

STATE OF INDIANA
Indiana Board of Tax Review

AMERICAN LEGION POST 495,)	On Appeal from the Marion County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petition for Review of Exemption-Form 132
)	
)	Petition No. 49-700-01-2-8-10001
MARION COUNTY PROPERTY TAX)	Parcel No. 7039874
ASSESSMENT BOARD OF APPEALS)	
)	
Respondent.)	

Findings of Fact and Conclusions of Law

The Indiana Board of Tax Review (IBTR) makes the following findings of fact and conclusions of law in this appeal:

Findings of Fact

1. This administrative appeal comes before the IBTR on the Petition for Review of Exemption-Form 132, filed by American Legion Post 495 on August 22, 2001. Said Petition was defected due to failure to attach Form 120. Form 120 was filed on October 22, 2001.

2. Pursuant to Ind. Code § 6-11-15-4, an administrative hearing was scheduled for April 17, 2002 at 10:15 A.M. Notice of said hearing was mailed to American Legion Post 495 at the address listed on the petition and to Gary Keen, Commander, at the address listed on the power of attorney submitted for purposes of this appeal. Notice of hearing was mailed on February 25, 2002.

3. On April 17, 2002, Administrative Law Judge (ALJ) Tim Rider conducted the administrative hearing on the Form 132 Petition. Neither the Petitioner nor its representative appeared at the hearing.
4. The Petitioner and its representative did not contact the IBTR or the ALJ prior to the scheduled hearing date and did not request a continuance of the hearing.
5. The ALJ verified that notices of hearing were mailed, with proof of mailing, and also verified that the notices were not returned to the IBTR as not deliverable.

Conclusions of Law

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. In addition, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.
2. Ind. Code § 6-1.1-15-3 requires the IBTR to review the actions of the PTABOA, but does not require the IBTR to review the initial assessment or undertake reassessment of the property.
3. In reviewing the actions of the PTABOA, the IBTR 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.

4. 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.
5. Taxpayers are expected to make factual presentations to the IBTR regarding alleged errors in assessment. *Id.* These presentations should both outline the alleged errors and support 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 IBTR is not required to give weight to evidence that is not probative of the errors the taxpayers 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)).
6. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the IBTR is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the IBTR 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.
7. 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).
8. 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 IBTR 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 IBTR final determination even though the taxpayer demonstrates flaws in it).

9. The Form 132 petition is denied for the failure of the taxpayer or its representative to appear at the administrative hearing and present evidence in support of the alleged errors regarding the exemption application.