STATE OF INDIANA
Board of Tax Review

QUEMETCO, INC.	)	On Appeal from the Marion County Property
	)	Tax Board of Appeals
Petitioner,	)	
	)	Petition for Review of Assessment, Form 131
	)	
	)	Petition Nos.: 49-940-95-1-7-11111
	)	49-940-95-1-7-11112
MARION COUNTY PROPERTY TAX	)	49-940-95-1-7-11113
BOARD OF APPEALS And WAYNE	)	
TOWNSHIP ASSESSOR	)	Parcel Nos. 9044465
	)	9044466
Respondents.	)	I502214

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 Quemetco's claim for deduction of assessed valuation applicable to resource recovery system (RRS) was improperly denied.

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. Quemetco, Inc. (Quemetco) is located in Indianapolis, Indiana (Marion County, Wayne Township). The assessment date under appeal is March 1, 1995. There are three parcels under appeal; two are real property and the third parcel is personal property.

3. Pursuant to Ind. Code § 6-1.1-15-3, Quemetco filed a Form 131 petition for review of the denial of the RRS deduction. The petition was filed on March 26, 1999. The Property Tax Assessment Board of Appeals' (PTABOA) Final Determination is dated March 1, 1999.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held before Administrative Law Judge Joseph Stanford on March 13, 2002. Attorneys Stephen H. Paul, Brent A. Auberry, and David L. Hatchett of Baker & Daniels represented Quemetco. Gregory Dodds, Tara B. Acton, and Jewell F. Powell represented Wayne Township.

5. The following items are labeled as Board Exhibits:
   Board Ex. A – Form 131 petition and attachments.
   Board Ex. B – Notice of hearing.
   Board Ex. C – List of Quemetco's witnesses and exhibits, filed February 19, 2002.
   Board Ex. D – Quemetco's summary of evidence and summary of witness testimony, filed March 7, 2002.
   Board Ex. E – Affidavit of Howard B. Myers, filed by Quemetco on March 8, 2002.
   Board Ex. F – Wayne Township's list of witnesses and exhibits.

6. At the hearing, the following exhibits were submitted to the State:

Quemetco submitted a brief, marked Petitioner's Ex. A, which includes the following:

Petitioner's Ex. 1 – RRS deduction application.

Petitioner's Ex. 2 – Affidavit of Howard B. Myers.

Petitioner's Ex. 3 – Certification of Resource Recovery System from Indiana Department of Environmental Management (IDEM).

Petitioner's Ex. 4 – Form RRS-1 application for deduction filed with County Auditor.

Petitioner's Ex. 5 – PTABOA denial of RRS deduction.

Petitioner's Ex. 6 – Consent decree.

Petitioner's Ex. 7 – Joint Motion to Dismiss.

Petitioner's Ex. 8 – Closure plan.

Petitioner's Ex. 9 – Indictment in the United States District Court charging Quemetco with conspiracy to violate the Clean Water Act.

Petitioner's Ex. 10 – Transcript of Plea.

Petitioner's Ex. 11 – May installment of Quemetco's 1995 pay 1996 tax bill.

Petitioner's Ex. 12 – Quemetco's calculation of the RRS deduction.

Respondent's Ex. 1 – Memorandum in Support of Denial of Resource Recovery System Property Tax Deduction.

Respondent's Ex. 2 – Consent decree.

7. The RRS deductions for all three parcels have been wholly denied by the PTABOA. Quemetco seeks a total deduction, for all three parcels, of $1,380,040 in assessed value for the March 1, 1995 assessment date. The Administrative Law Judge did not view the property.

8. Quemetco contends that the Marion County PTABOA's denial of Quemetco's RRS deduction application was arbitrary and capricious, and contrary to law. *Petitioner's Ex. A at p. 18.*

9. First, Quemetco argues that the Township Assessor and PTABOA lack the expertise and authority to determine whether Quemetco's system qualified for an RRS deduction. Quemetco contends that authority and expertise lies solely with the Indiana Department of Environmental Management (IDEM). IDEM certified the system in question as a resource recovery system in 1993, and did so with full knowledge that Quemetco was, at the time, subject to a 1989 federal consent decree involving the treatment and disposal of waste at its facility. *Petitioner's Ex. A at p. 1.* Quemetco argues that, according to Ind. Code § 6.1-1-12-28.5(c)(2), only the certifying official (IDEM) has the authority to determine whether the system owner is subject to an order or consent decree regarding hazardous waste that "had a major or moderate potential for harm." *Id at p. 9.*

10. In addition, Quemetco contends that IDEM certified the system as a "solid waste" resource recovery system, not a "hazardous waste" system. *Petitioner's Ex. A at p. 1.* Quemetco argues that the disqualifying factors listed in Ind. Code § 6.1-1-12-28.5(c) are to be considered only with respect to a system "that is used to dispose of hazardous waste." *Id at p. 13.*

11. Finally, Quemetco contends that nothing disqualified it from receiving the RRS deduction in 1995. Quemetco was not convicted of a violation of any state environmental law in 1995, and did not admit in the 1989 consent decree to violating any federal or state regulation governing hazardous waste. *Petitioner's Ex. A at p. 1.* IDEM knew about the consent decree and still certified Quemetco's system in 1993. *Id at p. 18.* Quemetco asserts that if the consent decree was a disqualifying factor the PTABOA would have denied RRS deductions for 1996 and 1997 also, since the consent decree was in effect from 1989 through 1997. The PTABOA, however, granted Quemetco's application in 1996 and 1997. *Id at p. 12.*

12. While the PTABOA and Wayne Township (Respondents) agree that the system in question qualifies as a resource recovery system, the 1995 RRS application

was denied by the PTABOA pursuant to Ind. Code § 6.1-1-12-28.5(c) on the basis that Quemetco had been convicted of violations of the Clean Water Act. *Respondent's Ex. 1 at p. 2.*

13. In 1994, in an eleven count indictment filed in United States District Court, Quemetco was charged with violations of the Clean Water Act. In 1995, Quemetco pleaded guilty to two of the counts. Included in those counts were allegations that Quemetco conspired to violate the Clean Water Act, and filed false records concerning the discharge of toxic wastewater from its facility. As a part of the plea agreement, Quemetco was fined $500,000 per count, plus $400 in court costs. *Respondent's Ex. 1 at p. 2.*

14. In addition to the 1995 conviction, Quemetco was subject to a 1989 consent decree filed in United States District Court. Quemetco did not admit to allegations in the consent decree, but neither did it contest the allegations. The allegations involved violations of the Resource Conservation and Recovery Act. The consent decree was in effect from 1989 through 1997. *Respondent's Ex. 1 at p. 2 and 3.*

15. The Respondents contend that both the 1995 conviction and 1989 consent decree were based on a violation listed by Ind. Code § 6-1.1-12-28.5(c)(2) as grounds to deny Quemetco's RRS deduction application. They contend that the Indiana legislature clearly intended to encourage the development and operation of resource recovery systems by property tax deduction. However, the Respondents contend that the deduction should only be allowed for owners who operate their facilities in a safe and responsible manner. They argue that the deduction should not be allowed to owners who endanger public health and safety by violating state and federal laws governing the treatment, storage, and disposal of hazardous wastes. *Respondent's Ex. 1 at p. 7.*

Conclusions of Law

1. 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.

2. In reviewing the actions of the County, 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.

3. 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.

4. 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)).

5. 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.

6. 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).

7. 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 merely because the taxpayer demonstrates flaws in it).

Conclusions Regarding the RRS Deduction

8. The authority and responsibility to certify a system as a resource recovery system lies with IDEM. The authority and responsibility rests with the township assessor to verify the RRS deduction application, and with the county auditor to determine the RRS deduction. Ind. Code § 6-1.1-12-28.5(f).

9. Quemetco contends that the denial of its RRS deduction is improper. Quemetco argues that neither the Wayne Township Assessor nor the Marion County PTABOA has the authority to determine whether a system qualifies as a resource recovery system, and that this authority lies exclusively with IDEM. Quemetco is correct. *Auburn Foundry v. State Board of Tax Commissioners,* 628 N.E. 2d at 1267 (Ind. Tax 1994). However, the Respondent does not dispute that Quemetco's system qualifies as a resource recovery system. The issue in this

case is whether Quemetco is entitled to the RRS deduction.

10. The PTABOA denied Quemetco's RRS application citing to Ind. Code § 6-1.1-12-28.5(c) which states:

> The owner of a resource recovery system that is directly used to dispose of hazardous waste is not entitled to the deduction provided by this section for a particular assessment year if during that assessment year the owner:
> (1) is convicted of any violation under IC 13-7-13-3 (repealed), IC 13-7-13-4 (repealed), or IC 13-30-6; or
> (2) is subject to an order or a consent decree with respect to property located in Indiana based upon a violation of a federal or state rule, regulation, or statute governing the treatment, storage, of disposal of hazardous wastes that had a major or moderate potential for harm.

11. While Ind. Code § 6-1.1-12-28.5(c) states that the owner of a resource recovery system may not be entitled to the deduction if certain conditions exist, it does not specify who has the authority to make that determination.

12. In *Auburn Foundry,* the Tax Court states that township assessors have no greater authority than the State Board. That authority is limited to verifying the assessed value of property IDEM certifies. (*See footnote 5*). With the exception of requiring the State Board to prescribe the certified statement forms, the statute gives the State Board no role in allowing the deduction. *Auburn Foundry* at p. 1265. Therefore, if the State Board has no role in allowing the deduction and the township assessor has no greater authority that the State Board, then township assessor has no role in allowing the deduction.

13. Further, the conditions set forth in Ind. Code § 6-1.1-12-28.5(c) relate to violations under Title 13 of the Indiana Code, or violations of federal or state rule, regulation, or statute governing hazardous wastes. Since the conditions relate to environmental concerns not tax matters, it is logical to assume that IDEM should make the determination.

14. IDEM certified Quemetco's system, therefore all that remained was for the township assessor to verify the assessed value of the property that IDEM certified. The township assessor exceeded its authority and responsibiltiy when it denied the deduction.

15. Quemetco is entitled to the RRS deduction for the March 1, 1995 assessment date. The amount of the deduction is computed pursuant to Ind. Code § 6-1.1-12-28.5(d) as follows:

Assessed value of real estate	144,600*
Assessed value of business personal property	1,388,788*
Total assessed value	1,533,378
Portion not eligible (10%**)	(153,378)
Assessed value to be deducted	1,380,040

*values per the Form 115 and Form RRS-1
**Pursuant to Ind. Code § 6-1.1-12-28.5(d) the deduction for 1995 is 90%

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