

**STATE OF INDIANA  
Board of Tax Review**

BERLINGER CALF FEEDING CO.,	)	On Appeal from the St. Joseph County
	)	Property Tax Assessment Board of Appeals
Petitioner,	)	
	)	
	)	Petition for Review of Assessment, Form 131
v.	)	Petition No. 71-001-01-1-3-00300
	)	
ST. JOSEPH COUNTY PROPERTY	)	
TAX ASSESSMENT BOARD OF	)	Parcel No. 0110030066
APPEALS And CENTRE TOWNSHIP	)	
ASSESSOR	)	
	)	
Respondents.	)	

Petitioner Representative:           Denise Praul  
  Integrity Tax Consulting  
  10822 Coldwater Road  
  Fort Wayne, IN 46845

**Findings of Fact and Conclusions of Law**

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

## Issues

1. Whether a grade reduction from “C” to “C-1” is warranted for the office due to low quality materials and flooring.
2. Whether obsolescence depreciation applied to the facility should be increased from 5% to 15% to account for functional problems.

## Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.
2. Pursuant to Ind. Code § 6-1.1-15-3, Denise Praul of Integrity Tax, on behalf of Berlinger Calf Feeding Company (Petitioner or Berlinger), filed a Form 131 petition requesting a review by the State. The Form 131 petition was filed on September 10, 2001. *Board Ex. A.* The St. Joseph County Property Tax Assessment Board of Appeals’ (PTABOA) final determination on the underlying Form 130 petition is dated August 27, 2001.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was scheduled for January 24, 2002. *Board Ex. B.* At the request of the Petitioner, the hearing was continued to a later date. The hearing was rescheduled for May 1, 2002, and the Notice of Hearing on Petition was sent. The Notice of said Hearing on Petition was mailed on April 1, 2002. *Board Ex. C.*
4. The hearing officer verified that the notices of hearing were mailed, with proof of mailing, and verified that the notices were not returned to the State as not deliverable. *Board Exhibit F.*

5. On May 1, 2002, Hearing Officer Patti Kindler was present to conduct an administrative hearing on the Form 131 petition. Neither the Petitioner nor its representative appeared at the hearing. Kevin J. Klaybor was present on behalf of St. Joseph County. Ralph J. Wolfe and Phyl Olinger were present on behalf of Centre Township.
  
6. The Petitioner's representative contacted the State on April 30, 2002 via facsimile requesting a continuance. The State denied the continuance request.  
*Board Exhibit E.*
  
7. At the hearing, the following items were received into evidence from the Respondents:  
  
Respondent's Ex. 1 – PRC for subject property with Adell Corporation listed as owner as of 2/27/01.  
Respondent's Ex. 2 – Power of Attorney, Form 23261 listing Integrity Tax Consulting as POA for Berlinger Calf Feeding, dated 4/12/01.  
Respondent's Ex. 3 – PTABOA exhibits including: PTABOA's Findings of Facts and Determination, PRC, Form 115, and exhibits submitted by the Petitioner.
  
8. The true tax value of the property as determined by the PTABOA is:  
Land: \$252,000    Improvements: \$566,300    Total: \$818,300.
  
9. The subject property is assessed as a light manufacturing facility located at 21149 W. Roosevelt Road, South Bend, Indiana (Centre Township, St. Joseph County).
  
10. The Hearing Officer did not view the property.

## Conclusions of Law

1. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.
2. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
3. In reviewing the actions of the PTABOA, the State 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 State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the 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 State is not required to give weight to evidence that is not probative of the errors the taxpayer 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’s burden in the State’s administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. In this way, the taxpayer properly frames the inquiry as to “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Town of St. John V*, 702 N.E. 2d at 1040.
7. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State 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.
8. 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).
9. 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 State Board 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 State’s final determination even though the taxpayer demonstrates flaws in it).

10. The Form 131 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 of assessment.

The above stated findings and conclusions 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 \_\_\_\_\_, 2002.

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Chairman, Indiana Board of Tax Review