

REPRESENTATIVE FOR PETITIONER:  
David L. Pippen, ATTORNEY AT LAW

REPRESENTATIVES FOR RESPONDENT:  
Steve Carter, ATTORNEY GENERAL OF INDIANA

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

VITCO, INC.,	)	Petition Nos.: 20-041-89-3-4-00821R
	)	20-041-90-3-4-00166R
Petitioner,	)	20-041-92-1-4-00001R
	)	
v.	)	County: Elkhart
	)	
DEPARTMENT OF LOCAL	)	Township: Union
GOVERNMENT FINANCE,	)	
	)	Parcel No.: 411431451001
Respondent.	)	
	)	Assessment Years: 1989, 1990, 1992

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On Remand from the Indiana Tax Court  
Cause No. 49T10-9701-TA-52

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**REFERAL TO UNION TOWNSHIP ASSESSOR, ELKHART COUNTY**

The Indiana Board of Tax Review (the “Board”) having reviewed the decision of the Tax Court in the above matter dated May 28, 2004 (attached and incorporated by reference), and pursuant to Ind. Code § 6-1.1-15-8, refers this matter to the Union Township Assessor, Elkhart County, Indiana (the “Assessor”) to make another assessment consistent with the Tax Court decision for the reasons contained herein.

## **Facts and Procedural History**

1. Vitco, Inc. (Vitco) owns land and a manufacturing facility in Nappanee, Indiana (Elkhart County, Union Township). In July of 1991, Vitco filed two Petitions for Correction of Error (Forms 133) – one challenging its 1989 assessment, the other challenging its 1990 assessment. On each of the Forms 133, Vitco alleged the perimeter area ratio (PAR) and the base rates used were incorrect.
2. In June of 1993, Vitco filed a Petition for Review of Assessment (Form 131) challenging its 1992 assessment. Vitco alleged an incorrect amount of obsolescence depreciation applied, incorrect PAR, and an incorrect grade assigned.
3. On November 22, 1996 the State Board of Tax Commissioners (State Board) issued final determinations on all three assessment challenges. The State Board denied relief on the Forms 133. The State Board made a change to the PAR and applied a 35% obsolescence factor to Vitco's facility as a result of the Form 131 challenge.
4. Vitco initiated an original tax appeal on January 6, 1997. On September 30, 1998, the parties filed a joint motion for remand. On October 9, 1998, the Tax Court granted the motion for remand. On February 11, 1999, the State Board conducted a remand hearing. On April 7, 1999, the State Board issued a final determination denying Vitco's claims for assessment years 1989 and 1990. The State Board also issued a final determination on April 7, 1999, denying Vitco's claims for the 1992 assessment.
5. On May 21, 1999, Vitco filed another original tax appeal. The Tax Court heard the parties' oral arguments on April 4, 2001. The issues raised by Vitco were the correctness of the PAR calculation for years 1989 and 1990, errors in the base rate adjustments for 1989 and 1990, and an incorrect obsolescence calculation for 1992.

## Discussion of Remanded Issues

6. This case was previously remanded to the State Board so that the base rates and perimeter area ratio could be verified by inspection of the property. (Status Report and Mot. for Remand, *Vitco, Inc. v. State Bd. of Tax Comm'rs*, Cause No. 49T10-9701-TA-52, filed Sept. 30, 1998.) No such inspection was conducted as a result of the remand.
  
7. Noting its frustration with the parties, the Court ordered that the case be remanded to the Board. With respect to the issue of the correct perimeter area ratio, the Tax Court ordered the Board to:
  - a) instruct the local assessing officials and Vitco to each designate a representative to meet at the subject property;
  - b) those representatives will work together in calculating the appropriate PAR to be applied to the building, consistent with the provisions of 50 IAC 2.1-4-1; and
  - c) the representatives will preserve all appropriate measurements, drawings, calculations, etc.
  
8. With respect to the issue of base rate adjustments, the Tax Court ordered the Board to:
  - a) instruct the local assessing officials and Vitco to each designate a representative to meet at the subject property;
  - b) those representatives will walk the subject improvement together in order to determine whether Vitco is entitled to the base rate adjustments it seeks (i.e., adjustments for sprinklers, floor finish, heating system, and exterior wall types only);
  - c) however, to be entitled to any of the base rate adjustments it seeks, Vitco must (during the walk-through) physically point out where and how its building does not contain construction elements listed in the model used to assess it or that its building contains construction elements that are not listed in the models. *See Barth, Inc. v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1124, 1129 (Ind. Tax 2001). Vitco then has the burden to ascertain the cost of each component (i.e., the amount of the requested adjustment) based on the assessment regulations. *See id.*

9. Finally, the Tax Court affirmed the decision of the State Board with respect to the issue of obsolescence raised by Vitco on the Form 131 filed for tax year 1992.
10. The Board hereby ORDERS the Assessor and Vitco to follow the instructions of the Tax Court as written. *Vitco, Inc. v. Dep't of Local Gov't Fin.*, No. 49T10-9701-TA-52, slip op. at 7, 9 (Ind. Tax Ct. 2004).

Therefore, pursuant to Ind. Code § 6-1.1-15-8, the Board refers this matter to the Union Township Assessor of Elkhart County, Indiana, and instructs the Assessor and Vitco to follow the instructions of the Tax Court and jointly arrive at a new assessment consistent with the Tax Court decision, this \_\_\_ day of \_\_\_\_\_, 2004.

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Commissioner, 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.