

REPRESENTATIVE FOR PETITIONER: Robert E. Horner, Pro se

REPRESENTATIVES FOR RESPONDENT: John R. Scott, Portage Township Assessor; Kathryn L. Cochran, Deputy Township Assessor; Lindy Wilson, Deputy County Assessor; and Janine A. Chrisman, member of the Porter County Property Tax Assessment Board of Appeals.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

ROBERT E. HORNER)	
)	
Petitioner)	Petition No.: 64-016-02-1-7-00004
)	County: Porter
v.)	Township: Portage
)	Property Parcel No.: Personal property
)	Assessment Year: 2002
PORTAGE TOWNSHIP)	
ASSESSOR)	
)	
Respondent)	
)	

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

May 13, 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. The issue presented for consideration by the Board was:

Whether the assessed value of the motor home is correct.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, Robert E. Horner (the Petitioner) filed a Form 131 petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on August 15, 2002. The determination of the Porter County Property Tax Assessment Board of Appeals (PTABOA) was issued on August 1, 2002.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on November 14, 2002 at the Porter County Administration Center, Valparaiso, Indiana before Ellen Yuhan, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

4. The following persons were present at the hearing:

For the Petitioner:

Robert E. Horner, Taxpayer

For the Respondent:

John R. Scott, Portage Township Assessor;

Kathryn L. Cochran, Deputy Township Assessor;

Lindy Wilson, Deputy County Assessor; and

Janine A. Chrisman, PTABOA member

5. The following persons were sworn in as witnesses:

For the Petitioner:

Robert E. Horner, Taxpayer

For the Respondent:

John R. Scott, Portage Township Assessor;

Kathryn L. Cochran, Deputy Township Assessor;

Lindy Wilson, Deputy County Assessor; and

Janine A. Chrisman, PTABOA member

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1- Recapitulation of petition presented to the Board, with four (4) pages from log and maintenance records to support the mileage on the subject recreational vehicle.

For the Respondent:

No exhibits were presented.

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

Board's Exhibit A- Form 131 petition with attachments

Board's Exhibit B- Notice of Hearing on Petition

8. The personal property is a 1994 Pace Arrow motor home owned by Mr. Horner whose address is 5573 Birch Avenue, Portage, Portage Township, Porter County. The assessed value for 2002 is \$29,080.

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 houses, 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 assessed value of the motor home is correct.*

20. The Petitioner contended vehicle should be assessed using the value contained in the *National Automobile Dealers Association (NADA)* valuation guide for recreational vehicles. He further contended that the value of the motor home should be adjusted to reflect the adjustment for mileage as shown in this publication.
21. The Respondent contended the motor home is properly assessed using the *Recreational Vehicle Blue Book* as stated in the statutes.
22. The applicable rules governing this Issue are:

50 IAC 4.3-14-1(b)

The types of property to be valued under this rule will usually be owned by an individual not engaged in business and are reportable on Form 101. The assessor is required to verify the true tax value of such property by the taxpayer.

50 IAC 4.3-14-1(c)

A taxpayer may report applicable values established by such nationally recognized publications as the "Recreational Vehicle and Van Conversion Blue Book", published by National Marketing Reports, for valuing these types of property. Applicable values consistent with, or supported by, the data reflected in the edition of such a nationally

recognized publication, that is in effect on March 1 of the year in which the assessment is made, will be deemed appropriate.

50 IAC 4.3-14-1(d)

The “As is” value as listed in such a publication shall be the basis for valuation. If no “As is” value is listed, the retail or market value shall be used.

Department of Local Government Finance Memorandum dated June 3, 2002

In order that all recreational vehicles and equipment are assessed in a uniform manner and in conformity with the intent of the rule, the memorandum clarifies that taxpayers may report, and assessors should use, the average wholesale value as stated in the 2002 Blue Book in valuing these types of properties.

Indiana Constitution, Article 10, section 1(a)

The General Assembly shall provide by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property, both real and personal.

23. Evidence and testimony considered particularly relevant to this determination include the following:
- (a) The Petitioner contended that NADA publishes a national valuation book for recreational vehicles. This publication values the motor home at \$260 less than the publication used by the assessing officials. The NADA publication also provides for a 23% deduction (in value) for a 1994 motor home with 95,001 to 100,000 miles. The dealers first take the value out of the book, then deduct for mileage and then they look at condition. *Horner Testimony & Board’s Exhibit A attachments.*
 - (b) The administrative code, 50 IAC 4.3-14-1(c), provides for the taxpayer to report values established by other nationally recognized publications. *Horner Testimony & Petitioner’s Exhibit 1.*

- (c) The Indiana Code does not prohibit an adjustment based on mileage. *Horner Testimony & Petitioner's Exhibit 1.*
- (d) The Respondent testified that the motor home is assessed according to the statutes using the *Recreational Vehicle Blue Book*. Mileage is not a factor in assessing motor homes. There are no guidelines for the mileage depreciation of motor homes. Furthermore, there is no provision for a mileage deduction on the Form 101, Individual's Tangible Personal Property Assessment Return. *Scott, Chrisman and Cochran Testimonies.*

Analysis of the Issue

ISSUE: *Whether the assessed value of the motor home is correct.*

24. The Petitioner makes two arguments in support of his position: (1) He is permitted to introduce evidence from any nationally recognized publication to establish the assessed value of his vehicle, and (2) the value should be reduced by an adjustment for mileage depreciation.
25. The Board will examine each of these arguments separately.

Whether any nationally recognized publication may be used to establish the assessed value of the recreational vehicle.

26. The Petitioner contended that taxpayers are permitted to report values established by any nationally recognized publication. In this appeal, the Petitioner uses the NADA guide that lists a lower value than the 2002 Recreational Vehicle & Van Conversion Blue Book used by the assessor.
27. There are two relevant documents addressing the assessment of recreational vehicles.

28. The first relevant document is 50 IAC 4.3, the Personal Property Rule in effect on March 1, 2002. Specifically, 50 IAC 4.3-14-1 (Prescribed Methods of Valuation; Specific Types of Property) addresses the assessment of recreational vehicles.
29. The second relevant document is a memorandum titled “Valuation of Recreational Vehicles & Equipment,” issued on June 3, 2002, by the Department of Local Government Finance (DLGF) (Memorandum). The expressed purpose of this document is stated as follows: “Therefore, in order that all recreational vehicles and equipment are assessed in a uniform manner and in conformity with the intent of the rule this memorandum clarifies that taxpayers may report, and assessors should use, the average wholesale value as stated in the 2002 [Recreational Vehicle & Van Conversion] Blue Book in valuing these types of property. 50 IAC 4.3-14-1(c). If there is no average wholesale value stated for a particular item, then use the market or retail value.”
30. When assessing recreational vehicles, neither of these documents can be read in isolation; the instructions contained in both documents must be considered.
31. The Petitioner’s argument is based upon 50 IAC 4.3-14-1(c), which states: “A taxpayer may report applicable values established by such nationally recognized publications as the ‘Recreational Vehicle & Van Conversion Blue Book,’ published by National Marketing Reports, for valuing these types of property. Applicable values consistent with, or supported by, the data reflected in the edition of such a nationally recognized publication, that is in effect on March 1 of the year in which the assessment is made, will be deemed appropriate.”
32. The Petitioner argued that he had met his burden by presenting evidence of an alternative average value from a nationally recognized publication that differed from the assessed value.
33. Under the Petitioner’s proposed interpretation of 50 IAC 4.3-14-1(c), the assessed value of recreational vehicles would be dependent only upon the lowest value that an individual

taxpayer could locate in any one of a multitude of national publications. Identical properties, therefore, could be assessed differently.

34. For example, assume ten taxpayers each own an identical recreational vehicle. Each Petitioner offers a different nationally recognized publication, each containing a different average value. Under such a scenario, the ten identical recreational vehicles would then be assessed at ten different values.
35. Both the Tax Court and the Indiana Supreme Court have expressly rejected the result espoused by the Petitioner. Similarly situated properties must not receive disparate tax treatment during the assessment process. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034 (Ind. 1998) (*Town of St. John V*).¹
36. Because the Petitioner's contention leads to a result contrary to both current case law and the Indiana Constitution, the Board will examine the two relevant documents for an alternative interpretation. If there are two reasonable interpretations of a statute, one of which is constitutional and the other not, the constitutional interpretation must be followed. *Boehm v. Town of St. John*, 675 N.E.2d 318, 321 (Ind. 1996).
37. As discussed, the Memorandum was issued to clarify 50 IAC 4.3-14-1 and promote an assessment "in a uniform manner and in conformity with the intent of the rule."
38. The plain language of the Memorandum is clear. Assessors "should use the average wholesale value as stated in the 2002 [Recreational Vehicle & Van Conversion] Blue Book in valuing these types of property [recreational vehicles and equipment]."
39. "Administrative decisions must...be based on ascertainable standards in order to be fair and consistent rather than arbitrary and capricious." *State Board of Tax Commissioners v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1264 (Ind. 2002).
By unequivocally stating the basis for assessing recreational vehicles and equipment, the

¹ The Board recognizes that *Town of St. John V* addressed only real property assessments. However, the Board concludes that the same Constitutional principles apply equally to assessments of personal property.

DLGF has created an ascertainable standard necessary to support fair and consistent assessments.

40. However, the average wholesale value as stated in the 2002 Recreational Vehicle & Van Conversion Blue Book is not necessarily conclusive evidence of the value of an individual property.
41. As the preface to the 2002 Recreational Vehicle & Van Conversion Blue Book acknowledges, the values contained in its pricing guides are representative averages. (Board's Exhibit A, Attachment to the Form 131 petition, Exhibit 4).
42. As the Petitioner correctly asserts, 50 IAC 4.3-14-1 specifically allows a taxpayer to offer evidence of value contained in any nationally recognized publication.²
43. Obviously, different publications will arrive at varying average values as a result of different survey techniques and sample groups. For the evidence to be probative of error, the Petitioner must present evidence that is more credible than merely an alternative "average" value.
44. Specifically, the Petitioner must demonstrate that the value contained in the proffered publication is a more credible indication of value, for the individual property under appeal, than the average value contained in the 2002 Recreational Vehicle & Van Conversion Blue Book.
45. For example, nationally recognized publications identifying regional, statewide, or local property values may be found to be more credible than a national average.

² The statute indicates that such evidence is "appropriate." It does not indicate such values are necessarily controlling. *Cf. Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099, 1105, n. 11 (Ind. Tax 1999) (the "Court is only determining what is relevant, not what is controlling.").

46. Additionally, the value contained in the 2002 Recreational Vehicle & Van Conversion Blue Book could be challenged through the use of a credible appraisal of the property under appeal or a sales invoice with the sale price adjusted to the assessment date. Further, the “three approaches to value [the cost approach, the sales comparison approach, and the income approach] may all be applied to personal property, given availability of data.” International Association of Assessing Officers (IAAO) Property Assessment Valuation, 360 (2nd ed. 1996).
47. Summarizing, the Memorandum instructs the assessor to use the 2002 Recreational Vehicle & Van Conversion Blue Book as the basis for the assessment of recreational vehicles and equipment. This creates an ascertainable standard based on market data. As discussed, the values contained in the Blue Book consist of representative averages. The Petitioner is therefore entitled to submit evidence from other nationally recognized publications establishing that the value of the individual property under appeal differs from these averages. Mere alternative “average” values, however, are not probative evidence of error. Probative evidence may also include appraisals, sales invoices, and use of the three generally recognized approaches to value.³
48. Such a process of review creates the ascertainable standard required by the Indiana Constitution but also allows the Petitioner to present any evidence of the value of his individual property, rather than being bound to an assessment based on “averages.”

Whether depreciation adjustments should be made to the “As is” value.

49. The Petitioner also contended that the assessment of the motor home should reflect an adjustment for mileage depreciation as shown in the NADA valuation book. The Petitioner further contended that the Indiana Code does not prohibit such an adjustment.

³ These examples are not intended to be all-inclusive of evidence relevant to the determination of the value of specific properties. Further, the introduction of this type of evidence should not be construed as being necessarily dispositive of any issue. The Board is obviously required to consider all evidence presented by the parties during an administrative hearing.

50. Depreciation may be defined as “the loss in value, from all causes, of property having a limited economic life.” IAAO Property Assessment Valuation, 153 (2nd ed. 1996).
51. The procedure for assessing recreational vehicles is explained in 50 IAC 4.3-14-1: “The ‘As is’ value as listed in such a publication shall be the basis for valuations. If no ‘As is’ value is listed, the retail or market value shall be used.” 50 IAC 4.3-14-1(d).⁴
52. Further, “In the event a particular make or model is not included in any such nationally recognized publication, or on a list of unit valuations issued by the state board, such personal property shall be valued at its true tax value. The true tax value shall be the cost less a reasonable allowance for depreciation.” 50 IAC 4.3-14-1(e).
53. Summarizing, the three steps in the assessment process are clearly defined for the assessor:
- a. First, if available, the assessor must use the “As is” value;
 - b. Second, if there is no “As is” value listed, the assessor must then use the retail or market value;
 - c. Third, if no “As is”, retail, or market values are available, the assessor must then use the cost of the vehicle less a reasonable allowance for depreciation.
54. The Regulation therefore identifies four different values that potentially may be used to assess recreational vehicles: “As is” value; retail value; market value; and cost. Depreciation is expressly authorized only when using the cost of the vehicle. An adjustment for depreciation is not authorized when using any of the other three methods.

⁴ As explained in the Memorandum, “When the rule was proposed and as of the date it was finally adopted, the Blue Book had used the term “as-is value” for many years”. The 2002 Blue Book, however, dropped the use of the term “as-is” and replaced it with average wholesale value. The definitions are otherwise identical...” As defined in the Memorandum, the 2002 average wholesale (“As is”) value is “Considered the trade in or wholesale value of a unit in average salable condition. Direct consumer-to-consumer sales generally sale between as-is and average retail values.”

55. The personal property rule, 50 IAC 4.3, contains several examples of permissible adjustments. For example:
- a. Adjustments to cost, 50 IAC 4.3-4-5;
 - b. Adjustment for abnormal obsolescence, 50 IAC 4.3-4-9;
 - c. Mandatory adjustments, 50 IAC 4.3-5-4;
 - d. Abnormal obsolescence adjustment, 50 IAC 4.3-5-9; and
 - e. Abnormal obsolescence adjustment, 50 IAC 4.3-8-9.
56. It is just as important to recognize what a statute does not say as it is to recognize what a statute does say. *Peele v. Gillespie*, 658 N.E. 2d 954 (Ind. App. 1995); *Million v. State*, 646 N.E. 2d 998 (Ind. App. 1995).
57. The regulations do not expressly provide that depreciation is to be applied when using the “As is” value from a nationally recognized publication, but expressly provide that depreciation is to be considered when using cost to assess a particular make or model that is not included in any such nationally recognized publication. Clearly, the regulations were drafted with the intent to specifically delineate which situations required the consideration of depreciation. *Cf. Garcia v. State Board of Tax Commissioners*, 694 N.E.2d 794 (Ind. Tax 1998) (reversed on other grounds).
58. Indiana courts have consistently held that a statute does not require interpretation unless a statute is unclear and ambiguous. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189 (Ind. Tax 1997). Unambiguous language within a statute cannot be construed in a manner that expands or limits its function. *Cooper Industries, Inc. v. Indiana Department of State Revenue*, 673 N.E. 2d 1209 (Ind. Tax 1996). Words, unless statutorily defined, are to be given their plain, ordinary, and usual meaning given in the dictionary. *Knauf Fiber Glass, GmbH v. State Board of Tax Commissioners*, 629 N.E. 2d 959 (Ind. Tax 1994).
59. The Board therefore cannot construe the clear language of 50 IAC 4.3-14-1(e) to include a mileage depreciation adjustment to the “As is” value.

60. Summarizing, the Petitioner has failed to establish that the averages contained in the NADA publication are more credible than the value determined by the assessor. Further, the plain language of 50 IAC 4.3-14-1(e) prohibits the type of mileage depreciation adjustment sought by the Petitioner.
61. For all the reasons above, the Petitioner failed to meet his burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

Summary of Final Determination

Determination of Issue: *Whether the assessed value of the motor home is correct.*

62. The Petitioner did not meet his burden in this appeal. Accordingly, there is no change in the assessment.

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.