

REPRESENTATIVES FOR PETITIONER: Christopher K. Thayer

REPRESENTATIVES FOR RESPONDENT: None

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

CHRISTOPHER K. THAYER,	)	Petition Nos.: 70-010-00-3-4-10001
	)	70-010-01-3-4-00001
	)	70-011-00-3-4-00002
Petitioner	)	70-011-01-3-4-00002
	)	
	)	County: Rush
	)	
v.	)	Township: Rushville
	)	
	)	Parcel Nos.: 0107239700
RUSH TOWNSHIP ASSESSOR,	)	0110105600
	)	
Respondent	)	Assessment Year(s): 2000 & 2001
	)	

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

**January 17, 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 is:  
*Whether the subject mobile homes should be assessed as real property.*

### Background of Administrative Appeal

2. Pursuant to Ind. Code § 6-1.1-15-12, Christopher K. Thayer (Petitioner) filed Form 133s with the Rush County Auditor on July 2, 2002 disagreeing with the assessment of his mobile homes as real property. On July 9, 2002 the Property Tax Assessment Board of Appeals (PTABOA) denied the Petitioner's Form 133 petitions. The PTABOA's decisions were sent to the Petitioner on July 26, 2002. The Petitioner upon receipt of the PTABOA decisions requested a review of the PTABOA's determinations by the Board on August 26, 2002. The Form 133 petitions were subsequently forwarded to the Board on August 30, 2002.
3. On August 30, 2002 the Board received the Form 133 petitions. These petitions were reviewed, defected and returned to the Petitioner on September 26, 2002 for the following reasons:
  - a. The personal property tax reduction credits provided by Ind. Code § 6-1.1-20.5 apply only to personal property. The mobile homes in question are assessed as real property. Mobile homes assessed as real property do not qualify for personal property tax reduction credits.
  - b. Pursuant to 50 IAC 2.2-8-1(9), a mobile home shall be assessed as real property if it meets one (1) of the following requirements:
    - (1) located on land owned by the home owner
    - (2) located on a permanent foundation
4. Per the Notice of Defect, the Petitioner was given until October 28, 2002 to correct said defects. The Petitioner returned the Form 133 petitions in the allotted time frame.

5. The following exhibits are officially recognized as part of the record of proceedings:

For the Petitioner:

- Petitioner's Exhibit 1 – Petitioner's brief
- Petitioner's Exhibit 2 – Newspaper article property tax credit
- Petitioner's Exhibit 3 – Copy of IC 6-1.1-7
- Petitioner's Exhibit 4 – Copy of IC 6-1.1-20.5
- Petitioner's Exhibit 5 – Copy of 50 IAC 3.1
- Petitioner's Exhibit 6 – Response to Notice of Defect

For the Board:

- Board's Exhibit A – Form 133 petitions
- Board's Exhibit B - Notices of Defect
- Board's Exhibit B – Memorandum dated November 28, 1995

6. The subject properties are located at:

Parcel No. 0107239700 - 450 E US Highway 52, Rushville, Rushville Township, Rush  
County

Parcel No. 0110105600 – 125 S. Harrison Street, Rushville, Rushville Township, Rush  
County

7. No on-site inspection of the subject properties was made.

### **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 § 6-1.1-15-12.

## Indiana's Property Tax System

10. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
11. Indiana has established a mass assessment system through statutes and regulations designed to assess property according to what is termed “True Tax Value.” See Ind. Code § 6-1.1-31, and 50 Ind. Admin. Code 2.2.
12. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
13. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property’s market value. See *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. Tax 1998)(*Town of St. John V*).
14. The Indiana Supreme Court has said that the Indiana Constitution “does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each individual assessment”, nor does it “mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant”, but that the proper inquiry in tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” See *Town of St. John V*, 702 N.E. 2d at 1039 - 40.
15. Although the Supreme Court in the *St. John* case did declare the cost tables and certain subjective elements of the State’s regulations constitutionally infirm, it went on to make clear that assessment and appeals must continue to be determined under the existing rules until new regulations are in effect.
16. New assessment regulations have been promulgated, but are not effective for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

## State Review and Petitioner's Burden

17. 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 Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
18. 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 Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
19. 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 Board of Tax Commissioners*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
20. 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 Board of Tax Commissioners*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
21. 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 Board of Tax Commissioners 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).

22. 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 Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 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**

#### *Whether the subject mobile homes should be assessed as real property.*

23. The Petitioner contends that the property tax credit, which became law in 1999, applies to the mobile homes he owns and that the mobile homes should be assessed as personal property and not as real property.
24. The Respondent contends that the mobile homes were being valued as real estate prior to the Petitioner purchasing the subject property in May 1999. Since the owner of the real estate (Petitioner) also owns the mobile homes the request for property tax credit was denied.
25. The applicable rule(s) governing this Issue 1 is (are):
- Ind. Code 6-1.1-20.5** Personal Property Tax Reduction Credit
  - Ind. Code 6-1.1-20.5-1** “Personal property” defined
  - Sec. 1. As used in this chapter, “personal property” includes personal property as defined in IC 6-1.1-1-11 and personal property assessed under IC 6-1.1-7.

## **Ind. Code § 6-1.1-7 Taxation of Mobile Homes**

### **Ind. Code § 6-1.1-1-11 “Personal property” defined**

Sec. 11. (a) Subject to the limitation contained in subsection (b), “personal property” means:

- (1) nursery stock that has been severed from the ground;
- (2) florists’ stock of growing crops which are ready for sale as pot plants on benches;
- (3) billboards and other advertising devices which are located on real property that is not owned by the owner of the devices;
- (4) motor vehicles, mobile houses, airplanes, boats not subject to the boat excise tax under IC 6-6-11, and trailers not subject to the trailer tax under IC 6-6-5;
- (5) foundations (other than foundations which support a building or structure) on which machinery or equipment is installed; and
- (6) all other tangible property (other than real property) which is being:
  - (A) held for sale 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.

(b) Personal property does not include commercially planted and growing crops while they are in the ground.

### **50 IAC 3.1-1-4(b)**

A mobile home in which the owner resides shall be assessed as real property under 50 IAC 2.1 if the mobile home:

- (1) is located on the land owned by the owner of the mobile home; or
- (2) is located on a permanent foundation even if the land under the mobile home is owned by someone other than the owner of the mobile home.

### **50 IAC 2.2-8-1(9)**

“Real property mobile home” means a mobile home that meets one (1) of the following requirements:

- (A) Located on land owned by the home owner.
- (B) Located on a permanent foundation.

## **Analysis of the Issue**

26. The only issue before the Board for review on the Form 133 petitions is one of whether the mobile homes owned by the Petitioner should be valued as personal property and thus be entitled to the personal property tax credit per Ind. Code § 6-1.1-20.5. This tax credit has since been repealed.

27. The Petitioner submits copies of several code cites in support of his position. 50 IAC 3.1-1-4 states, “A mobile home in which the owner resides shall be assessed as real property if the mobile home (1) is located on the land owned by the owner of the mobile home; or (2) is located on a permanent foundation even if the land under the mobile home is owned by someone other than the owner of the mobile home.” The Petitioner emphasizes the fact that he does not reside in the mobile home(s).
28. The Petitioner follows this up by referring to Ind. Code § 6-1.1-1-11 which defines personal property in part under (a)(4), as “motor vehicles, mobile houses, airplanes, boats not subject to the boat excise tax under IC 6-6-11, and trailers not subject to the trailer tax under IC 6-6-5.”
29. The Petitioner then concludes that because he does not reside in the mobile home(s), that the mobile home(s) are not on a permanent foundation and that his property is mobile homes as defined in the cite above, that his property is therefore personal property and entitled to the personal property tax credit.
30. The rules promulgated for the 1989 statewide general reassessment included provisions concerning both real property and mobile homes reassessments. These rules and regulations remained in effect until the subsequent statewide general reassessment in 1995.
31. Another set of rules were promulgated for the 1995 statewide general reassessment that again included provisions for the reassessment of real property and mobile homes. In the case at bar, the tax years under appeal are 2000 and 2001. These tax years fall under the rules and regulations promulgated by the Board for the 1995 statewide general reassessment.
32. 50 IAC 3.1 referred to by the Petitioner was the Mobile Home Assessment Regulation (set of rules) applicable for the 1989 statewide reassessment. The Petitioner is partially correct when he indicates that this regulation is “still on the books today”. A replacement set of rules, referenced as 50 IAC 3.2 were proposed to become 1995 Mobile Home

Assessment Regulation, but were never promulgated. As a consequence, 50 IAC 3.1 (the old rules) were left on the books and remained in part effective. This is reflected in the State Board of Tax Commissioners' memorandum issued in 1995 under the authority of IC 6-1.1-31-5(b)(1). (See Board's Exhibit B.) The memorandum clarifies that:

- a. The Mobile Home cost schedules located within 50 IAC 3.1 or the "1989 Real Property Assessment Manual" are to be used to calculate the reproduction cost of all mobile homes assessed annually for January 15, 1996. The costs for foundations, skirting, central air conditioning, extra plumbing fixtures, and the mobile home manufactured room additions (tip outs, roll outs, and pull outs) should be valued using these same cost schedules. The depreciation table used to depreciate the mobile home reproduction cost is the same table used in 1995.

For supplemental improvements it was decided that:

- a. The cost schedules applicable to calculating the reproduction cost for any supplemental improvements to a mobile home are contained in the cost schedules included in 50 IAC 2.2, the "1995 Real Property Assessment Manual".

33. In summary, the Board decided for the 1995 reassessment of mobile homes to use from the 1989 Mobile Home Assessment Regulation the *pricing schedules* only, to use the 1995 depreciation schedules as well as to use the cost schedules contained in the 1995 Real Property Assessment Manual for supplemental improvements to mobile homes (50 IAC 2.2). Included in 50 IAC 2.2 is that section dealing with the valuation of mobile and manufactured homes (50 IAC 2.2-8).
34. Most critical to this matter is the fact that although certain provisions of 50 IAC 3.1, including 50 IAC 3.1-1-4 cited by the Petitioner, remained on the books, a new definition applicable to mobile homes, was promulgated as 50 IAC 2.2-8-1.
35. 50 IAC 2.2-8-1(9) defines "real property mobile home" to mean a mobile home that meets *one* (1) of the following requirements:
  - (A) Located on land owned by the home owner.

(B) Located on a permanent foundation.

36. The later promulgated 50 IAC 2.2-8-1 controls and effectively supercedes the inconsistent provision cited by the Petitioner. Since 'residing' is not a requirement under 50 IAC 2.2-8-1(9), the Petitioner's claim must fail.

### **Summary of Final Determination**

#### *Whether the subject mobile homes should be assessed as real property.*

37. 50 IAC 2.2-8-1(9) controls this matter and does not require that the owner reside in the mobile home before it can be considered real property.
38. The mobile homes under review in these appeals are owned by the Petitioner and are located on land also owned by the Petitioner. By definition the mobile homes are real property. No change in the assessment is made 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.

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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.**