STATE OF INDIANA
Board of Tax Review

INDIANAPOLIS RACQUET CLUB, INC.	)	On Appeal from the Marion County Property
	)	Tax Assessment Board of Appeals
	)	
Petitioner,	)	
	)	Petition for Review of Assessment, Form 131
v.	)	Petition No. 49-800-98-1-4-00004
	)	Parcel No. 8048124
MARION COUNTY PROPERTY TAX	)	
ASSESSMENT BOARD OF APPEALS	)	
And WASHINGTON TOWNSHIP	)	
ASSESSOR	)	
	)	
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

1. Whether the building received the proper base rate reduction in accordance with STB Instructional Bulletins 91-8 and 92-1.

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, Indianapolis Racquet Club, Inc. (IRC) filed a petition requesting a review by the State. IRC received the Marion County Board of Review's (BOR) Final Determination on March 12, 1999. The Form 131 petition was filed on April 13, 1999. Additional details concerning the procedural history will be discussed as needed.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on August 16, 2001, before Hearing Officer Ronald Gudgel. Testimony and exhibits were received into evidence. Stephen E. DeVoe and Eliza Houston, both with the law firm of Henderson, Dailey, Withrow & DeVoe, represented IRC.[1] A. Peter Amundson represented both the Washington Township and the Marion County Assessors' Offices.

4. At the hearing, the Form 131 petition was made part of the record as Board's Exhibit A. Additional Board exhibits include:
   Board's Exhibit B – The transcript of the trial testimony before the Indiana Tax Court on May 2, 1997.
   Board's Exhibit C – Request for additional evidence from IRC.
   Board's Exhibit D – Letter forwarding IRC's response to the Township officials.

5. In addition, the following exhibits were submitted:
   Petitioner's Exhibit 1 – A copy of photographs from 50 IAC 2.2-11-4.1, Graded photographs of various commercial and industrial buildings.

[1] Mr. DeVoe testified that he is also the President of IRC. At the request of Mr. DeVoe, appeal petitions 49-800-91-3-4-00001, 49-800-98-1-4-00004, and 49-800-89-1-4-00020R were consolidated into one administrative hearing.

Petitioner's Exhibit 2 – A copy of the 1995 property record card for the parcel under appeal.
Petitioner's Exhibit 3 – Photographs of the building under appeal.
Petitioner's Exhibit 4 – Written testimony of Stephen E. DeVoe.
Petitioner's Exhibit 5 - Written summary of additional testimony of Mr. DeVoe.
Petitioner's Exhibit 6 – Response to a request for additional evidence.

Respondent's Exhibit 1 – Copies of Forms 17T.

6. The property is located at 8249 Dean Road, Indianapolis, Washington Township, Marion County.

7. The hearing officer did not inspect the property.

Issue No. 1 - Whether the building received the proper base rate reduction in accordance with STB Instructional Bulletins 91-8 and 92-1.

8. On February 22, 1991, the State Board issued a memorandum authorizing a 50% reduction in the base rate of certain qualifying economically built structures. Additional guidance concerning this reduction was subsequently provided in STB Instructional Bulletin 91-8 (dated October 1, 1991) and STB Instructional Bulletin 92-1 (dated August 28, 1992).

9. STB Instructional Bulletin 91-8 states in relevant part "These changes in assessments [the 50% reduction for qualifying buildings] were then to be effective for March 1, 1991, for taxes due and payable in 1992. It was also explained that there were to be no retroactive refunds for excessive tax payments for reductions in assessments as a result of these amendments."

10. IRC contended that the building should receive a 50% reduction because it is a lightweight, economical kit type structure. On October 27, 1997 IRC filed a Form 130 petition (the underlying petition for 49-800-98-1-4-00001) listing multiple

years of appeal, 1989 through 1994 (Petitioner's Exhibit 5, page 9).[2] On December 8, 1997, the Marion County Auditor's Office notified IRC this petition was defective, citing two reasons: (1) multiple years were included on the petition ("You are unable to file a Form 130 for [19]89-94.") (Board's Exhibit A, attachment to the Form 131 petition) and (2) lack of timely filing ("The petition needs to be filed within 45 days after the notice of assessment change.") Id. IRC was given 30 days to correct these defects.

11. Mr. DeVoe responded on December 10, 1997, contending that a letter dated September 25, 1997, from the Washington Township Assessor's Office and the accompanying Forms 17T constituted a new notice of assessment. Id. Mr. DeVoe did not address the defect of multiple years being included on the petition.

12. The BOR denied the petition on March 12, 1999, citing the same two reasons (lack of timely filing and multiple years on the same petition) identified in the December 8, 1997, notice of defect. No values were included in the BOR denial notice.

13. At the hearing, Mr. Amundson testified that he concurred with IRC's assertion that the building qualified for the 50% kit building reduction for 1991. Mr. Amundson further testified that the building received the kit adjustment at the time it was reassessed on March 1, 1995.

Procedural History

14. Because the parties agree that the building qualified for the kit adjustment, the State must determine whether the petition was timely filed. Testimony and documents presented at the hearing established the following sequence of events:

[2] This petition raised the same issue, a 50% kit adjustment, as the Form 133 petition numbered 49-800-91-3-4-00001.

March 11, 1991	IRC filed a Form 131 petition contesting the land value and building use type for parcel 8048124.
August 7, 1996	The State Final Determination was issued, concluding that the total value of the parcel was $558,930. (This determination was subsequently appealed to the Tax Court. The issue of the 50% reduction was not raised on this petition).
November 12, 1996	IRC filed a Form 133 petition appealing the assessment for the year 1991 (the underlying petition for 49-800-91-3-4-00001).
September 25, 1997	IRC received a letter from Washington Township approving the Form 133 petition and enclosing Forms 17T for the years 1989 through 1994.
October 27, 1997	IRC filed a Form 130 petition (the underlying petition for 49-800-98-1-4-00004) listing multiple years.
December 8, 1997	The Form 130 petition was returned to IRC as defective because it identified multiple years and was not timely filed.
December 10, 1997	IRC returned the Form 130 to the Marion County officials, claiming it was timely filed.
July 9, 1998	IRC received a letter from the Marion County Auditor's Office (after a telephone conversation) advising IRC that it "will be hearing" from the Marion County Assessor's Office.

March 12, 1999	The BOR denied the Form 133 petition for 1991 because it was not timely filed. This denial included instructions to file a Form 131 petition if IRC appealed the BOR decision. (The underlying petition for 49-800-91-3-4-00001). The BOR Final Determination included an assessed value of the land in the amount of $134,730 and an assessed improvement value in the amount of $424,200 (a total assessed value of $558,930). The BOR denied the Form 130 petition (the underlying petition for 49-800-98-1-4-00004) due to multiple years and untimely filing.
April 13, 1999	IRC filed Form 131 petitions for both denials.
September 7, 1999	In response to a defect notice from the State regarding petition 49-800-91-3-4-00001, Mr. DeVoe replied, “The assessment year being appealed here is only 1991.
November 1, 1999	In response to a second defect notice from the State regarding petition 49-800-91-3-4-00001, IRC contended that that Form 131 had been filed to appeal the BOR denial of the Form 133 petition because: (a) the BOR denial instructed the Petitioner to file a Form 131, and (b) the assessed values on the BOR constituted a new assessment that could be appealed by use of a Form 131 petition.

Conclusions of Law

1. The Petitioner is statutorily limited to the issues raised on the Form 130 petition 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 130 petition. Ind. Code §§ 6-1.1-15-1, -2.1, and –4. See also the Forms 130 and 131 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 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and –2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by 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 131 petition. *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 on the Form 131 petition filed with the State.

2. 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.

A. Indiana's Property Tax System

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.

4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John,* 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V)*.

5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause 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. *Town of St. John V,* 702 N.E. 2d at 1039 – 40.

6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Id* at 1040. Only evidence relevant to this inquiry is pertinent to the State's decision.

B. Burden

7. 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)).

8. 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.

9. 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. *See also* Ind. Code § 4-21.5-2-4(a)(10) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).

10. 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)).

11. 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.

12. 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.

13. 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).

14. 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).

C. Review of Assessments After *Town of St. John V*

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed

value assigned to the property does not equal the property's market value will fail.

16. Although the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V,* 702 N.E. 2d at 1043; *Whitley,* 704 N.E. 2d at 1121.

17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John V*, 702 N.E. 2d at 1040.

Issue No. 1 - Whether the building received the proper base rate reduction in accordance with STB Instructional Bulletins 91-8 and 92-1.

18. As discussed, IRC received Forms 17T by letter dated September 25, 1997, following submission of a Form 133, Petition for Correction of Error. IRC contended that these Forms 17T were "the first notice to Petitioner of new assessed values for improvements for the years 1991 through 1994…The new assessments for the years 1989 through 1991 were the same amount and were also the same as the most recent determination by the State Board for the year 1989, which determination had been made on 8/7/96. However, the new assessments for 1992 through 1994 were slightly less. Having received notice of new appraised values which were determined by a county official, Petitioner filed a Form 130 appeal Pursuant to Indiana Code Section 6-1.1-15-1a in order to preserve the issue of the application of the kit building adjustments for the years of 1991 through 1994." (Petitioner's Exhibit 5, page 9).

19. On October 27, 1997 IRC filed a Form 130 petition (the underlying petition for 49-800-98-1-4-00001) listing multiple years, 1989 through 1994 (Petitioner's Exhibit

5, page 9).[3] On December 8, 1997, the Marion County Auditor's Office notified IRC this petition was defective, citing two reasons: (1) multiple years were included on the petition ("You are unable to file a Form 130 for [19]89-94.") (Board's Exhibit A, attachment to the Form 131 petition) and (2) lack of timely filing ("The petition needs to be filed within 45 days after the notice of assessment change.") Id. IRC was given 30 days to correct these defects.

20. Mr. DeVoe responded on December 10, 1997, contending that the letter dated September 25, 1997 from the Washington Township Assessor's Office and the accompanying Forms 17T constituted a new notice of assessment. Id. Mr. DeVoe did not address the defect of multiple years being included on the petition.[4]

21. The BOR denied the petition on March 12, 1999, citing the same two reasons (lack of timely filing and multiple years on the same petition) identified in the December 8, 1997, notice of defect. No values were included in the BOR denial notice.

22. The Form 130 filed with the BOR lists multiple years of appeal on the petition. IRC was given the opportunity to correct this Form 130 defect by the BOR and failed to do so. The State therefore concludes that the BOR correctly denied the petition as a result of this defect.

23. Assuming arguendo that the Form 130 petition was not defective because it identified multiple years requires the State to decide if the Forms 17T constitute a notice of a new assessment.

[3] This petition raised the same issue, a 50% kit adjustment, as the Form 133 petition numbered 49-800-91-3-4-00001.

[4] The Form 130 petition (as revised January, 1989) required the Petitioner to list the assessed land and improvement values "for the year [singular] 19__." Section I of the petition further required the Petitioner to identify "Property Features as of March 1 of the Assessment Year [singular]."

24. The September 25, 1997, letter from the Washington Township Assessor informed IRC that its Form 133 petition had been approved and included Forms 17T, Claims for Refund, for the years 1989 through 1994.

25. The Forms 17T prepared by the Washington Township Assessor's Office indicated that the new assessed value for the parcel was $558,930. As discussed, this is the value contained in the State Final Determination for the March 1, 1989 assessment. IRC appealed this State assessment, which is currently the subject of remand proceedings. (The improvements value was remanded by the Tax Court. *Indianapolis Racquet Club, Inc. v. State Board of Tax Commissioners*, 722 N.E. 2d 926 (Ind. Tax 2000). The land value was remanded by the Indiana Supreme Court. *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.*, 743 N.E. 2d 247, 248 (Ind. 2001)).

26. A Form 17T is a claim for refund of taxes. It is not a notice of assessment.

27. Contradicting its claim that a Form 17T should be considered as notice of a change in the assessment, IRC acknowledged that it, in fact, received assessment notices during the years 1989 through 1994. "In 1989 the total assessment for the property started out at $706,170 and the assessment of the improvements started out at $540,900. None of the actual tax bills subsequently received and paid by the Petitioner for any year from 1989 to 1994 reflected an assessed value for the improvements other than $540,900 nor was there a material change in the total assessment." (Petitioner's Exhibit 5, page 10).

28. IRC cannot reasonably contend that the Form 17T constitutes a notice of a change in assessment while at the same time acknowledging that it received "actual tax bills" reflecting no change in the assessment, and that the assessed values contained in these notices (rather than the values contained in the Form 17T) were the basis for the tax payments actually made by IRC.

29. Assuming arguendo that the Forms 17T constitute a notice of assessment actually undermines IRC's contention concerning the correct value of the property. Mr. DeVoe, in his capacity as President of IRC, signed the Forms 17T on January 25, 2001, acknowledging that "I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of same has been paid." (Respondent's Exhibit 1).

30. If the Forms 17T are, in fact, a notice of assessment, then Mr. DeVoe's certification that the new assessed value identified on the Form 17T ($558,930) is "just and correct" could arguably constitute a stipulation to that value.

31. For all the reasons above, the State concludes the Forms 17T do not constitute a notice of new assessment.

32. Because the Forms 17T do not constitute notices of a new assessment, the petition was therefore not timely filed for the assessment years 1989 through 1994. Additionally, Mr. DeVoe did not file a separate appeal for each year, despite being given notice and an opportunity to correct this defect.

33. "A taxpayer may appeal a current real estate assessment in a year even if the taxpayer has not received a notice of assessment in the year. If an appeal is filed on or before May 10 of a year in which the taxpayer has not received notice of assessment, a change in the assessment resulting from the appeal is effective for the most recent assessment date. If the appeal is filed after May 10, the change becomes effective for the next assessment date." IC 6-1.1-15-1a(d).

34. As discussed, the appeal was filed on October 27, 1997. Because the appeal was filed after May 10, 1997, the BOR correctly determined that the petition (even if not defective for listing multiple years) could only apply to the assessment date of March 1, 1998.

35. As discussed, however, the building received the requested kit adjustment for the tax year 1995 and thereafter. Therefore, even ignoring the fact that the petition was defective because it listed multiple years, this appeal is moot for the assessment year beginning March 1, 1998.

36. For all the reasons above, the Petitioner failed to meet its burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

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