

REPRESENTATIVES FOR PETITIONER:

Charles Spillman, Chairman, Robus Leather Corporation
Douglas Darling, Attorney

REPRESENTATIVES FOR RESPONDENT:

Gail Sims, Jefferson County Assessor
Delores Barner, PTABOA member
George Thomas, PTABOA member
Elbert Hines, PTABOA member

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Robus Leather Corporation,)	Petition for Correction of an Error,
)	Form 133
Petitioner)	
)	Petition Nos.: 39-011-98-3-7-00001
v.)	39-011-99-3-7-00001
)	
)	County: Jefferson
)	
Madison Township Assessor,)	Township: Madison
)	
Respondent)	Parcel No.: Personal Property
)	
)	Assessment Years: 1998 and 1999

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

April 12, 2004

FINAL DETERMINATION

The Indiana Board of Tax Review (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 issue presented for consideration by the Board was:

Whether cost of depreciable assets was correctly reported for the years 1998 and 1999.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-12, Robus Leather Corporation (Petitioner) filed Form 133 petitions petitioning the Board to conduct an administrative review of the above petitions for the years 1998 and 1999. The Form 133 petitions were filed on December 11, 2001, and December 31, 2001, respectively. The determinations of the Jefferson County Property Tax Assessment Board of Appeals (PTABOA) were issued on November 22, 2002. The Form 133 petitions were filed with the Board on December 20, 2002.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on January 15, 2004, in Madison, Indiana before Paul Stultz, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-5-2.
4. The following persons were present at the hearing:
For the Petitioner: Charles Spillman
Jenny Wendel
Douglas Darling

For the Respondent: Gail Sims
Delores Barner
George Thomas
Elbert Hinds

5. The following persons were sworn in as witnesses:

For the Petitioner: Charles Spillman
Jenny Wendel
Douglas Darling

For the Respondent: Gail Sims
Delores Barner
George Thomas
Elbert Hinds

6. The Form 133 petitions were made a part of the record and labeled as Board Exhibits A.
The Notice of Hearing on Petition is labeled as Board Exhibit B.

7. The following exhibits were presented:

For the Petitioner:¹

Petitioner's Exhibit 2 – A packet containing the following documents:

1. A cover letter from C. Spillman to the Board dated January 9, 2004.
2. A summary of witness testimony and list of exhibits.
3. Reconciliation of the Form 103, Business Personal Property Return, to Form 1120 for 3-1-98.
4. Reconciliation of the Form 103, Business Personal Property Return, to Financial Statements for 3-1-98.
5. Reconciliation of Form 103, Business Personal Property Return, to Form 1120 for 3-1-99.
6. Reconciliation of Form 103, Business Personal Property Return, to Financial Statements for 3-1-99.
7. Copy of 17T, Claim of Tax Refund, for 1998.
8. Copy of 17T, Claim of Tax Refund, for 1999.
9. A copy of a letter to the PTABOA from Mr. Spillman dated March 14, 2002.
10. A copy of a letter to the PTABOA from Mr. Spillman dated December 12, 2002 with Federal 1120 Schedule L for the years 1997, 1998, and 1999 attached.
11. A copy of original Form 103, Business Personal Property Return, filed for the assessment year 1998.
12. A copy of a Form 133 petition with an amended Form 103 for 1998 attached.
13. A copy of original Form 103, Business Personal Property Return, and Form 322 ERA/PP, Application for Deduction, for the assessment year 1999.

¹ The Board notes that the Petitioner's evidence identification begins with Pet. Ex. 2 because the copy of the notice to the Respondent of the witnesses and evidence to be presented by the Petitioner mailed to the Board was inadvertently labeled as Petitioner's Ex. 1.

14. A copy of Form 133 with an amended Form 103 and an amended Form 322 ERA/PP for 1999 attached.
15. A copy of Section V of the Form 133 petition dated November 22, 2002 establishing the assessed value of personal property at \$1,391,340 for tax year 1998.
16. A copy of Section V of the Form 133 dated November 22, 2002 establishing the assessed value of personal property at \$1,425,700 for tax year 1999.
17. A copy of Section VI of the Form 133 dated December 20, 2002 for tax year 1998.
18. A copy of Section VI of the Form 133 dated December 20, 2002 for tax year 1999.
19. A copy of the Certified Mail Receipt and the Return Receipt confirming the mailing and receipt of the Form 133 petitions.

For the Respondent:

Respondent's Exhibit 2² – A letter authorizing the PTABOA to represent Madison Township before the Board in the matter of the personal property assessment appeal filed by Robus Leather Corporation.

8. As a result of testimony, the Board requested additional information from the Petitioner. Specifically, the Board asked the Petitioner to provide a detailed listing of all assets, federal depreciation schedules for 1998 and 1999, and a complete list of any depreciable assets acquired in January and February of 2000. The Request for Additional Evidence was labeled and entered into the record as Board Exhibit C. The date of submission was set for January 25, 2004, ten days following the hearing.
9. Petitioner sought to make post-hearing submissions. The Petitioner was granted 35 days from the date of the hearing, or until February 18, 2004, to submit its post-hearing submissions. The Petitioner's post-hearing submission was not limited to, but included the additional information requested by the administrative law judge. Also, as a result of the Petitioner's request to make post-hearing submissions, the Petitioner waived the deadlines imposed under Ind. Code § 6-1.1-15-4. The Post-hearing Submission Waiver was labeled and entered into the record as Board Exhibit D.

² The Board notes that the Respondent's evidence identification begins with Resp. Ex. 2 because the copy of the notice to the Petitioner of the witnesses and evidence to be presented by the Respondent was inadvertently labeled as Respondent's Ex. 1.

10. On February 17, 2004, via FedEx delivery, the Board received the Petitioner's post-hearing submission. The Petitioner's submission was labeled and entered into the record as Petitioner's Exhibit 3 and contained the following:

1. Cover letter from Mr. Spillman to the Board dated February 10, 2004.
2. A copy of an e-mail communication from the Board to Mr. Spillman dated February 2, 2004.
3. A copy of the Federal Tax Form 1120, Schedule L, for 1998.
4. A copy of reconciliation of Form 103, Business Personal Property Return, to Federal Tax Form 1120, Schedule L, for March 1, 1998.
5. A copy of reconciliation of Form 103, Business Personal Property Return, to Federal Tax Form 1120, Schedule L, for March 1, 1999.
6. A copy of reconciliation of Federal Income Tax Depreciation Schedule to Form 103 for assets acquired prior to March 1, 1992.
7. A copy of reconciliation of Federal Income Tax Depreciation Schedule to Form 103 for assets acquired between March 2, 1992 and March 1, 1993.
8. A copy of reconciliation of Federal Income Tax Depreciation Schedule to Form 103 for assets acquired between March 2, 1991 and March 1, 1994.
9. A copy of reconciliation of Federal Income Tax Depreciation Schedule to Form 103 for assets acquired between March 2, 1994 and March 1, 1995.
10. A copy of reconciliation of Federal Income Tax Depreciation Schedule to Form 103 for assets acquired between March 2, 1995 and March 1, 1996.
11. A copy of reconciliation of Federal Income Tax Depreciation Schedule to Form 103 for assets acquired between March 2, 1995 and March 1, 1997.
12. A copy of reconciliation of Federal Income Tax Depreciation Schedule to Form 103 for assets acquired between March 2, 1997 and March 1, 1998.
13. A copy of reconciliation of Federal Income Tax Depreciation Schedule to Form 103 for assets acquired between March 2, 1998 and March 1, 1999.
14. A copy of reconciliation of Federal Income Tax Form 1120, Balance Sheet, to the Federal Depreciation Schedule for December 31, 1997.
15. A copy of detailed depreciation expense report as of December 31, 1997.
16. A copy of reconciliation of Federal Income Form 1120, Balance Sheet, to the Federal Depreciation Schedule for December 31, 1998.
17. A copy of detailed depreciation expense report as of December 31, 1998.
18. A copy of detailed depreciation expense report as of February 28, 1999.

11. The property subject to this appeal consists of certain depreciable assets owned by the Petitioner and located at 1100 Hutchinson Lane, Madison Township, Jefferson County.
12. The Administrative Law Judge did not view the subject property.
13. At the hearing, the parties agreed the years under appeal are 1998 and 1999. The assessed values established by the PTABOA and agreed upon by the parties are as follows:
 - \$1,391,340 for 1998
 - \$1,425,700 for 1999.

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

See Ind. Code § 6-1.1-1-11.

18. 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

19. 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).
20. 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 890 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.
21. 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.]
22. 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.]

23. 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).
24. 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 Issues

Whether cost of depreciable assets was correctly reported for the years 1998 and 1999.

25. The Petitioner contends that the total cost of depreciable assets originally reported for 1998 and 1999 is not in agreement with the total cost of assets reflected in the books and records of the corporation. The Petitioner maintains that total cost of depreciable assets is overstated for 1998 and 1999 as a result of this error.
26. The Respondent contends that sufficient evidence to determine the correct True Tax Value for the Petitioner's depreciable assets for 1998 and 1999 has not been

presented by the Petitioner. The Respondent does not agree or disagree with the Petitioner's position.

27. The applicable rules governing this issue is:

50 IAC 4.2-1-3

Generally, all property shall be taxed as personal property, real estate, ... unless specifically exempted by law.

50 IAC 4.2-4-1

In general, "depreciable personal property", as used in this article, is all tangible personal property used in a business or trade to produce income unless that property is treated differently in this article.

50 IAC 4.2-4-2

The value of depreciable property subject to assessment is determined by utilizing the cost of depreciable property reflected on the taxpayer's books and records.

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

- A. The total cost of depreciable assets reported for the years 1998 and 1999 did not reconcile with either the Petitioner's federal tax forms or the Petitioner's books and financial records. *Spillman testimony; Pet. Ex. 2 and 3.*
- B. Schedule L, Balance Sheet, IRS Form 1120 for the years 1998 and 1999. *Petitioner's Exhibit 3.*
- C. Detailed depreciation expense reports for 12-31-97, 12-31-98, and January and February 1999. *Petitioner's Exhibit 3.*
- D. The Respondent disagreed with the Petitioner's position. The Respondent opted to defer to the Board for a decision regarding this matter. *Sims testimony.*

Analysis

29. With regard to personal property assessments, the taxpayer's books and records determine the total cost of depreciable assets. The Schedule L, Form 1120 from the Petitioner's Federal Income Tax Return (Pet. Ex. 3) and the detailed depreciation expense reports for 1998 and 1999 clearly show that the total cost of depreciable assets carried on the Petitioner's books and records do not agree with the total cost of depreciable assets reported on the Petitioner's Business Personal Property Tax Forms 103 filed for the years 1998 and 1999.

30. The Petitioner has presented evidence sufficient to establish a prima facia case regarding the alleged error in the total cost of depreciable assets reported for 1998 and 1999. The evidence shows that, due to the discrepancy between the cost of depreciable assets reflected on the Petitioner's records and the Petitioner's Form 103, the total cost of depreciable assets reported on the Petitioner's Form 103 for 1998 and 1999 was overstated. The Petitioner has established a prima facia case and the burden has shifted to the Respondent to rebut the Petitioner's case.

31. The Respondent offered no indication of whether they agreed or disagreed with the Petitioner's position nor did the Respondent offer any evidence or testimony to rebut the Petitioner's prima facia case. The Respondent simply claimed that the Petitioner had not presented the probative evidence needed to make a determination regarding its claim and adopted a neutral position deferring to the Board to make the determination.

32. Because the Petitioner successfully established a prima facia case regarding the alleged error in reporting the total cost of depreciable assets, the Respondent had the burden of presenting evidence sufficient to rebut the Petitioner's case. The Respondent has failed to do so. The Petitioner has shown by a preponderance of the evidence that the total cost of depreciable assets reported on the Form 103 for 1998 and 1999 was overstated and should be corrected to reflect the total cost of depreciable assets reflected on the Petitioner's books and records.

Summary of Final Determination

Whether cost of depreciable assets was correctly reported for the years 1998 and 1999.

33. The Petitioner has met its burden and, by a preponderance of the evidence, shown that the total cost of depreciable assets reported on the Form 103 for 1998 and 1999 were overstated and should be corrected to reflect the correct cost reflected on the Petitioner's books and records. A change is made to the assessment as a result of this issue.

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 _____ 2004.

Commissioner, 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.