

and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issues

1. The issue presented for consideration by the Board was:
Whether the personal property assessment is incorrect.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, Thomas E. Hinchley filed a Form 133 petitioning the Board to conduct an administrative review of the above petitions. The Form 133 petitions were filed and eventually received by the Board on December 3, 2001. The determination of the PTABOA was issued on October 25, 2001. The PTABOA determined that the assessed value is \$18,330 for the property for all three years under appeal.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on April 8, 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:
Mr. Thomas E. Hinchley

For the Respondent:
No one appeared on behalf of the Respondent.
5. The following persons were sworn in as witnesses and presented testimony:
For the Petitioner:

Mr. Thomas E. Hinchley

For the Respondent:

No one appeared on behalf of the Respondent.

6. The following exhibits were presented:

For the Petitioner:

No exhibits were submitted.

For the Respondent:

No one appeared on behalf of the Respondent.

7. The following additional items are officially recognized as part of the record of proceedings:

Board Item A – Form 133 petition and attachments.

Board Item B – Hearing notice.

Jurisdictional Framework

8. 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.

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

Indiana's Personal Property Tax System

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

11. 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.

12. 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

13. 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).
14. 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.]
15. 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.]
16. 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.]

17. 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).
18. 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 the personal property assessment is incorrect

19. The Petitioner contends that the assessed value determined by the PTABOA for the subject property, \$18,330 for all three years under appeal, is incorrect. He contends that the correct assessed values are \$2,650 for 1997, \$2,220 for 1998, and \$1,940 for 1999. (Board Item A)

20. The applicable rules governing this Issue are:

50 IAC 4.2-4-2(a)

The cost of depreciable property, both real and personal, as recorded on the taxpayers books and records, must be utilized in determining the value of the depreciable personal property subject to assessment.

50 IAC 4.2-3-1(a)

The township assessor shall examine and verify the accuracy of each personal property return filed with them by a taxpayer. In examining the return 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 reported or not reported by the person on the return.

50 IAC 4.2-3-12

A taxpayer who claims that an error in an assessment entitles them to a refund must file...a Form 133 for correction of the assessment. A fact to keep in mind when dealing with these forms is that they are not to be used to challenge the methodology used in generating an assessment. There are appeal provisions for that purpose.

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

- A. Mr. Hinchley has only one office, and has two desks, a copier, a fax machine, and general office items. (Hinchley testimony)
- B. Mr. Hinchley attempted to resolve this issue with the Assessor, and even submitted “destruction papers” in an attempt to prove that he no longer has the items that he contends are being erroneously assessed. The items in question are two or three trucks and trailers. (Hinchley testimony)
- C. Mr. Hinchley received nothing stating that he could appeal his assessment. He did not know of the assessment until he received a registered letter informing him that his home was in jeopardy for non-payment of business tax. (Board Item A)

Analysis of this Issue

22. To repeat, the burden is placed squarely on a petitioner to prove error in the assessment. Even if a respondent fails to appear, a petitioner has the burden of establishing a set of facts that, when not contradicted, would lead one to reasonably conclude that there is an error in the assessment.
23. In the case at bar, the Board finds the documentary evidence from the Petitioner to be insufficient to establish a set of facts. First, Mr. Hinchley has not established whether original, timely personal property returns were ever filed for the years in question. The only tax returns on the record are signed by Mr. Hinchley and dated November 8, 2000. These returns were attached to and filed with the respective petitions for 1997, 1998, and 1999. It is unknown whether the township assessor estimated the entire assessments or made corrections to tax returns, or whether the township assessor raised or lowered the original assessments.
24. Second, Mr. Hinchley failed, at the hearing, to produce documentation showing that the trucks and trailers he discussed in his testimony were actually disposed of or destroyed. Moreover, Mr. Hinchley did not produce any books or records showing the cost of depreciable assets that he testified still *are* on hand. See 50 IAC 4.2-4-2(a). Thus, Mr. Hinchley submitted no evidence showing that the local officials' current assessments are incorrect, and no evidence to show that the assessments he requests for 1997, 1998, and 1999 *are* correct. He has, therefore, not met the burden of proof required of a petitioner in *Clark and North Park Cinemas, Inc.*
25. Even if Mr. Hinchley had met his burden of proof described above, he has not submitted evidence to show that this appeal was filed in a proper, timely manner. Pursuant to 50 IAC 4.2-3-1, a township assessor has the authority to assess personal property in his jurisdiction, or to make a change to an assessment reported by a taxpayer. If a taxpayer disagrees with the assessment, his recourse is to file a petition for review of assessment within forty-five (45) days after receiving notice of assessment. The Form 133, petition for correction of an error, is not the proper avenue to appeal the methodology of an

assessment made by a township assessor. See 50 IAC 4.2-3-12. Furthermore, even if the proper form had been filed, evidence is lacking to determine if the filing was timely. While Mr. Hinchley stated in his petition that his first notice of assessment was a certified letter received from the county, Mr. Hinchley failed to produce a copy of this letter at the hearing. Thus, the Board has no way to determine when the clock started ticking toward the Petitioner's filing deadlines.

26. For the reasons set forth, the Petitioner's Form 133 petition is hereby denied for the tax years 1997, 1998, and 1999. The assessments remain as determined by the PTABOA.

Summary of Final Determination

Whether the personal property assessment is incorrect

27. The Form 133 petitions for 1997, 1998, and 1999, which claim that the personal property assessments are incorrect, are denied. There is no change to the assessments for all three years in question.

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.