

REPRESENTATIVE FOR PETITIONER:

Dustin Connors, *pro se*

REPRESENTATIVES FOR RESPONDENT:

Kelly Balensiefer, Benton County Assessor

Paula Stillabower, Benton County Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Dustin Connors,	)	Petition Nos.:	04-002-13-1-8-00001
	)		04-002-13-1-8-00002
Petitioner,	)		04-002-13-1-8-00003
	)		04-002-13-1-8-00004
	)		04-002-13-1-8-00005
	)		04-002-13-1-8-00006
	)		04-002-13-1-8-00007
	)		04-002-13-1-8-00008
	)		04-002-13-1-8-00009
)		
	)	Parcel Nos.:	04-402-00002-00
	)		04-402-00003-00
	)		04-402-00004-00
	)		04-402-00008-00
	)		04-402-00011-00
	)		04-402-00017-00
Benton County Assessor,	)		04-402-00027-00
	)		04-402-00050-00
Respondent.	)		04-402-00051-00
)		
	)	County:	Benton
)		
	)	Township:	Bolivar
)		
	)	Assessment Year:	2013

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

AUGUST 26, 2014

FINAL DETERMINATION

The Indiana Board of Tax Review (the “Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

INTRODUCTION

The Benton County Property Tax Assessment Board of Appeals (the “PTABOA”) issued notices of hearing with regard to each of nine assessment appeals filed by the Petitioner. The Petitioner failed to appear on the hearing date as specified by the notices due to a personal emergency. The PTABOA subsequently assessed nine separate statutorily prescribed penalties against the Petitioner for failure to appear. The Board finds that the Petitioner should only be subject to one such penalty.

PROCEDURAL HISTORY

1. The parcels at issue are nine mobile homes located in a mobile home park in Otterbein.
2. The Petitioner timely initiated assessment appeals with regard to each of the nine parcels for 2013.
3. On August 15, 2013, the PTABOA issued notices of hearing (on Forms 114) for each of the nine parcels. The notices indicated that each hearing for each of the nine parcels would be held at 10:30 a.m. on September 18, 2013. The record reflects that the United States Postal Service confirmed, and that the Petitioner acknowledged, the delivery of the notices.
4. The Petitioner did not appear at the hearing on the date as indicated by the notices. On September 20, 2013, the PTABOA issued notifications of final determination (on Forms 115) with regard to the nine parcels. On September 26, 2013, the Respondent issued an

invoice assessing a \$50 penalty with regard to each of the nine petitions because the Petitioner did not appear pursuant to the notices. The invoice total was \$450.

5. On October 25, 2013, the Petitioner filed Forms 131 with the Board seeking relief from the penalties assessed for each of the nine parcels.¹
6. The Board's administrative law judge, Ellen Yuhan, held a hearing on May 28, 2014.
7. Dustin Connors, the Petitioner, was sworn as a witness. Kelly Balensiefer, the Benton County Assessor, and Paula Stillabower, the Benton County Deputy Assessor, were sworn as witnesses for the Respondent.
8. The Petitioner presented no exhibits.
9. The Respondent presented the following exhibits:
 - Respondent Exhibit A – United States Postal Service confirmation of delivery of the Forms 114
 - Respondent Exhibit A1 – Forms 114 for each of the nine parcels
 - Respondent Exhibit B – Note with regard to the results of the PTABOA hearing
 - Respondent Exhibit B1 – Forms 115 for each of the nine parcels
 - Respondent Exhibit B2 – Penalty invoice
10. The following items are also recognized as part of the record:
 - Board Exhibit A – Forms 131 for each of the nine parcels
 - Board Exhibit B – Board notices of hearing for each of the nine parcels
 - Board Exhibit C – Hearing sign-in sheet

PETITIONER'S CONTENTIONS

11. The Petitioner testified that he was unable to appear at the hearing because of a personal emergency. He does not dispute the fact that he did not appear at the hearing, the associated penalty or its application. He also does not dispute that he received notice of

¹ On the first page of each of the Forms 131, the Petitioner checked the box indicating that the parcels under appeal are real property. In fact, the parcels under appeal are mobile homes which are defined as personal property pursuant to Ind. Code § 6-1.1-1-11.

the penalty as described on the Forms 114. He does, however, request leniency regarding the imposition of the penalty. *Petitioner testimony.*²

RESPONDENT'S CONTENTIONS

12. According to the Respondent, the Petitioner received notices of hearing on August 19, 2013. Consequently, the Respondent contends, since the Petitioner did not appear pursuant to the notices, he should be assessed a \$50 penalty for each of the nine petitions. *Respondent testimony; Respondent Exhibits A, A1, B, B1 and B2.*

ANALYSIS

13. Ind. Code § 6-1.1-15-1(l) provides that:

A penalty of fifty dollars (\$50) shall be assessed against the taxpayer if the taxpayer or representative fails to appear at the hearing under subsection (k), the taxpayer's request for continuance is denied, or the taxpayer's request for continuance, request for the board to take action without the taxpayer being present, or withdrawal is not timely filed. A taxpayer may appeal the assessment to the Indiana Board or directly to the tax court.

14. While the Respondent acted within her statutory authority in assessing the penalty, as discussed previously, Ind. Code § 6-1.1-15-1(l) states that the penalty shall be assessed if the taxpayer "fails to appear at *the hearing . . .*" (emphasis added). On the Forms 114, the PTABOA scheduled one hearing time for all nine of the petitions, not nine distinct hearing times for each petition.
15. Since the PTABOA scheduled one hearing for which the Petitioner failed to appear, and not nine separate hearings, the Board finds the Petitioner should only be assessed one penalty under the statute.

² The Petitioner assumed the assessed values of the mobile homes would also be at issue during the Board hearing since the penalties stemmed from his appeal of those assessments. However, he did not raise the assessed values as issues on the Forms 131. Pursuant to the hearing instructions accompanying the Board's notice of hearing sent to the Petitioner, in small claims matters the Board will only consider the issues raised on the petition.

SUMMARY OF FINAL DETERMINATION

16. In accordance with the above findings, the Board finds the total penalty assessed against the Petitioner should be reduced from \$450 to \$50.

The Final Determination of the above-captioned matter is issued by the Board on the date written above.

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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.