

REPRESENTATIVES FOR PETITIONER: Mr. Steve Peck

REPRESENTATIVES FOR RESPONDENT: Ms. Tara Acton

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

| | | |
|--------------------------------|---|-----------------------------------|
| Steve's Auto Sales, Petitioner |) | Petition for Review of Assessment |
| |) | Form 131 |
| |) | |
| |) | Petition No.: 49-930-01-1-7-00497 |
| |) | County: Marion |
| v. |) | |
| |) | Township: Wayne |
| |) | |
| Wayne Township, Respondent |) | Parcel No.: Personal Property |
| |) | |
| |) | Assessment Year: 2001 |
| |) | |

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

January 30, 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 were:
ISSUE 1 – *Whether the assessed value of the subject personal property is correct.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, Mr. Steve Peck (Petitioner) filed a Form 131 petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on September 24, 2002. The determination of the Marion County Property Tax Assessment Board of Appeals (PTABOA) is dated August 23, 2002

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was scheduled for December 17, 2002 at 2:00 P.M. in Indianapolis, Indiana. Notice of said hearing (Board Ex. B) was mailed to Mr. Peck at the address listed on the petition. Notice of said hearing was mailed on November 14, 2002 (Board Ex. C).
4. On December 17, 2002, Administrative Law Judge Paul Stultz was present to conduct an administrative hearing on the Form 131 petition. Ms. Tara Acton, deputy assessor, appeared to represent Wayne Township. The Petitioner failed to appear at the scheduled hearing. Therefore, no hearing was held.
5. The Petitioner did not contact the Board or the Administrative Law Judge prior to the scheduled hearing date and did not request a continuance of the hearing.
6. The Administrative Law Judge verified that notices of hearing were mailed, with proof of mailing (Board Ex. C), and verified that the notices were not returned to the Board as not deliverable.

7. The Form 131 petition was made a part of the record and labeled as Board Exhibit A. Notice of Hearing on Petition is labeled as Board Exhibit B, and proof of mailing receipt as Board Ex. C.

Jurisdictional Framework

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

State Review and Petitioner's Burden

10. 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).
11. 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.]
12. 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.]

13. 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 Issue

14. The petitioner failed to appear at the administrative hearing and present evidence in support of the alleged errors in the assessment. The petitioner did not establish a ‘prima facie case’. The Form 131 petition is denied.

Summary of Final Determination

15. The Form 131 is denied for the failure of the petitioner to appear at the administrative hearing and present evidence in support of the alleged errors in the assessment. No change is to be made in the assessment as a result of this issue.

This Final Determination of the above captioned matter is issued this 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.