STATE OF INDIANA
Board of Tax Review

JACK RIPLEY	)	On Appeal from the Randolph County
	)	Property Tax Assessment Board of Appeals
	)	
Petitioner,	)	
	)	Petition for Review of Assessment, Form 131
v.	)	Petition No. 68-016-00-1-5-00011[1]
	)	Parcel No. 016 00211-00
RANDOLPH COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS And MONROE 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:

Issues

1. Whether the assessment year under appeal is March 1, 2000 rather than March 1, 2001.

[1]The petition number has been changed to reflect the appropriate assessment year under appeal.

2. Whether the date of construction of improvements, for the purpose of applying physical depreciation, should be 1994 rather than 1999 for 192 square foot addition (Improvement C).

2. Whether the 224 square foot addition (Improvement E) is correctly valued under Schedule E.2.

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, Mr. Jack Ripley (Petitioner) filed a petition requesting a review by the State. The Form 131 petition was filed on July 15, 2001[2]. The Property Tax Assessment Board of Appeals' (PTABOA) Final Determination (Form 115) was mailed on June 15, 2001.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held before Administrative Law Judge Joseph Stanford on February 13, 2002. Mr. Ripley was present at the hearing and Mr. Steven R. Altland, attorney-at-law, was present representing Mr. Ripley. Mr. Noel Carpenter, Randolph County Assessor, and Mr. Rick Carpenter were present on behalf of the PTABOA. Bobbie G. Neal, Township Assessor, was present on behalf of Monroe Township.

4. At the hearing, the Form 131 petition was made part of the record and labeled Board Ex. A. The hearing notice was labeled Board Ex. B. In addition, the following exhibits were submitted to the State:
Petitioner's Ex. A – Tax statements for the assessment years 1999 and 2000.

[2] On September 17, 2001, the State received a copy of the petition for review directly from Mr. Ripley. On October 25, 2001, the State received the original Form 131 petition from Randolph County via US Mail. The original Form 131 petition was received by the Randolph County Assessor's Office on July 16, 2001.

Petitioner's Ex. B – A memorandum issued by the State addressing the change in the rate of assessment from one-third of true tax value to 100% of true tax value.
Petitioner's Ex. C – Notices of Assessment, Form 11 R/A, for the assessment years 1994, 1995 (3 for 1995), and 2000.
Petitioner's Ex. D – A property record card reflecting the assessment effective March 1, 2000.
Petitioner's Ex. E – A sketch and a description of the subject property's construction history.
Petitioner's Ex. F – Certificate of occupancy and building permit for the 16' x 12' second floor room addition dated December 21, 1994.
Petitioner's Ex. G – A copy of 50 IAC 2.2-7-11, Schedule E.2, and 50 IAC 2.2-9-7, Residential Depreciation Table.
Petitioner's Ex. H – A copy of the underlying Form 130 petition.
Petitioner's Ex. I – The notice of hearing sent to Mr. Ripley by the PTABOA regarding Mr. Ripley's Form 130 petition.
Petitioner's Ex. J – A copy of a partially completed Form 115.
Petitioner's Ex. K – An audiotape of PTABOA hearing.
Petitioner's Ex. L – Certificate of Net Assessed Valuations for 2001 from the Randolph County Auditor.
Petitioner's Ex. M – A copy a cover letter and a certified mail/return receipt requested receipt attached to the Form 131 petition signed on July 10, 2001.
Petitioner's Ex. N – A power of attorney delegating the authority to act on behalf of the Petitioner to Mr. Altland.
Petitioner's Ex. O – Calculations prepared by Mr. Ripley of proposed changes in property taxes based on changes made to the assessment.
Petitioner's Ex. GG – Exterior front and rear view photographs of subject property.

Respondent's Ex. 1 – The property record card for the subject property reflecting the 2001 assessment established by the PTABOA.

Respondent's Ex. 2 – A copy of the Form 11/RA, Notice of Assessment, effective for the March 1, 2000 assessment date for the subject property.

5. The subject property is a two-story residential dwelling located at 420 Oak Street, Parker City, in Randolph County. The Hearing Officer did not view the subject property.

Testimony and Evidence Regarding the Assessment Year Under Appeal

6. Petitioner testified that he did not receive a Form 11, Notice of Assessment, reflecting changes made to the subject property for the 2000 assessment year. The Petitioners first learned of the increased assessment upon receipt of a tax statement for the 2000 assessment in April 2001. The Petitioner filed the underlying Form 130 petition on April 27, 2001 following receipt of the tax statement. The Petitioner is appealing the 2000 assessment year with an assessment of $330 for land and $13,700 for improvements. *Ripley testimony*.

7. Respondent testified that subject Form 11 was mailed by an employee of the Randolph County Assessor's office using the same procedure used for mailing all notices of assessment. The subject Form 11 was mailed on October 2, 2000. The PTABOA action addresses the 2001 assessment year with an assessed value of $1,000 for land and $32,100 for improvements.[3] *Noel Carpenter testimony*.

Testimony and Evidence Regarding the Year of Construction for Improvement C

8. Petitioner testified that Improvement C was constructed during the fall and winter of 1994. *Ripley testimony. Pet. Ex. E and F*.

9. Respondent testified that Improvement C was under construction in 1994, but was not considered complete by the Randolph County Assessor's office until

1999. Improvement C was first assessed as complete for the assessment year March 1, 2000 reflecting a construction date of 1999. *R. Carpenter testimony. Pet. Ex. C; Resp. Ex. 1.*

Testimony and Evidence Regarding the Valuation of Improvement E

10. Improvement E is an upper level addition containing only one newly constructed exterior wall. Improvement E is valued using Schedule E.2, which provides a whole dollar cost for two walled additions. Valuing Improvement E at 75% of the whole dollar cost shown in Schedule E.2 would be an agreeable resolution to this issue. *Ripley testimony. Pet. Ex. G.*

11. Improvement E has a negative 25% adjustment applied to the whole dollar cost from Schedule E.2 for the 2001 assessment. The PTABOA agrees that making this adjustment is an agreeable resolution to this matter. This is the equivalent of using 75% of the whole dollar cost in Schedule E.2. *R. Carpenter testimony*. *Resp. Ex. 1.*

Conclusions of Law

1. The Petitioner is 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. 50 IAC 17-5-3. See also the Forms 130 and 131 petitions authorized under Ind. Code §§ 6-1.1-15-1, -2.1, and –4. 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.

[3] Due to legislative action, in 2001 the rate of assessment became 100% of true tax value.

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. See 50 IAC 17-6-3. "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.

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. One manner for the taxpayer to meet its burden in the State's administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners,* 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). 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 merely because 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*, 702 N.E. 2d at 1040.

Conclusions Regarding the Year Under Appeal

18. When real property is assessed or reassessed by any assessing official, the assessing official is required to give notice to the taxpayer (and the county assessor), by mail, of the new assessment. Ind. Code § 6-1.1-4-22. In the case at hand, the evidence makes it clear that the subject property was assessed by

the local assessing official and that the assessment had an effective date of March 1, 2000. It is an undisputed fact that the local assessing is official required to give the Petitioner notice of assessment.

19. Although the statutory procedures for obtaining a review of an assessment provide two methods by which a current assessment is challenged, the State will focus only on the method applicable to the case at hand. Because the local assessing official was required to provide notice of the assessment, to obtain a review of the current assessment the petition must have been filed within 45 days after the notice of assessment was given to the Petitioner. Ind. Code §6-1.1-15-1.

20. The date that a petition is filed controls the year for which any change in assessment becomes effective. With respect to the filing procedures following a notice of assessment, if a petition for review is filed outside the 45 day time limitation any change in assessment resulting from the petition becomes effective for the next assessment year rather than the current year. Ind. Code §6-1.1-15-1.

21. The procedure described above assumes that the taxpayer was given notice of an assessment as prescribed by law. At first glance, it would appear that, if a taxpayer did not receive the prescribed notice of assessment, the taxpayer would effectively lose any avenue to achieve review of that particular assessment year. This is not so. The legislature built in a safety net for taxpayers. If a local assessing official fails to provide notice of assessment to a taxpayer and the taxpayer's first notice of a change in the assessment is upon receipt of the tax bill affected by the assessment, the tax bill acts as the notice of assessment for the purposes of initiating a review of assessment. Ind. Code § 6-1.1-15-13.

22. The Petitioner maintains that he did not receive a Form 11, Notice of Assessment, notifying the Petitioner that the assessment of the subject property had changed effective the March 1, 2000 assessment year. The Petitioner asserts that the year under appeal is 2000 because the underlying Form 130 was

filed upon the Petitioner first learning of the new assessment when he received the corresponding tax bill in April 2001.

23. The Respondent asserts that the subject Form 11 was mailed to the Petitioner following the standard procedures of the Randolph County Assessor's office. The PTABOA action was effective for the March 1, 2002 assessment because the underlying form 130 was filed in April 2001.

24. The point in dispute is whether the local assessing officials properly provided notice to the Petitioner as prescribed by law. The testimony presented by the Respondent indicates that a notice of assessment was mailed using the normal procedures for mailing. The record is void of any other evidence regarding the mailing of the subject Form 11. Barring any type of material evidence (proof of mailing from the US Postal Service, etc.), the question then becomes what kind of evidence is sufficient to prove that the subject Form 11 was mailed to the Petitioner.

25. This question was answered in *Indiana Sugars, Inc. v. State Board of Tax Commissioners*, 683 N.E. 2d 1383 (Ind. Tax 1997). In *Indiana Sugars*, citing *F&F Construction Co. v. Royal Globe Insurance, Co.,* 423 N.E. 2d 656 (Ind. App. 1981), the Court stated that "…testimony from one with direct and actual knowledge of the particular message in question is required to establish proof of mailing."

26. Thus, testimony is enough to establish proof of mailing *if* the testimony is from the one who has the personal knowledge of the act. Although the Respondent presented testimony indicating that the Randolph County Assessor's office has set procedure for mailing notices of assessment and that one particular employee of that office is responsible for this duty, this testimony does not provide any personal knowledge of the actual mailing of the subject Form 11. Under the test from *Indiana Sugars*, the testimony presented by the Respondent is not enough to establish proof of mailing.

27. Therefore, because the Respondent did not establish proof of mailing of the subject Form 11, the Petitioner's claim is undisputed. The evidence in the record indicates that the Petitioner was not notified in the manner prescribed under Ind. Code § 6-1.1-4-22 and, as such, receipt of the tax bill reflecting the 2000 assessment served as the Petitioner's notice for the purposes of initiating the appeal process for the 2000 assessment year.

28. For all of the reasons above, the assessment year under review is 2000. The assessed value under appeal is $330 for land and $13,700 for improvements.

Conclusions Regarding the Year of Construction for Improvement C

29. The Petitioner contends that the year of construction for Improvement C should be listed as 1994 rather than 1999. The Petitioner submitted a description of the construction history for the subject property, a building permit for Improvement C and a certificate of occupancy for Improvement C to show the actual year of construction.

30. The evidence provided by the Petitioner plainly shows that Improvement C was constructed during 1994. The evidence makes it clear that the construction, completion, and occupancy of Improvement C took place no earlier than December 21, 1994.

31. When challenging an assessment, the Petitioner carries the burden of showing error exists by presenting factual evidence probative of the alleged error. In the event the Petitioner makes such a showing, the burden shifts to the local assessing officials to support their position with substantial evidence. In the matter at hand, the Petitioner has successfully made a showing that the year of construction should be 1994 rather than 1999. Thus, the burden has shifted to the Respondent to justify the 1999 year of construction assigned to Improvement C.

32. The testimony offered by the Respondent does not dispute that construction of Improvement C began in 1994. However, for reasons of their own, the local assessing officials chose not to assess Improvement C until March 1,1999 when Improvement C was viewed as 100% by the Randolph County Assessor's Office. Thus, the local assessing officials assigned 1999, the year it was viewed complete by the local office, as the construction date. The Respondent offered no other evidence that gives any reason to believe the year of construction should be 1999 rather than 1994. The Respondent has not justified the 1999 year of construction assigned to Improvement C and the Petitioner prevails.

33. For all of the above reasons, the Petitioner has met its burden regarding the year of construction for Improvement C. As such, the State will make the change regarding the year of construction.

34. Normally, if an improvement's date of construction realized a change, because physical depreciation is directly affected, the improvement might also realize a change in physical depreciation. However, in the matter at hand, the change in the construction date of Improvement C does not have any effect on the physical depreciation applied to Improvement C. Although the date of construction is changed to 1994, Improvement C was first assessable for the assessment year March 1, 1995 – the year of a general reassessment[4]. Therefore, because Improvement C was newly constructed in the year of a general reassessment, even if it had been placed on the assessment rolls March 1, 1995, it was not eligible for the application of physical depreciation until the next general reassessment. 50 IAC 2.2-10-7.

[4] The construction of Improvement C was complete and ready for occupancy on December 21, 1994. Because this occurred after March 1, 1994, the year of assessment applicable to Improvement C is March 1, 1995.

Conclusions Regarding the Valuation of Improvement E Under Schedule E.2

35. The testimony provided by both parties indicates agreement regarding a resolution to this issue. The Petitioner suggests valuing Improvement E at 75% of the whole dollar cost from Schedule E.2. The Respondent points out that, for the assessment year 2001, a negative 25% adjustment was made to the whole dollar cost for Improvement E. The Respondent also noted that a negative 25% adjustment was the equivalent of using 75% of the whole dollar cost. Both parties agreed that adjusting the whole dollar cost in this manner was an agreeable resolution to this issue. This constitutes an agreement between the parties regarding the assessment of Improvement E.

36. The State accepts the agreement between the parties regarding the valuation of Improvement E. However, the State's acceptance of this agreement should not be construed as a determination regarding the propriety of the method used to value Improvement E under Schedule E.2. As a result of the agreement between the parties, the State will make the change regarding the valuation of Improvement E.

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