

REPRESENTATIVE FOR PETITIONER: Richard F. Petry, Controller
REPRESENTATIVE FOR RESPONDENT: Sue Sams, Union Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

WORKMAN PUBLISHING COMPANY,)	Petition Nos.: 54-030-02-1-7-10000
)	54-030-03-1-7-00173
Petitioner,)	
)	Parcel No.: Personal Property
v.)	
)	County: Montgomery
UNION TOWNSHIP ASSESSOR,)	
)	Township: Union
Respondent.)	
)	Assessment Years: 2002 and 2003
)	
)	
)	

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

JANUARY 13, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence presented in this case. The Board now enters its findings of fact and conclusions of law on the following issue:
Is the assessed value of Petitioner's paper supply (business personal property) at the R.R. Donnelly printing plant on March 1, 2002 and 2003 excessive?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. Workman Publishing Company (the Petitioner) timely filed a business tangible personal property return (Form 103) for the 2002 assessment date. The return for 2002 listed an assessed value of \$112,480. Sometime between the filing of the Form 103 for 2002 and March 10, 2004, the assessed value changed to \$73,110.¹ The Petitioner filed a Form 130 petition to the Montgomery County Property Tax Assessment Board of Appeals (PTABOA) on March 10, 2004. The PTABOA issued a decision upholding the 2002 assessment on May 26, 2004.
2. The Petitioner failed to file a timely Form 103 for the 2003 assessment. On June 18, 2003, the Union Township Assessor mailed a Form 113/PP to the Petitioner. The Form 113/PP assigned a value of \$59,380 to the Petitioner's personal property for 2003. The Petitioner subsequently filed a Form 103 reporting personal property with an assessed value of \$50,800. The Petitioner filed an appeal for the 2003 assessment to the PTABOA.² The PTABOA issued a decision for the 2003 assessment year on November 29, 2004.
3. Pursuant to Ind. Code § 6-1.1-15-3, the Petitioner sought the Board's review. On June 14, 2004, the Petitioner filed a Form 131 petition for the 2002 assessment. The Petitioner filed a Form 131 petition for the 2003 assessment on December 21, 2004.

¹ Originally, the 2002 personal property regulation did not provide for a 35% reduction that had existed in previous years. This situation changed after May 15, 2002. *See* House Enrolled Act No. 1001(ss) Section 194 (d)(2) (2002). Each county was required to apply the 35% reduction retroactively. The adjustment from \$112,480 to \$73,110 appears to be the application of that 35% reduction. Neither the amount of inventory reported by the Petitioner nor the original value assigned by the Petitioner was changed.

² The Form 130 is date stamped the same day as the Form 131 (December 21, 2004), but obviously it was filed earlier. The PTABOA's decision on it (Form 115) was dated on November 29, 2004. That action indicates the Form 130 was filed before that date. The Petitioner signed the Form 130 on November 11, 2004. Accordingly, it appears that the Form 130 must have been filed sometime between November 11 and 29, 2004.

Hearing Facts and Other Matters of Record

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on October 13, 2005, in Crawfordsville, Indiana. Brian McKinney, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3, presided at the hearing.

5. The following persons were sworn as witnesses at the hearing:
 - Richard F. Petry, Controller for the Petitioner,³
 - Peggy Hudson, Montgomery County Assessor,
 - Sue Sams, Union Township Assessor.

6. The following exhibits were presented by the Petitioner:
 - Petitioner Exhibit 1 – Form 130 for the 2003 assessment,
 - Petitioner Exhibit 2 – Invoice from Banta Book Group indicating a February 24, 2003, shipping date to Indiana,
 - Petitioner Exhibit 3 – Invoice from RR Donnelly indicating job completion date of March 11, 2003,
 - Petitioner Exhibit 4 – Freight invoice from RR Donnelly indicating shipping date from Indiana on March 14, 2003,
 - Petitioner Exhibit 5 – Form 130 for the 2002 assessment,
 - Petitioner Exhibit 6 – Electronic mail from RR Donnelly dated February 6, 2002,
 - Petitioner Exhibit 7 – Invoice from RR Donnelly dated March 12, 2002,
 - Petitioner Exhibit 8 – Shipping documents from RR Donnelly indicating books shipped to Wisconsin on March 11, 2002.

7. The following exhibits were presented by the Respondent:
 - Respondent Exhibit A – Form 103 for the 2002 assessment,
 - Respondent Exhibit B – Form 103 for the 2003 assessment.

³ Mr. Petry participated in the hearing via telephonic conference. The Respondent did not object to conducting the hearing in this manner.

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – The Forms 131,
 - Board Exhibit B – Notice of Hearing dated July 8, 2005.
9. The Administrative Law Judge did not conduct an on-site inspection of the subject property.
10. The subject property is tangible personal property that was located at the RR Donnelly printing plant in Crawfordsville, Indiana, on March 1 of each assessment year.
11. The PTABOA determined the assessed value of the personal property was \$73,110 for the 2002 assessment. The PTABOA determined the assessed value of the personal property was \$50,800 for the 2003 assessment.
12. The Petitioner contended the assessed value should be \$0 for each year.

Jurisdiction

13. 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 that provision, including all case law pertaining to property tax assessment or matters of administrative law and process. The Board is authorized to issue a final determination pursuant to Ind. Code § 6-1.5-5-5.
14. In order to appeal the assessed value of its tangible property for 2002 and 2003, the taxpayer was required to file a petition with the county assessor within 45 days after a notice of change in the assessment or May 10 of that year. Ind. Code § 6-1.1-15-1. The Tax Court has held that failure to initiate the appeals process in a timely manner is a jurisdictional fault that the Court can raise sua sponte. *Thousand Trails, Inc. v. State Bd. of Tax Comm'rs*, 757 N.E.2d 1072, 1075-1076 (Ind. Tax Ct. 2001); *see also Kent Co. v. State Bd. of Tax Comm'rs*, 685 N.E.2d 1156, 1158 (Ind. Tax Ct. 1997).

15. For the 2002 assessment year, the Petitioner timely filed the Form 103 on April 15, 2002. This appeal was initiated with a Form 130 almost two years after the Form 103 was filed by the Petitioner. No notice of a change in the assessment was issued between the filing of the Form 103 and the Form 130. The Petitioner filed a Form 103 for 2003 on July 21, 2003. The Petitioner filed a Form 130 on November 11, 2004, appealing the assessed value it had reported. This appeal was initiated more than a year after the Form 103 was filed by the Petitioner. No notice of a change in the assessment was issued between the filing of the Form 103 and the Form 130. The record indicates that the Petitioner failed to initiate its appeals for either year in a timely manner. The Board, therefore, lacks jurisdiction to hear this matter and the petitions are denied.
16. Although the jurisdictional issue is dispositive, because the Respondent did not raise the jurisdictional issue, the Board will also address the merits of Petitioner's case.

State Review and the Petitioner's Burden

17. 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).
18. 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 Twp. 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”).
19. 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.

Analysis

20. The Petitioner contracted with RR Donnelly in February of each year to run a print of books. The orders were shipped out of Indiana on March 11, 2002, and March 11, 2003. *Petitioner Exhibits 3, 8*. The Petitioner does not have any offices or any other property located in Indiana. *Petry testimony*.
21. The Petitioner does not dispute the property was in Indiana on the assessment dates for 2002 and 2003. The Petitioner contends that the taxes are too high because the property was physically in Indiana for only a short time. *Petry testimony*.
22. The Respondent contended the property was in Indiana on March 1 of each of the assessment years in question, and therefore, it is properly assessed. No claim for exemption was filed for the personal property. *Sams testimony*.
23. Except as otherwise provided by law, all tangible property that is within the jurisdiction of this state on the assessment date of a year is subject to assessment and taxation for that year. Ind. Code § 6-1.1-2-1. Personal property must be assessed where it is situated on the assessment date if the property is regularly used or permanently located where it is situated or a nonresident who does not have a principal office within this state owns it. Ind. Code § 6-1.1-3-1(c).
24. Indiana's personal property tax system is a self-assessment system. *See Paul Heuring Motors, Inc. v. State Bd. of Tax Comm'rs*, 620 N.E.2d 39, 41 (Ind. Tax Ct. 1993). Every person or entity owning personal property in Indiana on March 1 of any year is required to file a personal property return on or before May 15 of that year unless an extension is granted. 50 IAC 4.2-2-2; 50 IAC 4.3-2-2.

25. The Petitioner does not dispute that on March 1 of both 2002 and 2003 it owned tangible personal property located in the State of Indiana. Additionally, the Petitioner does not contend the value of the property is in error. Instead, the Petitioner's contention is that, because the property was located in Indiana for only approximately one month in each year, it should not have to pay the full amount of taxes.
26. The Petitioner provided no substantial argument or authority such as statute, regulation or case law to support its position.
27. When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Final Determination

27. Because the Petitioner failed to initiate the appeals in a timely manner, the petitions must be denied.
28. The Petitioner did not make a prima facie case of error in the assessment.
29. The Board finds for the Respondent.

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>.