

**STATE OF INDIANA  
Board of Tax Review**

O'NEAL STEEL	)	On Appeal from the Vanderburgh
	)	County Property Tax Assessment Board
	)	of Appeals
	)	
Petitioner,	)	
	)	
v.	)	Petition for Correction of Error Form 133
	)	Petition Nos. 82-019-96-3-4-00023
VANDERBURGH COUNTY PROPERTY)	)	82-019-97-3-4-00010
TAX ASSESSMENT BOARD OF )	)	82-019-98-3-4-00003
APPEALS And CENTER TOWNSHIP )	)	Parcel No. 0205002140036 (Real)
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 a change from the GCI pricing schedule to the GCK pricing schedule should be made using a Form 133 Petition for Correction of Error.

## 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, Timothy Boyce of Review Corporation filed Form 133 petitions on behalf of O'Neal Steel (the Petitioner). The Form 133 petitions were filed on May 10, 2000 and sought a review of the action of the Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA). The PTABOA notified Mr. Boyce of its determination on May 11, 2001. Mr. Boyce filed the Form 133 petitions with the State on June 6, 2001.
  
3. Pursuant to Ind. Code §6-1.1-15-4, a hearing was held on August 22, 2001 before Hearing Officer Jennifer Bippus. Testimony and exhibits were received into evidence. Mr. Timothy Boyce represented the Petitioner. Mr. Rick Barter, Vanderburgh County Assessor's Hearing Officer, represented the County.
  
4. At the hearing, the subject Form 133 petitions were made a part of the record as Board Exhibit A and the Notices of Hearing on Petition are labeled Board Exhibit B. In addition, the following exhibits were submitted to the State:

Petitioner's Exhibit A - A folder with the following materials included:

- a. A copy of the notice from the Vanderburgh PTABOA to the Petitioner
- b. An outline and discussion of the Appeal prepared by Mr. Boyce
- c. A copy of the Form 130 filed for O'Neal Steel
- d. A copy of a letter sent to the Vanderburgh PTABOA, dated June 9, 1999, from Mr. Boyce
- e. A copy of the documents from the Vanderburgh County Assessor to O'Neal Steel finalizing the findings of the Form 130 hearing

- f. A copy of a letter from the Vanderburgh County Assessor to Mr. Boyce denying the Form 133 Petition for Error on O'Neal Steel
- g. A copy of the Memorandum prepared by Mr. Khris Seger, Vanderburgh County Hearing Officer, on the procedural facts and history of the Form 133 petitions filed on behalf of O'Neal Steel
- h. A copy of a letter sent to the Vanderburgh County PTABOA by Mr. Boyce, dated April 25, 2001, referencing the O'Neal Steel Petition 133 Hearing
- i. A copy of the filing with the Vanderburgh County Auditor for the 133 Petition for Correction of Error to appeal to the State Tax Board
- j. Photographs of the subject property
- k. A copy of the Indiana Case Law - *Bender v. Indiana State Board of Tax Commissioners*
- l. A copy of the Court Case for *Barth, Inc. v. State Board of Tax Commissioner.*
- m. A copy of the Court Case for *Wareco Enterprises, Inc. v. State Board of Tax Commissioners*
- n. A copy of Published Opinion Number Two Hundred and Four [204P], August 7, 1997, *Componx, Inc. V. Indiana State Board of Tax Commissioners*
- o. A copy of the Court Case for *King Industrial Corp. v. State Board of Tax Commissioners*
- p. A copy of the Court Case for *Bock Products, Inc. v. State Board of Tax Commissioners*

Respondent's Exhibit A - A copy of the Discussion of the Issue prepared by Mr. Barter for the subject hearing held August 22, 2001

Respondent's Exhibit B - A copy of the letter sent to O'Neal Steel from Vanderburgh PTABOA finalizing the tax appeal

Respondent's Exhibit C - A copy from the Vanderburgh County Assessor to Mr. Boyce, denying the Form 133 Petition for Correction of Error

Respondent's Exhibit D - A copy of the Form 133 Petition for Correction of Error

Respondent's Exhibit E - A copy of the plat of the subject property

Respondent's Exhibit F - A copy of the Vanderburgh PTABOA's minutes from March 1, 2001 referring to the subject property.

5. The subject property is located at 1323 Burch Drive, Evansville, Indiana, (Vanderburgh County, Center Township).

6. The correct assessed value for March 1, 1996 is:

Land: \$37,070      Improvements: \$898,200      Total: \$935,270.

The correct assessed value for March 1, 1997 and March 1, 1998 is:

Land: \$37,070      Improvements: \$744,370      Total: \$781,440.

7. The Hearing Officer did not view the subject property.

**Issue - Whether a change from the GCI pricing schedule to the GCK pricing schedule should be made using a Form 133 Petition for Correction of Error.**

8. The assessment change made by the County via the Form 130 for 1999 should be correctable back to the years 1996, 1997, and 1998, using Form 133 Petitions for Correction of Error. The County admittedly made an error in the schedule selection for the subject building as of 1999 and the same schedule consideration should be given for the prior years. The errors were clearly caused by the misuse of Regulation 17 and this resulted in the taxpayer being unfairly taxed for the years 1996, 1997, 1998. *Boyce Testimony.*

9. The Legislature made the Form 133 petition as a means for taxpayers to address situations where the property has been assessed incorrectly. The error is clearly objective and not a subjective issue at this point. It does not take any judgment to decide if a metal building is a metal building. *Boyce Testimony.*

10. There are various court cases addressing this issue from the 1989 reassessment period, but to his knowledge none exist for the 1995 reassessment period. *Boyce Testimony. Petitioner's Exhibits A(k),(l),(m),(n),(o),(p).*
11. The County used the *Paul Bender v. State Board of Tax Commissioners* court case to establish that a Form 133 could not be used, but this case pertains to two models (GRC v. GCM) that are similar in nature. The judge decided because of the similarities in the models that this was not a decision automatically mandated by a straightforward finding of fact. *Petitioner's Exhibit A(k).*
12. In the court cases presented as Petitioner's Exhibits A (l,m,n,o,p) the court held that if something is conspicuous and reasonable, it is objective. In this case, an untrained eye can determine a GCK metal building. It is objective and the schedule provides a definitive description. *Boyce Testimony.*
13. The County contends that the selection of the GCK schedule is a subjective issue and not allowed to be changed on a Form 133 petition. The statute does not allow subjective issues to be addressed on Form 133 petitions. If Form 130 petitions had been filed for all years (1996, 1997, 1998), the situation could have been addressed. The Form 133's, filed after the fact, are not allowable. *Barter Testimony.*

### **Conclusions of Law**

1. The Petitioner is statutorily limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA'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 PTABOA. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. 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 PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State 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.

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. 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’s decision.

### **B. Burden**

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

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 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 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)).
11. The taxpayer's burden in the State'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 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.

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. 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's final determination even though the taxpayer demonstrates flaws in it).

### **C. Review of Assessments After *Town of St. John V***

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property's market value will fail.
16. Although the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.

17. Town of St. John V does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

**D. Issue - Whether a change from the GCI pricing schedule to the GCK pricing schedule should be made using a Form 133 Petition for Correction of Error.**

18. The Petitioner's argument is that the County admitted to an error by correcting the selected schedule used for the subject building. The County changed the building from the GCI schedule to the GCK schedule via the Form 130 petition filed for 1999 with the PTABOA. The Petitioner now comes forward and files Form 133 petitions for tax years 1996, 1997, and 1998 and opines that since the County changed the subject building to the GCK schedule for 1999, the subject building should also be taxed at that same base rate for 1996, 1997, and 1998. The Petitioner contends that the Form 133 petition can be used for such a change due to the fact the County admitted to the error and the issue is not a subjective one at this time, but an objective issue.
19. The County, on the other hand, admits that the change in the selected pricing schedule was made for 1999, but that the Form 130 is the appropriate form to use. The County contends that if the Petitioner had filed Form 130 petitions for the years 1996, 1997, and 1998, the issue could have been addressed. The County further contends that that even though the change was made for 1999, the Form 133s for the prior years are still inappropriate for a schedule change.
20. Under the current regulation, the reproduction cost for commercial and industrial property is the base rate for the selected association grouping less adjustments. 50 IAC 2.2-10-6.1 and 2.2-11-5. As previously noted, the term "association grouping" was introduced by the 1995 Regulation. Previously, the term "model" was the commonly used descriptive term.

21. 50 IAC 2.2-10-6.1 identifies four association groupings to be used for the selection of the appropriate base rate. These four groupings are: (1) General Commercial Mercantile (GCM), (2) General Commercial Industrial (GCI), (3) General Commercial Residential (GCR), and (4) General Commercial Kit (GCK).
22. The GCK association grouping was added to the 1995 Regulation to value pre-engineered and pre-designed pole buildings. Selecting the GCK association grouping instead of another grouping is not a straightforward finding of fact. Rather, subjective judgment is used to select the appropriate association grouping. First, as part of the assessment analysis, the assessor must necessarily decide whether the physical attributes of the building under review more appropriately fall within the purview of one association group or another. Also, in deciding whether the GCK association grouping should be used, the assessor must decide whether the building under review is a pre-engineered building and whether the frame type is light metal/wood siding. 50 IAC 2.2-11-5, Schedule A.4.
23. The County changed the assessment of the subject property to the GCK schedule during the PTABOA hearing via a Form 130 petition. As stated above, the selection of the GCK schedule is not a straightforward finding of fact. Each individual makes their own judgment and they may not always agree. In this case, after the Township Assessor assigned the selection of schedule, the PTABOA (made up of several individuals) decided the original selection of the GCI schedule was incorrect and reassigned the GCK schedule. Once again this was a subjective issue taken care of via a Form 130 - Petition for Review of Assessment. The final determination from the Form 130 is valid for the year in which it was filed.
24. The Petitioner stated that the Form 130 was handled correctly. At issue in this case is whether the decision on the Form 130 is valid for previous years on a Form 133 - Petition for Correction of Error. Errors arising from an assessor's

subjective judgment are not the type of errors that can be corrected by way of Form 133 petition. *Hatcher v. State Board of Tax Commissioners*, 561 N.E. 2d 852 (Ind. Tax 1990).

25. 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).
26. Schedule selection involves subjective judgment. Therefore, a Form 133 petition is not the appropriate petition with which to challenge an alleged error made in the selection of schedules. In *Bender v. State Board of Tax Commissioners*, 676 N.E. 2d 1113, 1116 (Ind. Tax 1997) the Tax Court held:

Clearly, the assessor must use his judgment in determining which schedule to use. It is not a decision automatically mandated by a straightforward finding of fact. The assessor must consider the property in question, including its physical attributes and predominant use, and make a judgment as to which schedule is most appropriate. Just as the assessor must use subjective judgment to determine which base price model to employ within these schedules, so too the assessor must exercise his or her discretion to determine which schedule to use. In some cases, this decision will be a closer call than in others, but regardless of the closeness of the judgment, it remains a judgment committed to the discretion of the assessor. (Citations omitted).

27. In the case at hand, the Form 130 was used to make a schedule change. The decision on the Form 130 does not carry back to other years and the assessment is only allowed for the year appealed on the Form 130, which, in this case, is 1999. The Tax Court was very clear on this in *Reams v. State Board of Tax Commissioners*, 620 N. E. 2d at 759. In *Reams*, a taxpayer filed a Form 133

petition requesting a retroactive reduction in the grade and design factor assigned to his property. The Court rejected this use of the petition.

28. As clearly stated above, there is no provision to allow the use of a Form 133 for schedule changes. Therefore, the change requested on the Form 133 petitions for 1996, 1997, and 1998 will not be allowed in this case, regardless of the outcome of the Form 130 petition.
29. The Form 133 petitions are denied for all of the reasons set forth above. No change in the assessment is made.

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