

REPRESENTATIVES FOR PETITIONER: Thomas Fleming

REPRESENTATIVES FOR RESPONDENT: None

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

PREMIER PROPERTIES, INC.,)		
	)	Petition No.	45-026-01-3-7-00074
Petitioner,)		
	)	County:	Lake
v.	)	Township:	North
)		
NORTH TOWNSHIP ASSESSOR,	)	Parcel No.:	16-701844
	)		Personal Property
Respondent.)		
	)	Assessment Year:	2001

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

February 25, 2004

FINAL DETERMINATION

The Indiana Board of Tax Review (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

Issue

1. The issue presented for consideration on the petition was:
Whether the personal property assessment is correct.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-12, Thomas Fleming filed a Form 133 petition on behalf of Premier Properties, Inc. (Petitioner) petitioning the Board to conduct an administrative review of the above petition. The Form 133 petition was filed with the Board on June 27, 2003. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued a Final Determination on June 3, 2003. It is not apparent when the Form 133 petition was originally filed with the County.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on November 5, 2003, in Crown Point, Indiana before Ellen Yuhan, 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. Thomas Fleming, President, Premier Properties, Inc.

 - For the Respondent:
No one appeared
5. The following person was sworn in as a witness and presented testimony:
 - For the Petitioner:
Mr. Thomas Fleming
6. The following exhibits were presented:
 - For the Petitioner:
Petitioner's Exhibit 1 - Data for personal property tax appeal

7. The following additional items are officially recognized as part of the record of proceedings:

Board's Exhibit A - Form 133 petition with the following attachments: PTABOA Final Determination; equipment inventory; and listing of property owned by Premier
Board's Exhibit B - Notice of Hearing on Petition

8. The subject property is personal property located at 8232 Kennedy Avenue, Highland, North Township, Lake County. The assessment year under appeal is 2001 and the assessed value, as determined by the PTABOA, is \$28,000.

Jurisdictional Framework

9. 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.
10. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-4.

Indiana's Property Tax System

11. Personal property includes all tangible property (other than real property) which is being:
 - (A) held in the ordinary course of a trade or business;
 - (B) held, used, or consumed in connection with the production of income; or
 - (C) held as an investment.

See Ind. Code § 6-1.1-1-11.

12. 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

13. The Board does not undertake to reassess property, or to make the case for the petitioner. The Board's decision is based on 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).
14. 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); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890 (Ind. Tax 1995). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
15. 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.]
16. 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.]
17. 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. Tax 2001); *Blackbird Farms Apartments, LP v. Department of Local Government Finance* 765 N.E.2d 711 (Ind. Tax, 2002).

18. The Board 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); *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 Board (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 Board that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of the Issue

19. The Petitioner contends the depreciated value [true tax value] of the personal property is \$1,710. On the Form 133, the Petitioner states that "the original assessment form was not filed and the assessor created the \$28,000 figure even though the prior years were much lower."
20. The PTABOA upheld the assessed value of \$28,000. The PTABOA Final Determination states: "This petition was denied because it was not filed in a timely manner."
21. The applicable statutes and rules governing this Issue are:
- Ind. Code § 6-1.1-3-7**
- Ind. Code § 6-1.1-3-15**
- Ind. Code § 6-1.1-15-1**
- Ind. Code § 6-1.1-15-12**

50 IAC 4.2-3-12

22. Evidence and testimony considered particularly relevant to this determination include the following:
- A. The equipment and furniture were assessed at \$28,000. Petitioner claims the original cost was \$5,702 and the depreciated value [true tax value] is \$1,711. *Fleming testimony; Petitioner's Exhibit 1.*
 - B. Section II of the Form 133 petition states that the original assessment form [Form 103] was not filed. The Petitioner does not know if a Form 103 was filed. *Fleming testimony; Board Exhibit A.*
 - C. The Petitioner found out about the increase in assessment from his accountant. He doesn't know if the office manager got the notice and took it to the accountant and then accountant called him. *Fleming testimony.*

Analysis

23. Ind. Code § 6-1.1-3-7 states that a taxpayer shall, on or before the filing date of each year, file a personal property return with the assessor of each township in which the taxpayer's personal property is subject to assessment.
24. If a taxpayer fails to file a personal property return, then pursuant to 50 IAC 4.2-3-1(b), the assessor is required to make an assessment if they have sufficient information to indicate there is omitted property.
25. On the Form 133 petition, the Petitioner states that the original assessment form [Form 103] was not filed. At the hearing, the Petitioner testified that he did not know if a personal property return was filed.
26. If the Petitioner failed to file the personal property return, then the township assessor was required to make an assessment. On the Form 133 petition, the Petitioner stated that the township assessor created the assessment of \$28,000. The Petitioner did not know when or if a notice of assessment (Form 113/PP) was received. The Petitioner testified that he

found out about the increase from his accountant. The Petitioner stated that he doesn't know if the office manager got the notice and took it to the accountant.

27. Ind. Code § 6-1.1-15-1 is the governing authority when a township assessor makes a change to a personal property assessment. Ind. Code § 6-1.1-15-1 states if the taxpayer does not agree with the action of the township assessor, the PTABOA will review the action if a petition is filed within forty-five days of the notice. However, since it is not known when or if a Form 113 was received, it is impossible to determine whether or not the Petitioner appealed within the time frame required by Ind. Code § 6-1.1-15-1.
28. In the PTABOA's denial, it states that the petition was denied because it was not filed in a timely manner.
29. The Petitioner filed a Form 133 petition to appeal the assessment. Only specific types of errors are correctable using the Form 133 petition. The procedures for the Form 133 petition are described in Ind. Code § 6-1.1-15-12. "A fact to keep in mind when dealing with these forms [Form 133] is that they are not to be used to challenge the methodology used in generating an assessment. There are appeal provisions for that purpose." 50 IAC 4.2-3-12(a).
30. On the Form 133, the Petitioner checked the box claiming there was a mathematical error in computing the assessment. In section II of the Form 133 petition, the Petitioner states: "We are petitioning to have the mathematical errors corrected."
31. Pursuant to 50 IAC 4.2-3-12(g)(2) mathematical errors correctable on the Form 133 petition are described as:
 - (A) An error in addition, subtraction, multiplication, or division was made in the process of taking numbers initially entered into the assessment computation and developing them into assessed value.
 - (B) A number entered on the personal property return was incorrectly carried to another location on the return.
 - (C) A number was correctly determined, but was incorrectly entered on the personal property return.

(D) A number was correctly determined, but was entered in the wrong location on the personal property return.

Examples of these errors are also provided in 50 IAC 4.2-3-12(g)(2).

32. Clearly the mathematical errors described above assume a personal property return has been filed by the taxpayer. In the case at hand, the Petitioner does not know if a personal property return was filed and the Form 133 petition states that the form was not filed.
33. The Form 133 petition (Ind. Code § 6-1.1-15-12) is not the proper avenue to appeal an assessment made by a township assessor.
34. The Petitioner initiated this appeal claiming that the assessment is incorrect. However, the Petitioner does not know what caused the assessment. The Petitioner does not know whether he filed a personal property return or whether the township assessor made the assessment.
35. Without knowing what caused the original assessment, it is impossible to determine whether the Petitioner followed the proper procedures to appeal the assessment.
36. “If a taxpayer cares so little about its case that it does not make a strong factual case at the administrative level, why should the [Indiana] Board care any more than the taxpayer?” *Hoogenboom-Nofziger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1023 (Ind. Tax Ct. 1999)
37. The Petitioner did not present sufficient evidence to show that the proper procedures were followed to appeal the assessment. There is no change in the assessment as a result.

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

Commissioner, 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.