
**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Raymond Duensing, Sr.,)	Petition No.: 45-036-05-1-7-00001
)	Personal property: #22-200604
Petitioner,)	
)	
v.)	
)	County: Lake
St. John Township Assessor,)	Township: St. John
)	
Respondent.)	Assessment Year: 2005

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

October 8, 2008

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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the Petitioners' recreational vehicle should be assessed in Indiana as personal property in 2005 despite the vehicle's use and location in Nevada because the vehicle was licensed

in Indiana for the tax year at issue and the Petitioner maintains a residence with a homestead exemption in the state.

PROCEDURAL HISTORY

2. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued its determination upholding the St. John Township Assessor's 2005 assessment of the subject property on December 29, 2006.
3. Pursuant to Ind. Code § 6-1.1-15-1, the Petitioner filed a Form 131 Petition for Review of Assessment on January 30, 2007, petitioning the Board to conduct an administrative review of the subject property's 2005 assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on July 10, 2008, in Crown Point, Indiana.
5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner: Raymond Duensing, Taxpayer,¹

For the Respondent: Hank Adams, St. John Township Assessor,
Betty Wilusz, Deputy Assessor, St. John Township.

6. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Nevada Driver's License

¹ Mrs. Duensing was present at the hearing but was not sworn to give testimony.

7. The Respondent presented the following exhibits:

Respondent Exhibit 1 – Form 130 petition,
Respondent Exhibit 2 – Form 131 petition,
Respondent Exhibit 3 – Letter and 50 IAC 4.2-2-1,
Respondent Exhibit 4 – List of PTABOA denials,
Respondent Exhibit 5 – Questions and answers regarding
RV assessments, 50 IAC 4.2-1-5,
50 IAC 4.2-15-2,
Respondent Exhibit 6 – Form 113 and reason for denial of
Form 130,
Respondent Exhibit 7– List of vehicles from the BMV,
Respondent Exhibit 8 – Personal property maintenance
report,
Respondent Exhibit 9 – Real property maintenance report.

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing dated June 5, 2008,
Board Exhibit C – Sign-in sheet.

9. The subject property is a recreational vehicle located in Nevada.

10. The ALJ did not conduct an on-site inspection of the subject property.

11. For 2005, the PTABOA determined the assessed value of the personal property to be \$7,840.

12. The Petitioner contends the recreational vehicle should not be assessed in Indiana.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination

by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. See Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

14. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would be. See *Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); see also, *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
15. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. See *Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
16. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. See *American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

FACTS AND CONTENTIONS

17. The Petitioner presented the following evidence in support of his contentions:

- A. The Petitioner contends the subject property has never been in Indiana on any March 1 assessment date. *Duensing testimony*. According to the Petitioner, he purchased the recreational vehicle in June 2004. *Id.* The Petitioner admits that he purchased plates for the RV, but argues that he purchased the plates to tow the vehicle out of state. *Id.* According to Mr. Duensing, the RV was out of Indiana by July 2004 and has not been in the state since. *Id.*
- B. The Petitioner also contends that, pursuant to 50 IAC 4-2-2-1(c), he is not required to file a personal property return because he is not a resident of Indiana. *Duensing testimony*. According to the Petitioner, he has a home in Indiana that is his principal place of residence when he is in Indiana, but he is a resident of Nevada. *Id.* In support of this the Petitioner submitted a Nevada driver's license to prove residency in that state. *Petitioner Exhibit 1*.
- C. In response to the Respondent's arguments, the Petitioner contends that the Respondent is incorrect that maintaining a homestead exemption on a property makes a person a resident of Indiana. *Duensing testimony*. According to Mr. Duensing, a "homestead" is an individual's principle place of residence in Indiana. *Id.* Although Mr. Duensing contends he is a resident of the state of Nevada, he argues that the homestead exemption on the house in St. John is proper because it is his principle place of residence when he is in the state of Indiana. *Id.*
18. The Respondent contends that the subject property is properly assessed and presented the following evidence in support of their contentions:
- A. The Respondent contends the policy of the State Tax Board (now the Department of Local Government Finance or DLGF) is to assess RVs if they are licensed in Indiana because licensing is a statement of legal residence. *Adams testimony; Respondent Exhibit 5*. According to the Respondent, it is the position of the DLGF to tax vehicles if they are licensed in Indiana, even if

they are not in the state on March 1 or are out of the state for 6 months of the year. *Id.*

- B. The Respondent did not dispute that the Petitioner lives in Nevada, but contends that the Petitioner is a resident of Indiana because he has a home in Indiana and a homestead exemption for 2005. *Adams testimony.* According to the Respondent, a taxpayer cannot claim a homestead exemption if the taxpayer is a resident of another state. *Id.*

ANALYSIS

19. Indiana's personal property is a self-assessment system. Every person 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. 50 IAC 4.2-2-2. "Except as otherwise provided by law, all tangible property which is within the jurisdiction of this state on the assessment date of a year is subject to assessment and taxation for that year." Ind. Code § 6-1.1-2-1.
20. Here, the Petitioner claims he had no obligation to file a personal property tax report because he is a resident of Nevada and the recreational vehicle at issue is physically located in Nevada. *Duensing testimony.* Mr. Duensing testified that he primarily lives in Nevada. *Id.* Further, he is licensed in Nevada and is registered to vote in that state. *Id.; Petitioner Exhibit 1.* According to Mr. Duensing, he purchased the vehicle in June 2004 and transported it out of state in July 2004. *Id.* Therefore, the property was not in Indiana on the March 1, 2005, assessment date and, in fact, was not situated in Indiana for any part of that year. *Id.*
21. The Respondent did not dispute the Petitioner's claim that the property was not in Indiana on the assessment date, but argues that the Petitioner is a resident of Indiana because he claimed a homestead exemption on his property in Crown

Point, Indiana, and licensed the vehicle in Indiana. According to the Respondent, the Petitioner is responsible for the personal property taxes because the license plate expired after March 1.

22. The undisputed evidence shows that the recreational vehicle was not in Indiana on the assessment date. Nor was the vehicle regularly used in Indiana during the assessment year at issue. “Personal property shall be assessed at the place where it is situated on the assessment date of the year for which the assessment is made if the property is[] regularly used or permanently located where it is situated...” Ind. Code § 6-1.1-3-1(c). The weight of the evidence supports the Petitioner’s claim in this case. The vehicle was not within the jurisdiction of the state of Indiana for the March 1, 2005, assessment date and therefore cannot be assessed as personal property by the Respondent.

SUMMARY OF FINAL DETERMINATION

25. The Petitioner’s recreational vehicle is not assessable as personal property in Indiana. The Board finds in favor of the Petitioner.

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

Commissioner, Indiana Board of Tax Review

Commissioner, 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 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 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/bills/2007/SE0287.1.html>.