

REPRESENTATIVE FOR PETITIONER: Dorothy L Marshall, Pro se.

REPRESENTATIVE FOR RESPONDENT: Judy Lewis, Cass County Property Tax Assessment Board of Appeals (PTABOA).

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

DOROTHY L. MARSHALL,)	Petition No.: 09-018-98-1-5-00045
)	
Petitioner)	County: Cass
)	
v.)	Township: Washington
)	
CASS COUNTY BOARD OF)	Parcel No.: 15-08-103-003
REVIEW,)	
)	
Respondent)	Assessment Year: 1998
)	

Appeal from the Final Determination of
Cass County Board of Review

June 18, 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 Petitioner is entitled to an attained age (over 65) deduction from assessed value for the 1998-assessment year.

Procedural History

2. On April 14, 1998, Dorothy L. Marshall (Petitioner) filed an Affidavit of Person, 65 Years Of Age or More Requesting Deduction from Assessed Valuation (Form #43708), more commonly known as an attained age deduction, with the Cass County Auditor. The determination of the Cass County Board of Review denying the deduction was issued on July 28, 1998.
3. Pursuant to Ind. Code § 6-1.1-11-7, the Petitioner filed a Form 132 petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on August 24, 1998.

Hearing Facts and Other Matters of Record

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on May 14, 2003 in Logansport, Indiana before Patti Kindler, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
5. The following persons were present at the hearing:
For the Petitioner: Dorothy L. Marshall, property owner

For the Respondent: Judy Lewis, Cass County Assessor and Secretary of the Cass County PTABOA.

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

For the Petitioner: Dorothy L. Marshall

For the Respondent: Judy Lewis

7. The following exhibits were presented:

For the Petitioner: Petitioner's Exhibit 1 – Copy of a Personal Representative's Deed for distribution of the Joseph F. Marshall estate, signed by the Petitioner on October 14, 1998.

For the Respondent: None

8. The following additional items are officially recognized as part of the record of proceedings:

Board's Exhibit A – Form 132 with the following attachments:

A note by Ms. Marshall stating her contentions; a copy of the Form # 43708, titled Affidavit of Person, 65 Years of Age or More Requesting Deduction From Assessed Valuation; and, the County Board of Review's Notice of Disapproval of Exemption

Board's Exhibit B – Notice of Hearing on Petition

9. The property under review is located at 57 East County Road 100 North, Logansport, Indiana. The Administrative Law Judge did not inspect the subject property.

10. The assessed values subject to deduction for 1998, as listed on the subject Form 132 are:

Land: \$1,170 Improvements: \$9,230 Total: \$10,400.

Jurisdictional Framework

11. 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.
12. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.5-4-1.

State Review and Petitioner's Burden

13. 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).
14. 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.]
15. 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.]
16. 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.]

17. 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

ISSUE: *Whether the Petitioner is entitled to an attained age deduction for the 1998 assessment year*

18. The Petitioner timely filed an Affidavit of Person, 65 Years of Age or More Requesting Deduction From Assessed Valuation, with the Cass County Auditor for the property located at 57 E – CR 100 North, Logansport, for the assessment year 1998.
19. The County denied the deduction because "The property is titled to Joseph F. Marshall, and Dorothy's name does not appear on the title." *Board's Exhibit A, attachment (Notice of Disapproval of Exemption)*.
20. The applicable rules governing the Issue are:

Ind. Code § 6-1.1-1-15

Defines "deduction" as a situation where a taxpayer is permitted to subtract a fixed dollar amount from the assessed value of his property.

Dorothy L. Marshall Findings and Conclusions

Ind. Code § 6-1.1-1-9

Defines the term “owner” with regards to tangible property.

Ind. Code § 6-1.1-12-9

Details the requirements for persons over 65 years old to obtain a deduction from the assessed value of the individual’s real property, or manufactured home.

Ind. Code § 6-1.1-12-10.1

Details the procedure for filing a claim for the attained age deduction.

Ind. Code 6-1.1-12-17.8

An individual who receives an attained age deduction and who remains eligible is not required to file a statement to apply for the deduction in the following year.

21. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The Petitioner contended that she should have been eligible for an attained age deduction for the 1998 assessment year, as she met all the requirements of said deduction. *Marshall Testimony*.
 - b. The Petitioner’s husband, Joseph, was titled as the sole owner of the property at the time of his death in 1997. The Petitioner is the surviving spouse of the deceased titleholder, but her name did not appear on the title on the assessment date. *Board’s Exhibit A, attachment (Notice of Disapproval of Exemption); Lewis Testimony*.
 - c. A life estate interest in the property was deeded to the Petitioner in October 1998, pursuant to the Last Will and Testament of Joseph Marshall. *Petitioner’s Ex. 1*.
 - d. The Petitioner has occupied the property since 1981 and is responsible for the property’s taxes, upkeep, and insurance. *Marshall Testimony; Board’s Exhibit A, attachment (Affidavit Requesting Deduction, Form #43708)*.
 - e. The Petitioner filed for the attained age deduction on April 14, 1998 with the Cass County Auditor, six months prior to the transfer of ownership of the property into

her name. *Board's Exhibit A, attachment (Affidavit Requesting Deduction, Form #43708); Lewis Testimony.*

- f. The Cass County Board of Review denied the attained age deduction because the property remained titled solely to Joseph Marshall on the assessment date. *Board's Exhibit A, attachment (Notice of Disapproval of Exemption); Lewis Testimony.*
- g. Mrs. Lewis questioned whether the former Board of Review correctly denied the deduction, since Ms. Marshall was married to the deceased titleholder and appeared to meet all the requirements of the deduction. *Lewis Testimony.*

Analysis of the ISSUE

- 22. The relevant facts in this appeal are undisputed.
- 23. In April 1998, the Petitioner filed a claim for an attained age deduction for the 1998 assessment year. At the time the deduction was requested, the residence was titled in the name of Joseph F. Marshall, the Petitioner's deceased spouse. The Last Will and Testament of Mr. Marshall granted the Petitioner a life estate in the property. The Cass County Board of Review denied the attained age deduction because the deed conveying this life estate was not dated until October 1998. Therefore, on the assessment date, the Petitioner was not the owner of record. *Board's Exhibit A, attachment (Disapproval of Exemption); Lewis Testimony.*
- 24. The only issue in dispute is whether the Cass County Board of Review properly concluded that the Petitioner was not the owner of the property until October 1998. This conclusion is the only reason offered for the denial of the deduction.
- 25. The Board determines that the Cass County Board of Reviewed erred in denying the Petitioner's claim for the deduction.
- 26. An 'owner' of real property includes: the holder of the legal title of real property; the person who obtains title to property on the assessment date; the mortgagee of real

property who is in possession of the mortgaged premises; and **a life tenant of real property who is in possession of the property**. Ind. Code § 6-1.1-1-9.

27. Undisputed testimony indicated that the Petitioner had been in continuous possession of the property since 1981.
28. The Respondent, however, contended that the life estate did not commence until the deed was recorded on October 15, 1998: “The only discrepancy I can see is when we did this [denied the claim for the deduction] was July 28, 1998 and this transfer was filed October 15, 1998, would be the date, and that’s why they disapproved it, was because of that.”
29. Indiana Courts have addressed the issue of when life estates commence: “Therefore, a life estate passes to its designated heir immediately following the death of the owner subject to the administrator's right to subject such real estate to the payment of debts.” *In re Estate of White*, 651 N.E.2d 324, 325 (Ind. Ct. App. 1995); see also *Montgomery v. Estate of Montgomery*, 677 N.E.2d 571, 575 (Ind. Ct. App. 1997) (“We agree with the proposition that the surviving spouse's share of the real estate vests at death.”).
30. The Petitioner’s life estate interest in the property was not contingent on the preparation or recording of the deed. Instead, the life estate in the property vested at the time of Mr. Marshall’s passing in 1997 and, as a result, the Petitioner was the owner of the property on the assessment date.
31. The Respondent’s sole objection to the deduction is not supported by law. The local officials have therefore failed to justify the denial of the Petitioner’s requested deduction.

32. For all the reasons above, the Petitioner is entitled to the attained age deduction for 1998.¹

Summary of Final Determination

Determination of the ISSUE: *Whether the Petitioner is entitled to an attained age deduction for the 1998 assessment year.*

33. The Petitioner has met her burden in this appeal and is entitled to the attained age deduction for 1998.

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

Chairman, Indiana Board of Tax Review

¹ “An individual who receives [an attained age deduction] and who remains eligible for the deduction in the following year is not required to file a statement to apply for the deduction in the following year.” 50 IAC 6-1.1-12-17.8(a).

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.