

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 73-009-05-1-7-00001
Petitioners: Harold and Wilma Weaver
Respondent: Hendricks Township Trustee/Assessor (Shelby County)
Parcel: Personal Property
Assessment Year: 2005

The Indiana Board of Tax Review (Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The Petitioners initiated an assessment appeal with the Shelby County Property Tax Assessment Board of Appeals (PTABOA) by written document dated August 9, 2005.
2. The PTABOA issued notice of its decision on November 9, 2005.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on November 16, 2005. The Petitioners elected to have this case heard according to small claim procedures.
4. The Board issued a notice of hearing to the parties dated March 3, 2006.
5. The Board held an administrative hearing on May 10, 2006, before Administrative Law Judge Paul Stultz.
6. The Petitioners were represented by N. Gregg Graham, Attorney at Law. The Respondent was represented by Douglas W. Brown, Attorney at Law.
7. The following persons were sworn as witnesses at the hearing:
For the Petitioner – None,
For the Respondent – Wray D. Emerick, Hendricks Township Trustee/Assessor,
Linda Emerick, Hendricks Township Deputy Assessor.

Facts

8. The property is a 2004 Winnebago motor home. It is personal property. The motor home is stored part of the year at the Petitioners' residence in Boggstown, Indiana.
9. The Administrative Law Judge did not conduct an inspection of the property.
10. The total assessed value of personal property as determined by the PTABOA was \$145,450.¹
11. The Petitioners contended the motor home should not be assessed.

Issue

12. Summary of the Petitioners' contentions in support of alleged error in the assessment:
 - a. The motor home is in Indiana less than 50% of a calendar year. The motor home was not in Indiana on March 1, 2005. The Petitioners were returning from a trip to Mexico, and on or about March 1, 2005, the motor home was in a shop in New Mexico for service. *Pet'rs Ex. 4.*
 - b. Because the motor home was not physically located in Hendricks Township on March 1, 2005, it did not have a tax situs in Indiana and the Respondent did not have jurisdiction to assess the vehicle. *Graham argument; Pet'rs Ex. 5.*
 - c. For personal property to be taxable in Indiana, IC § 6-1.1-2-1 must be strictly construed to mean that personal property has to be physically present in the taxing unit imposing the tax on March 1 of the year the tax is imposed. *Graham argument; Pet'rs Ex. 1.* The Petitioners also cited the portion of 50 IAC 4.2-15-13(d) that states "to be subject to personal property assessment and taxation in the state of Indiana, the personal property must establish a nexus or tax situs here as of March 1, the assessment date. To establish a tax situs, the personal property must have a physical presence here and receive benefit of the services provided by the property tax. Also, the physical presence test must be something other than of a transitory nature, i.e., passing through the state on its journey from one out of state location to another as of the assessment date."² *Graham argument; Pet'rs Ex. 5.*
 - d. The Respondent failed to offer any proof to establish the motor home was in its jurisdiction on the assessment date. The Board has previously found against a township assessor who failed to offer any evidence concerning the tax situs of vehicles. *Id.; Pet'rs Exs. 3, 5.*

¹ The Respondent subsequently agreed to minor changes regarding other items that lower the total assessed value to \$145,200. The assessed value of the motor home itself is \$145,000. *Resp't Ex. 1.*

² 50 IAC 4.2-15-13 refers to the assessment of interstate motor truck carriers under the international registration program.

- e. The Petitioners live in Hendricks Township the majority of the time. The Petitioners own the motor home and store it at their home for part of the year. The motor home is not titled or registered in Indiana. Counsel stated that, to the best of his knowledge, the Petitioners did not pay any property tax or excise tax on the motor home in any other jurisdiction. *Graham statement.*
13. Summary of the Respondent's contentions in support of the assessment:
- a. The Petitioners timely filed an Individual's Tangible Personal Property Assessment Return (Form 101) for 2005. It reported only a paddle boat. *Resp't Exs. 1, 5.* Subsequently, the assessor issued a Notice of Assessment/Change (Form 113 / PP) that increased the value of the paddle boat, added a row boat, and added the motor home to the assessment. *Resp't Exs. 2, 5.*
 - b. The Petitioners own a home in Hendricks Township where they reside and receive mail. The Petitioners receive a homestead credit on the dwelling. They vote in Hendricks Township and they receive fire and police protection, as well as other services. *L. Emerick testimony; Resp't Exs. 3, 4.* Mr. Weaver told the local officials the Petitioners registered the vehicle in South Dakota to avoid paying taxes on it. *L. Emerick testimony.* The Petitioners have not paid any property tax on the motor home in any other tax district. *L. Emerick testimony; Resp't Ex. 4.* Although the motor home is not registered in Indiana, it is stored at the Petitioners' home when they are not traveling. *Resp't Ex. 5.* These facts establish that the motor home had a tax situs in Hendricks Township on March 1, 2005. *L. Emerick testimony.*

Record

14. The official record for this matter is made up of the following:
- a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioners Exhibit 1 – *Chief Industries, Inc. v. Indiana Dep't of State Revenue*,
Petitioners Exhibit 2 – Results of Township Assessor/Petitioner Conference (Part IV, Form 130, township assessor handwritten summary),
Petitioners Exhibit 3 – *Robert J. Price, Concord Twp. Assessor v. Elkhart Co. Property Tax Bd. of Appeals and Reith-Riley Constr. Co.*,
(Board Determination),
Petitioners Exhibit 4 – Affidavit of Harold Weaver,
Petitioners Exhibit 5 – Brief in support of appeal,
Respondent Exhibit 1 – Form 101,
Respondent Exhibit 2 – Form 113,
Respondent Exhibit 3 – Linda Emerick's notes on tax situs for recreational vehicles,
Respondent Exhibit 4 – Written appeal (Form 130 Petition),
Respondent Exhibit 5 – Informal hearing summary prepared by Wray Emerick,

Respondent Exhibit 6 – Form 115,
Respondent Exhibit 7 – Ind. Code § 6-1.1-31-1,
Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,

- d. These Findings and Conclusions.

Analysis

15. The most applicable governing cases are:
- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving 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).
 - b. 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. Washington 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”).
 - c. 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.
16. The evidence fails to establish that the Petitioners' motor home was "within the jurisdiction of this state on the assessment date" or that the motor home had a tax situs within Indiana. Consequently, the assessment must not include that item. This conclusion was arrived at because:
- a. 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.
 - b. "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.
 - c. Personal property that is owned by a person who is an Indiana resident shall be assessed at the place where the owner resides on the assessment date, except personal property shall be assessed where it is situated on the assessment date if the property is

- regularly used or permanently located where it is situated. Ind. Code § 6-1.1-3-1; *Heuring Motors v. State Bd. of Tax Comm'rs*, 620 N.E.2d 39, 41 (Ind. Tax Ct. 1993).
- d. Neither of these statutes stands in isolation. The provisions about specifically where to assess the personal property of an Indiana resident apply to property that first meets the jurisdiction/tax situs requirement. Ind. Code § 6-1.1-2-1; 50 IAC 4.2-2-2.
 - e. The Petitioners primarily argue that because their motor home was outside the physical boundaries of this state on March 1, 2005, it cannot be assessed or taxed. The Petitioners have not provided convincing authority that "jurisdiction of this state" and a "tax situs within Indiana" have such a limited meaning. Specifically, the rules for assessment of interstate motor truck carriers in 50 IAC 4.2-15-13 have no application to the Petitioners' motor home for many reasons. The rule is based on an international registration plan for trucking companies in interstate commerce. The Petitioners are not such carriers. Most significantly, that rule contains specific rules for determining situs and allocation provisions based on miles driven. The Petitioners failed to provide sufficient analysis or explanation to justify application of this rule to their case.
 - f. The Petitioners' brief cites *Chief Industries, Inc. v. Indiana Dep't of Rev.*, 792 N.E.2d 972 (Ind. Tax Ct. 2000) as "an excellent discussion of tax situs and the phrases 'within this state' and 'in this state.'" The Tax Court held that capital gains earned by Chief from its sales of common stock had no tax situs in Indiana. The Petitioners' arguments fail to explain how a discussion and holding about capital gains and sources within Indiana might be relevant to the question of assessing their motor home.³ This authority does not support the Petitioners' claim that the assessment is improper simply because the motor home was not physically in Indiana on the assessment date. The Petitioners' interpretation could lead to illogical and absurd results if property owners could escape assessment and taxation by moving property out of the state on February 28 and moving it back on March 2. If the decision in *Chief Industries* has any application in this case, it is only to establish that physical presence in Indiana is not, by itself, the test. Physical presence is only one factor to consider in determining jurisdiction and tax situs.
 - g. In this case, however, two additional undisputed facts indicate Indiana tax situs and jurisdiction is lacking. First, the undisputed evidence establishes that the motor home is in Indiana less than 50% of a calendar year. Second, the motor home is not registered or titled in Indiana. These facts, together with the lack of physical presence on the assessment date, are sufficient to make a prima facie case and shift the burden of going forward with probative evidence on that point to the Respondent.
 - h. The Respondent presented substantial evidence and argument focusing on the place where the motor home should be assessed according to Ind. Code § 6-1.1-3-1, but failed to prove the initial jurisdiction or tax situs in Indiana. The facts that the

³ The Tax Court specifically notes that Ind. Code § 6-3-2-2(a) identifies the various Indiana sources from which adjusted gross income may be derived. There is no corresponding statute regarding personal property assessment.

Petitioners own the motor home and that they reside in Indiana have some relevance to the jurisdiction/tax situs issue. Similarly, the facts that the motor home is sometimes present in Indiana and that the Petitioners sometimes store it in a barn at their home in Indiana potentially have relevance to the jurisdiction/tax situs issue. Nevertheless, the presence and storage in Indiana have little weight in this case because the Respondent failed to present probative evidence about how often or how much total time the motor home is in Indiana. The unspecified, occasional presence and storage time is outweighed by the undisputed fact that the motor home is in Indiana less than 50% of a calendar year.

- i. The weight of the evidence supports the Petitioners' claim in this case. Their motor home lacked an Indiana tax situs and it was not within the jurisdiction of this state for the assessment as of March 1, 2005.

Conclusion

17. The subject property is not assessable as personal property in Indiana. The assessment of the motor home must be changed.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment of the motor home must be changed.

ISSUED: _____

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. 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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.