

BEFORE THE IDAHO BOARD OF TAX APPEALS

COVE ASSOCIATION, INC.,	)	
	)	
Appellant,	)	APPEAL NO. 17-A-1056
	)	
v.	)	FINAL DECISION
	)	AND ORDER
VALLEY COUNTY,	)	
	)	
Respondent.	)	
_____	)	

**RESIDENTIAL PROPERTY APPEAL**

This appeal is taken from a decision of the Valley County Board of Equalization modifying a protest of valuation for taxing purposes of property described by Parcel No. LR006540260010. The appeal concerns the 2017 tax year.

This matter came on for hearing October 19, 2017 in Cascade, Idaho before Board Member Leland Heinrich. Association Board Member and attorney Frederic Shoemaker appeared at hearing for Appellant. Assessor June Fullmer represented Respondent.

Board Members David Kinghorn, Leland Heinrich and Kenneth Nuhn join in issuing this decision.

**The issue on appeal concerns whether the subject property is subject to assessment and taxation.**

**The decision of the Valley County Board of Equalization assessing the subject property at its market value is affirmed.**

FINDINGS OF FACT

The assessed value of the subject improvements is \$89,820. Appellant contends the property is personal property and cannot be taxed as real property, or stated differently, the subject property as personal property must be fully exempted from assessment and taxation.

Following the Valley County Board of Equalization’s action on this assessment, the remaining property associated with Parcel No. LR006540260010 is three (3) boat docks located

in the Pilgrim Cove area of Payette Lake. Each boat dock has a gangway and/or ramp leading to the shoreline. The three (3) docks have a total of 35 boat slips. The lake bed over which the docks float is owned by the State of Idaho. Respondent reported originally five (5) docks were assessed for 2017 in connection with the subject parcel, however the Board of Equalization moved two (2) of the docks, or lake decks, which contained no boat slips onto a common area parcel. Therefore on appeal before this Board, only the remaining three (3) docks, each involving boat slips and associated ramps and gangways, are still part of the subject parcel assessment.

The Valley County Board of Equalization did not find the subject property exempt, nor to be properly assessed as part of a common area lot associated with Appellant. Therefore a separate appraisal and assessment of the property's market value was made. The value of the property was placed on an LR parcel, where it was assessed as an improvement to leased real property reflecting an underlying land ownership(s) belonging to a third party. Since Respondent was not certain of who the current individual boat slip owners were, a single grouped assessment was prepared and delivered to Appellant where the association possesses a record of individual slip ownerships and can therefore allocate the tax cost as necessary.

Appellant has an Encroachment Permit from the State of Idaho, Department of Lands, permitting the placement and maintenance of the subject property on the lake. Appellant, as lessee, also is party to a Submerged Land Lease agreement with the State, which Respondent characterized as providing "the right to occupy the beach." For the winter season, portions of the docks are disassembled as needed and moved by a professional contractor to the low water shoreline to mitigate winter damage. Appellant allocates the moving cost and other dock

expenses between the individuals associated with each slip and the association membership.

A private use right is associated with each slip. Appellant referred to this as the right to occupy a slip. These rights are sold separately from the cabins on shore. The association membership numbers about 80, so there are fewer slips than members. The majority of the subject docks' maintenance and repair costs are allocated to the slip owners. All association members have access to the docks, but not the use of the slips. Slip ownerships are reportedly transferred by a bill of sale document, with a copy then filed with Appellant's president. At hearing, Appellant could not provide information on the current market values or ownerships of the individual slip rights.

Appellant contended the subject property is personal property as provided by Idaho Code § 63-201. Reference was made to a three-part test (IDAPA 35.01.03.205.03) to determine if personal property has become real property. Appellant argued the subject property was mostly not affixed to the association's common area land except for the instance of two (2) ramps (annexation test). It was argued the docks were instead only temporarily tied to weights on the lake floor. It was contended the subject property could be entirely removed and not alter or damage the underlying real estate. For the adaptation test, it was said the docks were not integral to a majority of the diverse use of the common area. On the third test factor, the intent test, Appellant believed objectively one could not find the docks were a permanent addition to the real property where they are largely "hailed up on the beach" for each winter.

Respondent's case addressed facts related to the market value of the subject property, noting all property must be appraised at its market value, except property expressly exempt under Chapter 6, Title 63, Idaho Code. It was reported moorage rates on the lake ranged from

\$1,600 to \$1,800 per boat slip. Respondent confirmed or expanded on many of the details shared by Appellant, such as the information associated with the encroachment permit and the permit's granting of the right to build the subject docks. Respondent also spoke to the three (3) factor test referenced by Appellant (Rule 205), arguing the test only applies to business personal property such as furniture and equipment, and was therefore "immaterial" to residential property. Respondent contended the only exemption for residential personal property was found in § 63-602I, I.C., which addresses household goods, wearing apparel and other personal effects in certain cases.

Respondent characterized the docks, or lake deck systems, as permanent structures, affixed to land, and integral to the permanent use of adjacent or nearby residential property. It was stated "[m]oorings in itself refers to permanent structures to which vessels are secured." In concluding, Respondent reported it did not find the subject improvements listed anywhere in Idaho Code as exempt property.

#### CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of fair market value, or as applicable here a property's exempt status. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

Idaho Code § 63-203 mandates, "[a]ll property . . . not expressly exempted, is subject to appraisal, assessment and property taxation." See also Section 63-601, I.C. The taxation statutes are neither limited to real property nor personal property. Pertinent to this case, and as

argued by Respondent, any applicable statute exempting the subject boat docks would be found in Title 63, Chapter 6, Idaho Code.

Pursuant to § 63-205, I.C., property is assessed annually based on its status and value as of January 1; January 1, 2017 in this case. Appellant did not dispute the market valuation placed on the subject property. Instead Appellant claimed the property should be considered personal property exempt from taxation.

Rule 600 in the Property Tax Administrative Rules is a convenient place to observe the burden of proof relating to statutory exemptions from property tax;

01. Burden of Proof. The burden of proof of entitlement to the exemption is on the person claiming exemption for the property.

Case law has long addressed this burden of proof in a more expanded fashion.

Key to the fair consideration of most exemption claims is the precursor requiring the exemption sought be named sufficiently to allow necessary analysis of entitlement. The appeal to this Board failed to cite an exemption statute. When a claim of exemption is made, the party claiming it must be able to point out some provision of law plainly supporting the exemption. See *Cheney v. Minidoka County*, 26 Idaho 471 at 477, 144 Pac. 343 (1914). In the present case the Board found it necessary to interpret from oral comments at hearing that the exemption claim must rest on Idaho Code § 63-602KK, an exemption for certain personal property. Portions of this statute follow.

63-602KK. Property exempt from taxation — Certain personal property.

(1) (a) An item of taxable personal property purchased on or after January 1, 2013, shall be exempt from property taxation if the item of taxable personal property has an acquisition price of three thousand dollars (\$3,000) or less.

...

© For purposes of this subsection, an "item of taxable personal property" means equipment, machinery, furniture or other personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is generally capable of performing that function without being combined with other items of personal property. An item of taxable personal property is not an individual component part of a piece of equipment, machinery, furniture or other personal property as a whole. *An item of taxable personal property does not include an improvement to real property, a part that will become an improvement, or anything defined as a fixture.*

(2) On and after January 1, 2015, except as provided in subsection (8) of this section, each person's personal property, located in the county, which is not otherwise exempt, shall be exempt to the extent of one hundred thousand dollars (\$100,000). For the purposes of this section, a person includes two (2) or more people using the property in a common enterprise who are within a relationship described in section 267 of the Internal Revenue Code, as defined in section 63-3004, Idaho Code.

. . .

(6) (a) The application for the exemption provided for in subsection (2) of this section shall be in the form prescribed by the state tax commission and shall include such information as the state tax commission may require by rule as needed to implement the purpose of this section including, but not limited to, a list of each item of personal property, the purchase date of each item of personal property, the unit cost of each item of personal property, if more than the exemption allowed in subsection (1) of this section, and the total cost of the items of personal property . . . .  
*(Emphasis added).*

The Board found nothing in the record to suggest Appellant timely filed the required application or listing to secure the above exemption. An accompanying rule for this exemption, IDAPA 35.01.03.626.06.d, provides;

Improvements, as defined or described in Sections 63-201 and 63-309, Idaho Code, shall not be eligible for the exemption . . . Improvements shall be deemed to include mobile and manufactured homes and float homes, regardless of whether such property is considered personal property. *Leasehold real properties and other leasehold improvements that are structures or buildings shall be considered improvements, and therefore ineligible for the exemption . . . .*  
*(Emphasis added).*

Also related to issues in this case is IDAPA 35.01.03.205.01 which provides;

## 205. PERSONAL AND REAL PROPERTY – DEFINITIONS AND GUIDELINES

. . .

01. Real Property. Real property is defined in Section 63-201, Idaho Code. Real property consists of land and improvements. (5-8-09)

a. Land. Land is real property as well as all rights and privileges thereto belonging or any way appertaining to the land. (5-8-09)

b. Law and Courts. Real property also consists of all other property which the law defines, or the courts may interpret, declare, and hold to be real property under the letter, spirit, intent, and meaning of the law. (5-8-09)

c. Improvements. *Improvements are buildings, structures, fences, and similar properties that are built upon land. Improvements are real property regardless of whether or not such improvements are owned separately from the ownership of the land upon or to which the same may be erected, affixed, or attached. (Emphasis added).*

Here the Board was not persuaded the subject docks were personal property for taxation purposes. This was due in part based on its attachment, situs and connection with a specific area of land. As put forth in the Statement of Purpose<sup>1</sup> accompanying the original § 63-602KK, the spirit and intent of the exemption was to phase out personal property taxes on businesses. The letter of the law also points this way. The Board was stretched to view the subject property as the machinery and equipment, or as the personal property fixtures, of a business. In summary, Appellant did not show clear entitlement to an exemption deriving from § 63-602KK, I.C.

The subject docks exist to primarily house thirty-five (35) boat slips. The docks are an improvement on the underlying lake bed owned by the State of Idaho. The fact a portion of the subject docks are disassembled in such a way as to be moved annually to the shoreline to ward off winter damage, did not make them personal property in the Board's judgment. Being affixed

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<sup>1</sup>2008 Idaho Legislative session, House Bill No. 599.

to a particular area of land was required. The permittee-lessee associated with the construction and maintenance of the docks, i.e. Appellant, allows for the beneficial or private use of individual slips by separate owners who are association members or their tenants. This valuable use right was described as the right to occupy a slip. Ultimately Respondent's consideration and assessment treatment of the subject property as real property was fair.

In conclusion, this Board's examination of the statutes exempting property from taxation failed to disclose an exemption for the subject property of this appeal. The docks are privately owned and used for residential and recreational purposes. The Board did not find it improper to assess the dock improvements to Appellant under the market value standard. The Board did not find the property elsewhere assessed for property tax purposes and therefore found no instance of double-taxation (§ 63-213, I.C.)

Both parties presented a lot of information and relevant evidence for the Board's consideration. Ultimately the burden was on Appellant to establish the subject property was duly entitled to a full exemption from property taxation, or that the subject property was elsewhere assessed. The Board did not find the burden of proof met in this instance. On the whole, the Board found Respondent's assessment of the subject property was correct and fair. Therefore the decision of the Valley County Board of Equalization is affirmed, thereby upholding the \$89,820 market valuation of the subject property as an improvement on an LR (leased real) parcel.

#### FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Valley County Board of Equalization concerning the subject parcel be, and the same hereby is,

AFFIRMED.

DATED this 9<sup>th</sup> day of April, 2018.