

REPRESENTATIVES FOR PETITIONER: Jeff Kelsey
PricewaterhouseCoopers LLP

REPRESENTATIVES FOR RESPONDENT: Rick Freeman, Supv. Business Division,
Center Township

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

ROCHE DIAGNOSTICS CORPORATION)	Petition No.: 49-101-01-3-7-00029
)	
Petitioner,)	County: Marion
)	
v.)	Township: Center
)	
CENTER TOWNSHIP ASSESSOR,)	Parcel No.: A107495
)	Personal Property
Respondent.)	
)	Assessment Year: 2001

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

March 2, 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 Form 103 for the property located at 2916 Bluff Road was timely filed.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-12, Jeff Kelsey filed a Form 133 petition on behalf of Roche Diagnostics Corporation (Petitioner) petitioning the Board to conduct an administrative review of the above petition. The Form 133 petition was filed with the Board on May 30, 2003. The Marion County Property Tax Assessment Board of Appeals (PTABOA) issued a Final Determination on May 16, 2003.

3. On the Form 133, the Petitioner raised a second issue regarding the calculation of the penalty. Prior to this hearing, the Petitioner was informed that the Board did not have jurisdiction over penalties or the calculation of penalties. The Petitioner was further informed that no testimony, evidence, or discussion of the computation of late filing or undervaluation penalties would be entertained at the hearing.

Hearing Facts and Other Matters of Record

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on December 10, 2003, in Indianapolis, Indiana before Beth Hammer, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-5-2.

5. The following persons were present at the hearing:
 - For the Petitioner:
Mr. Jeff Kelsey, PricewaterhouseCoopers LLC

 - For the Respondent:
Mr. Rick Freeman, Supv. Business Division, Center Township

6. The following person was sworn in as a witness and presented testimony:
 - For the Petitioner:
Mr. Jeff Kelsey

For the Respondent:

Mr. Rick Freeman

7. The following exhibits were presented at the hearing:

For the Petitioner:

Petitioner Exhibit 1 – Listing of assessed value for the four locations in Center Township and the percentage of total

For the Respondent:

None

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

Board Exhibit A - Form 133 petition with the following attachments: Cover letter; calculation of undervaluation penalty; tax statement; calculation of late filing penalty; letter addressed to Marty Womacks, Marion County Auditor, dated May 31, 2002; letter from Marty Womacks dated May 22, 2002; letter to Marty Womacks dated April 22, 2002; Certificate of Authority; copy of 50 IAC 4.2-2-1; letter to Rick Freeman dated May 20, 2002; copy of State Board of Tax Commissioner Memorandum on the \$12,500 Personal Property Tax Reduction Credit dated September 2, 1999; PTABOA Final Determination

Board Exhibit B - Notice of Hearing on Petition

Board Exhibit C – Exhibits and witness list for the hearing (dated 11/26/03).

Exhibits include the following:

1. Form 103 filed by Roche for property at Marian, Inc.
2. Form 103 filed by Roche for property at IN UNIV/PUR UNIV/PCR
3. Form 103 filed by Roche for property at Methodist Hospital
4. Form 113 for property at 1413 South West Street
5. Form 103 filed by Roche indicating no property at 1413 South West Street
6. Form 113 for property at 1600 Albany Street
7. Form 103 filed by Roche indicating no property at 1600 Albany Street
8. Form 113 for property at 2916 Bluff Road (Egenolf Machine)
9. Form 103 filed by Roche reporting property at 2916 Bluff Road
10. Tax bill for property at 2916 Bluff Road including penalty for failure to file
11. Joint statement of facts drafted by the Petitioner
12. IC 6-1.1-3-7
13. IC 6-1.1-37-7
14. 50 IAC 4.2-2-1

15. Request for Clarification/Confirmation addressed to Department of Local Government Finance(DLGF)
16. Mission statement of DLGF

Board Exhibit D – Pre-hearing correspondence including:

1. Order of Dismissal dated July 22, 2003
 2. Petitioner’s response to Order of Dismissal dated July 25, 2003
 3. Fax from Petitioner dated August 12, 2003
 4. Letter to Petitioner dated September 15, 2003
 5. Letter from Petitioner dated September 17, 2003
9. The Petitioner objected to the Board’s stated position that penalties are not within its jurisdiction.
 10. The subject property is personal property located at 2916 Bluff Road, Center Township, Marion County. The assessment year under appeal is 2001.

Jurisdictional Framework

11. 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.
12. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-4.

Indiana’s Property Tax System

13. 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.

14. 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

15. 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).
16. 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.]
17. 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.]
18. 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.]

19. 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).

20. 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

21. The Petitioner contends that they merely failed to include certain property on the timely filed personal property returns, and the late filing penalties should not apply.

22. The PTABOA contends that the Petitioner did not demonstrate that the return was filed timely, and the penalty for late filing was correctly imposed.

23. 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 § 6-1.1-15-12

Ind. Code § 6-1.1-37-7

50 IAC 4.2-2-10

50 IAC 4.2-3-1

24. Evidence and testimony considered particularly relevant to this determination include the following:
- A. The Petitioner filed three (3) separate personal property returns (Form 103) with Center Township before May 15, 2001. All three property locations are in the same taxing district.
 - B. Subsequent to May 15, the Respondent sent the Petitioner three (3) separate Notices of Assessment (Form 113) for property located at 1413 South West Street, 1600 Albany Street, and 2916 Bluff Road.
 - C. The Petitioner responded to each Form 113 by filing a Form 103 indicating the proper value for each location. The Petitioner filed a Form 103 showing \$0 for 1413 South West Street. The Petitioner filed a Form 103 showing \$0 for 1600 Albany Street. The Respondent accepted the Form 103 filings and removed the assessments.
 - D. The Petitioner filed a Form 103 showing a value of \$35,000 for 2916 Bluff Road. The Respondent accepted the value from the Form 103. The Respondent did not remove the late filing penalties for the property at 2916 Bluff Road.
 - E. The property at 2916 Bluff Road is located in the same taxing district as the property included on the three personal property returns filed prior to May 15, 2001.

Analysis

25. 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.

26. Pursuant to 50 IAC 4.2-2-1, a personal property return must be filed in each taxing district where property has a tax situs. A return may cover all business locations in a single taxing district.
27. In the case at hand, the Petitioner supports his position by stating that Ind. Code § 6-1.1-37-7 states that if a person fails to file a required return on or before the due date, the county auditor shall apply penalties. The Petitioner states that since 50 IAC 4.2-2-1 states that a return may cover all business locations in a single taxing district, the Petitioner was only required to file a one return for all property in the same district. All of the property in question is located in the same taxing district. The Petitioner timely filed three separate returns. The Petitioner summarized by stating that that it was only required to file a return in the taxing district and that the 2916 Bluff Road property was merely omitted.
28. The Respondent stated that Egenoff (2916 Bluff Road) disclosed the property in question on a Form 103-N. The Respondent sent a Form 113 to the Petitioner for the property located at 2916 Bluff Road.
29. After receiving the Form 113, the Petitioner determined that it did have property located at 2916 Bluff Road and filed a Form 103 for \$35,000.
30. The Respondent accepted the value reported on the Form 133, but included late filing penalties of \$25 and 20%.
31. The Respondent contends that the Petitioner made the choice to file separate (individual) returns. There was no return for the property at 2916 Bluff Road, therefore it is non-filing. The Respondent contends that the Petitioner is subject to the late filing penalties of \$25 and 20%.
32. 50 IAC 4.2-2-1 does state that a return may cover all locations in the taxing district. By the use of the word “may”, clearly the taxpayer has the option to file a single return or multiple returns for a taxing district.

33. If the Petitioner had chosen to file a single return for the taxing district this issue would not be before the Board today. The question becomes, do the statutes and regulations provide for penalties if the taxpayer chooses to file more than one return in a taxing district?
34. Ind. Code § 6-1.1-37-7(a) states that if a taxpayer fails to file a required return on or before the due date, penalties shall be added. Ind. Code § 6-1.1-3-7(a) states that a taxpayer shall, on or before the filing date, file a personal property return with the assessor of each township in which the taxpayer has property subject to assessment. The Petitioner did file three returns in the taxing district before the filing date. Therefore, even though the returns did not disclose or include the property in question, the Petitioner is not subject to penalties for late filing.
35. There are provisions in Ind. Code § 6-1.1-37-7 and 50 IAC 4.2-2-10 that address undervalued property. If the amount of the undervaluation exceeds five percent (5%) of the value that should have been reported, then a penalty of twenty percent (20%) of the additional taxes shall be added. The purpose of the undervaluation penalty is to ensure complete disclosure of all required information.
36. Although penalties for undervaluation were not an issue, the undervaluation penalty was briefly discussed at the hearing. The Petitioner presented a computation showing the amount of undervaluation to be 4.36% (Petitioner's Exhibit 1). Assuming the information found in the Petitioner's Exhibit is correct, the penalties for undervaluation would not apply.

Other

37. With regard to the issue of penalties and the calculation of penalties, the Board is a creation of the Legislature and has only the powers conferred by statute. *Whetzel v. Department of Local Government Finance*, 761 N.E. 2d 904 (Ind. Tax 2002), citing *Matonovich v. State Board of Tax Commissioners*, 705 N.E. 2d 1093, 1096 (Ind. Tax

1999); *Hoogenboom-Nofziger v. State Board of Tax Commissioners*, 715 N.E. 2d 1018, 1021 (Ind. Tax 1999).

38. In *Whetzel*, the Tax Court determined that the statute did not grant the Board power to review penalties imposed by the County for late payment of property taxes. Therefore, the Board did not have the authority to decide Whetzel's appeal of the penalty.
39. While the late filing penalties described on the Form 133 petition are not the same as the late payment penalties described in the *Whetzel* case, it is clear that the statute does not empower the Board to review any penalties imposed by the county.

Summary of Final Determination

40. The Board finds that the Petitioner did timely file a return in the taxing district in question. The Petitioner is not subject to penalties for late filing.

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.