software and real property when filing the business tangible personal property tax returns for the March 1, 1992, 1993, and 1994 assessment dates.

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, Richard Hutmacher with Uzelac & Associates, on behalf of The National City Bank of Evansville (Petitioner), filed three Form 133 petitions requesting a review by the State. The Form 133 petitions were filed with the State on May 15, 1997. The Vanderburgh County Board of Review's (County Board) Assessment Determinations on the underlying Form 133 petitions are dated April 17, 1997.

3. Prior to the scheduled hearing, the Petitioner submitted a letter with attachments. The Petitioner would not be attending the hearing, but wanted the letter and attachments placed in the record.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on November 20, 2001 before Hearing Officer Paul Stultz. Testimony and exhibits were received into evidence. The Petitioner was not present at the hearing. Mr. Rick Barter, County Hearing Officer, represented the Vanderburgh County Board. Mr. John Gerard, Center Township Assessor; and Ms. Rebecca Galey, Center Township Deputy Assessor represented Center Township.

5. At the hearing, the Form 133 petitions were made a part of the record and labeled as Board Exhibits A. Notice of Hearing on Petition is labeled as Board Exhibits B. In addition, the following exhibits were submitted to the State:

Petitioner's Exhibit 1 – copy of letter dated November 16, 2001 addressed to
Hearing Officer

Petitioner's Exhibit 2 – copy of two page statement dated November 20, 1996 to Cheryl Musgrave, President of the County Board, stating the issue and summary

Petitioner's Exhibit 3 – package of documents containing the following for hearing 82-020-92-3-7-00013:

- a. copy of Notice of Hearing
- b. copy of Form 133
- c. copy of Power of Attorney
- d. copy of Petitioner's Exhibit 2
- e. copy of list of the assets in contention
- f. copy of explanation of adjustment
- g. copy of two page asset listing
- h. copy of the revised return

Petitioner's Exhibit 4– package of documents containing the following for hearing 82-020-93-3-7-00021:

- a. copy of Notice of Hearing
- b. copy of Form 133
- c. copy of Power of Attorney
- d. copy of Petitioner's Exhibit 2
- e. copy of list of the assets in contention
- f. copy of explanation of adjustment
- g. copy of two page asset listing
- h. copy of the revised return

Petitioner's Exhibit 5 – package of documents containing the following for hearing 82-020-94-3-7-00025:

- a. copy of Notice of Hearing
- b. copy of Form 133
- c. copy of Power of Attorney
- d. copy of Petitioner's Exhibit 2

- e. copy of list of the assets in contention
- f. copy of explanation of adjustment
- g. copy of two page asset listing
- h. copy of the revised return

Petitioner's Exhibit 6 - copy of UPS envelope with delivery date November 18, 2001, and received date November 19, 2001

Respondent's Exhibit 1 - copy of 1992 Form 103

Respondent's Exhibit 2 - copy of County Board of Review minutes

Respondent's Exhibit 3 - copy of 1991 Form 103

Respondent's Exhibit 4 - copy of subject property record card

Respondent's Exhibit 5 - copy of 1993 Form 103

Respondent's Exhibit 6 - copy of 1994 Form 103

6. The subject property is personal property located at 4659 First Avenue, Evansville, Center, Township, Vanderburgh County.
7. The Hearing Officer did not view the subject property.
8. The assessment dates under appeal are March 1, 1992, 1993, and 1994. The assessed values of record for each year are: 1992 - \$17,240; 1993 - \$17,230; and 1994 - \$17,490.

Were certain assets incorrectly reported?

9. The Petitioner contends that four assets were reported on the Form 103, Business Tangible Personal Property Assessment Return, in error for the assessment dates of March 1, 1992, 1993, and 1994. The Petitioner contends that three assets are real property, and one asset is application software.

10. The assets in contention are:

<u>Asset No.</u>	<u>Description</u>	<u>Cost</u>
1526	Design Fee	\$2,527
1522	Renovations	\$36,100
1521	Electrical Work	\$3,000
1765	Application Software*	\$259

*Described as "Installation Fees" on the fixed asset listing.

11. Included with the Petitioner's exhibits is a page from a fixed asset listing. (Petitioner's Exhibit 3(g)). The Petitioner highlighted the four assets in contention. The assets were acquired in late 1989 and early 1990, and have a 5 to 7 year tax life. There is no title or date on the fixed asset listing.

12. The Respondent claimed that when the petitions were filed, the Petitioner did not provide sufficient justification for the requested decrease. After reviewing the evidence presented at the hearing, the Respondent still takes the position that there is lack of justification for the requested deduction.

Conclusions of Law

1. The Petitioner is limited to the issues raised on the Form 133 petition filed with the State Ind. Code § 6-1.1-15-12. See also the Form 133 petition. 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 issues 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 § 6-1.1-15-3.

A. Burden

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

7. 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.
8. 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).
9. 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.² 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).

B. Were certain assets incorrectly reported?

10. 50 IAC 4.2-4-2(b) states in part:
...the cost of depreciable personal property must include, but not be limited to direct costs and an appropriate portion of indirect cost attributable to its production or acquisition and preparation for use. The cost of machinery, furniture, tools, computers (excluding application software), and other plant assets includes all cost necessary to place the asset in condition and in place, ready for use. These costs include, but are not limited to, the purchase price, transportation costs to the place of use, and installation costs, foundations and electrical wiring, interest incurred during construction and installation, and sales tax.
11. The Petitioner highlighted assets on the detailed fixed asset listing (Petitioner's Exhibit 3(g)). The highlighted assets include installation fees, design fee, renovations, and electrical work. The Petitioner contends that three of the items are assessed as real property, and that the fourth item is application software not assessable as personal property. There is nothing in the evidence presented by the Petitioner that provides any details about the assets in contention. The Petitioner did not appear at the hearing.
12. The limited description in the asset listing does not clearly show that the assets in contention are real property or application software. In fact, based on the limited description, the assets in contention clearly fall within the definition of 50 IAC 4.2-4-2(b), which includes all costs necessary to get an asset in place and ready for use. See ¶10 above. Without further details and descriptions of the assets in contention, the State is unable to determine whether the assets were incorrectly reported as personal property.
13. The Petitioner has the burden to present probative evidence in order make a prima facie case. Providing an asset listing with four items highlighted is not probative evidence.
14. The Petitioner has failed to meet his burden. The Petitioner did not provide probative evidence to support its claim that the assets were incorrectly reported

as personal property. There is no change in the assessments.

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