

**STATE OF INDIANA
Board of Tax Review**

SOURCE ONE PARTNERS, LLC)	On Appeal from the Allen County Property
)	Tax Assessment Board of Appeals
Petitioner,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition No. 02-075-00-1-4-00224
)	
ALLEN COUNTY PROPERTY TAX)	Parcel No. 59-7023-0056
ASSESSMENT BOARD OF APPEALS)	
and ABOITE 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 basement pricing is incorrect.
2. Whether the construction of the building was incomplete on March 1, 2000.
3. Whether the building should be adjusted to its actual cost through the use of "cost multipliers."

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, Integrity Tax Consulting, Inc., on behalf of Source One Partners, LLC (Source One), filed a petition requesting a review by the State. The Form 131 was filed on March 19, 2001. The Property Tax Assessment Board of Appeals' (PTABOA) Final Determination was mailed on February 22, 2001.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on July 24, 2001 before Hearing Officer Joseph Stanford. Testimony and exhibits were received into evidence. John F. Fiene, Joy E. DenHouter, and Paul Pratico represented Source One. Mike Ternet and Kimberly Klerner represented the PTABOA. Carolyn Berghorn represented Aboite Township.

4. At the hearing, the subject Form 131 petition was made part of the record and labeled Board Ex. A. The Notice of Hearing on Petition is labeled Board Ex. B. In addition, the following items were submitted into evidence:

Petitioner's Ex. 1 – Summary of issues and contentions.

Respondent's Ex. 1 – Photograph of subject property and sketch of floor plan.
Respondent's Ex. 2 – Copy of Petitioner's Form 104 and top portion of first page of Form 103 (Business Tangible Personal Property Return).

Respondent's Ex. 3 – Copy of building permit for subject improvement.
Respondent's Ex. 4 – Copy of GCM Base Price schedule from 50 IAC 2.2-11-6.
Respondent's Ex. 5 – Allen County Building Department building permit entry.

5. Subsequent to the hearing, the hearing officer requested additional evidence. Upon request, the County submitted minutes to the PTABOA hearing concerning this matter. The minutes are labeled Respondent's Ex. 6. The Petitioner was given an opportunity to file a response to this additional evidence. The Petitioner's response is labeled Petitioner's Ex. 2.

6. The subject property is located at 6628 Constitution Drive, Fort Wayne, Aboite Township, Allen County. The hearing officer did not view the property. The parties agreed that the assessed value under appeal is \$8,230 for land and \$91,030 for improvements.

A. Issue No. 1 – Whether the basement pricing is incorrect

7. Source One submitted documentation from its builder that the subject's basement cost \$56,250 to construct, while the true tax value of the basement is \$94,900. Mr. Pratico testified that much of the basement – nearly 1,700 square feet – is unfinished.

**B. Issue No. 2 – Whether construction of the building was incomplete on
March 1, 2000**

8. The representatives of Source One testified that they did not move into the building until approximately April 1, 2000. While Source One representatives were uncertain of the exact percentage of completion, they are certain the building was not complete on March 1, 2000.

9. Mr. Pratico and Mr. Fiene testified that the basement finishing did not begin until June, 2000, and the finished portion was not completed until July, 2000. Source One submitted a work order showing that all floor covering for the basement was not ordered until May 3, 2000.

10. Ms. Berghorn testified that she inspected the building “long before June 1”, and noted that a portion of the basement was finished at that time. She did not inspect the building on March 1.
11. The PTABOA and the Township objected to the raising of this issue, because it was not listed on the underlying Form 130 petition, and not discussed at the PTABOA hearing. Mr. Fiene contends that this issue was discussed at the PTABOA hearing, as the same exhibit was submitted into evidence.
12. The minutes of the PTABOA hearing make no reference to this issue. In its response to this evidence, Source One contends “[s]ince the information was not objected to prior to its entry into evidence, it would appear that this objection would not be valid. Any objection to this line of evidence should have been submitted prior to its introduction.”

C. Issue No. 3 – Whether the building should be adjusted to its actual cost through the use of “cost multipliers”

13. Source One contends that an adjustment should be made to the assessment of the subject improvement converting actual construction costs to 1991 costs. Mr. Fiene utilized a cost multiplier developed by Marshall & Swift to convert the actual cost of the building in 2000 dollars, \$301,151, to 1991 costs. Source One concludes that the true tax value of the subject building should be \$215,400. Mr. Fiene did not suggest a specific adjustment that should be made, but contends that the base rate should somehow be adjusted to arrive at the actual cost.
14. Ms. Berghorn stated that she is required to use the cost schedules contained in Regulation 17 when making an assessment, and contends that is what she has done.

Conclusions of Law

1. The Petitioner is statutorily 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. Ind. Code §§ 6-1.1-15-1, -2.1, and -4. See also the Forms 130 and 131 petitions. 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'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. “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. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).
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’s final determination even though 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.

D. Issue No. 1 – Whether the basement pricing is incorrect

18. The subject's basement has been assessed as general office (2,003 square feet) and utility storage (1,637 square feet). The GCM-General Office model contains pricing for construction components typical of an average office. The GCM-Utility Storage model, however, contains pricing for a typical unfinished basement or storage area. There are no costs included in the GCM-Utility Storage model for floor finish, ceiling finish, or wall finish. Thus, the Township's assessment of this basement appears to match Source One's description of it.
19. Source One's complaint is that the true tax value of the basement is greater than the actual cost it has testified to. To repeat, however, individual taxpayers are not entitled to absolute and precise exactitude in each individual assessment. *Town of St. John*, 702 N.E. 2d at 1040. A petitioner's burden is to show whether the system prescribed by statute and regulations has been properly applied to an individual assessment. *Id.*

20. Source One has not shown that the Township has incorrectly applied the assessment system prescribed by law. In addition, Source One has neither specified the adjustment it seeks nor cited any authority for an adjustment.
21. For the reasons set forth, there is no change in the assessment of the basement as a result of this issue.

A. Issue No. 2 – Whether construction of the building was incomplete on

March 1, 2000

22. Before considering the evidence submitted by Source One, the State must first determine if it will hear and decide this issue.
23. The issue of percentage of completion was not listed on the underlying Form 130 petition to the PTABOA. The issue is not mentioned or addressed in the PTABOA's findings (See Board Ex. A) or minutes.
24. The person filing an appeal petition is limited to the issues specifically expressed during the hearing before the PTABOA, or that are a direct result of findings and determinations of the PTABOA. It is a rebuttable presumption that the issues identified in the PTABOA's findings are the issues expressed during the PTABOA's hearing of the matter. The person attempting to rebut the presumption will have the burden of proving the presumption false. 50 IAC 17-5-3(a) and (b).
25. In the case at bar, Source One has not proven the presumption false. Source One's argument to allow this issue before the Appeals Division is that the local officials failed to object to evidence concerning this issue before it was submitted.
26. The local officials' failure to object to evidence concerning percentage of completion before it was introduced is not a factor in the State's determination of whether to consider this issue. Pursuant to 50 IAC 17-7-2(a), a party may object

to the admissibility of evidence at any time during the hearing. Furthermore, while the State considers the requirements set forth by various rules of evidence as interpreted and applied by various federal and state courts, the State is not bound to any precise rule of evidence in its administrative hearings. 50 IAC 17-7-2(c) and (d).

27. It is therefore determined that the issue of percentage of completion was not listed on the Form 130 petition, not discussed at the PTABOA's hearing, and not addressed in the PTABOA's findings. As stated previously, 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. Therefore, pursuant to Ind. Code 6-1.1-15-1, -2.1, and -4, and 50 IAC 17-5-3, the State will not consider this issue, or the evidence submitted in support of this issue. There is no change in the assessment as a result of this issue.

F. Issue No. 3 – Whether the building should be adjusted to its actual cost through the use of “cost multipliers”

28. Source One contends that the true tax value of the subject building should be trended back to 1991 actual cost dollars using a Marshall & Swift cost multiplier. Source One argues that the Regulation requires that buildings be assessed at their actual costs in 1991 dollars.
29. Source One's claim that the Regulation requires that buildings be assessed at their actual costs in 1991 dollars is incorrect. It is correct that the *cost schedules* contained in the Regulation are based on 1991 costs (actually, 85% of 1991 costs), and the Regulation is quite clear that these cost schedules are to be used in developing base rates to assess buildings. (See 50 IAC 2.2-10-6; 50 IAC 2.2-11-1, -5, and -6). Only adjustments that are specifically provided for in the Regulation can be made to the base rates developed by these cost schedules.

30. Indiana's system of assessment is based on reproduction cost. While Source One's argument that buildings should be assessed at their actual costs may have some merit, Source One has neither specified the adjustment it seeks, nor cited any authority from statutes or regulations for the type of adjustment it requests. Again, Source One has not shown that the assessment system prescribed by law has been applied incorrectly.

31. In all administrative hearings before the State, the burden is on the petitioner to show error in the assessment. For the reasons stated, Source One has failed to meet its burden. Therefore, there is no change in the assessment as a result of this issue.

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