

**STATE OF INDIANA
Board of Tax Review**

EPIFANIO SANTANA)	On Appeal from the Lake County Property
)	Tax Assessment Board of Appeals
Petitioner,)	
)	
v.)	Petitions for Correction of Error, Form 133
)	
LAKE COUNTY PROPERTY TAX)	Petition Nos. 45-004-93-3-7-00023
ASSESSMENT BOARD OF APPEALS)	45-004-94-3-7-00024
And CALUMET TOWNSHIP)	45-004-95-3-7-00025
ASSESSOR)	45-004-96-3-7-00026
)	
Respondents.)	Personal Property

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:

Issue

Whether the personal property taxes assessed against the taxpayer for the years 1993 to 1996 were illegally applied because the Petitioner was no longer in business.

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 § 6-1.1-15-12, Epifanio Santana filed petitions requesting the correction of an error by the State. The Form 133 petitions were filed with the Lake County Auditor on October 9, 1997.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on November 14, 2001, before Hearing Officer Patti Kindler. Testimony and exhibits were received into evidence. Epifanio Santana and Mark A. Psimos, Attorney, represented the Petitioner. No one appeared on behalf of Lake County or Calumet Township.

4. At the hearing, the subject Form 133 petitions were made part of the record and labeled Board Exhibit A. The Notices of Hearing on Petition were labeled Board Exhibit B. Proof of mailing the Notices of Hearing to Calumet Township was labeled Board Exhibit C and copies of the subject tax statements for the assessment years of 1992 to 1995 were labeled as Board Exhibit D. In addition, the following items were received into evidence.

Petitioner's Ex. 1 – Federal Income Tax Return for 1992.
Petitioner's Ex. 2 – Federal Income Tax Return for 1993.
Petitioner's Ex. 3 – Federal Income Tax Return for 1994.
Petitioner's Ex. 4 – Federal Income Tax Return for 1995.
Petitioner's Ex. 5 – Federal Income Tax Return for 1996.

5. The subject assessment is for personal property located at 669 Grand Boulevard, Gary, Indiana, (Lake County, Calumet Township).

6. The assessed value of the personal property assessments as reported on the subject tax statements is \$2000. The tax statements submitted by the Lake County Treasurer are for the year 1992 pay 1993 to 1995 pay 1996. Board Exhibit D. The Lake County Treasurer stated that there was no tax statement issued for the year 1996 pay 1997.

Whether the personal property was illegally assessed.

7. In 1992 Mr. Santana opened a business under the name of E & J Auto on Grand Boulevard in Gary, Indiana. Everett Jordon owned the building, which was rented by Mr. Santana for his business. *Board Exhibit A.*
8. Mr. Santana closed the E & J Auto business prior to March 1, 1993 and began working for a company in Chesterton, Indiana. The property located on Grand Boulevard was then rented to another business. *Petitioner's Exhibits 1 & 2; Board Exhibit A.* Mr. Santana did not inform the Calumet Township Assessor that he was no longer in business. *Santana Testimony.*
9. Mr. Santana was unaware that the local taxing officials had assessed any personal property in his name for the years 1993 - 1996, nor did he recall receiving any Notices of Assessment of Personal Property, Forms 113 for any of those years. *Santana Testimony.* Mr. Santana claims that if the Notices of Assessments were sent to the E & J Auto address, he would not have received them because he and the property owner "did not split up under very good terms." *Id.*
10. Mr. Santana first learned of the personal property taxes assessed against him when he sold his dwelling. *Santana Testimony.* Mr. Santana claims that tax liens totaling \$2,082.04 were paid before the real estate transaction could be completed. At that time, Mr. Santana tried to explain to the Assessor that E & J went out of business in 1992, but they were uncooperative. *Id.*

11. No one was present on behalf of Calumet Township or Lake County in defense of the personal property assessment. The Hearing Officer verified that Calumet Township and the Lake County Assessor were mailed the Notices of Hearing on Petition for the subject property. The Notices were mailed on October 31, 2001.
Board Exhibit C.

Conclusions of Law

1. The Petitioner is limited to the issues raised on the Form 133 petition filed with the State. See 50 IAC 17-5-3, Form 133, and Ind. Code § 6-1.1-15-12. The State has the discretion to address any issue once an appeal has been filed by the taxpayer. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised in the Form 133 petition filed with the State.
2. The State the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

A. Burden

3. 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)).
4. 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.

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 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.
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).

B. Whether the personal property was illegally assessed

8. In the case at bar, the Calumet Township Assessor has purportedly placed assessments on personal property located at 669 Grand Boulevard for the years

1993 to 1996 in the name Epifanio Santana, the Petitioner.¹ The Petitioner contends that he no longer had a business in Calumet Township prior to March 1, 1993, and therefore was illegally assessed.

9. Pursuant to 50 IAC 4.2-3-1(b), a township assessor is required by law to make an assessment of personal property if they have sufficient information to indicate there is omitted property. The township assessor may examine the personal property, and the books and records of the person who fails to file a personal property return. In the alternative, the township assessor may estimate the value of the personal property. At the time that the notice of assessment is given to the taxpayer, they shall also be informed in writing of their opportunity for review and the procedures that must be followed in order to obtain a review.
10. While the Calumet Township Assessor had the authority to make these assessments, whether the assessments themselves are legal and appropriate is another matter. The record is silent as to whether the assessor had sufficient information to indicate that there was omitted property and to assess such property to the Petitioner. There is no evidence to show that the required Notices of Assessment, Form 113, were mailed to the Petitioner. The Petitioner testified that he first learned of the assessments when he sold his home and had to pay the tax liens.
11. The Petitioner submitted Federal Income Tax Returns for the years 1992 through 1996. The tax returns indicate that the Petitioner was the sole proprietor for E & J Auto in 1992. Subsequent to 1992, the Petitioner testified that he was employed at M.T. Enterprises in Chesterton, Indiana, and submitted Federal Income Tax returns for the years 1993 to 1996 to sustain his testimony.

¹ The Lake County Treasurer contends that tax statements were issued for the years 1992 pay 1993 to 1995 pay 1996. The Treasurer stated that there was no 1996 pay 1997 tax statement issued in the name of Mr. Epifanio Santana for E & J Auto. In addition, the tax statement for the year 1992 pay 1993 is not subject to this appeal, which was filed for the years 1993 to 1996.

12. The Petitioner has shifted the burden of proof to the local assessing officials to defend the assessment. The local assessing officials have failed to submit any evidence in support of the assessments.
13. No representatives from Calumet Township appeared at the hearing to refute the Petitioner's evidence. To repeat, a representative for the assessing office that originally made the assessment, Calumet Township, failed to appear at the hearing. Nor were any other representatives on behalf of the Lake County Board of Review present in support of the assessment. In addition, local assessing officials have submitted no testimony or evidence to rebut the Petitioner's contention that he was completely unaware of the tax assessments placed against him until he discovered the liens during a real estate transaction.
14. In light of the undisputed testimony and evidence submitted by the Petitioner, the State hereby concludes that the purported personal property assessments for the years 1993, 1994, 1995, and 1996, shall be removed.

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 this by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review