

REPRESENTATIVES FOR PETITIONER: Ralph Campbell, Property Valuation, Inc.

REPRESENTATIVES FOR RESPONDENT: Brenda Brittain, Morgan County Assessor; Reva Brummett, Consultant for PTABOA

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

PBF INVESTMENTS, LLC)	Petitions for Correction of Error
)	Form 133s
Petitioner)	
)	Petition Nos.: 55-005-00-3-4-00001
)	55-005-01-3-4-00001
)	County: Morgan
v.)	
)	Township: Brown
BROWN TOWNSHIP ASSESSOR,)	
)	Parcel No.: 021-05-14-200-002-005
Respondent)	
)	Assessment Years: 2000 and 2001
)	

Appeal from the Final Determination of the
Morgan County Property Tax Assessment Board of Appeals

[December 5, 2002]

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issues

1. The issues presented for consideration by the Board were:

ISSUE 1 – *Whether a Form 133 can be used to change the pricing schedule of a structure.*

ISSUE 2 – *Whether the subject structure should be valued from the GCK pricing schedule.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-12 Ralph Campbell, Property Valuation Services, Inc. filed Form 133 (Correction of Error) petitions on behalf of PBF Investments, LLC (Petitioner) petitioning the Board to conduct an administrative review of the above petitions. The Form 133 petitions were filed on April 22, 2002. The determinations of the Morgan County Property Tax Assessment Board of Appeals (“PTABOA”) were issued on June 20, 2002. The Form 133s were subsequently forwarded to the Board on July 12, 2002.

Hearing Facts and Other Matters of Record

3. The Board received by mail evidence submitted by Ralph Campbell on August 27, 2002. This evidence was made a part of the record and labeled Petitioner Exhibit 1. This evidence is described at Findings of Fact and Conclusions of Law ¶8 below.
4. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on September 17, 2002 at Mooresville, Indiana before Paul Stultz, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

5. The following persons were present at the hearing:

For the Petitioner:

Ralph Campbell, Property Valuation Services, Inc.

For the Respondent:

Brenda Brittain – Morgan Co. Assessor

Reva Brummett – PTABOA consultant

6. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Ralph Campbell, Property Valuation Services, Inc.

For the Respondent:

Brenda Brittain – Morgan Co. Assessor

Reva Brummett – PTABOA consultant

7. The following exhibits were presented:

For the Petitioner, submitted prior to the hearing:

Petitioner's Exhibit 1 – package of documents containing the following:

- A. Cover letter dated August 22, 2002
- B. Six page Nucor Building Systems order form
- C. Petitioner's proposed pricing schedule
- D. Copy of one exterior photo and one interior photo of subject building

For the Respondent:

Respondent's Exhibit 1 – Copy of property record card

Respondent's Exhibit 2 – Copy of 50 IAC 2.2-11-2, pages 37 and 43; 50 IAC 2.2-11-6, page 113; and 50 IAC 2.2-12-5, page 12

Respondent's Exhibit 3- Copy of Petitioner's proposed pricing with changes made by Ms. Brummett

8. The following additional items are officially recognized as part of the record of proceedings:

Board Exhibit A- Form 133 petition

Board Exhibit B- Notice of hearing.

9. The subject property is a commercial building located at 2500 Hancel Parkway, Mooresville, Brown Township, Morgan County.

10. The Administrative Law Judge did not view the subject property.

11. At the hearing, the parties agreed the years under appeal were 2000 and 2001 and the values of record are:

For assessment year 2000:

Land \$12,430

Improvements \$108,000

For assessment year 2001:

Land \$37,300

Improvements \$324,000

12. At the hearing, Mr. Campbell suggested a procedural issue should be determined first. The procedural issue under review is whether the Form 133 petition can be used to change the pricing schedule of a structure (selection of schedule).

13. The Board takes a similar position as Mr. Campbell and determines the procedural issue, as stated immediately above, should be resolved first. If it is determined a Form 133 petition is the proper form, the Board will analyze the evidence and testimony presented by Mr. Campbell to support his contention that the subject building should be priced using the GCK pricing schedule. However, if it is determined that the Form 133 petition is not the proper form to review an issue regarding a change in the pricing schedule, then the Form 133 issue will not be addressed and the determination by the PTABOA will stand.

Jurisdictional Framework

14. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
15. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

Indiana's Property Tax System

16. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
17. Indiana has established a mass assessment system through statutes and regulations designed to assess property according to what is termed "True Tax Value." See Ind. Code § 6-1.1-31, and 50 Ind. Admin. Code 2.2.
18. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
19. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property's market value. See *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998) (*Town of St. John V*).
20. The Indiana Supreme Court has said that the Indiana Constitution "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", nor does it "mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant", but that the proper inquiry in tax appeals is "whether the system prescribed by statute and regulations was properly applied to individual assessments." See *Town of St. John V*, 702 N.E. 2d at 1039 – 40.

21. Although the Supreme Court in the *St. John* case did declare the cost tables and certain subjective elements of the State's regulations constitutionally infirm, it went on to make clear that assessment and appeals must continue to be determined under the existing rules until new regulations are in effect.
22. New assessment regulations have been promulgated, but are not effective for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

State Review and Petitioner's Burden

23. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
24. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
25. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
26. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]

27. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).

28. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case' and, by a 'preponderance of the evidence' proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of the Issue

ISSUE 1: *Whether a Form 133 can be used to change the pricing schedule of a structure (selection of schedule)*

29. The Petitioner contends the Form 133 can be used to contest the selection of schedule in the case of the GCK schedule.

30. The Respondent contends the Form 133 cannot be used to contest the selection of schedule in the case of the GCK schedule.

31. The applicable rule governing Issue 1 is:

Indiana Code 6-1.1-15-12- Tax Duplicates; correction of errors; reasons; appeal

The Form 133 petition is used to correct objective errors specified in the above code. Those correctable errors are:

- (1) The description of the real property was in error.
- (2) The assessment was against the wrong person.
- (3) Taxes on the same property were charged more than one (1) time in the same year.
- (4) There was a mathematical error in computing the taxes or penalties on the taxes.
- (5) There was an error in carrying delinquent taxes forward from one (1) tax duplicate to another.
- (6) The taxes, as a matter of law, were illegal.
- (7) There was a mathematical error in computing an assessment.
- (8) 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.

32. Evidence and testimony considered particularly relevant to this determination include the following:

- A. In 50 IAC 2.2-10-6.1, GCK does not include use type descriptions nor does this section mention economy or low cost buildings. The schedule is used to value pre-engineered, pre-designed pole buildings used for commercial and industrial purposes. The building description found in this section is a finding of fact. *Campbell testimony.*
- B. The GCK is not like the other three schedules. The other schedules apply “a use type”. The GCK schedule refers to a construction type, not a use type. *Campbell testimony.*
- C. A building either is or is not a kit building according to the Tax Court November 24, 1998 Barth decision. The 1995 reassessment has not changed this legal precedent. *Campbell testimony.*

Analysis of ISSUE 1

33. Reproduction Cost minus Depreciation equals True Tax Value. For the 1989 statewide general reassessment, the reproduction cost for commercial and industrial property was the base rate for the model selected less adjustments. 50 IAC 2.1-4-3 and -5.
34. As an addendum to the rules and regulations promulgated by the Board for the 1989 statewide general reassessment, the Board introduced Instructional Bulletins 91-8 (October 1, 1991) and 92-1 (August 22, 1992). Instructional Bulletin 91-8 provided a 50% reduction in the base rate for qualifying kit buildings. Instructional Bulletin 91-8 stated, “These amendments allowed for a fifty percent (50%) reduction in the base rate of qualifying structures priced front the General Commercial Mercantile, General Commercial Industrial, and the Poultry Confinement Building Pricing Schedules.”
35. Board’s Instructional Bulletin 92-1 provided local officials instructions on handling appeals by taxpayers who felt their qualifying structures were not reassessed as required in the Board’s Instructional Bulletin 91-8. Instructional Bulletin 92-1 gave a more detailed method to use to assess structures qualifying for the 50% reduction in the base rate.
36. In summary, for appeals prior to the 1995 statewide general reassessment date, the methodology used (in Instructional Bulletins 91-8 and 92-1) to make this type of adjustment entailed making a 50% reduction to the base rate of the existing pricing schedule that was in use at the time. The change was an objective issue with a mathematical solution and could be addressed using the Form 133 petition.
37. As cited the *Indiana Administrative Code* (2001), 50 IAC 2.1, “real property assessment” was repealed by the State Board of Tax Commissioners, filed September 14, 1992 (16 IR 662) effective March 1, 1995 and replaced by the “real property assessment” 50 IAC 2.2. The Board’s 1995 Regulation, 50 IAC 2.2, eliminated the “kit” building adjustments described in the Board’s Instructional Bulletins 91-8 and 92-1 for assessment years 1995 and thereafter.

38. Under the current regulation (50 IAC 2.2), 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 50 IAC 2.2-11-6. The term “association grouping” was introduced by the 1995 regulation. Prior to that, the term “model” was the commonly used descriptive term.
39. 50 IAC 2.2-10-6.1 identifies four (4) association grouping to be used for the selection of the appropriate base rate. These four (4) groupings are: (1) General Commercial Mercantile (GCM), (2) General Commercial Industrial (GCI), (3) General Commercial Residential (GCR), and (4) General Commercial Kit (GCK).
40. The GCK association grouping was added to the rules and regulations promulgated by the Board for the 1995 statewide general reassessment in order to value pre-engineered and pole framed buildings used for commercial and industrial purposes. 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 grouping 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 A4.
41. Errors arising from an assessor’s judgment are not the type of errors that can be corrected by way of a Form 133 petition. *Hatcher v. State Board of Tax Commissioners*, 561 N.E. 2d 852 (Ind. Tax 1990).
42. 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).

43. 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 questing, 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 assessor. (Citations omitted).

44. For all the reasons set forth above, a selection of schedule issue does not qualify for a review on a Form 133 petition. No changes in the assessments are made as a result of this issue.

Summary of Final Determination

Determination of ISSUE 1: *Whether a Form 133 can be used to change the pricing schedule structure*

Determination of ISSUE 2: *Whether the subject structure should be valued from the schedule.*

45. As stated in ¶13, the Board must first determine whether a Form 133 petition is the proper vehicle to make a change from one pricing schedule to another.

46. It is determined that such an issue is a subjective determination and does not qualify for review on a Form 133 petition. As a result of this determination the Form 133 petitions are denied. No changes in the assessment are made as a result.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.