

REPRESENTATIVE FOR PETITIONER:

Denise Praul - Accurate Tax Management, Inc.

REPRESENTATIVES FOR RESPONDENT:

Sheila Pullen - Center Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

KOKOMO OPALESCENT GLASS)	Petition No.: 34-002-98-3-3-00018
COMPANY,)	34-002-99-3-3-00019
)	34-002-00-3-3-00020
Petitioner)	
)	County: Howard
)	
v.)	Township: Center
)	
CENTER TOWNSHIP ASSESSOR,)	Parcel No.: 053-266-558
)	
)	
Respondent)	Assessment Years: 1998, 1999 & 2000
)	

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

[DATE OF ISSUANCE]

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to

the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the “Board”.

The 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’s contention this subject structure should be assessed using the General Commercial Kit (GCK) pricing schedule is an objective issue that may be appealed by use or a Form 133 Correction of Error Petition.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-12, Denise Praul with Accurate Tax Management, Inc. filed Form 133 petitions on behalf of Kokomo Opalescent Glass Company (Petitioner) petitioning the Board to conduct an administrative review of the above petitions for the 1998, 1999 and 2000 assessment years. The Form 133 petitions were filed on October 10, 2001. The Howard County Property Tax Assessment Board of Appeals (PTABOA) Determination was issued on February 14, 2002. The Form 133 petitions were subsequently forwarded to the Board for review on February 27, 2002.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on October 23, 2002 at the Howard County Administrative Center in Kokomo, Indiana before Patti Kindler, 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:

Denise Praul, Accurate Tax Management, Inc.

For the Respondent:

Ann Harrigan, Howard County Assessor

James A. Morris II

Sheila Pullen, Center Township Assessor

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Denise Praul

For the Respondent:

Ann Harrigan

James A. Morris II

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 – Tax Representative Disclosure Statement

Petitioner's Exhibit 2 – State Tax Board Instructional Bulletin 91-8,
October 1, 1991

Petitioner's Exhibit 3 – Copy of Tax Court case *Barth, Inc. v. State Board of Tax Commissioners*, 699 N.E. 2d 800 (Ind. Tax 1998)

Petitioner's Exhibit 4 – Petitioner's summary of *Barth* case

Petitioner's Exhibit 5 – Ms. Praul's resume

Petitioner's Exhibit 6 – Ms. Praul's State Certification

For the Respondent:

Respondent's Exhibit 1 – Partial property record card (PRC) of subject property

For the Board:

Board's Exhibit A – Subject Form 133 petitions and attachments for 1998, 1999, and 2000

Board's Exhibit B – Hearing Notices on Petitions

Board's Exhibit C – Rescheduled Hearing Notices on Petitions

7. The subject structure is a 6,000 square foot light warehouse located at 1310 South Market Street, Kokomo, Center Township, Howard County.
8. The assessed values under appeal as determined by the PTABOA for 1998, 1999, and 2000 are: Land - \$24,930 and Improvements - \$69,470.
9. The ALJ did not conduct an on-site inspection of the subject property.

Jurisdictional Framework

10. 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.
11. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-12.

Indiana's Property Tax System

12. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.

13. Indiana has established a mass assessment system through statutes and regulations designed to assess property according to what is termed “True Tax Value.” See Ind. Code § 6-1.1-31, and 50 Ind. Admin. Code 2.2.
14. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
15. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property’s market value. See *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998) (*Town of St. John V*).
16. The Indiana Supreme Court has said that the Indiana Constitution “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”, nor does it “mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant”, but that the proper inquiry in tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” See *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
17. Although the Supreme Court in the *St. John* case did declare the cost tables and certain subjective elements of the State’s regulations constitutionally infirm, it went on to make clear that assessment and appeals must continue to be determined under the existing rules until new regulations are in effect.
18. New assessment regulations have been promulgated, but are not effective for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

State Review and Petitioner’s Burden

19. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon 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).

20. 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), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
21. 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.]
22. 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.]
23. 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., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).
24. The State 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), and *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 State (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 State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of the Issue

Whether the subject structure should be assessed using the GCK pricing schedule.

25. The Petitioner contends that the determination of whether a structure should be assessed using the GCK pricing schedule, is an objective error and therefore correctable on a Form 133 Correction of Error petition.
26. The Respondent contends the issue of schedule selection is subjective, and therefore cannot be addressed on Form 133 petitions.
27. The applicable rules governing this issue are:

Indiana Code 6-1.1-15-12 – Tax Duplicates; correction of errors; reasons; appeal

This petition is used to correct objective errors specified in the above code. Those correctable errors are:

- (1) The description of the real property was in error.
- (2) The assessment was against the wrong person.
- (3) Taxes on the same property were charged more than one (1) time in the same year.
- (4) There was a mathematical error in computing the taxes or penalties on the taxes.

- (5) There was an error in carrying delinquent taxes forward from one (1) tax duplicate to another.
- (6) The taxes, as a matter of law, were illegal.
- (7) There was a mathematical error in computing an assessment.
- (8) Through an error of omission by any state or county officer the taxpayer was not given credit for an exemption or deduction permitted by law.

State Board Instructional Bulletin 91-8

One (1) of two (2) addendums to the rules and regulations promulgated by the Board for the 1989 statewide general reassessment (50 IAC 2.1), provided for a 50% reduction in the base rate for qualifying kit buildings priced from the General Commercial Mercantile (GCM), General Commercial Industrial (GCI), and Poultry Confinement Building pricing schedules.

50 IAC 2.2-10-6.1(a)

“Schedule A Base Prices” consists of base square foot unit rates by floor for various “Use” and “Finish” types for two (2) types of exterior walls. The rates are for a range of perimeter area ratios (PAR) for a specific type of construction, and adjustments are provided for variations in wall heights and structural framing.

50 IAC 2.2-11-6

Because there are so many models included in Schedule A, the base rates are divided into four (4) association groupings. Each grouping appears as a separate schedule in order to facilitate selection. The four (4) association groupings are:

- (A) General Commercial Mercantile (GCM) used for use types generally associated with mercantile districts.
- (B) General Commercial Industrial (GCI) includes those use types generally associated with industrial related operations.
- (C) General Commercial Retail (GCR) includes those use types generally associated with commercially operated residential accommodations.
- (D) General Commercial Kit (GCK) does not include use type descriptions. This schedule is utilized for valuing pre-engineered and pre-designed pole buildings

which are used for commercial and industrial purposes. Buildings classified as special purpose design are not valued using this pricing schedule.

28. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The subject structure is assessed using the General Commercial Industrial (GCI) schedule for the assessment years in question, 1998, 1999 and 2000. For the 2001 assessment year, the subject structure is assessed using the GCK schedule. The Petitioner requests that the subject structure be valued in the same manner as it was for 2001. *Praul testimony.*
 - b. The Petitioner argues that the GCK schedule is based on structure rather than usage. This takes away any subjectivity regarding this issue. *Praul testimony.*
 - c. The Petitioner's representative, who is not an attorney, contends that the Tax Court has ruled, in *Barth, Inc. v. State Board of Tax Commissioners*, 699 N.E. 2d 800 (Ind. Tax 1998), that the kit building application can be executed via the Form 133. *Petitioner's Exhibits 3 and 4.*
 - d. The Petitioner submits State Board Instructional Bulletin 91-8 and opines that this bulletin describes what a GCK building is. *Petitioner's Exhibit 2.*
 - e. The Respondent argues that selection of schedules is a subjective issue and per *Bender v. State Board of Tax Commissioners*, 676 N.E. 2d 1113 (Ind. Tax 1997) does not qualify for review. *Harrigan and Morris testimonies.*
 - f. For the 2002 reassessment the County has again valued the subject structure from the GCI pricing schedule. *Morris testimony.*

Analysis of the ISSUE

29. The Board must first determine whether a Form 133 petition is the proper vehicle of appeal for this type of issue. For the following reasons, the Board finds that the issue of whether a building presently assessed from the GCI pricing schedule should be valued from the GCK pricing schedule, is not the type of issue that is correctable via the Form 133.

30. Reproduction Cost minus Depreciation equals True Tax Value. For the 1989 statewide general reassessment, the reproduction cost for commercial and industrial property was the base rate for the model selected less adjustments. 50 IAC 2.1-4-3 and -5.
31. As addendums to the rules and regulations promulgated by the Board for the 1989 statewide general reassessment (50 IAC 2.1), the Board introduced Instructional Bulletins 91-8 (October 1, 1991) and 92-1 (August 22, 1992). Instructional Bulletin 91-8 provided instructions for assessors on how to determine which buildings (certain light pre-engineered or kit type buildings) qualified for an adjustment to the base rate (50% adjustment), examples of kit buildings, and outlined several characteristics of these buildings. Instructional Bulletin 91-8 stated, “Those amendments allowed for a fifty-percent (50%) reduction in the base rate of qualifying structures priced from the General Commercial Mercantile, General Commercial Industrial, and the Poultry Confinement Building Pricing Schedules.”
32. Board’s Instructional Bulletin 92-1 provided local assessing officials instructions on handling appeals by taxpayers who felt their qualifying structures were not reassessed as required in the Board’s Instructional Bulletin 91-8. Instructional Bulletin 92-1 gave a more detailed method to use to assess structures qualifying for the 50% reduction in the base rate. It also determined that an assessment was correct if the assessor had applied a low grade and design factor thus accounting for the lower cost of construction.
33. In summary, for appeals prior to the 1995 statewide general reassessment date, the methodology used (in Instructional Bulletins 91-8 and 92-1) to make this type of adjustment entailed making a 50% reduction to the base rate of the existing pricing schedule that was in use at that time. The change was an objective issue with a mathematical solution and could be addressed using the Form 133 petition.
34. The Petitioner relies on Instructional Bulletin 91-8 as if were applicable to the appeals under review in this case. However, it should be noted in the *Indiana Administrative Code* (2001), 50 IAC 2.1, “real property assessment” was repealed by the State Board of

Commissioners, filed September 14, 1992 (16 IR 662) effective March 1, 1995 and replaced by the “real property assessment” 50 IAC 2.2.

35. Consequently, Instructional Bulletin 91-8 (along with Instructional Bulletin 92-1) has no relevance to the case at bar. Again, these instructional bulletins were issued as addendums to the 1989 Real Property Assessment Manual (50 IAC 2.1). The adoption of the 1995 Manual (50 IAC 2.2) effectively repealed the 1989 Manual, its rules, and all bulletins issued as addendums to that Manual. Since the assessment years under review in this appeal are 1998, 1999 and 2000, the rules set forth in 50 IAC 2.2 would apply.
36. Under the current regulation (50 IAC 2.2), the reproduction cost for commercial and industrial property is the base rate for the selected association grouping less adjustments, 50 IAC 2.2-10-6.1 and 2.2-11-6. As previously stated, the term “association grouping” was introduced by the 1995 regulation. Prior to that, the term “model” was the commonly used descriptive term.
37. 50 IAC 2.2-10-6.1 identifies four (4) association grouping to be used for the selection of the appropriate base rate. These four (4) grouping are: GCM, GCI, GCR and GCK. See ¶27.
38. The GCK association grouping was added to the rules and regulations promulgated by the Board for the 1995 statewide general reassessment in order to value pre-engineered, pre-designed pole framed buildings used for commercial and industrial purposes. Selecting the GCK association grouping instead of another is not a straightforward finding of fact. Rather, subjective judgment is used to select the appropriate association grouping. First, as part of the assessment analysis, the assessor must necessarily decide whether the physical attributes of the building under review more appropriately fall within the purview of one association grouping or another. Also, in deciding whether the GCK association grouping should be used, the assessor must decide whether the building under review is a pre-engineered building and whether the frame type is light metal/wood siding. 50 IAC 2.2-11-5, Schedule A4.

39. The Petitioner also submitted into evidence a copy the Tax Court’s decision in *Barth, Inc. v. State Board of Tax Commissioners*, 699 N.E. 2d 800 (Ind. Tax 1998). Like the instructional bulletins discussed above, the decision issued in *Barth* has no relevance to the case at bar. This pre-1995 appeal again centers on the rules, regulations and addendums (Instructional Bulletins 91-8 and 92-1) promulgated by the Board for the 1989 general statewide reassessment and not the rules and regulations promulgated for the 1995 general statewide reassessment which would include the GCK pricing schedule.
40. Prior to 1995, a Form 133 could be filed to obtain what was known as a “kit building adjustment” as was instructed in the previously discussed instructional bulletins. In *Barth*, the Tax Court held that, in cases where the kit building adjustment was warranted, “then, in order to arrive at the correct assessment of those buildings, the grading of those buildings will likely require revision.” As previously stated, however, the adoption of the 1995 Real Property Assessment Manual effectively repealed all assessment rules and regulations in effect prior to 1995. In the 1995 Manual, the kit building adjustment was replaced with the GCK pricing schedule.
41. Assuming *arguendo* the issue of schedule selection qualified for review on a Form 133 petition, the Petitioner would still have a burden to prove that the building in question met the criteria to be valued using the GCK pricing schedule. The fact that the County may have valued the subject structure using the GCK schedule in 2001 has no bearing on the 1998, 1999 and 2000 assessments. In Indiana, each tax year is separate and distinct. *Williams Industries v. State Board of Tax Commissioners*, 648 N.E. 2d 713 (Ind. Tax 1995).
42. The State will not change the pricing schedule for the structure under appeal on the basis of what the County did for 2001. The Petitioner failed to submit any evidence regarding the basis used by the County in their decision. In addition, the local assessing officials’ determination of the correct pricing schedule for the subject building was not shown to be any more correct in 2001 than in 1998, 1999 or 2000, but only more beneficial to the taxpayer.

43. Errors arising from an assessor's judgment are not the type of errors that can be corrected by way of a Form 133 petition. *Hatcher v. State Board of Tax Commissioners*, 521 N.E. 2d 852(Ind. Tax 1990).
44. A Form 133 petition is available only for those errors that can be corrected without resort to subjective judgment. *Reams v. State Board of Tax Commissioners*, 620 N.E. 2d 758 (Ind. Tax 1993).
45. Schedule selection involves subjective judgment. Therefore, a Form 133 petition is not the appropriate petition with which to challenge an alleged error made in the selection of schedules. In *Bender v. State Board of Tax Commissioners*, 676 N.E. 2d 1113, 1116 (Ind. Tax 1997), the Tax Court held:

Clearly, the assessor must use his judgment in determining which schedule to use. It is not a decision automatically mandated by a straightforward finding of fact. The assessor must consider the property in question, including its physical attributes and predominant use, and make a judgment as to which schedule is most appropriate. Just as the assessor must use subjective judgment to determine which base price model to employ within these schedules, so too the assessor must exercise his or her discretion to determine which schedule to use. In some cases, this decision will be a closer call than in others, but regardless of the closeness of the judgment, it remains a judgment committed to the discretion of the assessor. (Citation omitted).

46. For the reasons set forth above, the issue of whether the subject building should be priced using the GCK schedule is a subject issue, and therefore may not be challenged by way of a Form 133 petition. No change in the assessment is made as a result of this issue.

Summary of Final Determination

Determination of ISSUE 1 – *Whether a Form 133 can be used to change the pricing schedule of*

a structure (selection of schedule).

Determination of ISSUE 2 – *Whether the subject structure should be valued from the GCK pricing schedule.*

47. As stated in ¶29, the Board must first determine whether a Form 133 petition is the proper vehicle to make a change from one pricing schedule to another.
48. It is determined that such an issue is a subjective determination and does not qualify for review on a Form 133 petition. As a result of this determination the Form 133 petitions are denied. No changes in the assessments are made as a result.

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

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.