

REPRESENTATIVES FOR PETITIONER: Donald Adams
REPRESENTATIVES FOR RESPONDENT: Tara Acton, Deputy Assessor
Michael Thompson – Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

Donald Adams,)	Petition No.: 49-901-01-1-7-00509
)	
Petitioner)	County: Marion
)	
v.)	Township: Wayne
)	
Wayne Township Assessor,)	Parcel No.: Personal Property
)	
Respondent)	Assessment Year: 2001
)	

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

April 11, 2003

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:
ISSUE – Whether the estimated assessed value set by the Wayne Township Assessor is correct.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, Donald Adams filed a Form 131 petitioning the Board to conduct an administrative review. The Form 131 was filed on September 24, 2002. The determination of the Marion County Property Tax Assessment Board of Appeals (“PTABOA”) is dated August 23, 2002.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on December 17, 2002 in Indianapolis before Paul Stultz, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
4. The following persons were present at the hearing:
For the Petitioner: Donald Adams

For the Respondent: Tara Acton, Deputy Township Assessor
Michael Thompson, Deputy Township Assessor
5. The following persons were sworn in as witnesses and presented testimony:
For the Petitioner: Donald Adams
For the Respondent: Tara Acton, Deputy Township Assessor

6. The following exhibits were presented:

For the Petitioner:

Petitioner Exhibit 1- package of documents containing the following:

1. three page statement
2. Form 104 (blank), Business Tangible Personal Property Return
3. Form 103 Short Form, Business Tangible Personal Property Return
4. Form 104, Business Tangible Personal Property Return
5. copy of tax bill (spring 2002)
6. copy of tax bill (fall 2002)

For the Respondent:

Respondent Exhibit 1 - copy of 50 IAC 4.2-3

Respondent Exhibit 2 - copy of 50 IAC 4.2-2

Respondent Exhibit 3 - copy of blank Notice of Assessment

7. The following items are officially recognized as part of the proceedings:

Board Exhibit A - Form 131 petition

Board Exhibit B - Notice of Hearing on Petition

Board Exhibit C - Request for Additional Evidence

Board Exhibit D - Post-hearing Submission Waiver

8. As a result of the testimony, Mr. Adams was asked to submit additional evidence. The date of submission was set for January 6, 2003. On January 6, 2003, via U.S. Mail, Mr. Adams submitted the following information. The information was entered into the record as Petitioner Exhibit 2 and includes:

1. cover sheet
2. copy of Post-hearing Submission Waiver
3. copy of Request for Additional Evidence
4. Asset Reconciliation with 2000 Tax Return - Schedule C
5. copy of Federal Tax Return for 2000 with schedules

9. Ms. Acton responded to the additional evidence submitted by the Petitioner. The response (a letter) was received via U.S. Mail on January 16, 2003, and was entered into the record as Respondent Exhibit 4.
10. The subject property is Personal Property located at 1500 Tibbs Avenue, Indianapolis, Wayne Township, Marion County.
11. The Administrative Law Judge did not view the subject property.
12. At the hearing, the parties agreed the year under appeal is 2001 and the assessed value of record for the Personal Property is \$174,600.

Jurisdictional Framework

13. 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.
14. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

Indiana's Personal Property Tax System

15. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
16. 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 that year unless an extension of time to file is obtained. See 50 IAC 4.2-2-2.

State Review and Petitioner's Burden

17. 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).
18. 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.]
19. 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.]
20. 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.]
21. 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).

22. 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 Issue

ISSUE: *Whether the estimated assessed value set by the Wayne Township Assessor is correct.*

23. The Petitioner contends that the estimated assessed value of \$174,600 is not correct and the correct assessed value of the subject property is \$16,250.
24. The Respondent contends that the Petitioner failed to file a Form 103, therefore Wayne Township estimated the assessed value in accordance with 50 IAC 4.2-3(b). The Respondent further contends that the Petitioner failed to provide evidence showing the estimated assessed value is incorrect, and the value claimed by the Petitioner is correct.
25. The applicable rules governing this issue are:

50 IAC 4.2-2-2

Every person, including any firm, company, partnership, association, corporation, fiduciary or individual owning, holding, possessing, or controlling personal property with a tax situs within the state on March 1 of any year is required to file a personal property tax return on or before May 15 of that year unless an extension of time to file a return is obtained pursuant to section 3 of this rule.

50 IAC 4.2-3(b)

Return not on file or omitted property. The assessor is required by law to make an assessment of personal property if they have sufficient information to indicate there is omitted property. If a person owning, holding, possessing, or controlling any personal property fails to file a personal property return or list with the township assessor, the township assessor may examine:

- (1) the personal property of the person;
- (2) the books and records of the person; and/or
- (3) under oath, the person or any person whom the assessor believes has knowledge of the amount, identity, of value of the personal property not reported by the person on a return.

As an alternative to such an examination, the township assessor may estimate the value of the personal property of the taxpayer and shall assess the person owning, holding, possessing, or controlling the property in an amount based upon the estimate. Upon receiving a notification of estimated value from the township assessor, the taxpayer may elect to file a personal property return within forty five (45) days from the date of the written notice as assessment by the assessor subject to the penalties imposed under 50 IAC 4.2-2-10. At the time that notice is given to the taxpayer, they shall also be informed in writing of their opportunity for review and the procedures they must follow in order to obtain review before the county board of review.

26. Evidence and testimony considered particularly relevant to this determination include the following:

- A. Mr. Adams has been in business at this location since 1994.
- B. Mr. Adams did not file any Personal Property Tax Returns (Form 103) for tax years 1994 through 2001. (Adams and Acton testimony)
- C. The Wayne Township Assessor placed an estimated assessed value of \$174,600 on the Petitioner, making this value the assessment of record for the March 1, 2001 assessment date. (Acton testimony)
- D. The Wayne Township Assessor gave Mr. Adams written notice of the estimated 2001 assessed value. Mr. Adams did not file a Form 103 within the forty five (45) days. (Acton testimony)
- E. Mr. Adams submitted a Form 103 for the March 1, 2001 assessment date. The Form 103 is dated May 15, 2002. (Acton and Adams testimony)
- F. Mr. Adams provided portions of his 2000 Federal Tax Form 1040 with some schedules. (Petitioner Ex. 2)

Analysis of ISSUE

27. The Petitioner failed to file a Form 103 as required by 50 IAC 4.2-2-2. The Respondent estimated the Petitioner's assessment pursuant to 50 IAC 4-2.3(b). The Petitioner contends that the estimated assessment is incorrect.
28. The Petitioner must do two things: (1) prove that the assessment of \$174,600 is incorrect; and (2) prove that the specific assessment he seeks of \$16,250 is correct. (See ¶ 21)
29. At the hearing, the Petitioner presented a copy of a Form 103 for the March 1, 2001 assessment date showing the assessed value to be \$16, 250. The Petitioner did not present any evidence to support the values shown on the Form 103.
30. At the hearing, the ALJ requested the Petitioner submit sufficient records to verify the amount of personal property on hand at March 1, 2001. The ALJ provided the Petitioner with a written Request of Additional Evidence which specifically requested evidence to verify the business personal property on hand at March 1, 2001. The items requested included the specific date of acquisition, cost, and the federal life applicable to each depreciable asset; the December 31, 2000 inventory; and, sales and purchases for January and February 2001.
31. In response to the Request of Additional Evidence, the Petitioner submitted an Asset Reconciliation with 2000 Tax Return Schedule C, and a copy of his Federal Tax Return 1040, Schedule A, Schedule C, Schedule E, Form 4797, and Form 4562.
32. With regard to the depreciable assets, the Reconciliation with 2000 Tax Return shows the following:

Total cost of assets shown on return	\$170,291
Assets junked during years prior to 1/1/00 and Reported on Form 4797 as a -0- sale	31,585
Buildings included in assets and its attached Components	<u>135,075</u>
Net equipment left to be reported on 3/1/02	\$3,633

Based on the evidence presented by the Petitioner, the only number that can be verified is for Assets junked prior to 1/1/00. The total cost of assets(\$170,291), the buildings (\$135075), and the net equipment (\$3,633) cannot be verified with any of the evidence presented.

33. With regard to the inventory, the inventory value of \$23,325 can be verified to the Federal Tax Return as the value at December 31, 2000. However, the Petitioner did not present the sales and purchases information for January and February 2001 in order to be able to determine the inventory value as of the March 1, 2001 assessment date.
34. The Petitioner's Asset Reconciliation with 2000 Tax Return is conclusory and is not supported by evidence.
35. The ALJ requested specific information from the Petitioner in order to be able to determine the assessment as of the March 1, 2001 assessment date. The information was not presented.
36. The Petitioner has not proven that the assessment of \$174,600 is incorrect. Nor has the Petitioner proven that the specific assessment he seeks of \$16,250 is correct.
37. Although it seems unlikely that the assessment established by the Respondent can be supported, when no return was filed it became the responsibility of the Petitioner to demonstrate the inaccuracy of the Respondent's estimate, and the accuracy of the assessment the Petitioner contends to be correct. Neither was demonstrated.

Summary of Final Determination

Determination of ISSUE: *Whether the estimated assessed value set by the Wayne Township Assessor is correct.*

38. The Petitioner failed to meet its burden on this issue. No change is made to the assessment as a result of this issue.

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

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.