

REPRESENTATIVE FOR PETITIONERS: None

REPRESENTATIVE FOR RESPONDENTS: Deborah Lewis, Vigo County Assessor.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

KENNETH E. and LAVERNE SMITH,)	Petition for Review of Assessment Form 131
)	
Petitioners)	Petition No. 84-004-96-1-5-00020
)	
v.)	County: Vigo
)	
VIGO COUNTY BOARD OF REVIEW and HONEY CREEK TOWNSHIP ASSESSOR,)	Township: Honey Creek
)	
Respondents)	Parcel No.: 1030910302019
)	Assessment Year: 1996

Appeal from the Final Determination of
Vigo County Board of Review

September 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:

Whether the Petitioners are entitled to the homestead credit exemption for the assessment date of March 1, 1996.

Procedural History

2. Pursuant to IC 6-1.1-15-4 Kenneth E. and Laverne Smith filed a Form 131 (Board Ex. A) petitioning the Board to conduct an administrative review of the above petition. The determination of the Vigo County Board of Review is dated January 26, 1998. The Form 131 was filed on February 5, 1998.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was scheduled for August 19, 2003, in the Office of Vigo County Council Room, Annex Building, at 9:30 AM before Joan Rennick, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2. Notice of said hearing (Board Ex. B) was mailed to Kenneth E. and Lavern Smith at the address (914 East Sunset Pike, Terre Haute, IN 47802) listed on the petition. Notice of said hearing was mailed on July 7, 2003, from the Indianapolis office. The hearing notice was returned to the Indianapolis office on July 16, 2003, as undeliverable, and the United States Postal Service indicated no forwarding address was available (Board Ex. C).

4. The Petitioners did not contact the Board or the Administrative Law Judge prior to the scheduled hearing date, did not request a continuance of the hearing, and did not advise the Board of any change of address.
5. On August 19, 2003, Administrative Law Judge Joan Rennick was present to conduct an administrative hearing on the Form 131 petition. Ms. Deborah Lewis, Vigo County Assessor, appeared to represent the Respondents. The Petitioners failed to appear at the scheduled hearing. Therefore, no hearing was held.
6. The following items are made a part of the record:
Board Ex. A – Form 131 petition.
Board Ex. B – Notice of Hearing on Petition.
Board Ex. C – The returned Notice of Hearing on Petition, labeled by the United States Postal Service as “Not deliverable as addressed, unable to forward.”
Board Ex. D – Proof of mailing of the Notice of Hearing on Petition.

Jurisdictional Framework

7. 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.
8. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

State Review and Petitioner’s Burden

9. 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).

10. 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.]
11. 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.]
12. The State will not change the determination of the County Board of Review 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

13. The Petitioners failed to appear at the administrative hearing and present evidence in support of the issue of the homestead credit exemption. The Petitioners did not establish a ‘prima facie case’. The Form 131 petition is denied.

Summary of Final Determination

14. The Form 131 is denied for the failure of the Petitioners to appear at the administrative hearing and present evidence in support of the issue of the homestead credit exemption. No change is made to the assessment as a result of this issue.

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

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.