STATE OF INDIANA

Board of Tax Review

RENAISSANCE ASSOCIATION 1, LTD.	)	On Appeal from the Lake County Property
	)	Tax Assessment Board of Appeals
	)	
Petitioner,	)	
	)	Petition for Review of Assessment, Form 131
v.	)	Petition No. 45-023-99-1-4-00024*
	)	Parcel No. 263701190032
LAKE COUNTY PROPERTY TAX	)	
ASSESSMENT BOARD OF APPEALS	)	
And NORTH 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

Whether an additional assessment for previous years of 1992, 1993, and 1994 was allowable and correct.

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 IC 6-1.1-15-3, Mr. Thomas A. Hendrickson filed a Form 131 petition on behalf of Renaissance Association (the Petitioner) requesting a review by the State Board. The Form 131 was filed on May 22, 2000. The Lake County Property Tax Assessment Board of Appeal's (PTABOA) Final Determination on the underlying Form 130 petition is dated April 27, 2000.

3. Pursuant to IC 6-1.1-15-4, a hearing was held on September 7, 2001 before Hearing Officer Joan L. Rennick. Testimony and exhibits were received into evidence. Mr. Thomas A. Hendrickson, Mr. David E. Braatz, Ms. Nancy J. Hesser, and Mr. Sanford Ross represented the Petitioner. Mr. Henry E. Bennett, Jr. represented the Lake County PTABOA and Mr. William Rivich represented North Township.

4. At the hearing, the subject Form 131 was made a part of the record and labeled as Board Exhibit A. Notice of Hearing on Petition is labeled as Board Exhibit B. The Hearing Sign In Sheet is labeled Board Exhibit C. In addition, the parties submitted the following exhibits to the State:
   Petitioner's Exhibit 1 – Evidence and Brief of Petitioner

   Respondent's Exhibit 1 – Copy of memo from Lake County Assessor dated April 7, 2000

5. The subject structures are apartment buildings located at 524-538 Michigan Ave., Hammond, North Township, Lake County.

6. The Hearing Officer did not view the subject property.

Whether an additional assessment for previous years of 1992, 1993, and 1994 was allowable and correct.

7. The subject property is improved by two (2) high-rise apartment buildings devoted to subsidized housing for senior citizens. One of the two buildings was omitted from assessment as of the assessment dates of March 1, 1992, March 1, 1993, and March 1, 1994. The North Township Assessor notified the Lake County Auditor of the omission on a Form 122 in August 1996. The Petitioners received a tax bill dated August 26, 1998 with a current tax due for the November installment of $112,207.98 plus a delinquent tax due of $350,708.94. The Petitioners assert this was their first notification of any delinquent taxes due. Handwritten notes were on the tax bill indicating this was a corrected bill for 1992/1993, 1993/1994, 1994/1995, and 1997/1998. Mr. Hendrickson stated the current tax bill was paid and the delinquent taxes were timely appealed to the PTABOA. There is no dispute with the current assessment. *Hendrickson testimony & Petitioner's Exhibit 1.*

8. A review of the Indiana statutes found that real property may be assessed or its assessed value increased for a prior year only if the notice is given within three (3) years after the assessment date for that prior year. Ind. Code § 6-1-9-4. If the local officials believe that any taxable tangible property has been omitted from or undervalued on the assessment rolls, they shall give written notice of the assessment or increase in assessment under Ind. Code § 6-1.1-3-20 or Ind. Code § 6-1.1-4-22. The notice shall contain a general description of the property and a statement describing the taxpayer's right to file a petition for review with the county property tax assessment board of appeals under Ind. Code § 6-1.1-15-1. An Indiana Tax Court decision, *Wetzel Enterprises, Inc. v State Tax Board*, 694 N.E. 2d 1259 (Ind. Tax 1998), upheld the statutes described. *Hendrickson*

testimony & Petitioner's Exhibit 1.

9. The Form 122 (Report of Omitted Property) was done in August 1996 and a Form 113 (Notice of Assessment Increase) should have been sent to the taxpayer at that time. However, no copy or record of such was found to support this. *Rivich testimony.*

10. The crux of this case hinges on whether proper notice was given to the taxpayer. The Lake County Auditor's office was contacted on April 7, 2000 by a memo requesting whether a Form 122 was processed in their office on or about August 22. 1996 for the subject parcel and whether a revised parcel tax bill for the tax years, 1992, 1993, and 1994 was sent to the taxpayer reflecting the new assessed value. Mr. Douglas Hensley from the Lake County Auditor's Office responded by handwritten answers on the memo with a "yes" to the first question and "standard practice" to the second question. *Bennett testimony & Respondent's Exhibit 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.

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 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.

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 Board'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 Board'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.

Whether an additional assessment for previous years of 1992, 1993, and 1994 was allowable and correct.

18. Pursuant to Ind. Code § 6-1.1-9-4 and Ind. Code §C 6-1.1-9-1, it is clear that the real property may be assessed or the assessed value increased for a prior year as long as proper notice is given to the taxpayers along with an explanation of their right to file a petition for review with the local officials.

19. It is recognized that local officials do not send Form 113s (Notice of Assessment) by certified mail because of cost, but a copy in the file would be appropriate and customary. The taxpayers in this appeal contend they did not receive a Form 113 and their first notice of a change in the assessment was a tax bill dated August 26, 1998. The handwritten note on the Form 122 has the same date under the word "done". The county or the township cannot find a copy of a Form 113 in their files, although, it is common procedure to follow the Form 122 to the Auditor with the Form 113 to the Taxpayer.

20. Neither the County nor the Township established that the Petitioner had been notified prior to receipt of the tax bill of August 26, 1998. No Form 113 was included in the documentation. The memo from the Auditor's office states a revised tax bill is mailed to the taxpayer as "standard procedure". "Standard procedure" means it should have been done, not that it actually was done.

21. A copy of the Indiana Tax Court decision in *Wetzel Enterprises Inc. v. State Board of Tax Commissioners,* 694 N.E. 2d 1259 (Ind. Tax 1998) reiterates the procedural protections implemented by the legislature to insure the taxpayer could not have their assessments increased without an opportunity to respond.

22. There is no dispute with the current tax assessment, but with the delinquent tax due in the amount of $350,708.94 attached to the 1998 tax bill for years 1992, 1993, and 1994 that was due on November 10, 1998.

23. The State agrees with the Petitioner that the Indiana code governs the outcome of this appeal. Without proper notice to the taxpayer and failure to act within the time limit of three (3) years, the local officials missed their opportunity to recoup any loss in the assessment as a result of an omitted building.

24. The State will not issue a property record card or affirm an assessed value based on the evidence presented. The PTABOA may prepare a property record card at its discretion.

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