

REPRESENTATIVE FOR RESPONDENT:

Bodie J. Stegelmann, Yoder, Ainlay, Ulmer & Buckingham, LLP  
Larry Ernest, Elkhart County Treasurer

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

DOUG EARNHART	)	Petition Nos.: 20-012-93-3-7-00034
	)	20-012-96-3-7-00014
	)	20-012-97-3-7-00051
Petitioner,	)	20-012-97-3-7-00052
	)	20-012-97-3-7-00053
	)	20-012-98-3-7-00036
v.	)	
	)	Personal Property
	)	
	)	County: Elkhart
ELKHART TOWNSHIP	)	Township: Concord
ASSESSOR	)	
	)	
	)	
Respondent.	)	Assessment Years: 1993, 1996, 1997 & 1998

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Appeal from the Final Determination of  
Elkhart Property Tax Assessment Board of Appeals

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**June 4, 2007**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (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**

### **Issues**

1. The issues presented for consideration by the Board were: (1) Whether the Board has the authority to consider Form 133 petitions appealing personal property assessments after the delinquent taxes have been certified to the court; (2) Whether Petitions for Correction of an Error (Form 133s) filed in 2003 were timely filed to correct errors on the 1993, 1996, 1997 and 1998 personal property returns; and (3) Whether the personal property assessments are improper.

### **Procedural History**

2. The Petitioner, Doug Earnhart, filed Form 133, Petitions for Correction of Error, with the Elkhart County Auditor on April 29, 2003. The determinations of the Elkhart County Property Tax Assessment Board of Appeals (the PTABOA) were issued on June 7, 2004. Pursuant to Ind. Code § 6-1.1-15-12, the Petitioner petitioned the Board to conduct administrative reviews of the above petitions by refiling his Form 133 petitions on July 2, 2004.

### **Hearing Facts and Other Matters of Record**

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2, held a hearing on February 28, 2007, in Goshen, Indiana.<sup>1</sup>
4. The following persons were sworn and presented testimony at the hearing:

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<sup>1</sup> The Board originally scheduled a hearing for September 1, 2006. The Petitioner failed to appear for this hearing and the Board issued an Order of Dismissal on September 19, 2006. On September 28, 2006, the Petitioner filed a written objection to the Board's Order showing cause as to why he failed to appear for the September hearing. Based on the Petitioner's written objection, the Board set aside the Order and issued notices of hearings to the parties on January 10, 2007.

For the Petitioner:

Doug Earnhart, Owner

For the Respondent:

Larry Ernest, Elkhart County Treasurer

5. The Petitioner presented no exhibits.
6. The Respondent presented the following exhibits:

Respondent Exhibit 1 – Petition for Correction of Error – Form 133 (1993 assessment), dated April 29, 2003; Demand Notice Personal Property Taxes, dated August 1, 1995; postage return receipt, dated July 29, 1995; Certified Court Judgment, dated September 27, 2002; and Business Tangible Personal Property Return – Form 104, dated June 21, 1993;

Respondent Exhibit 2 – Petition for Correction of Error – Form 133 (1996 assessment), dated April 29, 2003; Certified Court Judgment, dated October 30, 2002; Demand Notice Personal Property Taxes, dated August 1, 1998; and postage return receipt, dated July 27, 1998;

Respondent Exhibit 3 – Petition for Correction of Error – Form 133 (1998 assessment), dated April 29, 2003; Certified Court Judgment, dated October 30-2002; Demand Notice Personal Property Taxes, dated July 31, 2000; unclaimed postage return receipt; and Notice of Assessment/Change – Form 113/PP, dated August 31, 1998;

Respondent Exhibit 4 – Petition for Correction of Error – Form 133 (1997 assessment), dated April 29, 2003; Certified Court Judgment, dated October 30, 2002; Demand Notice Personal Property Taxes, dated July 31, 1999; and postage return receipt, dated August 5, 1999;

Respondent Exhibit 5 – Petition for Correction of Error – Form 133 (1997 assessment), dated April 29, 2003; Certified Court Judgment, dated September 27, 2002; Demand Notice Personal Property Taxes, dated July 31, 1999; postage return receipt, dated August 5, 1999; Notice of Assessment/Change – Form 113/PP, August 5, 1997; and

Individual Tangible Personal Property Assessment Return  
– Form 101;  
Respondent Exhibit 6 – Petition for Correction of an Error – Form 133 (1997  
assessment), dated April 29, 2003; Certified Court  
Judgment, dated September 27, 2002; Demand Notice  
Personal Property Taxes; postage return receipt; and  
Individual Tangible Personal Property Assessment Return  
– Form 101.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 133 petitions,  
Board Exhibit B – Notices of Hearing, dated January 10, 2007,  
Board Exhibit C – Hearing sign-in sheet.

8. The subject property is personal property, including a 1963 International dump truck, a 1974 Airstream Recreation vehicle and a 1971 canoe, located at 1828 Francis Avenue, Elkhart, Concord Township, in Elkhart County.
9. The ALJ did not conduct an on-site inspection of the property.
10. Neither, the PTABOA nor the Petitioner could provide the assessed values of record for the personal property under appeal for 1993, 1996, 1997 or 1998.<sup>2</sup>

### **Jurisdictional Framework**

11. The Indiana Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a

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<sup>2</sup> Mr. Doug Earnhart listed on his Petitions for Correction of an Error – Form 133's the amount of taxes that were certified to the court for judgment as the amount that was erroneously assessed, except for Petition #20-012-97-3-7-000051 that shows the amount of the erroneous assessed value as \$13,860.

county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.

### **Indiana’s Personal Property Tax System**

12. Personal property includes all “tangible property (other than real property) which is being: (A) held in 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.
13. 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 the year unless an extension of time to file is obtained.” *See* 50 IAC 4.2-2-2.

### **Administrative Review and Petitioner’s Burden**

14. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
15. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).

16. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id*; *Meridian Towers*, 805 N.E.2d at 479.

### **Parties' Contentions**

17. The Petitioner contends that the Board has the authority to consider Form 133 petitions appealing personal property assessments after the Elkhart Circuit Court has entered a Certified Judgment for the delinquent taxes. *Earnhart testimony*. The Petitioner also contends that the personal property tax assessments in the years 1993, 1996, 1997, and 1998 were improper and should be reassessed. *Id*.
18. The Petitioner presented the following testimony in support of these issues:
- a. The Petitioner contends that, for Petition No. 20-012-93-3-7-00034, the assessed value on the 1993 personal property returns were altered and overvalued the property. *Earnhart testimony*. According to Mr. Earnhart, the only asset reported on his 1993 personal property return was a 1963 International dump truck that he purchased in 1990 for \$950. *Id*. In addition, Mr. Earnhart claims that he received duplicate tax bills. *Id*.
  - b. The Petitioner contends that, for Petition No. 20-012-96-3-7-00014, he received tax notifications for F & S Services, which was not his company. *Earnhart testimony*. Mr. Earnhart testified that the name of his business was E & S Services located at 1828 Frances Avenue and that he was not affiliated with F & S Services located on Sterling Avenue. *Id*. Thus, the Petitioner argues, he would not have been responsible for F & S Services' 1996 personal property return, or the taxes on that property. *Id*.

- c. The Petitioner contends that, for Petition No. 20-012-97-3-7-00052, the Concord Township Assessor arbitrarily assessed the 1963 International dump truck for \$45,000. *Earnhart testimony*. Mr. Earnhart testified that, upon receipt of this assessment, he contacted the township assessor's office to inform them that (1) the 1963 International dump truck was purchased for \$950; (2) Mr. Jeff Smith was listed on the tax notification, but had not been affiliated with E & S Services since 1991; and (3) the business itself closed February 10, 1997. *Id.* Mr. Earnhart further testified that the township assessor's office, during a phone conversation, had told him these issues would be resolved. *Id.*
- d. The Petitioner contends that, for Petition Nos. 20-012-97-3-7-00053 and 20-012-98-3-7-00036, he received taxes for E & S Services, his company, even though the business was dissolved February 10, 1997. *Earnhart testimony*. Further, the Petitioner contends that the taxes assessed were unsupported. *Id.*
- e. Finally, the Petitioner contends that, for Petition No. 20-012-97-3-7-00051, the assessed values reported on his Form 101 for the 1974 Airstream recreational vehicle and a 1971 Marguette canoe were increased by the Concord Township Assessor's office without his authorization. *Earnhart testimony*. In addition, Mr. Earnhart argues that he never received formal notification of the increase in the assessed values. *Id.*
- f. In response to questioning, Mr. Earnhart admitted he has lived at 1828 Frances Avenue in Elkhart for approximately thirty years and that he does own a 1963 International dump truck. *Earnhart in response to Stegelmann*. Further, Mr. Earnhart admitted that he had not filed petitions to challenge the amount of the assessments or a motion to set aside the judgments with the court. *Id.*

19. The Respondent argues that the Petitioner failed to follow statutory procedures in appealing his assessments. *Stegelmann argument*. Specifically, the Respondent contends that the Petitioner waited beyond the three year statute of limitations to file his Petition for Correction of Error. *Id.* Thus, according to the Respondent, the Petitioner waived his rights to have his petitions reviewed. *Id.*
  
20. The Respondent presented the following testimony in support of these issues:
  - a. The Respondent testified that, for all six cases that are the subject of this appeal, the Petitioner was mailed a *Personal Property Taxes Demand Notice* advising the taxpayer that the treasurer's office records showed unpaid personal property taxes. *Ernest testimony; Respondent Exhibits 1 – 6*. In addition, the Respondent testified that the demand notices inform the taxpayer that it has sixty days to pay the taxes and should the taxes remain unpaid after that time period, the taxes will be certified to the court as a judgment. *Ernest testimony*.
  
  - b. The Respondent further testified that with the exception of Petition No. 20-012-98-3-7-00036, the Petitioner signed return postage receipts acknowledging the receipt of the demand notices from the treasurer's office.<sup>3</sup> *Ernest testimony; Respondent Exhibits 1 -6*.

### **Analysis of the Issues**

21. Here, the Petitioner alleges various defects in his personal property tax assessments for which the Elkhart Circuit Court entered a Certified Judgment for the delinquent taxes.<sup>4</sup>

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<sup>3</sup> The demand notices were mailed to the Petitioner at 1828 Frances Avenue, Elkhart, Indiana.

<sup>4</sup> The Board has subject matter jurisdiction over the Petitioner's Form 133 appeals because the appeals concern the assessed valuations of personal property. *Ind. Code § 6-1.5-4-1(a)(1)*. The Board, however, has no authority to set aside any values certified by the Elkhart Circuit Court. *Ind. Code § 6-1.1-23-12*.



The Respondent argues that statutory deadlines for filing have passed and that the Petitioner has waived his right to appeal.

22. Indiana Code § 6-1.1-15-12 is silent as to the time limit for a tax payer to file a petition for correction of error. When a statute is silent to an issue the court may look to the common law for guidance in applying a statute. *See Chrysler Fin. Co. v. Indiana Dep't of State Revenue*, 761 N.E.2d 909, 912 (Ind. Tax Ct. 2002) (stating that “courts presume that the Indiana Legislature understands and acquiesces in the common law of assignment absent a clear expression of contrary intent”).
23. The Indiana Supreme Court addressed the time for filing a Form 133 petition in *Lake County Property Tax Assessment Board of Appeals v. BP Amoco Corp.* 820 N.E.2d 1231 (Ind. 2005). Specifically, the Court there stated, “Indiana Code 6-1.1-15-12 and Indiana Administrative Code Title 50, Regulations 4.2-3-4, 12 and 14, provide taxpayers with the opportunity to appeal assessments on a form denominated ‘Form 133, Petition for Correction of Error,’ within three years from the date the taxes were first due.” *Id.* at 1233. *See Ind. Code § 6-1.1-15-12; Ind. Admin. Code tit. 50, r. 4.2-3-4, 12, 14* (1996) (repealed 2001); *Walker Mfg. Co. v. Dep't of Local Gov't Fin.*, 772 N.E.2d 1, 6 n. 12 (Ind. Tax Ct. 2002) (Tax Court noted that the taxpayer’s Form 133 was untimely because it did not file it until five months after the three year time limit requesting at refund).
24. In *Will's Far-Go v. Nusbaum*, 847 N.E.2d 1074 (Ind. Tax Ct. 2006), the Indiana Tax Court determined that the same time frame applied for filing a Form 133 Petition when the taxpayer failed to pay its property taxes. In *Will's Far-Go*, the Petitioner argued that no time limit exists for filing a Form 133. 847 N.E.2d at 1077. The Court, however, disagreed:

The practical effect of Will's Far-Go's argument produces an unjust and absurd result. Indeed, a taxpayer who actually paid his assessed taxes would be limited to three years within which to challenge the assessment and receive a refund. To allow a taxpayer, such as Will's Far-Go, who did not pay its taxes, an infinite amount of time to file a Form 133 and receive relief would, in effect,

penalize taxpayers for paying their taxes. The Court will not presume that the legislature or administrative agency intended for such a result.

*Id.* The Tax Court, therefore, held that the time a taxpayer has to appeal an assessment through a Form 133 Petition begins to run at the time the taxes are due. *Will's Far-Go*, 847 N.E.2d at 1078. If the taxes were paid, the Court held, then a tax payer could file a request for a refund and the time for filing such a request would begin running when the taxes were paid. *Id.*

25. In the case at bar, the Petitioner appealed his assessments for the 1993, 1996, 1997 and 1998 tax years. The Petitioner's Form 133 petitions for the four tax years under review were filed with the Elkhart County Auditor on April 29, 2003. *See* Board Exhibits A. Property taxes are first due on May 10 of the year following the year of assessment. 50 IAC 4.2-2-10. Thus, according to the Indiana Tax Court in *Will's Far-Go*, Mr. Earnhart was required to file his Form 133 petition for correction of the 1993 assessment by May 10, 1997. *See Will's Far-Go*, 847 N.E.2d at 1078 (the time a taxpayer has to appeal an assessment through a Form 133 Petition begins to run at the time the taxes are due). Likewise, the Form 133 for the 1996 assessment was required to be filed by May 10, 2000. For the 1997 assessment the Form 133 was required to be filed by May 10, 2001, and for the 1998 assessment the Form 133 was required to be filed by May 10, 2002.
26. Here, because the Petitioner did not pay his personal property taxes, his time to file an appeal on the personal property tax assessments began to run at the time of each assessment. As the Tax Court found in *Will's Far-Go*, a Petitioner's "decision to not pay the taxes upfront will not serve as a means to allow its dilatory protest to its property tax assessments." *Will's Fargo*, 847 N.E.2d at 1078. Mr. Earnhart had ample notice and time to challenge the assessments, his failure to do so in a timely manner cannot be remedied now.<sup>5</sup> *See Marhoefer Packing Co. v. Indiana Dep't of State Revenue*, 301

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<sup>5</sup> At the hearing, Mr. Earnhart never disputed or questioned his receipt of notices by the County that his personal property taxes were due.

N.E.2d 209, 215 (Ind. Ct. App. 1973) (where the court denied a taxpayer's request for relief finding that he slept on his rights).

27. Despite his untimely filings, the Petitioner argues that, because the taxes were assessed in the wrong name and the property's value was altered without his consent, the Board should review the assessments. This argument is contrary to the Tax Court's determination in *Will's Far-Go*. There, the Court upheld the taxpayer's liability for property tax on the same personal property in two different locations because the taxpayer failed to timely file an appeal of the assessments. While the Court noted that the resulting double taxation seemed unfair to the taxpayer, the Court's decision was based on its interpretation on the current law on the issue. *Id.* at 1078 ("While the Court sympathizes with Will's Far-Go in that it may have to pay taxes on the trailers twice, Will's Far-Go cannot simply ignore the Elkhart County tax assessments. Will's Far-Go had ample notice and time to challenge the assessments; its failure to do so in a timely manner cannot be remedied now."). Therefore, because the Petitioner failed to file his Form 133 petitions for 1993, 1996, 1997 and 1998 within three years of the due dates of his tax liabilities, the underlying issues of the propriety of the original assessments are moot.

#### **SUMMARY OF FINAL DETERMINATION**

28. The Petitioner failed to initiate the Form 133 appeal process within three years of the due dates of his tax liabilities as set forth by Indiana Tax Court. The Board, therefore, finds in favor of the Respondent.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at [http://www.in.gov/judiciary/rules/trial\\_proc/index.html](http://www.in.gov/judiciary/rules/trial_proc/index.html). The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.