

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

USV OPTICAL, INC.,)	Petition No.: 20-011-01-3-7-00002
)	
Petitioner)	County: Elkhart
)	
v.)	Township: Concord
)	
CONCORD TOWNSHIP)	Parcel No.: 1506667
ASSESSOR,)	
)	Assessment Year: 2001
Respondent)	
)	

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

July 14, 2003

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

Procedural History

1. Pursuant to Ind. Code § 6-1.1-15-3 Michael Clancy filed a Form 133 on behalf of USV Optical Inc., petitioning the Board to conduct an administrative review of the above

petition. The Form 133 was filed on August 5, 2002. The determination of the PTABOA was issued on July 17, 2002.

2. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was scheduled for 11:15am on April 22, 2003 in the Office of the Elkhart County Administration Building before Patti Kindler, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-5-2. Notice of the hearing was mailed to the Petitioner at the address listed on the Form 133 petition. The Notice of Hearing was mailed on January 28, 2003.
3. On April 22, 2003 the ALJ conducted the hearing on the Form 133 petitioner. Neither the Petitioner nor any duly authorized representative appeared at the hearing. Neither the Petitioner nor any duly authorized representative contacted the Board or the ALJ to request a continuance of the properly scheduled administrative hearing.
4. The ALJ verified that the Notice of Hearing was mailed to the address listed by the Petitioner on the Form 133 petition. The ALJ also verified that the notice of hearing was not returned as undeliverable to the Board.
5. The following persons were present at the hearing:
 - For the Petitioner: NONE
 - For the Respondent: Robert F. Lindahl, Concord Township Assessor
Richard Schlueter, Concord Township Deputy Assessor
Cathy Searcy, on behalf of Elkhart County PTABOA
6. The following exhibits were presented:
 - For the Petitioner: NONE
 - For the Respondent: Exhibit A – Copy of the Form 103
7. The following additional items are officially recognized as part of the record of proceedings:
 - A – Copy of Form 133 with attachments
 - B – Notice of Hearing

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 Indiana Code § 6-1.1-15-3.

State Review and Petitioner's Burden

10. 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).
11. 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.]
12. 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.]
13. 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.]

14. 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.]

Determination

15. The Form 133 petition is denied for the failure of the Petitioner or their representatives to appear at the administrative hearing and present probative evidence in support of the alleged errors in the assessment.

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.