

**STATE OF INDIANA
Board of Tax Review**

ROBERT E. JR. & CAROLYN S. LEDFORD)	On Appeal from the County Property
)	Tax Assessment Board of Appeals
)	
Petitioner,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition No. 22-008-01-1-5-00012
)	
FLOYD COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS)	Parcel No. 008-5560-021
And NEW ALBANY TOWNSHIP)	
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 the Petitioner's newer home is valued correctly compared to the older homes in the area.

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 § 6-1.1-15-3, Robert E. Jr. & Carolyn S. Ledford filed a petition requesting a review by the State. The Form 131 petition was filed on August 23, 2001. The Floyd County Property Tax Assessment Board of Appeals' (PTABOA) determination was issued on August 2, 2001.

3. Pursuant to Indiana Code § 6-1.1-15-4, a hearing was held on February 7, 2001, before Hearing Officer Jennifer Bippus. Testimony and exhibits were received into evidence. Robert & Carolyn Ledford were present as the Petitioner. Donald Banet represented the County.

4. At the hearing, the Form 131 petition was made part of the record and labeled as Board Exhibit A and the Notice of Hearing was labeled as Board Exhibit B.

5. At the hearing, the Petitioner submitted the following evidence:
Petitioner's Exhibit A - The history of taxes paid by the Petitioner from
1993 through 2001 for the subject property.
Petitioner's Exhibit B - A listing of the residences in the area, the gross tax value,
and the tax paid annually by the area residences.
Petitioner's Exhibit C - A copy of the platted area in question and the gross tax
value of each residence.
Petitioner's Exhibit D - An appraisal report for the subject property prepared on
1/27/99.
Petitioner's Exhibit E - A ratio study done by the Petitioner for area residences
and the subject property comparing taxable value to sales
value.

Petitioner's Exhibit F - The Petitioner's summary of the ratio study and request for reduction in taxable value for the Petitioner's property.

6. The property is a residential home located at 1331 Slate Run Road, New Albany, Indiana, Floyd County.
7. The Hearing Officer did not view the property.
8. The assessed value as determined by the Floyd County PTABOA is:
Land: \$8,600 Improvements: \$81,400 Total: \$90,000
9. The year under appeal is March 1, 2001.
10. Petitioner testified that the other homes in the neighborhood relative to the subject property are at a taxable value much lower than the subject property. Each year the taxes on the subject property have gone higher, yet the assessor stated that more depreciation is given as the home ages. *Ledford Testimony, Petitioner's Ex. A.*
11. Petitioner testified that the other homes in the neighborhood were built in the 1950's and 1960's and are appraised at similar values as the subject property. The taxable values of these properties are much lower than the subject property due to the depreciation schedule for older homes versus newer homes. *Ledford Testimony, Petitioner's Ex. B, C, D.*
12. The ratio study with information presented by the Petitioner showed an average of between 8.0 and 10.0 to be the norm for New Albany. The study consisted of using properties in the area, taking the sales price and dividing it by the taxable value, thereby producing the ratio number. *Ledford Testimony, Petitioner's Ex. E, F.*

13. Petitioner testified that the subject property is at a ratio of 5.0, but 7.0 would be acceptable. In order for this to happen, the subject property would have to be valued down to a total taxable value (land and improvements) of \$24,430. Therefore, Petitioner argued, the State needs to lower the taxable value to \$24,430 in order to make the property equal to the other residences in the area. *Ledford Testimony, Petitioner's Ex. F.*
14. Respondent argued that the County must use the Indiana Real Property Assessment Manual and the depreciation is based on the schedule in the manual. Changes cannot be made to the depreciation, unless a mistake has been made. *Banet 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. Petitioner’s home value compared to older homes

18. The Petitioner seeks a reduction in the assessed value of his property claiming that newer homes are over-assessed under Indiana’s real estate property tax system when compared to older homes. The Petitioner divides the market (sales) value by the taxable (assessed) value to obtain a ratio.
19. The Petitioner submitted a "ratio study" (Study). The Study examined five older

homes, finding these homes have an average ratio of between 8 and 10. For two of the homes the Petitioner used the sale price divided by the assessed value to obtain the ratio. For the other three homes, the Petitioner used the asking price divided by the assessed value to obtain the ratio. The Study also included the subject property, a newer home, having a ratio of 5. The Petitioner divided the appraised value of his property by the assessed value to arrive at a ratio of 5 ($\$171,000 \div \$34,240$). The appraisal on the subject property was done in 1999. The Petitioner testified that this Study demonstrates a clear discrepancy in equity between older and newer homes. Due to this discrepancy, the Petitioner requested a change in his assessed value to \$24,430 (a decrease of \$9,810 or 29%).

20. Similar challenges have been considered by the Indiana Tax Court. See *Kemp v. State Board of Tax Commissioners*, 726 N.E. 2d 395 (Ind. Tax 2000); *Bernacchi v. State Board of Tax Commissioners*, 727 N.E. 2d 1133 (Ind. Tax 2000); and *Bishop v. State Board of Tax Commissioners*, 743 N.E. 2d 810 (Ind. Tax 2001).
21. In *Kemp v. State Board of Tax Commissioners*, 726 N.E. 2d 395 (Ind. Tax 2000), the taxpayers presented a sales ratio study purporting to show that newer homes in LaPorte, Indiana, were on average assessed at a higher value than older homes. The Court observed that a sales ratio study is "designed to compare assessed value to market value property." *Kemp*, 726 N.E. 2d at 403 (quoting Institute of Property Taxation Property Taxation 154 (Jerrold F. Janata ed., 2d ed. 1993)). A sales ratio study is "undertaken principally for evaluating assessment accuracy and achieving tax equalization." *Id.*
22. Indiana does not value property based on its market value; rather the assessed value of the property is based on its reproduction cost as determined by the State Board's regulations. *Kemp*, 726 N.E. 2d at 403 (citations omitted). Thus, given the approach of Indiana's property assessment system, the taxpayers were obligated to show how use of market data helps demonstrate that the State

Board's regulations, as applied, violated their right to an equal and uniform assessment under the Indiana Constitution. *Id.*

23. The taxpayers in *Kemp* failed to persuade the Court that a "study based on market values can validly demonstrate the alleged inequity of assessments made under Indiana's system." *Kemp*, 726 N.E. 2d at 403. A sales ratio study, prepared using professionally acceptable standards, would measure the uniformity of assessment under a market based system. The Court held the taxpayers failed to sufficiently explain how the sales ratio study demonstrated uniformity of assessments calculated using the true tax value system. *Id.* at 404.
24. The Petitioner is obligated to show how use of this market data helps demonstrate that the State's regulations, as applied, violated his right to an equal and uniform assessment under the Indiana Constitution. *Kemp*, 726 N.E. 2d at 403.
25. The Petitioner has not sufficiently explained how his Study demonstrates the State's regulations, as applied, violated his right to a equal and uniform assessment. No change is made to the assessment.

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 this by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review