

**STATE OF INDIANA  
Board of Tax Review**

|                             |   |   |
|-----------------------------|---|---|
| KEY BANK, NA                | ) | On Appeal from the Johnson County           |
| KCCI SERVICES               | ) | Property Tax Assessment Board of            |
|                             | ) | Appeals                                     |
|                             | ) |   |
| Petitioner,                 | ) |   |
|                             | ) | Petitions for Correction of Error, Form 133 |
|                             | ) |   |
| JOHNSON COUNTY PROPERTY TAX | ) | Petition Nos. 41-031-98-3-7-00001           |
| ASSESSMENT BOARD OF APPEALS | ) | 41-009-99-3-7-00001                         |
| And PLEASANT TOWNSHIP       | ) | 41-009-00-3-7-00001                         |
| ASSESSOR                    | ) |   |
|                             | ) | Parcel No. 9931-99-11-045-00                |
| 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:

**Issues**

1. Whether assessment includes non-taxable computer application software.
2. Whether depreciable assets are pooled correctly.
3. Whether the assessment includes assets that had been disposed of.
4. Whether assessment includes assets that are assessed as real estate.

### **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, Vince Manard for Key Bank, NA (Petitioner), filed Form 133, Petitions for Correction of an Error. The Johnson County Property Tax Assessment Board Of Appeals (PTABOA) Assessment Determination on the underlying Form 133 petitions are dated November 14, 2001.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was scheduled for March at 10:00 A.M. in Franklin, Indiana. Notice of said hearing (Board's Ex. B) was mailed to Petitioner at the respective address listed on the petitions. Notice of said hearing was mailed on January 18, 2002 (Board's Ex. C).
4. On December 11, 2001, Hearing Officer Paul Stultz was present to conduct an administrative hearing on the Form 133 petitions. The Johnson County Assessor was present to represent Johnson County. The Petitioner failed to appear at the scheduled hearing, therefore no hearing was held.
5. The Petitioner did not contact the State or the Hearing Officer prior to the scheduled hearing and did not request a continuance of the hearing.
6. The Hearing Officer verified that notices of hearing were mailed, with proof of mailing (Board Ex. C), and verified that the notices were not returned to the State as not deliverable.

### **Conclusions of Law**

1. 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.

2. 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.
3. 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.
4. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Id.* These presentations should both outline the alleged errors and support 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 taxpayers 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)).
5. 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.

6. 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).
7. 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.
8. The Form 133 petitions are denied for the failure of the Petitioner or its Representatives to appear at the administrative hearing and present evidence in support of the alleged errors of 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.

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Chairman, Indiana Board of Tax Review