

REPRESENTATIVE FOR PETITIONER: Kevin E. Steele, Attorney, Burke, Costanza & Cuppy, LLP; Shaheen C. Khan, Vice-President, SKF Steel, Inc; Shahnaz S. Khan, President, SKF Steel, Inc.

REPRESENTATIVES FOR RESPONDENT: No one appeared

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

SKF STEEL, INC.	)	
	)	
Petitioner	)	
	)	
v.	)	Petition No. 45-003-00-1-7-00001R
	)	
	)	County: Lake
LAKE COUNTY PROPERTY TAX	)	Township: Calumet
ASSESSMENT BOARD OF APPEALS	)	Parcel No. Personal property
	)	
Respondent	)	Assessment Year: 2000

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On Remand from the Indiana Tax Court  
Cause No. 45T10-0204-TA-40

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**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**

1. Pursuant to Ind. Code § 6-1.1-15-3, SKF Steel, Inc. filed a Form 131 petition for the March 1, 2000 assessment date, petitioning the Board to conduct an administrative review of the above petition. The Form 131 petition was filed with the Board on November 26, 2001. The Board issued a final determination on March 1, 2002 denying the petition due to SKF's failure to comply with the Notice of Defect provisions of Ind. Code § 6-1.1-15-4. An amended final determination was issued on March 19, 2002.
2. SKF then sued the Board in the Indiana Tax Court. On July 12, 2002, as a result of a Joint Motion for Remand, the Indiana Tax Court remanded the cause back to the Indiana Board of Tax Review for further proceedings.
3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on September 16, 2002 in Crown Point, Indiana before Ellen Yuhan, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
4. The following persons were present at the hearing:
  - For the Petitioner: Kevin E. Steele, Attorney
  - Shaheen C. Khan, Vice-President SKF Steel, Inc.
  - Shahnaz S. Khan, President SKF Steel, Inc.

For the Respondent: No one appeared for the Respondent.
5. The following persons were sworn in as witnesses and presented testimony:
  - For the Petitioner: Shaheen C. Khan
  - Shahnaz S. Khan.

6. The Petitioner submitted the following exhibits to the Indiana Tax Court:

Petitioner's Exhibit A- Demand Notice for Personal Property Taxes and Personal Property Tax Statement for 1998 payable 1999

Petitioner's Exhibit B - Form 130 petition #45-001-00-0-7-00001, date stamped April 5, 2000, property address shown as 201 Mississippi Street, Gary, IN

Petitioner's Exhibit C - Form 115 for petition #45-001-00-0-7-00001, notification date September 29, 2000

Petitioner's Exhibit D - Copy of the tax payment to the Lake County Treasurer

Petitioner's Exhibit E - Form 115 for petition #45-001-00-0-7-00001, notification date February 1, 2002

Petitioner's Exhibit F - Form 131 without a date stamp or petition number, Form 130 without a date stamp or petition number (address shown as 2600 E. 5<sup>th</sup> Street and 700 Chase Street), and page two (2) of a Form 115 (undated).

Petitioner's Exhibit G - Notice of Defect in Completion of Assessment Appeal Form, Form 131 petition #45-003-01-1-7-00001, date-stamped November 26, 2001 by the Lake County Assessor's office, Form 130 (no petition number) date-stamped November 26, 2001 by the Lake County Assessor's office

Petitioner's Exhibit H- Certified mail receipt

Petitioner's Exhibit I - Final Determination of the Indiana Board of Tax Review for petition #45-003-01-1-7-00001

Petitioner's Exhibit J - Letter from Mr. Khan to the Board, certified mail receipt, letter verifying visit to Lake County to obtain Form 115

Petitioner's Exhibit K - Letter requesting rehearing

Petitioner's Exhibit L - Letter denying rehearing

Petitioner's Exhibit M - Amended Final Determination of the Board for petition #45-003-00-1-7-00001.

7. The following documents were submitted at the administrative hearing:

Petitioner's Exhibit 1- Form 115, dated September 29, 2000.

Petitioner's Exhibit 2- Form 115, dated February 1, 2002.

Petitioner's Exhibit 3-Summary of inventory as of March 1, 2000.

Petitioner's Exhibit 4- Invoices for inventory held at Westmont Steel on March 1, 2000.

Petitioner's Exhibit 5- Invoices for inventory held at Chicago Steel & Storage on March 1, 2000.

Petitioner's Exhibit 6 - Invoices for inventory held at Roll & Hold on March 1, 2000.

Petitioner's Exhibit 7 - Form 103 and Form 104 for March 1, 2000 assessment date.

For the Respondent: None

8. Following the hearing, the Board requested certain post-hearing submissions in order to clarify the record, in a letter to the parties dated October 7, 2002. In response to the request, the Office of the Lake County Assessor provided a copy of the Form 133 for the March 1, 2000 assessment date, filed by Petitioner and received by the County on June 18, 2001 (Petition 133-00094), with relevant attachments and a copy of the County's file on Petitioner's Form 130 for Petition #45-003-00-1-7-00001.
  
9. The following additional items are officially recognized as part of the record of proceedings:
  - Board Exhibit A-Remand Order.
  - Board Exhibit B- Form 131 petition.
  - Board Exhibit C-Notice of Hearing.
  - Board Exhibit D- Form 113/PP.
  - Board Exhibit E – Letter, dated October 7, 2002, addressed jointed to  
Sherry Feurborn of the Lake County Assessor's Office and Kevin Steel of  
Burke, Constanza & Cuppy LLP, counsel to Petitioner.
  - Board Exhibit F – Form 133 Petition for Correction of Error (No. 133-00094) for

the March 1, 2000 assessment date, date stamped June 18, 2001 by the Calumet township Assessor and date-stamped August 28, 2001 by the Lake County Auditor, with attachments.

### **Statement of the Issues**

10. The issues presented to the Board are:

Was the Petitioner's appeal timely filed, and if so, was the valuation of the personal property for the March 1, 2000 assessment date excessive?

### **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 of corrected assessment pursuant to Indiana Code § 6-1.1-15-8.

### **Indiana's 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:
- (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.

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 Board of Tax Commissioners*, 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 Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax. 1998), and *Herb v. State Board of Tax Commissioners*, 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 Board of Tax Commissioners*, 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 Board of Tax Commissioners*, 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 Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.* 743 N.E. 2d 247, 253 (Ind. Tax 2001), and *Blackbird Farms Apartments, LP v. Department of Local Government Finance* 765 N.E. 2d 711 (Ind. Tax, 2002).
21. The Board 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 Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 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 Board (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 Board that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]

### **Discussion of the Issues**

*Was the Petitioner’s appeal timely filed and if so, was the valuation of the personal property for the March 1, 2000 assessment date excessive?*

22. The Petitioner contends that the assessed value determined by the PTABOA for the subject personal property, \$490,000, is incorrect. He contends that the correct assessed value should be \$113,220.

23. The applicable rules governing this issue are:

**50 IAC 4.2-2-2**

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.

**50 IAC 4.2-3-1(b)**

Return not on file or omitted property. The assessor is required by law to make an assessment of personal property if they have sufficient information to indicate there is omitted property. If a person owning, holding, possessing, or controlling any personal property fails to file a personal property return or list with the township assessor, the township assessor may examine:

- (1) the personal property of the person;
- (2) the books and records of the person; and/or
- (3) under oath, the person or any other person whom the assessor believes has knowledge of the amount, identity, or value of the personal property not reported by the person on a return.

As an alternative to such an examination, the township assessor may estimate the value of the personal property of the taxpayer and shall assess the person owning, holding, possessing, or controlling the property in an amount based on that estimate. Upon receiving notification of estimated value from the township assessor, the taxpayer may elect to file a personal property return within thirty (30) days from the date of the written notice of assessment subject to the penalties imposed under 50 IAC 4.2-2-10. At the time the notice is given to the taxpayer, they shall also be informed in writing of their opportunity for review and the procedures they must follow in order to obtain review before the county property tax assessment board of appeals.

**50 IAC 4.2-3-3**

Appeal to the county property tax assessment board of appeals. In the event taxpayer does not agree with the assessment made by assessing official, an appeal may be made as outlined in this section.

The taxpayer may appeal to the county property tax assessment board of appeals by filing a Form 130 within forty-five (45) days from the mailing date of the written notice of assessment by the assessor.

Appeal to the state board. If a taxpayer does not agree with an assessment as made by the county property tax assessment board of appeals, a petition for review of assessment on Form 131 must be filed within thirty (30) days after the mailing of the notice of assessment by the county property tax assessment board of appeals.



If a petition for review does not comply with the state board's instructions for completing the form, the state board shall return the petition to the petitioner and include a notice describing the defect in the petition. The petitioner then has thirty (30) days from the date on the state board's notice to cure the defect and file a corrected petition. The state board shall deny a corrected petition if it does not substantially comply with the state board's instructions for completing the form.

### Procedural Background

1. Before addressing the issue of whether Petitioner's personal property was valued excessively, we must address whether Petitioner's Form 131, was timely filed.
2. The Petitioner's case presents a complex chronology of events, overlapping filings and misunderstandings, as described below:
  - a. The Petitioner concedes that it did not timely file a personal property return for the March 1, 2000 assessment date. This return would ordinarily have been due on or before May 15, 2000.
  - b. Petitioner received a Demand Notice on March 5, 2000 for the March 1, 1998 assessment date, in the amount of \$2,268.18. (Petitioner's Exhibit A.)
  - c. Petitioner filed a Form 130 petition, #45-001-00-0-7-0001, on April 5, 2000 in response to the Demand Notice. The assessment date on the petition was changed from 1998 to 2000 but the record is unclear as to which party effected this change or when it was changed. (Petitioner's Exhibit B.)
  - d. At the time Petitioner filed this Form 130, Petitioner's personal property return for the March 1, 2000 assessment date was not yet due.
  - e. On or about July 26, 2000 the Calumet Township Assessor sent a Form 113 to Petitioner, notifying it that they failed to file their personal property return for the March 1, 2000 assessment date, and that its personal property was being assessed at \$490,000. (Board Exhibit C.)
  - f. The form 113 lists Petitioner's address as 2533 Bernice Road, Unit E-1, Lansing, IL 60438, the address that has been consistently used by Petitioner in all their filings and to which all other relevant notices and communications have been sent (presumably successfully) to Petitioner.

- g. The Lake County PTABOA held a hearing on August 17, 2000 to consider the Form 130 filed on March 5, 2000 (presumably in response to the Demand Notice.)
- h. On September 29, 2000 the PTABOA issued a Notice of Final Determination (Form 115) regarding the August 17, 2000 hearing.
- i. The Form 115 erroneously (as was later conceded by Respondent) indicated that the Petitioner owed the amount shown on the Demand Notice, i.e. \$2,268.13. Despite the fact that the underlying hearing related to March 1, 1998 assessment date, the Form 115 specified that the assessment date at issue was March 1, 2000. (Petitioner's Exhibit C.).
- j. Petitioner paid the above tax amount on October 23, 2000. However, this amount apparently only cleared his tax liability for the March 1, 1998 assessment date that was the subject of the Demand Notice. [The record is entirely silent regarding the March 1, 1999 assessment date (the 1999 payable 2000 property taxes), whether the Petitioner filed a return, whether any assessment was established by the township assessor, whether any notices were sent, or whether the Petitioner, owed or paid property taxes.]
- k. Petitioner testified that they received a "Corrected Copy" of the Form 115 sometime in November 2001 indicating an assessed valuation of \$490,000 for tax year 2000. It was the receipt of this "Corrected Copy," Petitioner contends, that inspired them to file Form 131 petition, #45-003-00-1-7-00001, the petition that is the subject of this determination, on November 26, 2001. At the same time they filed the subject Form 131 with the Lake County Assessor, they also filed a Form 130 petition (unnumbered).
- l. By implication Petitioner argues that by paying the amount listed on the original Form 115 issued in September 2000, Petitioner believed that it had satisfied any tax liability he had for March 1, 2000 assessment date. Therefore, they argue, the Form 131 which it filed on November 26, 2001 was timely filed because it was within 30 days of their receipt of the "Corrected Copy" of the Form 115.

- m. The statutory procedures outlined in the Indiana Code clearly provide that a petitioner must bring his assessment complaint to the local PTABOA before it can appeal the assessment to the Board. By filing its 131 and 130 petitions simultaneously, Petitioner failed to follow clear statutory procedure.
- n. In essence, Petitioner contends that the first time they could reasonably have known that their assessment for March 1, 2000 was established at \$490,000 was upon receipt, sometime in November 2001, of the Corrected Copy of the Form 115.
- o. Petitioner testified that it did not have a copy of the “Corrected Copy” of the Form 115 that was sent to them in November 2001 but provided a copy of the form issued by the Lake County Assessor’s office on February 1, 2002. (Petitioner’s Exhibit 2.)
- p. The Board received the subject Form 131 from the Lake County Assessor on December 6, 2001 and on January 15, 2002 issued a notice of defect, because Petitioner had failed to file a complete copy of the Form 115. Petitioner had attached only the second page of an undated Form 115, relating to a personal property assessment of \$490,000. In the bottom right hand corner of this incomplete Form 115 was a footer stating “Petition No. 133-00094.” This is a petition number that would ordinarily be assigned to a Form 133 Petition for the Correction of Error, not to a Form 131. (Board Exhibit B)
- q. Petitioner corrected his Form 131 petition by providing the “Corrected Copy” of the Form 115, with the issuance date of February 1, 2002.
- r. When asked by the Administrative Law Judge, Petitioner testified that a Form 133 had never been filed with respect to the March 1, 2000 assessment date. This statement appeared to be inconsistent with Petitioner’s initial 131 Petition. Given that the record included references to other potentially related proceedings, the Board requested that the parties submit copies of any related Form 133 petitions filed by Petitioner. (Board Exhibit E.)
- s. The public records of Lake County, and the documentation submitted by the Petitioner, reflect that the Petitioner did, in fact, file a Form 133 Petition for assessment date of March 1, 2000, with the assigned petition number of 133-

00094, the same number as appeared on the partial form 115 filed with Petitioner's initial, defective, Form 131. The Form 133 was signed by Petitioner on June 12, 2001 and date-stamped by the Calumet Township Assessor on June 18, 2001. (Board Exhibit F.)

- t. On October 25, 2001, the PTABOA issued a determination on Form 115 Petitioner's Form 133 Petition. (Board Exhibit F.)
- u. It appears as though the Petitioner did not appeal the October 25<sup>th</sup> PTABOA determination to the Board but instead filed the subject 131 Petition, along with a 130 Petition.

### Analysis of the Issue

24. This matter is riddled with errors and omissions made by both the Petitioner and Respondent. Both parties seem to have demonstrated general apathy toward the governing statutory processes. These occurrences result in a record of scattered facts accompanied by little factual explanation. The evidence before the Board raises as many questions as it answers, making it difficult for the Board to reach a determination that it can be confident would be viewed as just if the precise historical events were known. Nevertheless, the Board must make a determination based on the evidence presented, and application of the governing rules and statutes.
25. The unfortunate set of events most relative to this matter are spread out over a period from April of 2000 to February of 2002. Although a great many of events occurred during this period, the discernable facts are limited and few.
26. First, Petitioner did not file a timely personal property return for the 2000 tax year. Given that failure, the Petitioner is consequently precluded from receiving the benefit of exemptions it would have otherwise be entitled to; a position that Petitioner does not now dispute.

27. However, the failure to file his tax return in a timely manner did not necessarily preclude Petitioner from appealing the valuation imposed on his personal property by the local assessing official, provided that it pursued those additional remedies in a timely manner.
28. Petitioner repeatedly failed to pursue these remedies in the manner required by the statute.
29. Petitioner has contended that the Form 131 it filed on November 26, 2001 and which is the subject of this appeal, is a response to the “Corrected Copy “of the Form 115 it received sometime in November 2001 and that it is this “Corrected 115” that represents his first notice that the assessment for March 1, 2000 was excessive.
30. However, a Form 113 notice of assessment was sent by the Lake County Assessor to Petitioner at Petitioner’s correct address on or about July 26, 2000. (Board Exhibit C). Petitioner, therefore, should have appealed the March 1, 2000 assessment within 45 days of his receipt of that Form 113.
31. Although Petitioner never addressed whether or not it received the July 2000 Form 113 directly, he made a general assertion that he received no notice of his assessment until November 2001. [No testimony was offered regarding whether the Petitioner notice via a tax bill/statement indicating that Petitioner must pay the May installment of the 2000 (March 1, 2000 assessment date) payable 2001 property taxes.]
32. Putting aside for the moment the issue of whether or not he received the July 2000 Form 113, Petitioner’s testimony and the configuration of events suggests that he may have assumed that whatever disputes surrounded the March 1, 2000 assessment, were resolved upon the payment of \$2,268.18, the amount which appeared on the March 5, 2000 Demand Notice and the Form issued by the Lake County PTABOA in September 2000. The understandable confusion caused by the Demand Notice and Form 115 (which stated, on its face, that it pertained to the March 1, 2000 assessment date) is relevant to this proceeding.

33. If Petitioner had remained ignorant of the fact that the local assessing officials had assessed his property at \$490,000 and had failed to receive any notice of such assessment prior to November 2001, as it alleges, the misleading Form 115 issued in September 2000, might arguably justify the late filing of the subject Form 131.
34. However, the record indicates that Petitioner was aware, at least as early as June 2001 that its March 1, 2000 assessment was unresolved.
35. Despite Petitioner's testimony to the contrary, the Petitioner's own evidence revealed that Petitioner did file a Form 133 on June 12, 2001. Furthermore, by filing the Form 133 protesting the March 1, 2000 assessed value of \$490,000, it demonstrated that it was aware of its personal property assessment approximately four months earlier than it indicated by its representative's testimony at the hearing.
36. It appears that several procedural issues may exist in connection with the 133 filing. However, because the Petitioner chose not to present evidence regarding the 133 filing, the Board is not able to ascertain how those apparent procedural issues relate to the Petitioner's actions (and perhaps explainable confusion and statutory noncompliance.) Instead, the Board can only conclude that the Petitioner misrepresented the facts, and did by one means or the other actually receive notice of the 2000 assessment sometime before June 12, 2001.
37. Consequently, the Petitioner cannot maintain that it remained without notice of the subject assessment until October of 2001.<sup>1</sup>
38. If the Petitioner had hoped to rely on a confusion surrounding the June Notice, or ultimately the October 25, 2001 Form 115 determination issued in response to the 133 filing, it ought to have so argued. The Board is not in the position to recognize what

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<sup>1</sup> Upon receiving notice of his Form 115 denial of the Form 133, issued October 25, 2001, Petitioner did not appeal this determination to the State. He filed instead the Form 131 at issue here. Filing the subject Form 131 was not the correct procedure following the denial of the 133. Nor was filing the Form 131 timely or procedurally correct.

might be presented as a justifiable confusion, when that potential confusion was never made part of the Petitioner's argument. In contrast, again, the Petitioner's testimony was that it did not file a 133.

39. The only conclusion the Board can arrive at under these circumstances is that the 133 filing demonstrates that the Petitioner in fact had notice of the disputed assessment in June of 2001 (if not sooner) and did not file a 131 until November of 2001.

40. The Petitioner did not file his Form 131 in a timely manner for the March 1, 2000 assessment date.

41. For all the above reasons, SKF has failed to follow the proper statutory procedures in filing this appeal. There is no change in the assessment as a result.

42. The Board notes that no appeal from the Form 130, dated November 26, 2001, and filed simultaneously with the subject Form 131, has been received.

### **Summary of Final Determination**

*Was the Petitioner's appeal timely filed and if so, was the valuation of the personal property for the March 1, 2000 assessment date excessive?*

43. The Form 131 petition requesting a change in the assessment is denied as untimely filed. There is no change in the assessment as a result.

The above stated findings of fact and conclusions of law 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

**IMPORTANT NOTICE**

**- APPEAL RIGHTS ON REMANDED CASE -**

**You may petition for judicial review of this final determination of corrected assessment pursuant to the provisions of Indiana Code § 6-1.1-15-9. 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.**