

STATE OF INDIANA
Board of Tax Review

IEI Services LLC)	On Appeal from the Marion County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petitions for Correction of Error, Form 133
)	
MARION COUNTY PROPERTY TAX)	Petition Nos. 49-101-98-3-7-01051
ASSESSMENT BOARD OF APPEALS)	49-101-99-3-7-01175
And CENTER TOWNSHIP ASSESSOR)	
)	Personal Property #A129421
Respondents.)	

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 Petitioner incorrectly included application software when filing its 1998 and 1999 business personal property tax returns.

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, IEI Services LLC (the Petitioner) filed Form 133, Petitions for Correction of Error, on October 6, 2000. The Marion County Property Tax Assessment Board of Appeals (PTABOA) denied the appeal and its determinations on the Form 133 petitions were mailed January 26, 2001. The Petitioner re-filed the Form 133 petitions requesting a review by the State on February 23, 2001.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on Friday, September 21, 2001 before Hearing Officer Betsy Brand. Testimony and exhibits were received into evidence. Larry J. Stroble and Jennifer A. Dunfee of Barnes & Thornburg represented the Petitioner. Tara Kamm and Brian J. Sullivan of Arthur Anderson, and Daniel C. Bugher and Gene Dobrzynski of Vectren (IEI), testified for the Petitioner. Rick Freeman represented Center Township. There was no one present to represent the Marion County PTABOA.

4. At the hearing, the State entered as evidence:
Board Exhibit A – The Form 133 petitions with attachments:
 1. A copy of an amended Form 104 dated February 2, 2000.
 2. A copy of an amended Form 103 dated February 2, 2000.
 3. A copy of a Form 104 dated May 11, 1998 and May 11, 1999, respectively.
 4. A copy of a Form 103 dated May 11, 1998 and May 11, 1999, respectively.
 5. A Form 131 with attachments:
 - a. Statement of Grounds for Appeal labeled Exhibit A.
 - b. The Power of Attorney labeled Exhibit B.
 - c. A copy of the Form 115 labeled Exhibit C.

Board Exhibit B – A Notice of Hearing on Petition dated June 8, 2001.

Board Exhibit C – A Motion for Continuance.

Board Exhibit D – A letter from Larry Stroble, Barnes & Thornburg, to the State with attached waiver document.

Board Exhibit E – A copy of a letter from the State to Larry Stroble, Barnes & Thornburg, granting the request for continuance.

Board Exhibit F – A Notice of Hearing – Reschedule dated July 5, 2001.

Board Exhibit G – A copy of a letter from Larry Stroble to the State with attachments:

1. A Motion for Clarification.
2. A Motion for Enlargement of Time.

Board Exhibit H – A copy of an order issued by the State on April 3, 2001.

Board Exhibit I – A copy of a letter from Joan Romeril to Larry Stroble, Barnes & Thornburg dated April 25, 2001.

Board Exhibit J – A copy of a letter from Center Township Assessor requesting a continuance.

Board Exhibit K – A copy of a letter from State granting request for continuance.

Board Exhibit L – A Notice of Hearing – Reschedule for a hearing on September 21, 2001.

6. In addition, the following exhibits were submitted to the State:

Petitioner's Exhibit 1 – Copies of the originally filed 1998 Forms 103 and 104.

Petitioner's Exhibit 2 – Copies of the originally filed 1999 Forms 103 and 104.

Petitioner's Exhibit 3 – Form 133 and Amended Forms 103 and 104 for 1998.

Petitioner's Exhibit 4 – Form 133 and Amended Forms 103 and 104 for 1999.

Petitioner's Exhibit 5 – A report of reconciliation of the Amended return.

Petitioner's Exhibit 6 – An account asset list for 1998.

Petitioner's Exhibit 7 – An account asset list for 1999.

Petitioner's Exhibit 8 - A copy of work order #171357 and supplements.

Petitioner's Exhibit 9 – A copy of work order #171396 and supplements.

Petitioner's Exhibit 10 – A copy of work order #171367 and supplements.

Petitioner's Exhibit 11 – A list of application software included in CIP account for
1998.

Petitioner's Exhibit 12 – A list of application software included in CIP account for
1999.

Petitioner's Exhibit 13 – A copy of 50 IAC 4.2-4-3.

7. The Respondent did not present evidence at the hearing. Mr. Freeman testified a meeting with the County, Township and Petitioner might produce an agreement and stipulation regarding the complicated technical issue.
8. The Hearing Officer requested a Stipulation Agreement or Proposed Findings of Fact and Conclusions of Law be submitted by October 5, 2001.
9. On October 4, 2001 the State received Proposed Findings of Fact and Conclusions of Law from the Petitioner's representative. The document is labeled Board Exhibit M and entered as evidence.

Procedural Background

10. The Petitioner filed Form 103, Business Tangible Personal Property Assessment Return, and Form 104, Business Tangible Personal Property Return, both of which reported an assessed value of \$1,707,830 as of the March 1, 1998 assessment date. (Petitioner's Exhibit 1).
11. The Petitioner filed Form 103, Business Tangible Personal Property Assessment Return, and Form 104, Business Tangible Personal Property Return, both of which reported an assessed value of \$4,086,850 as of the March 1, 1999 assessment date. (Petitioner's Exhibit 2). (The 1998 and 1999 returns as originally filed are hereinafter referred to as the Original Returns).
12. On October 6, 2000, the Petitioner filed Form 133 petitions for the 1998 and 1999 assessment dates respectively. The petitions alleged that the value of application software had been erroneously included in the Original Returns. (Petitioner's Exhibits 3 and 4). Attached to the petitions were 'amended' Forms 103 and 104. The 'amended' returns reported the assessed value of tangible personal property as \$527,510 in 1998 and \$1,034,160 in 1999 respectively. (Petitioner's Exhibits 3 and 4).
13. On January 26, 2001, the Marion County PTABOA issued its final determinations denying the petitions.

Application Software

14. Petitioner's Exhibit 6 lists the Petitioner's property placed in service prior to March 1, 1998, and is sorted by account number (the 1998 Asset Schedule). The total net value of the property listed in the 1998 Asset Schedule equaled the cost figure (\$10,383,401) reported on Form 103 for the 1998 assessment year

and 1999 assessment year for assets acquired on or before March 1, 1998. (Petitioner's Exhibits 5 and 6).

15. Petitioner's Exhibit 7 represents the additions of property placed in service by the Petitioner from March 2, 1998, to March 1, 1999 (the 1999 Asset Schedule). The total net value of the property listed in the 1999 Asset Schedule equaled the cost figure (\$14,732,639) reported on Form 103 for the 1999 assessment year for assets acquired from March 2, 1998 to March 1, 1999. (Petitioner's Exhibits 5 and 7).
16. The first account listed on the 1998 Asset Schedule and the 1999 Asset Schedule is account number 3030 (Account 3030) and represents acquisitions of application software. Only application software is supposed to be reported in Account 3030. No hardware acquisitions are supposed to be reported in Account 3030. Computer-related hardware is supposed to be reported in account number 3911 (Account 3911). (Petitioner's Exhibits 6 and 7).
17. The Petitioner testified that it was important to distinguish between hardware and software because, for federal income tax purposes, property that is classified as computer hardware is eligible for accelerated depreciation whereas property that is classified as application software is subject to less favorable straight-line amortization.
18. In connection with the preparation of the Petitioner's Forms 103 and 104 for 1998 and 1999, the amounts reflected in Account 3030 were added to the amounts corresponding to the depreciable tangible personal property listed in the other accounts, including Account 3911, and were included in the total amount shown as taxable. (Petitioner's Exhibits 1, 2, 6, and 7).
19. After filing the Forms 103 and 104 for the assessment years 1998 and 1999, the Petitioner determined that it made an error in reporting Account 3030 amounts as taxable. The Petitioner engaged Arthur Andersen and Company to prepare the

petitions to correct the error. Arthur Andersen conducted an audit review of Account 3030 for 1998 and 1999 to verify that the account was limited to application software.

20. The various entries in Account 3030 represent different work orders that relate to various capitalized projects. The work orders represent the accumulation of all the costs related to each specific capital project. (Petitioner's Exhibits 6 and 7).
21. After reviewing the work orders with responsible company employees, Arthur Andersen determined that one work order in Account 3030 for 1998 (Work Order # 171357), with a true tax value of \$99,154, contained hardware. All remaining work orders reported in Account 3030 for 1998 consisted exclusively of application software. The total true tax value of the application software in Account 3030 for 1998 was \$2,945,816. (Petitioner's Exhibit 5).
22. Arthur Andersen also determined that one work order in Account 3030 for 1999 additions (Work Order #171396) contained hardware with a true tax value of \$29,285. All remaining work orders reported in Account 3030 for 1999 (other than Work Orders #171357 and #171396) consisted exclusively of application software. The total true tax value of the application software in Account 3030 for 1999 was \$8,865,513. (Petitioner's Exhibit 5).
23. The Petitioner also established at the hearing that the Work Order #171367 listed in the 1999 Account 3030 and titled "CWIS Contract Labor Hardware" did not, in fact, contain any hardware or operational software. (Petitioner's Exhibits 7 and 10).
24. The Petitioner also reported construction in process on its Original Returns. Some of the reported construction in process consisted of computer application software. In 1998, application software with a true tax value of \$580,779 was included in Account 3030 as construction in process. In 1999, application

software with a true tax value of \$137,105 was included in Account 3030 as construction in process. (Petitioner's Exhibit 5).

25. The Petitioner erroneously reported application software with a true tax value of \$2,945,816 and \$8,865,513 as part of its taxable depreciable tangible personal property for 1998 and 1999, respectively, and erroneously reported application software with a true tax value of \$571,714 and \$137,105 as part of its taxable construction in process for 1998 and 1999, respectively. (Petitioner's Exhibit 5).
26. The Petitioner contends it is entitled to a reduction in the assessed value of its tangible personal property from \$1,707,830 to \$535,320 in 1998 and from \$4,086,850 to \$1,085,980 in 1999 to correct the erroneous inclusion of application software in the value of its tangible personal property subject to taxation as of March 1, 1998 and March 1, 1999. (Petitioner's Exhibit 5).

Conclusions of Law

1. The Petitioner is limited to the issues raised on the Form 133 petitions filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 133 petition. Ind. Code §§ 6-1.1-15-1, -2.1, and -4. See also the Form 133 petitions. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 133 process, the levels of review are clearly outlined by statute. The County Auditor can correct certain errors alleged on the Form 133 petition. Ind. Code 6-1.1-15-12. Two local officials can also correct error. Id. If these local officials do not correct alleged errors, then the Form 133 is referred to and reviewed by the PTABOA. Id. The PTABOA's decision may then be appealed to the State. Id. Taxpayers who raise new issues at the State level of appeal circumvent review of the issues by the local

officials and the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State. However, the State has the discretion to address issues not raised on the Form 133 petition. *Joyce Sportswear Co. v. State 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 on the Form 133 petition filed with the County Auditor.

2. The State is the proper body to hear an appeal of the action of the PTABOA pursuant to Ind. Code § 6-1.1-15-3.

Burden

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 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).
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 State 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 merely because the taxpayer demonstrates flaws in it).

Application Software

9. Pursuant to 50 IAC 4.2-4-3(f), computers are made up of three (3) elements: (1) hardware; (2) operational software; and (3) application software. Computers (including hardware and operational software), must be reported at the actual acquisition cost regardless of how this property may be valued on the taxpayers books and records.

10. The treatment of application software is addressed in 50 IAC 4.2-4-3(g)(3), which states in part:

...such charges may be deducted as nonassessable intangible personal property (to the extent that a separate charge or value can be identified).
11. The Petitioner submitted evidence at the hearing establishing that the values in its Account 3030 consisted of application software, except for some minor items of hardware and operational software which were erroneously recorded in that account. The Petitioner removed these items from its claim.
12. The PTABOA was not present at the hearing to rebut the Petitioner's evidence. The township representative did not offer evidence to rebut the Petitioner's testimony and evidence.
13. After excluding the amount of application software from the value of the other taxable tangible personal property and construction in process, the amount of the assessed value for tangible personal property in 1998 subject to tax should be \$535,320 and the amount of the assessed value for tangible personal property in 1999 subject to tax should be \$1,085,980.
14. Accordingly, there is a change in the 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.

Chairman, Indiana Board of Tax Review