

REPRESENTATIVE FOR PETITIONER:

Keith Shake, Attorney

REPRESENTATIVE FOR RESPONDENT:

Rick Freeman, Supervisor, Center Township Assessor's Office

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Celebration Halloween, Inc.)	Petition No.:	49-101-02-3-7-00038
)		Personal Property
Petitioner,)		
)		
v.)		
)	County:	Marion
Center Township Assessor's Office,)	Township:	Center
)	Assessment Year:	2002
Respondent.)		

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

November 3, 2005

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

Issues

1. The issues presented for consideration by the Board are:
 - Issue 1 – Can the Form 133 be used to correct errors on a personal property return?
 - Issue 2 – Did the Township officials act in a timely fashion?
 - Issue 3 – Is Petitioner entitled to an exemption?

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-12 Elizabeth Howard filed a Form 133 on behalf of Celebration Halloween, Inc., petitioning the Board to conduct an administrative review. The Form 133 was filed with the County Assessor on April 20, 2004. The determination of the Marion County Property Tax Assessment Board of Appeals (the PTABOA) was issued on August 27, 2004.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4, Paul Stultz, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2, held a hearing on August 10, 2005, at Indianapolis, Indiana.

4. The following persons were present at the hearing:

For the Petitioner - Keith Shake, Attorney,

Elizabeth Howard, Agent, Celebration Halloween, Inc.,

Michael Griffis, Controller, Celebration Halloween, Inc.

Michael Wolf, Certified Public Accountant with Ent & Imler

CPA Group,

Steven Imler, Certified Public Accountant with Ent & Imler

CPA Group,

For the Respondent - Rick Freeman, Supervisor, Center Township Assessor's

Office.

5. Elizabeth Howard, Michael Griffis, Michael Wolf, Steven Imler, and Rick Freeman were sworn in as witnesses and presented testimony.
6. The Form 133 petition is a part of the record and identified as Board Exhibit A. The Notice of Hearing on Petition is part of the record and identified as Board Exhibit B.

7. The following exhibits were presented:
 - Petitioner Exhibit 1 - Ind. Code § 6-1.1-10-29.3,
 - Petitioner Exhibit 2 - Form 103 and Form 103-W,
 - Petitioner Exhibit 3a - Letter from S. Imler to M. Womack, Marion County Auditor, dated September 24, 2004,
 - Petitioner Exhibit 3b - Form 133 with attachment,
 - Petitioner Exhibit 3c - Power of Attorney Form,
 - Respondent Exhibit 1 - Form 113.
8. The subject property is inventory (business personal property) located in Center Township, Marion County.
9. The Administrative Law Judge did not view the subject property.
10. At the hearing, the parties agreed the year under appeal is 2002 and the assessed value of record is \$1,064,070.

Jurisdictional Framework

11. 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.
12. The Board issues this final determination pursuant to Indiana Code § 6-1.1-15-3.

Indiana's Personal Property Tax System

13. 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. 50 IAC 4.2-2-2.

Administrative Review and Petitioner's Burden

14. 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 Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
15. 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 Issues

16. The parties agreed on certain relevant procedural matters. Petitioner presented a file stamped copy showing the Form 103, claiming an inventory exemption, was received by Center Township officials on May 15, 2002. On October 21, 2002, Respondent changed Petitioner's assessment based on a lack of information. Respondent contended notification of this change was sent. Petitioner contended the notification was not received.
17. Petitioner testified that all inventory originated from outside of Indiana. Petitioner does not manufacture or process any inventory, and the majority of customers are located outside of Indiana. *Howard testimony*.
18. Petitioner engaged Ent & Imler, a CPA firm, to perform an annual audit for the calendar year 2002. Mr. Wolf, a certified public accountant, supervised Petitioner's annual audit

and personal business property tax return for 2002. Mr. Wolf testified that the amount of inventory claimed as exempt was correct. *Wolf testimony.*

19. Mr. Wolf further testified the amount of inventory that went to an out-of-state destination was correctly identified on Petitioner's Form 103, schedule B, line 25. Mr. Wolf pointed out exempt inventory on the Form 103-W agrees with the amount on Form 103, schedule B, line 25. *Wolf testimony; Pet'r Ex. 2.*
20. Taxpayer claims it is entitled to the inventory interstate commerce exemption under Ind. Code § 6-1.1-10-29.3. Taxpayer contends the Form 103 and claim for exemption were timely and properly filed. Taxpayer contends it did not receive notice that Respondent disallowed the inventory exemption. Additionally, Taxpayer contends that the change to its assessment was not made in a timely fashion. *Shake argument.*
21. Respondent, on the Form 133 (section V), contended that Ind. Code 6-1.1-15-12(g) prevents Petitioner from filing a Form 133 to correct errors on the personal property return. *Pet'r Ex. 3(b).*
22. Respondent testified the assessment was changed due to a lack of information about the exemption claimed. Respondent contended the exemption could not be considered due to the use of the allocation method. *Freeman testimony; Resp't Ex. 1.*
23. Respondent, on the Form 133 (section V), contended that Petitioner did not respond timely to written notice (Form 113) sent on October 21, 2002. *Pet'r Ex. 3(b).*
24. Petitioner's contention that both the Form 103 and 103-W were timely filed was not disputed by Respondent.

25. The applicable laws governing this issue are:

Ind. Code § 6-1.1-15-12(g)

A taxpayer that files a personal property tax return under IC 6-1.1-3 may not petition under this section for the correction of an error made by the taxpayer on the taxpayer's personal property tax return. If the taxpayer wishes to correct an error made by the taxpayer on the taxpayer's personal property tax return, the taxpayer must instead file an amended personal property tax return under IC 6-1.1-3-7.5.

Ind. Code § 6-1.1-16-1(a)(1)

A township or county assessing official must make a change in the assessed value and give the notice of the change on or before the latter of:

- (A) September 15 of the year for which the assessment is made; or
- (B) four (4) months from the date the personal property return is filed if the return is filed after May 15 of the year for which the assessment is made.

Ind. Code 6-1.1-16-1(d)

This section does not apply if the taxpayer:

- (1) fails to file a personal property return which substantially complies with the provisions of this article and the regulations of the department of local government finance; or
- (2) files a fraudulent personal property return with the intent to evade the payment of property taxes.

Analysis of the Issues

Issue 1 – Can the Form 133 be used to correct errors on a personal property return?

26. Pursuant to IC 6-1.1-15-12(g), a taxpayer may not petition under this section for the correction of an error made by the taxpayer on the taxpayer's personal property return. In this case Petitioner is not attempting to correct an error made by Petitioner, but rather a change made by Township officials.
27. A Form 133 petition is available only for those errors that can be corrected without resort to subjective judgment. *Hatcher v. State Bd. of Tax Comm'rs*, 561 N.E.2d 852 (Ind. Tax Ct. 1990); *Reams v. State Bd. of Tax Comm'rs*, 620 N.E.2d 758 (Ind. Tax Ct. 1993).

28. The determination of whether or not the Township officials acted within the statutory period does not require subjective judgment. Accordingly, Petitioner may use a Form 133 to challenge the actions of the Township officials.

Issue 2 – Did the Township officials act in a timely fashion?

29. Petitioner filed the Form 103 with the claim for exemption on May 15, 2002. Respondent did not dispute the Form 103 was filed timely.
30. On October 21, 2002, Respondent changed Petitioner's assessment due to a lack of information. Respondent contends it sent notification. Petitioner contends the notification was not received.
31. Township officials must give notice on or before September 15, or four months after the date the return was filed. This time frame does not apply if the Form 103 return does not substantially comply with regulations or the return is fraudulent. Ind. Code 6-1.1-16-1. Respondent did not assert the Form 103 did not substantially comply with regulations or was fraudulent.
32. The Township's notice is dated October 21, 2002. Therefore, the Township officials' actions were outside the time to act pursuant to IC 6-1.1-16-1 and they have made no claim that their change is authorized by any other authority.

Issue 3 – Is Petitioner entitled to an exemption?

33. Respondent's action was not timely. Therefore, the attempt to change the reported assessed value was not authorized and is outside Respondent's statutory authority. Accordingly, the Board will not address the merits of the claimed exemption. The return and the claimed exemption must stand as originally filed before the Respondent attempted to change it. Thus, the total assessed value for personal property is \$1,700 for the March 1, 2002, as filed by Petitioner on the Form 103.

Other Findings – Objection to the admissibility of certain evidence.

34. The attorney for Petitioner objected to introduction of the Form 113 that was alleged to have been sent to the Petitioner. *Respondent Exhibit 1*. The date the notice was prepared and sent is relevant to the issue before the Board and actually supports Petitioner's contentions. Accordingly, the Form 113 is admitted and made a part of the record.

Summary of Final Determination

35. Petitioner proved its case that Respondent attempted an untimely change regarding the assessed value it had reported for personal property. Respondent failed to rebut or impeach that case. As a result, the assessment must be changed back to the value Petitioner originally reported.

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

Commissioner, 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. 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>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.