

REPRESENTATIVES FOR PETITIONER: Joseph Haddad, Manager

REPRESENTATIVES FOR RESPONDENT: John Matonovich, Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

SAMJOE, INC. D/B/A)	Petition No.: 45-023-01-3-7-00147
SUNRISE DISCOUNT LIQUORS,)	
)	
Petitioner,)	County: Lake
)	
v.)	Township: North
)	
NORTH TOWNSHIP ASSESSOR,)	Personal Property
)	
Respondent.)	Assessment Year: 2001
)	

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

February 26, 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 by the Board was:
Whether the Petitioner timely and properly appealed the notice of assessment by the township assessor.

Procedural History

2. On December 17, 2002, SAMJOE, Inc. (Petitioner) filed a Form 133 petition to appeal an estimated assessment. At the same time, the Petitioner filed Forms 103 and 104 for the March 1, 2001 assessment date.
3. The Form 133 petition was disapproved by the local officials and forwarded to the Lake County Property Tax Assessment Board of Appeals (PTABOA).
4. On September 25, 2003, the PTABOA issued its determination on the Form 133 petition. The PTABOA denied the Form 133 petition and upheld the assessed value of \$60,000.
5. On October 2, 2003, the Petitioner filed the Form 133 petition to the Board.
6. On October 30, 2003, the Board sent the Petitioner a Notice of Defect in Completion of Assessment Appeal Form. The Board requested a copy of the Form 113/PP, Notice of Assessment.
7. On November 24, 2003, the Board received a copy of the Form 113/PP Notice of Assessment/Change (By An Assessing Official). The Form 113 is dated July 9, 2001 and states that the Petitioner failed to file the required assessment return (Form 103). The township assessor estimated the assessment to be \$60,000 for the March 1, 2001 assessment date.

Other Matters of Record

8. The following items are officially recognized as part of the record of proceedings:
 - Board Ex. A** – Form 133 petition and attachments which include:
 - A statement dated October 2, 2003; PTABOA Determination;
 - Form 103 Short Form; Form 104; and Form 1120-A U.S. Corporation Short-Form Income Tax Return.
 - Board Ex. B** – Notice of Defect.

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 Indiana Code § 6-1.1-15-3.

Indiana’s Personal 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 firm, company, partnership, association, corporation, fiduciary, or individual owning, possessing, or controlling personal property with a tax situs within Indiana must file the appropriate return reporting such property in each taxing district where property is located or held on the assessment date. See 50 IAC 4.2-2-2.

Discussion of Issue

Whether the Petitioner timely and properly appealed the notice of assessment by the township assessor.

13. The applicable rules and case law governing this Issue are:

Ind. Code § 6-1.1-3-7

Ind. Code § 6-1.1-3-15 and 50 IAC 4.2-3-1

Ind. Code § 6-1.1-15-1

Ind. Code § 6-1.1-15-12

14. The Petitioner contends that the “the tax base was estimated due to the fact that the forms 103 & 104 were not filed. The taxpayer did not realize he had to file and is filing now with actual figures.” The Petitioner contends that the value of the estimated assessment is incorrect.

Analysis of ISSUE

Whether the Petitioner timely and properly appealed the notice of assessment by the township assessor.

15. 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. In the case at hand, the Petitioner did not file a personal property return by May 15, 2001.
16. 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. It further states that at the time notice is given to the taxpayer, the taxpayer be informed of their opportunity for review and the procedures they must follow in order to obtain a review. The township assessor estimated the assessment to be \$60,000 and sent the Petitioner notice of the assessment on July 9, 2001.
17. Ind. Code § 6-1.1-15-1 is the governing authority when a township assessor makes a change to a personal property assessment. This law, in fact, is printed at the top of the Form 113/PP, which describes the township assessor’s action that the Petitioner is appealing. On the Form 113/PP, taxpayers are informed “[i]f you do not agree with the action the County Property Tax Assessment Board of Appeals will review that action if you file a petition with the County Assessor of this county within forty-five (45) days of this notice. IC 6-1.1-15-1.”

18. Ind. Code § 6-1.1-15-1 clearly 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. The Petitioner did not file a petition within the time frame required by Ind. Code § 6-1.1-15-1.
19. On December 17, 2002, the Petitioner filed a Form 133 petition to appeal the assessment. The Form 133 petition was filed almost 18 months after the Form 113/PP notice was sent to the Petitioner.
20. 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).
21. On the Form 133, the Petitioner checked the box claiming there was a mathematical error in computing the assessment. The Petitioner described the error as: “The tax base was estimated due to the fact that the Forms 103 & 104 were not filed. The taxpayer did not realize he had to file and is filing now with actual figures.”
22. 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).

23. Clearly the mathematical errors assume a personal property return has been filed by the taxpayer. In the case at hand, the Petitioner did not file a personal property return and the Petitioner's issue does not fit the description of a mathematical error.
24. 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.
25. The Petitioner failed to follow the statutory procedures provided for in Ind. Code § 6-1.1-15-1 to appeal the assessment made by the Township Assessor.

Summary of Final Determination

Whether the Petitioner timely and properly appealed the notice of assessment by the township assessor.

26. The petition is denied. The Petitioner failed to follow the statutory procedures to appeal the assessment made by the township assessor. There is no change to the assessment.

This 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.