

**REPRESENTATIVE FOR PETITIONER: Dean White**

**REPRESENTATIVE FOR RESPONDENT: None**

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

<b>In the matter of:</b>	)	
	)	<b>Petition No.: 45-023-01-3-7-00182</b>
<b>DEAN WHITE,</b>	)	
	)	
<b>Petitioner</b>	)	
	)	<b>County: Lake</b>
<b>v.</b>	)	
	)	<b>Township: North</b>
<b>NORTH TOWNSHIP ASSESSOR</b>	)	
	)	<b>Parcel No.: 26-966732</b>
<b>Respondent</b>	)	
	)	<b>Assessment Year: 2001</b>
	)	

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

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**September 18, 2006**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (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**

### **Issue**

1. The issue presented for consideration by the Board was whether the Petitioner's personal property was valued correctly.

### **Procedural History**

2. On June 4, 2004, Dean White (the Petitioner) filed a Form 133 petition appealing an estimated assessment for personal property by the township assessor.
3. The Form 133 petition was disapproved by the local officials and forwarded to the Lake County Property Tax Assessment Board of Appeals (PTABOA). On December 2, 2004, the PTABOA issued its final determination for the assessment denying the Form 133 petition and upholding the assessed value of \$8,000.
4. Upon receipt of the decision by the PTABOA, the Petitioner re-filed the Form 133 petition to the Board on December 17, 2004.

### **Hearing Facts and Other Matters of Record**

5. Pursuant to Ind. Code § 6-1.1-15-4, and § 6-1.5-4-1, a hearing was held on June 21, 2006, in Crown Point, Indiana before Ellen Yuhan, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2.
6. The Petitioner, Dean White, appeared and participated in the hearing. No one appeared on behalf of the Respondent.
7. The Petitioner did not submit any exhibits.

8. The following items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A - Form 133 petition,

Board Exhibit B - Notice of Hearing dated April 7, 2006,

Board Exhibit C – Sign-in Sheet

9. The subject of this proceeding is personal property (equipment, furniture, and displays) located at 7026 Kennedy Avenue, Hammond, in North Township, Lake County.
10. The ALJ did not conduct an on-site visit of the property.
11. For the 2001 assessment year, the PTABOA estimated the assessed value for the personal property to be \$8,000.
12. For the 2001 assessment year, the Petitioner contends the assessed value for the personal property is \$500.

### **Jurisdictional Framework**

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.

## **Indiana's Personal Property Tax System**

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.

## **Administrative Review and Petitioner's Burden**

16. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
  
17. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
  
18. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life*

*Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

### **Discussion of the Issue**

19. Summary of Petitioner's contentions in support of an error in the assessment:
  - A. The Petitioner contends that the value attributed to his personal property (equipment and furniture) is excessive. *White testimony*. According to the Petitioner, in previous years his personal property was valued from \$1,170 to \$1,300. *Id.* The Petitioner argues that there has been no change in the business, displays, or desks at issue in this assessment. *Id.*
  - B. The Petitioner testified that he did not file an original assessment form (Form 103) for 2001. *White testimony*. The Petitioner further testified that he did not file a Form 103 for either 1999 or 2000, but that he had accepted the township assessor's values for those years because the assessed values were lower. *Id.*

### **Analysis of the Issue**

23. Ind. Code § 6-1.1-3-7 states that "a taxpayer shall, on or before the filing date of each year, file a personal property return with the assessor of each township in which the taxpayer's personal property is subject to assessment." In the case at bar, the Petitioner did not file a personal property return by May 15, 2001.
24. If a taxpayer fails to file a personal property return, then pursuant to 50 IAC 4.2-3-1(b), the assessor is required to make an assessment if they have sufficient information to indicate there is omitted property. "Upon receiving a 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 by the assessor subject to the penalties imposed under 50 IAC 4.2-2-10.” 50 IAC 4.2-3-1(b).

25. At hearing, the Petitioner testified that he did not file a personal property return for tax years 1999, 2000 and 2001. According to the Petitioner, the estimated assessments for the prior years were “lower” and, therefore, he did not appeal the assessments. He contends, however, that the assessment for the 2001 tax year was too high. Upon receiving the notice of estimated value, the Petitioner did not file a personal property tax return within thirty days and pay the proper penalties for the late filing.
26. The Petitioner’s failure to file its personal property tax return timely upon receiving notification of the estimate of value is fatal to the Petitioner’s position. As the Indiana Tax Court found in nearly identical circumstances in *Adams v. Spears*, “the Assessor acted within its authority in estimating and assigning a value to his property” and the Court confirmed the Board’s final determination upholding the assessment as proper. *Adams v. Spears*, 812 N.E.2d 876 (Ind. Tax Ct. 2004) (“Adams bore the responsibility to timely file his return; because he did not, the Assessor could estimate an assessment. Adams had the opportunity to challenge the Assessor's estimate; he failed to do so within the proper timeframe. Thus, the Court concludes that the Assessor acted within its authority in estimating and assigning a value to his property.”) (citations omitted).
27. Even if the Petitioner’s failure to file a personal property tax return was not fatal to his claims, the Petitioner’s appeal here still must fail. The Petitioner failed to present any probative evidence that the assessment at issue is incorrect. The Petitioner merely contends that the subject property was valued “lower” in 1999 and 2000. *White testimony*. The Petitioner is mistaken in his reliance on the prior assessments. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing

*Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id.* The Petitioner presented no further evidence to prove that the assessment at issue is in error.<sup>1</sup>

28. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Summary of Final Determination**

31. The Petitioner failed to make a prima facie case regarding an error in the assessment. The Board finds that the subject personal property is correctly assessed at \$8,000. The Board finds in favor of the Respondent.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

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Commissioner, Indiana Board of Tax Review

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<sup>1</sup> Furthermore, the Form 133 is not the proper avenue to appeal an assessment by the township assessor. *See* Ind. Code § 6-1.1-15-12. The Petitioner failed to follow the statutory procedures provided for in Ind. Code § 6-1.1-15-1 to appeal the assessment made by the Township Assessor. Thus, the Petitioner's appeal is denied.

## 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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Trial Rules are available on the Internet at <[http://www.in.gov/judiciary/rules/trial\\_proc/index.html](http://www.in.gov/judiciary/rules/trial_proc/index.html)>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.**