

REPRESENTATIVES FOR PETITIONER:

Dale Armbruster

REPRESENTATIVES FOR RESPONDENT:

Janice Wilson  
Marcia Scott

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

THE INTEC GROUP, INC.,	)	Petition For Correction Of An Error, Form 133
	)	Petition No.: 56-002-98-3-7-00001
Petitioner,	)	
	)	County: Newton
v.	)	Township: Beaver
	)	
BEAVER TOWNSHIP ASSESSOR,	)	Parcel No.: Personal Property
	)	
Respondent.	)	Assessment Year: 1998

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

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**February 7, 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

### Issues

1. The issues presented for consideration by the Board were:
  - ISSUE 1 – *Whether certain assets qualify as permanently retired equipment.*
  - ISSUE 2 – *Whether certain assets qualify as special tooling.*
  - ISSUE 3 – *Whether leased assets were incorrectly reported.*

### Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3 Dale Armbruster, True Tax Management, filed a Form 133 on behalf of Intec Group (Petitioner), petitioning the Board to conduct an administrative review of the above petition. The Form 133 was filed on March 15, 2002. The determination of the Newton County Property Tax Assessment Board of Appeals (PTABOA) is dated February 15, 2002.

### Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on August 22, 2002 at Kentland, Indiana before Paul Stultz, 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:
    - Mr. Dale Armbruster
  - For the Respondent:
    - Ms. Janice Wilson, County Assessor
    - Ms. Marcia Scott, County Auditor
5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Mr. Dale Armbruster<sup>1</sup>

For the Respondent:

Ms. Janice Wilson

6. The Form 133 petition with attachments was made a part of the record and labeled as Board Exhibit A. The attachments to the Form 133 petition included the following documents:
- a. Petitioner's statement of the issues raised on the Form 133 petition.
  - b. A list of depreciable assets with the heading "Tooling Detail".
  - c. A list of depreciable assets with the heading "Permanently Retired".
  - d. A copy of the minutes from the February 15, 2002 PTABOA hearing.
  - e. Forms 104, 103, 103T, 103W, and 106 identified as an "Amended Return" and dated December 31, 2001.
  - f. A forwarding letter from the Newton County Auditor to the Board submitted with the Form 133 petition.
  - g. A copy of the power of attorney.

The Notice of Hearing was entered into the record and labeled Board Ex. B.

7. The following exhibits were submitted to the Board at the hearing:

For the Respondent:

Respondent Ex. 1 – A copy of the original Form 103 filed by the Petitioner with the Beaver Township Assessor.

8. As a result of testimony, the Petitioner was asked to submit additional evidence. The date of submission was set for August 29, 2002. The Request for Additional Evidence

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<sup>1</sup> Mr. Armbruster testified that he is compensated on a contingency fee basis. Because the compensation of the witness is contingent upon the outcome of the issues about which he is testifying, such an arrangement may inherently affect the objectivity of the witness by improperly motivating the witness and adversely affecting the reliability of the testimony offered. It is for this reason that the Board will consider the contingent fee arrangement between the Petitioner and its witness in the process of determining the credibility of and the weight to be given to the testimony provided. *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998) and *Wirth v. State Board of Tax Commissioners*, 613 N.E. 2d 874 (Ind. Tax 1993).

was entered into the record and labeled as Board Ex. C. On August 29, 2002, via facsimile, the Petitioner submitted the following information, which was entered into the record as Petitioner's Ex. 1:

- a. A cover letter explaining the contents of the post-hearing submission.
- b. A copy of the original request for additional evidence.
- c. A Property Assessment Appeal Disclosure Statement prepared by the Petitioner.
- d. A detail list of the depreciable assets totaling \$6,032,047 as reported on the "Amended" Form 103.
- e. A copy of Pool 2 from Schedule A of the "Amended" Form 103.
- f. A list of depreciable assets reported on Row 20, Column A of Schedule A of the "Amended" Form 103.

On August 30, 2002, the Board received, via Certified Mail, the documents listed above as Petitioner's Ex. 1. In addition to the contents of Petitioner's Ex. 1, the Board received the following information, which was entered into the record as Petitioner's Ex. 2:

- a. A list of depreciable assets reported on Row 20 of Schedule A, Column B of the "Amended" Form 103.
- b. A list of depreciable assets reported on Row 21 of Schedule A, Column A of the "Amended" Form 103.
- c. A list of depreciable assets reported on Row 21 of Schedule A, Column B of the "Amended" Form 103.
- d. A list of depreciable assets reported on Row 22 of Schedule A, Column A of the "Amended" Form 103.
- e. A list of depreciable assets reported on Row 22 of Schedule A, Column B of the "Amended" Form 103.
- f. A list of depreciable assets reported on Row 23 of Schedule A, Column A of the "Amended" Form 103.
- g. A list of depreciable assets reported on Row 23 of Schedule A, Column B of the "Amended" Form 103.
- h. A list of depreciable assets reported on Row 24 of Schedule A, Column A of the "Amended" Form 103.

- i. A list of depreciable assets reported on Row 24 of Schedule A, Column B of the “Amended” Form 103.
  - j. A list of depreciable assets reported on Row 25 of Schedule A, Column A of the “Amended” Form 103.
  - k. A list of depreciable assets reported on Row 25 of Schedule A, Column B of the “Amended” Form 103.
  - l. A list of depreciable assets reported on Row 26 of Schedule A, Column A of the “Amended” Form 103.
  - m. A list of depreciable assets reported on Row 26 of Schedule A, Column B of the “Amended” Form 103.
  - n. A list of equipment cost identified as permanently retired prior to December 31, 1996.
9. The assessment date under appeal is March 1, 1998. The property subject to this appeal is manufacturing equipment used in the injection-molding industry. The equipment under appeal is located at 2295 West State Road 114, Morocco, Beaver Township, Newton County, Indiana. Some assets are located in a garage in the same taxing district. The ALJ did not inspect the property.
10. The original Form 103 filed by the Petitioner reflects an assessed value of \$1,049,320. The original Form 103 reports the total cost of depreciable assets to be \$8,394,813. No adjustments were taken to the depreciable assets. The true tax value of depreciable assets is computed as \$2,519,379. The true tax value of the inventory is computed as \$628,589.
11. The Petitioner attached an “amended” Form 103<sup>2</sup> to the Form 133 petition to support the values requested by the Petitioner. The “amended” Form 103 reflects an assessed value of \$703,460. The total cost of depreciable assets reported on the “amended” return is \$6,032,047 with adjustments of \$2,009,359 making the adjusted cost of depreciable assets to be \$4,022,688. The \$2,009,359 adjustment reflects the Petitioner’s request for permanently retired assets of \$120,153 and special tooling of \$1,889,206 (120,153 +

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<sup>2</sup> The amended return provisions found in Ind. Code § 6-1.1-3-7.5 and 50 IAC 16, which allow a taxpayer to file an amended return, were not in effect for the March 1, 1998 assessment date.

1,889,206 = 2,009,359). The true tax value of the depreciable assets is computed as \$1,481,783. The true tax value of the inventory is computed as \$628,589.

12. On the Form 133 petition, the Petitioner contends the assessed value of the property should be \$704,660. No explanation was given for the difference between the value on the Form 133 (\$704,660) and the value on the “amended” Form 103 (\$703,460). The Petitioner offered no explanation for the \$2,362,766 difference between the total cost of \$8,394,813 of depreciable assets reported on the original filed Form 103 and the total cost of \$6,032,047 of depreciable assets reported on the “amended” return.
13. The PTABOA determined the assessed value to be \$1,049,320 which is the assessed value reported by the Petitioner on the original Form 103.

### **Jurisdictional Framework**

14. 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 assessment or matters of administrative law and process.
15. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

### **Indiana’s Personal Property Tax System**

16. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
17. Indiana’s personal property tax system is a self-assessment system. Every person, including any firm, company, partnership, association, corporation, fiduciary, or individual owning, holding, possessing, or controlling personal property with a tax situs within Indiana on March 1 of any year is required to file a personal property tax return on

or before May 15 of that year unless an extension of time to file is obtained. See 50 IAC 4.2-2-2.

### **State Review and Petitioner's Burden**

18. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
19. 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 Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
20. 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 Bd. of Tax Comm'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
21. 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 State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
22. 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*

*Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).

23. The State 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 Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 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 for the State (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 State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

### **Discussion of Issues**

ISSUE 1: *Whether certain assets qualify as permanently retired equipment.*

24. The Petitioner contends that certain assets qualify as permanently retired. These assets are listed on a page titled "Permanently Retired" that was attached to the Form 133 petition. The listing shows a total cost of \$120,153.
25. The Respondent contends the equipment claimed to be permanently retired was not reported on the Petitioner's original Form 103. Therefore, the Petitioner is seeking a reduction for depreciable assets that were not reported.
26. The applicable rule governing Issue 1 is:
- 50 IAC 4.2-4-3(c)**
- "Permanently retired depreciable personal property" means depreciable personal property that has been removed from the manufacturing process on the assessment date, or has been removed from services other than manufacturing on



the assessment date, and is awaiting disposition, and must be scheduled to be scrapped, removed or disposed of and will be considered to be permanently retired providing the taxpayer actually scraps or sells such property.

27. The facts considered particularly relevant to this determination include the following:
- [A] The equipment was removed from the Petitioner's injection molding process as of December 31, 1996.
  - [B] The equipment has been stored in a garage located in the same taxing unit since the time of removal.
  - [C] There are no plans for disposal of the equipment.
  - [D] The equipment claimed to be permanently retired was not included on the original Form 103 filed by the Petitioner.
  - [E] The equipment claimed to be permanently retired is shown on the "amended" Form 103 which was attached to the Form 133 petition.

#### Analysis of ISSUE 1

28. The Petitioner argues that the value of depreciable assets should be adjusted to account for equipment which has been permanently retired. The Petitioner presented a list of the equipment claimed to be permanently retired, a detail of the depreciable assets shown on Schedule A of the "amended" Form 103, and the testimony of its representative to support this argument.
29. The list of equipment shows that assets described as "1984 Additions" were retired as of December 31, 1996. The Petitioner testified that this equipment was not included on the original Form 103 filed by the Petitioner. The Petitioner included the equipment on the "amended" Form 103 which was attached to the petition.
30. The Respondent argues that the cost for the equipment claimed to be permanently retired was not included in the original total cost of depreciable assets reported by the Petitioner. The Respondent contends that an adjustment is not warranted because these costs were

omitted on the original Form 103. The Respondent presented a copy of the original Form 103 filed for the March 1, 1998 assessment date in support of its position.

31. The Petitioner testified that the assets in question were removed from the manufacturing process prior to the 1998 assessment date. However, the Petitioner has not scheduled the equipment to be scrapped, removed, or disposed of. At the time of the hearing, almost six years after the retirement, the Petitioner still had no plans for disposal of the equipment.
32. The Petitioner testified that the equipment was not included on the original Form 103. The assessed value of record is the value reported by the Petitioner on the original Form 103.
33. In order to qualify as permanently retired the equipment must be removed from service and scheduled to be scrapped, removed, or disposed of. The Petitioner has not shown that the equipment at issue qualifies as permanently retired depreciable assets.
34. Further, the Petitioner has not shown why an adjustment is needed for equipment that was not even reported on the original Form 103.

*ISSUE 2: Whether certain assets qualify as special tooling.*

35. The Petitioner contends that certain assets qualify as special tooling and an adjustment should be made to the assessment. These assets are listed on a page titled “Tooling Detail” attached to the Form 133 petition. The cost of the assets on the listing is \$1,902,894. Three of the assets listed (totaling \$13,688) were acquired after March 1, 1998, therefore the cost of assets the Petitioner claims as special tooling for the March 1, 1998 assessment date is \$1,889,206.
36. The Respondent contends that the equipment on the list of “Tooling Detail” includes items that do not qualify as special tooling.

37. The applicable rule governing this issue is:
- 50 IAC 4.2-6-2**
- “Special tools” includes, but is not limited to, tools, dies, jigs, fixtures, gauges, molds, and patterns acquired or made for the production of products or product models which are of such specialized nature that their utility generally ceases with the modification or discontinuance of such products or product models.
38. The facts considered particularly relevant to this determination include the following:
- [A] The listing of “Tooling Detail” was prepared with the assistance of Mr. Tony McCracken, Plant Engineer for the Petitioner. The listing provides a short asset description, acquisition date, tax life, and cost for each item listed.
- [B] The Petitioner’s representative was unable to provide an explanation of how the equipment qualified as special tooling.
- [C] The listing includes items the Petitioner claims are permanently retired and also items that were acquired after the March 1, 1998 assessment date.

#### Analysis of ISSUE 2

39. The Petitioner contends that the assessment includes items which should be classified as Special Tooling. The Petitioner presented a listing entitled “Tooling Detail” in support of its argument.
40. The asset description on the “Tooling Detail” listing does not provide enough information to determine whether the equipment qualifies as special tooling. The Plant Engineer who assisted with the “Tooling Detail” listing did not attend the hearing to explain how he determined the equipment to be special tooling.
41. At the hearing, the Petitioner’s Representative was unable to describe the equipment on the listing or provide an explanation of how the equipment qualifies as special tooling.
42. The Petitioner’s listing entitled “Tooling Detail” without further explanation of how the items qualify as special tooling is conclusory and not probative evidence.

43. A tax representative's conclusions do not constitute probative evidence. *Whitley* 704 N.E. 2d at 1119.
44. The Petitioner did not present probative evidence to show that the equipment qualifies as special tooling.

ISSUE 3 – *Whether leased assets were incorrectly reported.*

45. The Petitioner verbally withdrew this issue at the hearing.

**Summary of Final Determination**

Determination of ISSUE 1: *Whether certain assets qualify as permanently retired equipment.*

46. The Petitioner failed to meet its burden on this issue. No change is made to the assessment as a result of this issue.

Determination of ISSUE 2: *Whether certain assets qualify as special tooling.*

47. The Petitioner failed to meet its burden on this issue. No change is made to the assessment as a result of this issue.

Determination of ISSUE 3: *Whether leased assets were incorrectly reported.*

48. This issue was withdrawn at the hearing. No change is made in the assessment as a result of this Issue.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

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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.