

REPRESENTATIVES FOR PETITIONER: James R. Bowdish

REPRESENTATIVES FOR RESPONDENT: Richard H.Potts

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

JAMES R. BOWDISH,)	Petition No.: 37-024-03-1-7-00005
)	
Petitioner)	County: Jasper
)	
v.)	Township: Keener
)	
)	Personal Property
KEENER TOWNSHIP ASSESSOR,)	
)	
Respondent)	Assessment Year: 2003
)	

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

December 18, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review “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

1. The issue presented for consideration by the Board was:

Whether the subject motor home should be assessed in Indiana.

Procedural History

- Pursuant to Ind. Code § 6-1.1-15-3, James R. Bowdish (Petitioner) filed a Form 131 petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on June 10, 2003. The determination of the Jasper County PTABOA was issued on June 5, 2003.

Hearing Facts and Other Matters of Record

- Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on September 30, 2003 at the Jasper County Commissioners Room before Joan L. Rennick, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
- The following persons were present at the hearing:
 - For the Petitioner: James R. Bowdish, Taxpayer
 - For the Respondent: Richard H. Potts, Jasper County Assessor
- The following persons were sworn in as witnesses and presented testimony:
 - For the Petitioner: James R. Bowdish, Taxpayer
 - For the Respondent: Richard H. Potts, Jasper County Assessor
- The following exhibits were presented:
 - For the Petitioner:
 - Petitioner's Exhibit 1** – Letter from Arizona Maverick R.V. Park Owner stating Mr. And Mrs. Bowdish were guests from December 15, 2002 to April 1, 2003
 - For the Respondent: No exhibits were presented.
- The following additional items are officially recognized as part of the record of proceedings:
 - Board's Exhibit A** – Form 131 with attachments

Board's Exhibit B – Notice of Hearing on Petition

Board's Exhibit C – Letter from Kenner Township Assessor appointing Mr. Richard Potts, Jasper County Assessor, to represent her at the hearing.

8. The following matters or facts were agreed to by the parties:

The personal property is a motor home owned by Mr. James R. Bowdish of 11344 Cumberland, Demotte, Keener Township, Jasper County. The assessed value for 2003 is \$59,830 established by Kenner Township Assessor and affirmed by the Jasper County PTABOA.

Jurisdictional Framework

9. 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.
10. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

Indiana's Property Tax System

11. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
12. Personal property includes motor homes, mobile homes, airplanes, boats, not subject to the boat excise tax and trailers not subject to the trailer tax. See Ind. Code § 6-1.1-1-11.
13. Indiana's personal property 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 is obtained. See 50 IAC 4.2-2-2.

State Review and Petitioner's Burden

14. 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).
15. 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.]
16. 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.]
17. 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.]
18. 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).

19. 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 subject motor home should be assessed in Indiana.

20. The Petitioner contends that the motor home location or “situs” as of March 1, 2003 was Arizona and not subject to Indiana personal property tax.
21. The Respondent contends that the motor home is subject to Indiana personal property tax.
22. The applicable rules governing this Issue are:

IC 6-1.1-3-1

Sec. 1. (a) Except as provided in subsection (c), personal property which is owned by a person who is a resident of this state shall be assessed at the place where the owner resides on the assessment date of the year for which the assessment is made.

(b) Except as provided in subsection (c), personal property which is owned by a person who is not a resident of this state shall be assessed at the place where the owner's principal office within this state is located on the assessment date of the year for which the assessment is made.

(c) Personal property shall be assessed at the place where it is situated on the assessment date of the year for which the assessment is made if the property is:

(1) regularly used or permanently located where it is situated; or

(2) owned by a nonresident who does not have a principal office within this state.

(d) If a personal property return is filed pursuant to subsection (c), the owner of the property shall provide, within forty-five (45) days after the filing deadline, a copy or other written evidence of the filing of the return to the assessor of the township in which the owner resides. If such evidence is not filed within forty-five (45) days after the filing deadline, the assessor of the township in which the owner resides shall determine if the owner filed a personal property return in the township where the property is situated. If such a return was filed, the property shall be assessed where it is situated. If such a return was not filed, the assessor of the township where the owner resides shall notify the assessor of the township where the property is situated, and the property shall be assessed where it is situated. This subsection does not apply to a taxpayer who:

(1) is required to file duplicate personal property returns under section 7(c) of this chapter and under regulations promulgated by the department of local government finance with respect to that section; or

(2) is required by the department of local government finance to file a summary of the taxpayer's business tangible personal property returns.

(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by Acts 1979, P.L.48, SEC.1; Acts 1980, P.L.35, SEC.1; P.L.2-1998, SEC.14; P.L.90-2002, SEC.21.

IC 6-1.1-3-9

Sec.9. (a) In completing a personal property return for a year, a taxpayer shall make a complete disclosure of all information, required by the state board of tax commissioners, that is related to the value, nature, or location of personal property:

(1) which he owned on the assessment date of that year; or

(2) which he held, possessed, or controlled on the assessment date of that year.

(b) The taxpayer shall certify to the truth of;

(1) all information appearing in a personal property return; and

(2) all data accompanying the return. *(Formerly: Acts 1975, P.L. 47, Sec.1.)*

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

(a) The Petitioner contends the subject motor home was located in Arizona on the March 1, 2003 assessment date and presented records to substantiate the contention. *Bowdish Testimony, Petitioner Exhibit 1, and Board's Exhibit A attachments.*

Analysis of the Issue

24. The Petitioner makes the argument that the motor home was purchased to be a second home in Arizona and on March 1, 2003, the assessment date, the motor home was located in Arizona. The Petitioner stated the “situs” or location of the motor home on the assessment date is the main reason he disagrees with having the motor home assessed as personal property in Indiana. The Petitioner testified that the motor home was presently in Indiana for warranty work and his wife is recuperating from illness that is keeping them from returning to Arizona.
25. The PTABOA’s Determination states that the Petitioner owns a home in Indiana, receives a homestead credit, and votes in Indiana. In addition, the motor home was plated in Indiana. The PTABOA affirmed the assessment made by the Township Assessor. The members requested the County Assessor contact the DLGF and their representative agreed with their arguments for the assessment of the motor home.
26. The Board will address the “situs” argument and the personal property rule in Indiana.
27. The Dictionary of Real Estate Appraisal *Third Edition* from the Appraisal Institute on Page 334 defines “situs”. In real estate, the physical location of a property; in personal property, the taxable location because personal property may be moved from one place to another.
28. Black’s Law Dictionary, *Fifth Edition*, states the following:

Generally, personal property has its taxable “situs” in that state where the owner of it is domiciled. *Smith v. Lummus*, 149 Fla. 660, 6 So2d 625,627,628.
29. Black’s Law Dictionary, *Fifth Edition*, states the following on domicile:

That place where a man has his true, fixed, and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning. *Smith v. Smith*, 206 Pa. Super 310, 213 A.2d 94. Domicile is the permanent residence of a person or the place to which he intends to return even though he may actually reside elsewhere. A person may have more than one residence, but only one domicile. The legal domicile of a person is important since it, rather than the actual residence often controls

the jurisdiction of the taxing authorities and determines where a person may exercise the privilege of voting and other legal rights and privileges.

30. According to the Jasper County PTABOA, the Petitioner is currently domiciled in Indiana, as evidenced by his owning and residing in a home, receiving a homestead credit, voting in Indiana, and plating the motor home in Indiana.
31. The Petitioner did not testify that he had established residency in any other state and none of the documents presented to the PTABOA or to the Board indicate that residence had been established in Arizona during 2002 and 2003.
32. The personal property assessment of the motor home by the township assessor was not a discretionary action. Even if the motor home were not back in Indiana for warranty work, the Petitioner would have received the personal property assessment. Plating the subject motor home in Indiana triggered the personal property assessment. Registration information given to the Bureau of Motor Vehicles (BMV) is reported to the State of Indiana, who in turn reports it to the County Auditor and Assessor of record. Vehicles not subject to the vehicle excise tax are required to report and complete Form 101. Motor homes fall into this category. Form 101 states that vehicles, campers, and other assessable property **must** be reported for assessment purposes in the township of the county where stored or situated on March 1 of the assessment year. Form 101 further states that every person owning, holding, or controlling taxable personal property that is subject to assessment is required to file a personal property tax return reporting such property for assessment by May 15 of that year. Form 101 defines vehicles to include motor homes, truck bodies (including pick-up campers), ATVs, snowmobiles, and all other vehicles not subject to the motor vehicle excise tax, or the commercial vehicle excise tax (IC 6-6-5 or IC 6-6-5.5) and not reported on Form 102 or 103.
33. The Petitioner read a portion of the personal property rule and assumed the “situs” of the personal property on March 1 was the only governing factor in a personal property assessment. If this were the case, there would be a large exodus of personal property leaving the state prior to March 1 and returning after March 1. The personal property rule

further states that any person owning, holding, or controlling taxable personal property is subject to assessment and taxes.

Summary of Final Determination

Determination of Issue: *Whether the subject motor home should be assessed in Indiana.*

34. The subject property is correctly assessed as personal property in Indiana. The determination of the PTABOA is sustained, and there is no change in the assessment.

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

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.