

**STATE OF INDIANA
Board of Tax Commissioners
Appeals Division**

PHAR-MOR, INC.,)	On Appeal from the Marion County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
)	Petition for Correction of an Error, Form 133
v.)	
)	Petition Nos.: 49-901-93-3-7-00012
MARION COUNTY PROPERTY TAX)	49-901-94-3-7-00012
ASSESSMENT BOARD OF APPEALS)	
And WAYNE TOWNSHIP ASSESSOR,)	
)	Parcel No.: Personal Property
Respondents.)	

Findings of Fact and Conclusions of Law

The Appeals Division (Appeals Division) of the State Board of Tax Commissioners (State Board) makes the following findings of fact and conclusions of law in this appeal.

Issue

Whether the Petitioner included the proper mandatory adjustments on their business tangible personal property tax returns (Form 103).

Findings of Fact

1. This administrative appeal comes before the State Board on the Petition for Correction of an Error, Form 133, filed by Phar-Mor, Inc. (Board Ex. A). The County Board's Final Assessment Determination is dated June 26, 1998.

2. Pursuant to Ind. Code § 6-1.1-15-4, an administrative hearing was scheduled for September 26, 2001 at 1:00 P.M. Notice of said hearing was mailed to the Petitioner at the address listed on the petition and to the Petitioner's Representative at the address listed on the power of attorney submitted for purposes of this appeal. The Notice of Hearing (Board Ex. B) was mailed on August 31, 2001.
3. On September 26, 2001, Hearing Officer Paul Stultz conducted the administrative hearing on the Form 133 petitions. Neither the Petitioner nor its representative appeared at the hearing. Ms. Tara Acton and Ms. Jewell Powell appeared to represent Wayne Township.
4. The Petitioner and its representative did not contact the State Board or the Hearing Officer prior to the scheduled hearing date and did not request a continuance of the hearing.
5. The Hearing Officer verified that the Notices of Hearing were mailed, with proof of mailing (Board Ex. C), and verified that the notices were not returned to the State Board as not deliverable.

Conclusions of Law

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. In addition, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.
2. Ind. Code § 6-1.1-15-3 requires the State Board to review the actions of the County Board (or PTABOA), but does not require the State Board to review the initial assessment or undertake reassessment of the property.

3. In reviewing the actions of the County Board (or 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.
4. 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 Board 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).
5. Taxpayers are expected to make factual presentations to the State Board regarding alleged errors in assessment. *Id.* These presentations should both outline the alleged errors and support 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 taxpayers 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’s burden in the State Board’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.

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).
10. The Form 133 petition is denied for the failure of the Petitioner or its Representative to appear at the administrative hearing and present evidence in support of the alleged errors of assessment.