

REPRESENTATIVES FOR PETITIONER: La Vada Mills, Property Tax Consultant, Kurz Group, Inc.

REPRESENTATIVES FOR RESPONDENT: No one appeared at the hearing.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

Precision Industries, Inc.,)	Petition No.: 45-024-99-3-7-00033
)	
Petitioner)	County: Lake
)	
v.)	Township: North
)	
)	Parcel No.: Personal property
Lake County Property Tax)	
Assessment Board of Appeals and)	
North Township Assessor)	
)	
Respondents)	Assessment Year: 1999
)	

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

[DATE OF ISSUANCE]

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

Issue

1. The issue presented for consideration by the Board was:
ISSUE – Whether the personal property (inventory) was incorrectly reported and should be assessed at the value shown on the corrected Forms 103 and 104.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, Precision Industries, Inc. filed a Form 133 petitioning the Board to conduct an administrative review of the above petition. The Form 133 was filed on November 16, 2001. The determination of the PTABOA was issued on October 25, 2001.

Hearing Facts and Other Matters of Record

3. On June 12, 2002, Ms. Mills faxed a list of potential exhibits to the administrative law judge, the Lake County Assessor, and the North Township Assessor. Said exhibits were mailed to all the abovementioned parties on June 14, 2002. The list of exhibits was not served timely; however the copies of the documentary evidence were received prior to the five (5) day deadline. In the absence of the opposing party, the administrative law judge determined the evidence be accepted and entered into the record.
4. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on June 26, 2002 at the Lake County Administration Building in Crown Point, IN before Ellen Yuhan, 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: La Vada Mills, Property Tax Consultant, Kurz Group, Inc.

For the Respondent: No representatives from Lake County or North Township were present.

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

For the Petitioner: La Vada Mills, Property Tax Consultant, Kurz Group, Inc.

For the Respondent: None

7. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1– Notice of Hearing

Petitioner's Exhibit 2– Power of Attorney

Petitioner's Exhibit 3 – Disclosure statement

Petitioner's Exhibit 4 – Copy of the state of Texas Property Tax Consultant
Registration

Petitioner's Exhibit 5 – Original petition letter, November 5, 2001

Petitioner's Exhibit 6 – Statement of Agency

Petitioner's Exhibit 7 – Form 115

Petitioner's Exhibit 8 – Form 133, Section IV

Petitioner's Exhibit 9 – Form 133, Section VIII

Petitioner's Exhibit 10 – Precision Industries transaction analysis with correct
amounts

Petitioner's Exhibit 11 – Form 103, as originally filed

Petitioner's Exhibit 12 – Form 103, corrected

Petitioner's Exhibit 13 – Copies of the Form 133, Form 103, Form 104, Form
105, and the transaction analysis

Petitioner's Exhibit 14 – Copy of the 1999 tax bills

Petitioner's Exhibit 15 – 1999 Indiana income tax return for year ending
December 31, 1998

Petitioner's Exhibit 16 – U.S. income tax return for 1998

Petitioner's Exhibit 17- Inventory by location for year end 1998

For the Respondent: None

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 of this appeal is personal property owned by Precision Industries, Inc. and located at 4407 Railroad Avenue, East Chicago, North Township, Lake County. The assessed value for 1999 as determined by the Lake County PTABOA is \$549, 854.

10. Ms. Mills testified that she was compensated on a contingency basis, but she was not aware of the actual financial arrangement, as she only handles the appeals.

Jurisdictional Framework

11. 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.

12. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

Indiana's Personal Property Tax System

13. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.

14. Personal property includes all tangible property (other than real property) which is being:
- (1) held in the ordinary course of a trade or business;
 - (2) held, used, or consumed in connection with the production of income; or
 - (3) held as an investment.

See Ind. Code § 6-1.1-1-11.

15. Indiana's personal property tax system is a self-assessment system. Every person, including any firm, company, partnership, association, corporation, fiduciary, or individual owning, holding, possessing, or controlling personal property with a tax situs within Indiana on March 1 of any year is required to file a personal property tax return on or before May 15 of that year unless an extension of time to file is obtained. See 50 IAC 4.2-2-2.

State Review and Petitioner's Burden

16. 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).
17. 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.]
18. 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.]

19. 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.]
20. 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).
21. 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.]

Credibility of Certain Evidence

22. The State's position is that it has the right to make general inquiry regarding, and to consider, the method by which a witness is compensated. Information about the witness's fee can be relevant and necessary in order to evaluate the potential partiality of the witness. A contingent fee arrangement may be considered to inherently affect the

objectivity of a witness. The State believes it appropriate to consider the potential of such an arrangement to improperly motivate the witness and adversely affect the reliability of the testimony. It is for these reasons that the State will consider the method of witness compensation in the process of determining the credibility and weight to be given to testimony of a witness whose fee is contingent on the outcome of the issues that he or she is testifying about. This position is supported by the discussion in the case of *Wirth v. State Board of Tax Commissioners*, 613 N.E. 2d 874 (Ind. Tax 1993).

Discussion of Issue

ISSUE : Whether the personal property (inventory) was incorrectly reported and should be assessed at the value shown on the corrected Forms 103 and 104.

23. The Petitioner contends the inventory value was incorrectly reported and the amounts shown on the corrected Forms 103 and 104 are the values that should be used for assessment purposes. They agree the forms were not filed in a timely manner, but it is their position that since the statutes provide for a penalty for late filed forms, they should be allowed to correct the amount and pay the penalty on the amended value.
24. The applicable rules governing this Issue are:

50 IAC 4.2-3-12(c):

Form No. 133 (Petition for Correction of Error)(50 IAC 3.2-2-9), is to be filed in duplicate with the auditor of the county where the assessment was made to correct one (1) of the following errors in the tax duplicate:

- (1) The taxes, as a matter of law, were illegal.
- (2) There was a mathematical error in computing an assessment.
- (3) 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.

50 IAC 4.2-3-13(a)(1):

The taxpayer may petition for a correction of error if a statutory basis for the correction of error exists (as prescribed in section 12 of this rule).

50 IAC 4.2-3-13(a)(2):

When a taxpayer has not filed a property tax return in substantial compliance with the provisions of this article, however, there is a three (3) year limitation on the filing of a action or claiming a refund of tax as provided in section 14 of this rule.

50 IAC 4.2-2-10(c):

Failure to file a return or be granted an extension of time to file a return by May 15 as required by law will result in the imposition of a twenty-five dollar (\$25) penalty. In addition, if the return is not filed within thirty (30) days after such return is due, a penalty equal to twenty percent (20%) of the tax determined to be due will be imposed with respect to the personal property which should have been reported on the return.

25. Evidence and testimony considered particularly relevant to this determination include the following:
- (1) The Petitioner did file personal property returns for 1999, although admittedly the forms were not filed in a timely manner.
 - (2) The Petitioner submitted documentation to support a corrected assessment.
 - (3) The Petitioner filed the Form 133 Petition for Correction of Error within the statutory time limit and under the statutory basis that there was a mathematical error in computing an assessment.

Analysis of Issue

26. The Petitioner argues that the values shown on the corrected Forms 103 and 104 and the Form 133 are the correct values for 1999 and the personal property assessment should be

changed to reflect the correct values. The Petitioner admits that the returns were not filed within the statutory time frame, but emphasizes that the statutes provide a penalty for late filing and the values should be corrected and the penalty imposed. In support of this contention, the Petitioner submitted the corrected forms, a transaction analysis, a document showing the inventory by location, and the 1999 Indiana and federal income tax returns.

27. The Respondents chose not to appear at the hearing. The Lake County PTABOA denied the petition citing to 50 IAC 4.2-12, which has no bearing on this issue since it concerns deductions, exemptions, and credits for inventory. The Petitioner did not request a deduction, an exemption, or a credit for inventory.
28. The Petitioner submitted sufficient evidence to establish a prima facie case. The Petitioner held that the original returns were incorrect and the corrected values should be the basis of the assessment. The documents entered support this claim.
29. The statutes allow for this correction as indicated in Finding ¶ 24. The Petitioner did file the Form 133 with the corrected values within the three-year statutory period and for a reason allowed by the statutes, that there was a mathematical error in the computation.
30. The Petitioner met its burden on this issue. The Petitioner, by a preponderance of evidence, showed that the assessment should be corrected and accepted that the statutory penalty should be imposed. Accordingly, there is a change in the assessment as a result of this issue.

Summary of Final Determination

Determination of ISSUE : *Whether the personal property (inventory) was incorrectly reported and should be assessed at the value shown on the corrected Forms 103 and 104.*

31. As stated above, the Petitioner has met its burden. Accordingly, the assessed value shall be corrected to \$281,440.
32. In addition, pursuant to 50 IAC 4.2-2-10(c) because the original return (Form 103) was filed after May 15, penalties of \$25 and 20% of the taxes determined to be due on \$281,440 will be imposed.

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.