

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

Petitions: 79-156-05-1-7-00001
79-156-06-1-7-00001
Petitioner: Timothy Reiss
Respondent: Tippecanoe County
Parcel: 056-00324-0612 (Personal Property)
Assessment Year: 2005 and 2006

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

Procedural History

1. The Petitioner did not file Personal Property Returns for 2005 or 2006. Apparently an assessor took the position that the Petitioner should have done so. This dispute must stem from some action based on Ind. Code § 6-1.1-3-15, most likely subsection (c), which for 2005 and 2006 provided “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.”¹ Unfortunately, both parties left the Board to speculate—both about the factual and legal basis for the assessor’s action and about what the Petitioner was told.²
2. Nevertheless, the Petitioner initiated appeals regarding 2005 and 2006 Business Personal Property with the Tippecanoe County Property Tax Assessment Board of Appeals (PTABOA) on November 13, 2007, claiming the assessed value should be \$0.
3. The PTABOA mailed notices of its determination to the Petitioner on December 19, 2007. The stated reason for the PTABOA determination that the value of personal property was \$80,400 for each year was “PROPERTY WAS STILL OWNED BY MR. REISS; THEREFORE, BUSINESS PERSONAL PROPERTY IS SUBJECT TO TAXATION.”
4. The Petitioner appealed to the Board by filing Petitions For Review (Form 131) on February 6, 2008. Again, the Petitioner claims the assessments should be \$0. The Petitioner accepted small claims procedures.

¹ The record fails to establish what happened at this initial stage of the dispute. Taxation of personal property should start with a system of self-reporting. *See* Ind. Code § 6-1.1-3-7. Indiana Code § 6-1.1-3-15, however, gives assessors authority to make an assessment if someone was supposed to file a return reporting personal property, but failed to do so.

² During the hearing the Respondent explained that the basis for the estimated assessment was appliances (such as stoves and refrigerators) that presumably were in the Petitioner’s 17 rental properties. The Petitioner, however, disputed the existence of any appliances in those properties.

5. The Board issued notices of hearing to the parties dated October 17, 2008.
6. Administrative Law Judge Paul Stultz held the administrative hearing in Lafayette on December 18, 2008. He did not conduct an inspection of the property.
7. Timothy Reiss was sworn as a witness. Attorney Rebecca Trent represented the Petitioner. Attorney Marilyn Meighen represented the Tippecanoe Assessor.

Contentions

8. A summary of the Petitioner's contentions:
 - a) On December 3, 2004, the Petitioner filed bankruptcy for 17 rental properties owned either by Timothy Reiss or TR Rentals, LLC. Some of the properties were deeded to the bank in lieu of foreclosure and others were relinquished to the bankruptcy court. *Reiss testimony; Pet'r Ex. 4.*
 - b) Schedule E from the Petitioner's 2005 and 2006 Federal Income Tax Return shows that the Petitioner did not receive any income from the 17 properties involved in the bankruptcy petition. *Reiss testimony; Pet'r Ex. 1, 2.*
 - c) The Petitioner did not seek exemption for, or claim any interest in, any personal property as part of the bankruptcy petition. *Reiss testimony.*
 - d) Appliances were provided with the rental units in the past, but more recently the cost of providing appliances made the practice economically impractical. Appliances were not provided with these rental units for several years. Tenants were required to provide their own stoves and refrigerators. *Reiss testimony.*
 - e) The Petitioner did not file a Business Tangible Personal Property Return for 2005 and 2006 because there was no personal property to report. The Petitioner did not own any business personal property at that time. *Reiss testimony.*
9. A summary of the Respondent's contentions:
 - a) The Petitioner was assessed for personal property because the Petitioner's federal tax returns show that he owns 17 rental properties. If the Petitioner owns the rental properties, it is logical to conclude that the rental properties have appliances and that the Petitioner owns those appliances. *Meighen argument.*
 - b) Ind. Code §6-1.1-2-4 provides that the person holding, possessing, controlling, or occupying personal property is liable for the taxes unless the person shows that the personal property is assessed and taxed in the name of the owner or the owner is liable under an agreement with that person. *Meighen argument.*

- c) Following the Court's opinion in *State Bd. of Tax Comm'rs v. Jewell Grain Co., Inc.*, 556 N.E.2d 920 (Ind. 1990), the assessor had the discretion to assess and tax either the owner or the person possessing or controlling the property without any order of priority for either party. The assessor assessed the Petitioner because he owned the rental properties. *Meighen argument.*

Record

- 10. The official record for this matter is made up of the following:
 - a) The Petition with attachments,
 - b) Digital recording of the hearing,
 - c) Petitioner Exhibit 1 – Copy of Petitioner's Federal Tax Schedule E for 2005,
Petitioner Exhibit 2 – Copy of Petitioner's Federal Tax Schedule E for 2006,
Petitioner Exhibit 3 – List of dates banks took over management of the
Petitioner's rental properties,
Petitioner Exhibit 4 – Copy of pages 1 and 2 of bankruptcy petition,
Respondent Exhibit 1 – Copy of *St. Bd. of Tax Comm'rs v. Jewell Grain Co., Inc.*, 556 N.E.2d 920 (Ind. 1990),
Respondent Exhibit 2 – Property record card ("PRC") for 1411 South Street,
Respondent Exhibit 3 – PRC for 1908 Salem Street,
Board Exhibit A – Form 131 Petitions for Review of Assessment,
Board Exhibit B – Notices of Hearing on Petition,
Board Exhibit C – Hearing Sign In Sheet,
 - d) These Findings and Conclusions.

Issue

- 11. The Board consolidates and restates the issue as: did the Petitioner have liability for business personal property taxes as of March 1, 2005 and 2006 because he is either the owner or one who is holding, possessing, or controlling appliances in several rental properties?

Statutes

- 12. For the years 2005 and 2006, the most relevant parts of the statutes were:

Ind. Code § 6-1.1-2-4(a)

A person holding, possessing, controlling, or occupying any personal property on the assessment date of a year is liable for the taxes imposed for that year on the property unless:

- (1) the person establishes that the property is being assessed and taxed in the name of the owner; or

(2) the owner is liable for the taxes under a contract with that person.

Ind. Code § 6-1.1-3-15

- (a) [I]f a person owning, holding, possessing, or controlling any personal property fails to file a personal property return with the township assessor as required by this chapter, the township assessor may examine:
- (1) the personal property of the person;
 - (2) the books and records of the person; and
 - (3) under oath, the person or any other person whom the assessor believes has knowledge of the amount, identity, or value of the personal property reported or not reported by the person on a return.
- (b) After such an examination, the assessor shall assess the personal property to the person owning, holding, possessing, or controlling that property.
- (c) 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....

Analysis

13. In Indiana, the personal property tax system depends on self-assessment and relies on full disclosure with accurate reporting by the taxpayer. *Standard Plastic Corp. v. Dep't of Local Gov't Fin.*, 773 N.E.2d 379, 383 (Ind. Tax Ct. 2002); *Dav-Con, Inc. v. State Bd. of Tax Comm'rs*, 644 N.E.2d 192, 195 (Ind. Tax Ct. 1994).
14. It is undisputed that the Petitioner did not file a Business Personal Property Return for 2005 or 2006. The Petitioner claims he was not required to do so because he did not have any business personal property to report. Obviously, if the Petitioner is correct, then he should not be assessed for anything. On the other hand, the Respondent claims the Petitioner should have filed returns to report appliances that must have been in his rental properties and correctly points out that an assessor has authority to assess a taxpayer for property that was improperly not reported. The existence of the appliances is clearly the fundamental dispute.
15. Specific testimony established that the appliances do not exist. Although he had done so in times past, the Petitioner had not provided stoves and refrigerators with the rental units for several years. Tenants supplied their own. The Petitioner did not have any personal property in the rental units.
16. The Respondent offered no evidence to the contrary. The Respondent merely argued that the Petitioner owned the real property and, therefore, had appliances in the rental units. Such an unsupported conclusion is not sufficient to establish the existence of business

personal property or to put a value on it. *See Dav-Con*, 644 N.E.2d at 196 (regarding “authority to determine the assessed value of property by any method that is reasonable in light of the facts and circumstances and yields ‘substantial evidence’ *** [, which] is ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion’”).

17. There is no substantial evidence that the Petitioner owned, held, possessed, or controlled the appliances that were presumed to be in 17 rental properties on March 1, 2005 or 2006. Consequently, there was nothing wrong with the fact that the Petitioner did not file business personal property returns for those years. The Respondent’s authority to act under Ind. Code § 6-1.1-3-15 is moot.

Conclusion

18. The Petitioner made a prima facie case showing that he did not have any business personal property to report for the 2005 and 2006 assessment years. The Respondent failed to rebut the Petitioner’s case. The Board finds in favor of the Petitioner.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$0.

ISSUED: March 18, 2009

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

- 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>>