

**STATE OF INDIANA
Board of Tax Review**

VIB, INC.,)	On Appeal from the Marion County Property
)	Tax Assessment Board of Appeals
)	
Petitioner,)	
)	Petition for Correction of Error, Form 133
v.)	Petition Nos. 49-440-97-3-3-01080
)	49-440-98-3-3-01069
MARION COUNTY PROPERTY TAX)	49-440-99-3-3-01194
ASSESSMENT BOARD OF APPEALS)	49-440-00-3-3-00104
And LAWRENCE TOWNSHIP)	49-440-01-3-3-00003
ASSESSOR,)	
)	
)	Parcel No. 4008946
)	
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 subject building should be valued from the General Commercial Kit (GCK) pricing schedule.

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 § 6-1.1-15-12, Ralph Campbell of Property Valuation Services, Inc., on behalf of VIB, Inc. (Petitioner) filed Form 133 petitions, Corrections of Error, requesting a review by the State. The Form 133 petitions were filed on May 8, 2001. The Marion County Property Tax Assessment Board of Appeals (PTABOA) Notification of Final Assessment Determinations are dated July 27, 2001. The Form 133 petitions were subsequently forwarded to the State on July 30, 2001.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on April 11, 2002, before Administrative Law Judge Brian McKinney. Testimony and exhibits were received into evidence. Ralph Campbell represented the Petitioner. Kevin Fasick with the Marion County Assessor's Office represented the PTABOA. No one appeared at the hearing to represent Lawrence Township.

4. At the hearing, the subject Form 133 petitions were made a part of the record and labeled Board Exhibits A. Notices of Hearings on Petitions are labeled Board Exhibits B. In addition, the following exhibits were submitted to the State:

Petitioner Exhibit A – Packet of information containing the following:

 1. Letter from PTABOA dated July 3, 2002
 2. Response to the PTABOA letter, dated July 10, 2002
 3. Four (4) exterior photographs of the subject building
 4. Analysis of impact of non-load bearing concrete block portion of subject building

5. The subject building is a commercial/industrial structure located at 7502 East 86th Street, Indianapolis, Marion County, Lawrence Township.

6. The tax years under review in these appeals are 1997 through 2001.
7. The Hearing Officer did not inspect the subject property.
8. On April 18, 2002, Daniel Spiker, Chief Deputy Assessor of Lawrence Township appeared at the State offices. Hearing notices for the petitions under review were originally sent out on February 26, 2002 scheduling the hearing for April 18, 2002. However, on February 28, 2002 another set of hearing notices were sent scheduling the same appeals for hearings on April 11, 2002.
9. At the April 11, 2002 hearing, the Petitioner's representative and the County's representative appeared before the State. The Administrative Law Judge informed Mr. Spiker that he could submit a request for rehearing or respond to the issues, in writing, with the State.
10. On April 29, 2002, the Administrative Law Judge received a letter from Mr. Spiker, including a response to the issues. In the letter Mr. Spiker also indicated that he had mailed a copy of his letter to the Petitioner. Mr. Spiker's letter was not considered in reaching the final determinations in these appeals. The letter was not admitted as an exhibit and has been labeled Respondent Exhibit A for identification purposes only.

Whether the subject building should be valued from the General Commercial Kit (GCK) pricing schedule.

11. The Petitioner contends that the subject structure should be valued from the GCK schedule. The Petitioner further contends that whether or not the subject should be assessed from the GCK schedule is the kind of objective error that can be corrected by way of a Form 133 petition. *Campbell testimony.*

Conclusions of Law

1. Under the law applicable to these proceedings, the Petitioner is limited to the issues raised on the Form 133 petition filed with the PTABOA or issues that are raised as a result of the PTABOA's action on the Form 133 petition. Ind. Code §§ 6-1.1-15-1, 2.1, and 4 (Statutes were amended in 2001 but amendments do not apply). See also the Form 133 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. Tax 1996); *County board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 133 process, the levels of review are clearly outlined by statute. First, the county auditor may correct an error described under subsection (a)(6), (a)(7), or (a)(8) only if the correction is first approved by at least two of the following officials: (1) The township assessor, (2) The county auditor, (3) the county assessor. If two of these officials do not approve such a correction, the county auditor shall refer the matter to the county PTABOA for determination. If the taxpayer disagrees with the PTABOA's decision on the Form 133, then he may appeal to the State for a final administrative determination. Ind. Code § 6-1.1-15-12. Form 133 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 133 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, the State will decide whether the issue raised on the Form 133 petitions is the type of alleged error that can be corrected by way of such a petition.

2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-12.

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.
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. One manner for the taxpayer to meet its burden in the State’s administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). 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 merely because 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. Use of the GCK Schedule

18. The Petitioner claims that the wrong association grouping was used in assessing the subject building. The selection of the appropriate grouping involves the subjective judgment of the assessor. A Form 133 petition is not the appropriate vehicle for the correction of this type of alleged error. For this reason, the State denies the Form 133 petitions on this issue.
19. Reproduction Cost minus Depreciation equals True Tax Value. Prior to tax year 1995, the reproduction cost for commercial and industrial property was the base rate for the model selected less adjustments. 50 IAC 2.1-4-3 and -5.
20. In addition, the State introduced Instructional Bulletin 91-8 and 92-1. Instructional Bulletin 91-8 provided for a 50% reduction in the base rate for qualifying kit-buildings. Bulletin 91-8 stated that: "These amendments allowed for a 50 percent reduction in the base rate of qualifying structures priced from the General Commercial Mercantile, General Commercial Industrial and the Poultry Confinement Buildings Pricing Schedules."
21. State's Instructional Bulletin 92-1 provided local officials instructions on handling appeals by taxpayers who felt their qualifying structures were not reassessed as

required by Bulletin 91-8. Bulletin 92-1 gave a more detailed method to use to assess qualifying structures for the 50% reduction in the base rate.

22. In summary, for appeals prior to the 1995 assessment date, the methodology used (in Instructional Bulletins 91-8 and 92-1) to make this type of reduction entailed making a 50% reduction to the existing pricing schedule, which was in use at the time. The change was an objective issue with mathematical solution and could be addressed using the Form 133 petition.
23. As cited in the *Indiana Administrative Code* (2001), 50 IAC 2.1 “real property assessment” was repealed by the State Board of Tax Commissioners, filed September 14, 1992 (16 1R 662) effective March 1, 1995 and replaced by the “real property assessment” 50 IAC 2.2. The State’s 1995 Regulation, 50 IAC 2.2, eliminated the “kit” building adjustments described in the State’s Instructional Bulletins 91-8 and 92-1 for assessment years 1995 and thereafter.
24. Under the current regulation, the reproduction cost for commercial and industrial property is the base rate for the selected association grouping minus/plus adjustments. 50 IAC 2.2-10-6.1 and 2.2-11-5. As previously noted, the term “association grouping” was introduced by the 1995 Regulation. Prior to that time, the term “model” was the commonly used descriptive term.
25. 50 IAC 2.2-10-6.1 identifies four (4) association groupings to be used for the selection of the appropriate base rate. These four (4) groupings are: (1) General Commercial Mercantile (GCM), (2) General Commercial Industrial (GCI), (3) General Commercial Residential (GCR), and (4) General Commercial Kit (GCK).
26. The GCK association grouping was added to the 1995 Regulation to value pre-engineered and pre-designed pole buildings. Selecting the GCK association grouping instead of another grouping is not a straightforward finding of fact. Rather, subjective judgment is used to select the appropriate association grouping. First, as part of the assessment analysis, the assessor must

necessarily decide whether the physical attributes of the building under review more appropriately fall within the purview of one association grouping or another. Also, in deciding whether the GCK association grouping should be used, the assessor must decide whether the building under review is a pre-engineered building and whether the frame type is light metal/wood siding. 50 IAC 2.2-11-5, Schedule A.4.

27. Errors arising from an assessor's subjective judgment are not the type of errors that can be corrected by way of a Form 133 petition. *Hatcher v. State Board of Tax Commissioners*, 561 N.E. 2d 852 (Ind. Tax 1990).
28. A Form 133 petition is available only for those errors that can be corrected without resort to subjective judgment. *Reams v. State Board of Tax Commissioners*, 620 N.E. 2d 758 (Ind. Tax 1993).
29. Schedule selection involves subjective judgment. Therefore, a Form 133 petition is not the appropriate petition with which to challenge an alleged error made in the selection of schedules. In *Bender v. State Board of Tax Commissioners*, 676 N.E. 2d 1113, 1116 (Ind. Tax 1997) the Tax Court held:

Clearly, the assessor must use his judgment in determining which schedule to use. It is not a decision automatically mandated by a straightforward finding of fact. The assessor must consider the property in question, including its physical attributes and predominant use, and make a judgment as to which schedule is most appropriate. Just as the assessor must use subjective judgment to determine which base price model to employ within these schedules, so too the assessor must exercise his or her discretion to determine which schedule to use. In some cases, this decision will be a closer call than others, but regardless of the closeness of the judgment, it remains a judgment committed to the discretion of the assessor. (Citations omitted).

30. For all of the reasons set forth above, the Form 133 petitions are denied. No change in the assessment is made as a result of this issue.

SUMMARY OF STATE DETERMINATIONS

* Whether the subject structure should be valued from the General Commercial Kit (GCK) pricing schedule rather than the General Commercial Industrial (GCI) pricing schedule. – No Change

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 _____, 2002.

Chairman, Indiana Board of Tax Review