

REPRESENTATIVES FOR PETITIONER: Barbara L. Werich, Deputy Assessor, Concord Township

REPRESENTATIVES FOR RESPONDENT: Cathy Searcy, Secretary, County Board; Timothy D. Hernly, Attorney, Barnes & Thornburg; John E. Personett, Senior Accountant, Reith-Riley

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

Robert J. Price,)	
Concord Township Assessor)	
)	
Petitioner)	Petition No.: 20-031-98-1-7-00002
)	County: Elkhart
v.)	Township: Concord
)	Personal Property
Elkhart County Property Tax)	
Board of Appeals and)	
Rieth-Riley Construction Company,)	
Inc.)	
)	
Respondent)	

Appeal from the Final Determination of
Elkhart County Property Tax Board of Appeals

January 7, 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

1. Rieth-Riley is located in Elkhart, Indiana (Elkhart County, Concord Township). The tax year under appeal is 1998. The personal property assessed value under appeal is \$92,020.
2. On May 11, 1998, Rieth-Riley filed a business tangible personal property return for the March 1, 1998 assessment date with the Concord Township Assessor. The assessed value reported on this return was \$92,020. *Resp. Ex. A.*
3. On May 27, 1998, the Concord Township Assessor's Office mailed Rieth-Riley a Form 113/PP, Notice of Assessment Change. The form stated that 168 vehicles registered in Concord Township were not included on Rieth-Riley's vehicle list. Concord Township increased the assessed value of personal property to \$465,690. *Resp. Ex. C.*
4. Pursuant to Ind. Code § 6-1.1-15-1, Rieth-Riley filed a Form 130/PP, Petition to the County Board of Review, on June 2, 1998. *Resp. Ex. D.* On October 22, 1998, the Elkhart County Board of Review mailed a Form 115/PP, Notice of Assessment of Personal Property, to Rieth-Riley, lowering the assessment of personal property back to \$92,020. *Resp. Ex. E.*
5. Pursuant to Ind. Code § 6-1.1-15-3, Robert J. Price, Concord Township Assessor, filed a Form 131/PP petition to the State, requesting a review of the County Board of Review's decision. In his petition to the State, Mr. Price alleges that the County Assessor did not have the authority to assume control of the assessment, and that the taxpayer failed to file a Form 106 to explain adjustments taken on the business personal property return. The petition was filed November 6, 1998. *Board Ex. A.*
6. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held before Administrative Law Judge Joseph Stanford on April 11, 2002. Barbara L. Werich, Deputy Assessor, represented Concord Township. Cathy Searcy, Board Secretary, represented the County Board of Review. Timothy D. Hernly, Attorney, and John E. Personett, Senior Accountant,

represented Rieth-Riley. The administrative law judge did not visit or inspect the property.

7. The following items are labeled as Board Exhibits:
Board Ex. A – Form 131/PP petition and attachments.
Board Ex. B – Notice of hearing.
8. At the hearing, the following exhibits were submitted to the State:
Respondent's Ex. A – Business personal property tax return.
Respondent's Ex. B – Listing of Rieth-Riley's assessed value by county.
Respondent's Ex. C – Notice of Assessment Change.
Respondent's Ex. D – Petition to County Board of Review.
Respondent's Ex. E – Notice of Assessment of Personal Property.
Respondent's Ex. F – Petition to the State.
Respondent's Ex. G – Affidavit and Direct Testimony of John F. Personett.
9. Concord Township originally raised Rieth-Riley's assessment based on a vehicle listing provided by the Bureau of Motor Vehicles. *Board Ex. A at 13*. This document lists 168 vehicles plated in Concord Township. Rieth-Riley did not attach a vehicle listing with its personal property return, or list any vehicles as subject to excise. *Werich testimony*.
10. When the Form 113/PP was mailed to Rieth-Riley, a vehicle list was requested, but there was no response. Concord Township contends that this was a reasonable request. *Id.* Concord Township contends that Rieth-Riley should be assessed, in Concord Township, for the vehicles in question.
11. Rieth-Riley's attorney, Mr. Hernly, moved that the petition be dismissed due to Concord Township's failure to state a prima facie case.
12. Rieth-Riley submitted the Bureau of Motor Vehicles listing, along with a notation showing where each vehicle was located at March 1, 1998. *Resp. Ex. G at 7-10*. Mr. Personett testified that the vehicles in question, while plated in Concord Township, are

located at various construction job sites throughout the state. *Id at 4.* Mr. Price has been to Rieth-Riley's office in the past to review files and confirm that previous returns were accurately filed, but Mr. Price continues to raise this issue on an annual basis. *Id at 2.*

13. Rieth-Riley contends that the current assessment is correct, because property must be assessed where it is situated at March 1.

Statement of the Issue

14. The issue presented for the Board's review is:
Whether vehicles owned by Rieth-Riley Construction (Rieth-Riley) should be assessed in Concord Township, Elkhart County.

Jurisdictional Framework

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

Indiana's Property Tax System

17. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
18. Personal property includes all tangible property (other than real property) which is being:
 - (A) held in the ordinary course of a trade or business;
 - (B) held, used, or consumed in connection with the production of income; or
 - (C) held as an investment.

See Ind. Code § 6-1.1-1-11.

19. 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

20. 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).
21. 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.]
22. 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.]
23. 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.]

24. 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).
25. 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 vehicles owned by Rieth-Riley Construction (Rieth-Riley) should be assessed in Concord Township, Elkhart County.

26. At the hearing, the respondent moved that the case be dismissed because the petitioner failed to state a prima facie case. Rieth-Riley's Motion to Dismiss is denied. The State will analyze the evidence in this case in its entirety to form the basis of the conclusions that follow.

27. No law or instruction on the personal property return requires a taxpayer to file a listing of vehicles located in other taxing districts with its return.
28. Upon receipt of a personal property return, however, a township assessor may, for some reason, question the accuracy of the return. When this is the case, the township assessor is well within his rights to question the taxpayer, request additional evidence to support the return, and even examine the taxpayer's books and records. 50 IAC 4.2-3-1.
29. Rieth-Riley may consider it an inconvenience or a nuisance to provide a listing of vehicles and respective locations to Concord Township each year. However, some may consider it a disservice to other taxpayers in Concord Township if Mr. Price has knowledge of vehicles licensed in his township and makes no attempt to determine the tax situs of these vehicles. While Rieth-Riley asserts that it has provided this evidence in previous years, it also submitted testimony stating that construction jobs and sites are constantly changing. It is reasonable to suggest, then, that the locations of the vehicles in question are constantly changing. The tax situs of these vehicles in 1996 or 1997 is irrelevant to the March 1, 1998 assessment date.
30. Mr. Price's request for the actual tax situs of these vehicles at March 1, 1998 was a reasonable request.
31. Concord Township's assertion that the County Board of Review, or County Assessor, had no authority to take control and act on Rieth-Riley's Form 130/PP petition, however, is contrary to law. The County Board was clearly acting within the authority granted to it by Ind. Code § 6-1.1-15-1 and -2.1 when it reviewed Rieth-Riley's Form 130/PP and reduced the assessment back to \$92,020.
32. The petitioner, whether that petitioner is the taxpayer or the township assessor, must prove that the decision of the County Board is incorrect to prevail in the appeal. In the case at bar, Concord Township's burden of proof is two-fold. First, it must prove that the vehicles in question are located in Concord Township. Second, it must prove that the value it placed on these vehicles is reasonable.

33. Concord Township clearly failed to meet either prong of its burden of proof. Concord Township submitted no evidence concerning the tax situs of these vehicles.
34. In the case at bar, Rieth-Riley provided a listing of vehicles and respective locations at hearing. This listing did not prove Concord Township's case, but, in fact, disproved it. Therefore, there is no change in the assessment as a result of this issue. The assessed value determined by the County Board of Review is sustained.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2003.

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.