

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition #: 48-003-05-1-7-06594¹
Petitioner: B&B Truck Service, Inc.
Respondent: Madison County Assessor
Parcel #: 18 18-9
Assessment Year: 2005

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Background and Procedural History

1. In March 2007, B&B Truck Service, Inc. filed an appeal asking the Madison County Property Tax Assessment Board of Appeals (“PTABOA”) to reduce B&B’s March 1, 2005, personal property assessment. On July 19, 2007, the PTABOA denied B&B’s request. The PTABOA’s written determination referred to the March 1, 2006, assessment date.
2. B&B then timely filed a Form 131 petition with the Board. B&B elected to proceed under the Board’s small-claims procedures.
3. On June 25, 2008, the Board held a hearing through its Administrative Law Judge, Jennifer Bippus (“ALJ”).
4. Blanchard Shearer appeared as counsel for B&B. The following persons were present and sworn in at hearing:
 - a) For B&B: Kathy Buck, Owner
 - b) For the Madison County Assessor: Cheryl Heath, County Assessor
Lorel Farris, Anderson Township Deputy
5. The assessment under appeal is for business personal property.
6. Neither the Board nor the ALJ inspected the property.
7. The PTABOA’s determination lists the property’s assessed value at \$100,000.
8. B&B requests an assessment of \$0.

¹ The Petition number has been changed to reflect the correct year of appeal.

Record

9. The official record for this matter is made up of the following:

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

- Petitioner Exhibit 1: Photographs of truck used to pull mobile homes,
- Petitioner Exhibit 2: Photographs of truck hooked up to mobile homes,
- Petitioner Exhibit 3: Photographs of mobile homes,
- Petitioner Exhibit 4: Photographs of mobile homes,
- Petitioner Exhibit 5: Photograph of mobile home,
- Petitioner Exhibit 6: Contract and invoice for storage of mobile homes for
Madison County Health Center,
- Petitioner Exhibit 7: Copy of Form 113/PP and attachments for March 1, 2003
assessment date,
- Petitioner Exhibit 8: Recapitulation of Exhibit 7 – listing of mobile homes,
- Petitioner Exhibit 9: Copy of Form 130,
- Petitioner Exhibit 10: Copy of personal property tax statement for “2005 pay
2006.”

The Respondent did not present any exhibits.

- Board Exhibit A: Form 131 petition,
- Board Exhibit B: Notice of hearing,
- Board Exhibit C: Power of attorney for Blanchard Shearer
- Board Exhibit D: Hearing sign-in sheet.

- d) These Findings and Conclusions.

Findings of Fact

- 10. B&B primarily engages in “dump trucking.” *Buck testimony*. In the past, B&B also moved mobile homes, sometimes between mobile-home parks and sometimes from those parks to the local landfill. *Id.* In any case, B&B occasionally kept mobile-homes at its place of business. But it did not own those homes. *Id.*
- 11. In 2003, B&B had several mobile homes at its place of business—1500 East 32nd Street. B&B did not report those mobile homes on its personal property tax return.
- 12. Someone from the Anderson Township Assessor’s office saw the mobile homes on B&B’s property. Thus, on May 15, 2003, the Assessor completed a Form 113/PP in

which she (1) noted that B&B had failed to file an assessment return and (2) estimated an assessment of \$100,000. *Farris testimony; Pet'r Ex. 7*. The Assessor mailed the Form 113/PP to B&B's East 32nd Street address. *Id.* Ms. Buck did not recall having received that Form 113/PP in 2003. *Buck testimony*.

13. Sometime in 2003, the roof to B&B's East 32nd Street office caved in. B&B then moved to a new location. By the time B&B moved, there were no mobile homes left at the 32nd Street property. B&B did not store mobile homes at its new location. *Buck testimony*.
14. In March 2007, B&B received a personal property tax statement for "2005 pay 2006." *Buck testimony; Pet'r Ex. 10*. The statement originally had been mailed to B&B's East 32nd Street address and returned as undeliverable. *Pet'r Ex. 10*.
15. The tax statement shows an assessed value of \$100,000. Under the heading "legal description" it says "Form 113/PP." *Pet'r Ex. 10*. The statement, however, does not list any delinquent taxes or penalties. *Id.* Normally, if a taxpayer owes delinquent taxes, the treasurer includes a penalty on the taxpayer's tax statement. *Heath testimony*.
16. Ms. Buck was shocked when she received the tax statement because B&B did not owe any taxes and was never delinquent. *Buck testimony*. She asked people in both the Assessor's office and the treasurer's office what the statement was for. Eventually, Ms. Buck was told that the taxes were related to mobile homes and she was given a copy of the May 15, 2003, Form 113/PP. *Buck testimony*.
17. There is no evidence that the Anderson Township Assessor issued a Form 113/PP other than the one it mailed on May 15, 2003. And none of the Assessor's witnesses suggested that the assessment was for property other than mobile homes.

Analysis

The year under appeal is 2005

18. The Board must first address an issue to which the parties gave almost no attention—what is the assessment year under appeal?
19. One thing is clear—B&B did not appeal its March 1, 2003, assessment. While the appeal documents are not entirely consistent in describing the assessment year under appeal, none of them purports to address 2003. B&B's Form 130 petition—the document that B&B filed to begin the appeal process—lists the year under appeal as March 1, 2005. *Board Ex. A; Pet'r Ex. 9*. The PTABOA's Form 115 determination inexplicably lists the year under appeal as March 1, 2006. On its Form 131 petition to the Board, B&B followed suit and listed the assessment date as March 1, 2006. *Board Ex. A*.
20. Of course, that begs the question: which year did B&B appeal—2005 or 2006? The better answer is 2005. That is the year the B&B originally referenced; the change to 2006 on B&B's Form 131 petition appears to have been motivated by the PTABOA's

unexplained reference to 2006 on its Form 115 determination. And there is at least some evidence that B&B was assessed for \$100,000 in 2005. It received a tax statement for “2005 pay 2006,” presumably referring to taxes payable in 2006 that were based on a 2005 assessment. By contrast, the record contains no evidence that B&B had even been assessed for 2006.

The March 1, 2005 assessment was incorrect

21. The Board therefore must decide whether B&B proved that its March 1, 2005, assessment was wrong. A taxpayer seeking review of an assessing official’s determination must establish a prima facie case proving both that the current assessment is incorrect and specifically what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). Once the taxpayer establishes a prima facie case, the burden shifts to the assessing official to impeach or rebut the taxpayer’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.
22. B&B made a prima facie case. It proved both that it was assessed for \$100,000 in business personal property on March 1, 2005, and that it did not own any property to support that assessment.
23. Normally, the fact that a taxpayer’s property has been assessed requires no comment. But this is far from a typical case, and the very existence of the assessment under appeal is anything but a foregone conclusion. No one offered a Form 113/PP for the March 1, 2005, assessment date, and the parties spent most of the hearing addressing the Form 113/PP from 2003. Nonetheless, B&B received a personal property tax statement for “2005 pay 2006.” *Pet’r Ex. 10*. And that statement did not reference any penalties or delinquencies, which would have been the case had it reflected past-due taxes from the March 1, 2003, assessment. Thus, B&B made a prima facie case that it was assessed for \$100,000 on March 1, 2005.
24. B&B, however, did not own or possess any business personal property to support that assessment. Once again, B&B did not offer overwhelming evidence to make its point. For example, the 2005 pay 2006 tax statement does not describe the property upon which the underlying assessment was based. And B&B did not offer its 2005 personal property return to show that it had already separately been assessed for all the taxable business personal property that it owned or possessed. Nonetheless, B&B offered evidence to show that the assessment was based on mobile homes rather than other personal property that B&B owned or possessed. Indeed, Ms. Buck testified that, when she asked employees of the Assessor and treasurer what the “2005 pay 2006” tax statement was based on, she was given the May 15, 2003, Form 113/PP. That form, in turn, referred to mobile homes that had been at B&B’s place of business. Ms. Buck, however, testified without contradiction that B&B had gotten rid of those mobile homes by the time it moved to its new address sometime in 2003.

25. The Assessor did not even attempt to show that B&B owned or possessed personal property on March 1, 2005, that would have supported the \$100,000 assessment. At most, it argued that B&B possessed mobile homes on March 1, 2003. Obviously, that fact does not support the March 1, 2005, assessment.

The March 1, 2003, assessment

26. Because B&B's March 1, 2003, assessment is not before the Board, it need not address whether the Assessor properly assessed B&B on that date.

Conclusion

27. B&B did not own or possess property to support the March 1, 2005, assessment. The Board therefore finds that the assessment should be reduced to zero. The Board, however, makes no finding about the propriety of the March 1, 2003, assessment.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the \$100,000 assessment reflected in B&B's "2005 pay 2006" personal property tax statement should be reduced to zero.

ISSUED: September 22, 2008

Commissioner, Betsy J. Brand

Commissioner, Terry G. Duga

Chairperson, Robert Wentz

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>