

REPRESENTATIVE FOR PETITIONER:

Carla Delaney, Meritax Property Tax Consultants

REPRESENTATIVES FOR RESPONDENT:

Michael Chittum, Peru Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

BAKEHORN GRANDCHILDREN LTD,)

Petitioner)

v.)

PERU TOWNSHIP ASSESSOR)

Respondent)

Petitions for Correction of Error,
Form 133

Petition Nos: 52-021-98-3-3-00002

52-021-99-3-3-00002

52-021-00-3-3-00002

52-021-01-3-3-00002

County: Miami

Township: Peru

Parcel No. 0219640041

Assessment Years: 1998, 1999, 2000 &
2001

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

July 21, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the “Board”.

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:

ISSUE 1 – Whether 18,734 square feet of the subject structure should be valued from the GCK pricing schedule.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-12 Carla Delaney, Meritax Property Tax Consultants filed Form 133s (Correction of Errors) on behalf of Bakehorn Grandchildren LTD. (Petitioner) petitioning the Board to conduct an administrative review of the above petitions. The Form 133s were filed July 14, 2002. The Miami County Property Tax Assessment Board of Appeals (PTABOA) issued their Final Determinations on July 19, 2002. The Form 133s were subsequently forwarded to the Board for review on July 25, 2002.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on May 29, 2003 in Peru, Indiana before Dalene McMillen, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-5-2.

4. The following persons were present at the hearing:
 - For the Petitioner:
 - Carla Delaney, Meritax Property Tax Consultants

 - For the Respondent:
 - Nancy Hardwick-Gates, Miami County Assessor
 - Scott Potts, Member Miami County PTABOA
 - Michael Chittum, Peru Township Assessor

5. The following persons were sworn in as witnesses and presented testimony:
 - For the Petitioner:
 - Carla Delaney

 - For the Respondent:
 - Nancy Hardwick-Gates
 - Scott Potts
 - Michael Chittum

6. The following exhibits were presented:
 - For the Petitioner:
 - Petitioner's Exhibit 1 – Summary of Issues (three pages) and two (2) exterior photographs of the subject property

For the Respondent:

Respondent's Exhibit 1 – Written authorization by the Peru Township Assessor granting permission to the PTABOA to represent it (the Township) at these proceedings

For the Board:

Board's Exhibit A – Form 133 petitions

Board's Exhibit B – Notices of Hearing on Petition (Form 117)

7. At the hearing, the parties agreed the assessed values determined by the PTABOA for the assessment dates as of March 1, 1998, March 1, 1999, March 1, 2000 and March 1, 2001, are the values under review in these appeals. The assessed values are as follows:

March 1, 1998, March 1, 1999 and March 1, 2000:

Land \$20,770	Improvements: \$96,560	Total: \$117,330
---------------	------------------------	------------------

March 1, 2001:

Land: \$62,300	Improvements: \$289,700	Total: \$352,000
----------------	-------------------------	------------------

8. The subject property is a general office/light utility storage building located at 185 Madison, Peru, Peru Township, Miami County.
9. The ALJ did not conduct an on-site inspection of the subject property.

Jurisdictional Framework

10. 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 assessments or matters of administrative law and process.

11. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-12.

Indiana's Property Tax System

12. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, § 1.
13. Indiana has established a mass assessment system through statutes and regulations designed to assess property according to what is termed "True Tax Value". See Ind. Code § 6-1.1-31, and 50 Ind. Admin. Code 2.2.
14. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
15. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property's market value. See *State Board of Tax Commissioners v. Town of St. John V*, 702 N.E. 2d 1034, 1038 (Ind. 1998) (*Town of St. John V*).
16. The Indiana Supreme Court has said that the Indiana Constitution "does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each individual assessment," nor does it "mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant" but that the proper inquiry in tax appeals is "whether the system prescribed by statute and regulations was properly applied to individual assessments." See *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
17. Although the Supreme Court in the *St. John* case did declare the cost tables and certain subjective elements of the State's regulations constitutionally infirm, it went on to make

clear that assessment and appeals must continue to be determined under the existing rules until new regulations are in affect.

18. New assessment regulations have been promulgated, but are not in affect for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3

State Review and Petitioner's Burden

19. The Board does not undertake to reassess property, or to make the case for the petitioner. The Board's decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
20. The petitioner must submit "probative evidence" that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 1230 (Ind. Tax 1998). ["Probative evidence" is evidence that serves to prove or disprove a fact.]
21. The petitioner has a burden to present more than just "de minimis" evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Board of Tax Commissioners*, 715 N.E. 2d 1018 (Ind. Tax 1999). ["De minimis" means only a minimal amount.]
22. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. "Conclusory statements" are of no value to the Board in its evaluation of the evidence. See *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329 (Ind. Tax 1999). ["Conclusory statements" are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]

23. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.*, 743 N.E. 2d 247, 253 (Ind. Tax 2001), and *Blackbird Farms Apartments, LP v. Department Local Government Finance*, 765 N.E. 2d 711 (Ind. Tax 2002).
24. The Board will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a “prima facie case” and, by a “preponderance of the evidence” proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765 (Ind. Tax 1997). [A “prima facie case” is established when the petitioner has presented enough probative and material (i.e. relevant) evidence to the Board (as the fact-finder) to conclude that the petitioner’s position is correct. The petitioner has proven his position by a “preponderance of the evidence” when the petitioner’s evidence is sufficiently persuasive to convince the Board that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]

Discussion of Issue

Whether 18,734 square feet of the subject structure should be valued from the GCK pricing schedule.

25. The Petitioner claims that the determination of whether a building is a “kit” building and should be valued from the GCK pricing schedule is an objective error and therefore correctable on a Form 133 petition.

26. The Respondent contends that the issue under review is subjective and does not qualify to be reviewed via a Form 133 petition.

27. The statutes or applicable rules governing this issue are:

Indiana Code 6-1.1-15-12 Tax duplicates; correction of errors; reasons

Sec. 12 (a) Subject to limitations contained in subsections (c) and (d), a county auditor shall correct errors which are discovered in the tax duplicate for any one (1) or more of the following reasons:

- (1) The description of the real property was in error.
- (2) The assessment was against the wrong person.
- (3) Taxes on the same property were charged more than one (2) time in the same year.
- (4) There was a mathematical error in computing the taxes or penalties on the taxes.
- (5) There was an error in carrying delinquent taxes forward from one (1) tax duplicate to another.
- (6) The taxes, as a matter of law, were illegal.
- (7) There was a mathematical error in computing the assessment.
- (8) Through an error of omission by any state or county officer the taxpayer was not given credit for an exemption or deduction permitted by law.

Form 133 Petition

Ind. Code 6-1.1-15-12 limits the use of this form to correct only the following types of errors:

- The taxes are illegal as a matter of law
- There is a math error in the assessment
- Through an error of omission by any state or county officer the taxpayer was not given credit for an exemption or deduction permitted by law

Analysis of the Issue

28. Reproduction Cost minus Depreciation equals True Tax Value. Prior to tax year 1995, the reproduction cost for commercial and industrial property was the base rate for the model selected less adjustments. 50 IAC 2.1-4-3 and -5.
29. In addition, the Board introduced Instructional Bulletin 91-8 and 92-1. Instructional Bulletin 91-8 provided a 50% reduction in the base rate for qualifying kit buildings. Instructional Bulletin 91-8 stated, “These amendments allowed for a fifty percent (50%) reduction in the base rate of qualifying structures priced from the General Commercial Mercantile, General Commercial Industrial, and the Poultry Confinement Building Pricing Schedules.”
30. Board’s Instructional Bulletin 92-1 provided local officials instructions on handling appeals by taxpayers who felt their qualifying structures were not reassessed as required in the Board’s Instructional Bulletin 91-8. Instructional Bulletin 92-1 gave a more detailed method to use to assess structures qualifying for the 50% reduction in the base rate.
31. In summary, for appeals prior to the 1995 assessment date, the methodology used (in Instructional Bulletin 91-8 and 92-1) to make this type of adjustment entailed making a 50% reduction to the base rate of the existing pricing schedule that was in use at the time. The change was an objective issue with a mathematical solution and could be addressed using the Form 133 petition.
32. As cited in the *Indiana Administrative Code* (2001), 50 IAC 2.1, “real property assessment” was repealed by the State Board of Tax Commissioners, filed September 14, 1992 (16 IR 662) effective March 1, 1995 and replaced by the “real property assessment” 50 IAC 2.2. The Board’s 1995 Regulation, 50 IAC 2.2, eliminated the “kit” building

adjustments described in the Board's Instructional Bulletins 91-8 and 92-1 for assessment years 1995 and thereafter.

33. Under the current regulation, the reproduction cost for commercial and industrial property is the base rate for the selected association grouping less adjustments, 50 IAC 2.2-10-6.1 and 2.2-11-6. As previously noted, the term "association grouping" was introduced by the 1995 Regulation. Prior to that time, the term "model" was the commonly used descriptive term.
34. 50 IAC 2.2-10-6.1 identifies four (4) association groupings to be used for the selection of the appropriate base rate. These four (4) groupings are: (1) General Commercial Mercantile (GCM), (2) General Commercial Industrial (GCI), (3) General Commercial Residential (GCR), and (4) General Commercial Kit (GCK).
35. The GCK association grouping was added to the 1995 Regulation to value pre-engineered and pole framed buildings used for commercial and industrial purposes that were not special purpose designed structures. Selecting the GCK association grouping instead of another grouping is not a straightforward finding of fact. Rather, subjective judgment is used to select the appropriate association grouping. First, as part of the assessment analysis, the assessor must necessarily decide whether the physical attributes of the building under review more appropriately fall within the purview of one association grouping or another. Also, in deciding whether the GCK association grouping should be used, the assessor must decide whether the building under review is a pre-engineered building and whether the frame type is light metal/wood siding. 50 IAC 2.2-11-5, Schedule A4.
36. Errors arising from an assessor's judgment are not the type of errors that can be corrected by way of a Form 133 petition. *Hatcher v. State Board of Tax Commissioners*, 561 N.E. 2d 852 (Ind. Tax 1990).

37. A Form 133 petition is available only for those errors that can be corrected without resort to subjective judgment. *Reams v. State Board of Tax Commissioners*, 620 N.E. 2d 758 (Ind. Tax 1993).
38. Schedule selection involves subjective judgment. Therefore, a Form 133 petition is not the appropriate petition with which to challenge an alleged error made in the selection of schedules. In *Bender v. State Board of Tax Commissioners*, 676 N.E. 2d 1113, 1116 (Ind. Tax 1997), the Tax Court held:

Clearly, the assessor must use his judgment in determining which schedule to use. It is not a decision automatically mandated by a straightforward finding of fact. The assessor must consider the property in question, including its physical attributes and predominant use, and make a judgment as to which schedule is most appropriate. Just as the assessor must use subjective judgment to determine which base price model to employ within these schedules, so too the assessor must exercise his or her discretion to determine which schedule to use. In some cases, this decision will be a closer call than in other, but regardless of the closeness of the judgment, it remains a judgment committed to the discretion of the assessor. (Citations omitted).

39. In more recent Tax Court decisions, the Tax Court held “that a taxpayer may file a 133 Petition to correct only objective errors in assessment; accordingly, a taxpayer is prohibited from using a 133 Petition to challenge any part of an assessment that implicates a tax official’s lawful exercise of subjective discretion.” *U.S. Steel Corp. v. Lake County PTABOA et al.*, 785 N.E. 2d 1209, 1215 (Ind. Tax 2003). In *O’Neal Steel v. Vanderburgh PTABOA et al.*, no. 49T10-0204-TA-42, slip op at 5 (Ind. Tax Ct. July 10, 2003), the Court held that the decision to apply pricing schedules, including the GCK pricing schedules, “ultimately turns on judgment calls.” See also *Jeffery Southworth v. Grant County PTABOA et al.*, no. 49T10-0301-TA-3, slip op (Ind. Tax Ct. July 10, 2003)

40. For all reasons set forth above, the selection of schedule does not qualify for a review on a Form 133 petition. No change in the assessment is made as a result of this issue.

Summary of Final Determination

*Whether 18,734 square feet of the subject structure should
be valued from the GCK pricing schedule*

41. Selection of schedules does not qualify for review on a Form 133 petition. As a result of this issue the Form 133 petitions are denied and there are no changes in the assessments.

The above stated findings of fact and conclusions of law are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this _____ day of _____, 2003.

Chairman, 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.