

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 77270
Petitioner: PRESO MATIC KEYLESS LOCKS, v. Respondent: ARAPAHOE COUNTY BOARD OF COUNTY COMMISSIONERS	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on July 1, 2020, Diane DeVries and Valerie Bartell presiding. David Campbell, owner of Preso Matic Keyless Locks, appeared pro se. Respondent was represented by Benjamin Swartzendruber, Esq. Petitioner requests the abatement of personal property taxes for tax year 2017.

EXHIBITS

The Board admitted into evidence Petitioner’s Exhibit 1 and Respondent’s Exhibit A.

DESCRIPTION OF THE SUBJECT PROPERTY

Personal Property of Preso Matic Keyless Locks
County Schedule No.: 27699-68565-001

The subject property of this appeal is the personal property of the business Preso Matic Keyless Locks. The value assigned by the Arapahoe County Assessor is \$12,859. The Arapahoe County Assessor assigned this value based on a “Best Information Available Estimate.”

ARGUMENTS OF THE PARTIES

The owner of Preso Matic Keyless Locks, David Campbell, testified under oath that Petitioner ceased business operations in Arapahoe County and the State of Colorado in early 2016. Mr. Campbell testified he sold the real property out of which the business operated in December

2015. In early 2016, he moved the business operations and all business personal property owned by Preso Matic Keyless Locks to the State of Florida. Mr. Campbell testified there was no taxable personal property owned by Petitioner in Arapahoe County in tax year 2017. Mr. Campbell testified that he did not file a Personal Property Declaration Schedule for tax year 2017 because no personal property was located in Arapahoe County in 2017, and therefore he was not aware of the need to file a schedule, and had no obligation to do so for that year. Additionally, Mr. Campbell believes it is likely he did not receive a Personal Property Declaration Schedule form from the Assessor for tax year 2017. Mr. Campbell testified that in 2018 he did receive - through mail forwarded from his old Colorado address to his new Florida address - a Personal Property Declaration Schedule. As a result, he then recognized that the County was operating under the assumption his business was still located in Colorado, contacted the Assessor's office, and was instructed by the Assessor's office to file an abatement petition for 2017 and 2018.

Respondent presented the testimony of Carolyn Scott, Assistant Supervisor of the Arapahoe County Assessor's Office's Personal Property Division. Among Ms. Scott's job duties are reviewing most of the abatement requests in the Personal Property Division. Ms. Scott provided factual background regarding the historical assessment of personal property taxes to Petitioner, events surrounding the instant appeal, and her reasoning in denying the 2017 abatement request. Although Preso Matic Keyless Locks began business operations in Arapahoe County in 2007, Ms. Scott testified that Petitioner did not submit a Personal Property Declaration Schedule from 2007 through 2010, and in fact submitted only one Personal Property Declaration Schedule during its years of operation in Arapahoe County, in 2011. As a result, for all years subsequent to 2011 the Assessor's Office valued Petitioner's personal property based on "Best Information Available." The Assessor valued the subject property for tax year 2017 based on the 2011 value plus additional applied depreciation. Ms. Scott testified she first became aware of the movement of the personal property out of Colorado in June 2018, when Mr. Campbell called the Assessor's Office. Up until that point, she was operating on the assumption that Petitioner was still located in Colorado. Ms. Scott testified that after Mr. Campbell called, she provided him with an abatement petition form and instructions on how to submit it so as to formally notify the Assessor's office of the business closure. However, Mr. Campbell did not appeal in 2018 as she instructed him to.

Ms. Scott testified that a timely abatement request for tax years 2017 and 2018 was received from Petitioner on March 6, 2019. She approved the abatement request for tax year 2018 and denied the request for 2017. Ms. Scott testified she granted the abatement request for tax year 2018 although she believe she could have denied it. She did so because Mr. Campbell had contacted the Assessor's office in 2018 specifically to notify her he had ceased operations in Colorado, and because she wanted to prevent the entry of an erroneous assessment. Ms. Campbell testified that she denied the abatement for tax year 2017 "for non-filing status," because Mr. Campbell had not filed a Personal Property Declaration Schedule by the deadline of April 15, 2018. She testified to her belief that the abatement remedy was not available to Mr. Campbell due to his failure to submit a completed Schedule. Ms. Scott interpreted section 39-5-116 of the Colorado Revised Statutes as requiring this denial. Ms. Scott further operated under the assumption that the Assessor's "Best Information Available assessment" could not be invalidated when the Assessor's Office has not received a Schedule, per section 39-5-118, C.R.S.

Ms. Scott testified she “did not necessarily” dispute the date that Mr. Campbell removed the personal property from the State. Respondent’s counsel stated the County had no information to dispute the property left the state in 2016, and did not dispute Petitioner’s testimony that the subject personal property was not located in Arapahoe County in 2017. Respondent presented no evidence to counter Mr. Campbell’s testimony that there was no personal property of his business located in Colorado on January 1, 2017. Respondent concurred that Petitioner sold the real property housing its business in 2015. Respondent’s counsel stated there was no dispute regarding the value of any personal property, but rather that the issue for the Board’s determination was whether the personal property was located in Colorado on January 1, 2017. Respondent’s counsel also conveyed his position that the abatement petition should likely be granted if the personal property was not located in Colorado on January 1, 2017.

FINDINGS AND CONCLUSIONS

The Board finds the personal property at issue was not located in the State of Colorado on January 1, 2017. The Board finds Mr. Campbell’s testimony that he relocated his business to the State of Florida in early 2016 credible. There was no evidence provided to rebut this fact and no real dispute on this issue. Mr. Campbell provided detailed testimony regarding the relocation of his business, describing how it cost him \$12,000 to truck the equipment, that he incurred forklift rental costs, staff labor costs, and that he made the move for personal family reasons. He testified the company had been a Florida corporation since its inception business and had operated as a foreign entity in Colorado.

The Board has reviewed the relevant statutes, Volume 5 of the Assessor’s Reference Library (“ARL”) and the holding of the Colorado Supreme Court in *Prop. Tax Adm’r v. Prod. Geophysical Servs., Inc.*, 860 P.2d 514, 516 (Colo. 1993). In this case, the Colorado Supreme Court held that taxpayers alleging overvaluation of their personal property, who had not submitted personal property schedules to their respective county assessors, could not avail themselves of abatement and refund procedures, although they could have pursued the protest procedure.

The facts of the instant appeal differ from those in the *Production Geophysical Services* case, because the Petitioner in the instant case does not allege overvaluation of personal property – instead Petitioner alleges no personal property at all was located in the state on the assessment date. As Respondent’s counsel stated, this is not a case about the valuation of personal property. Rather, it is about whether it existed in Colorado and should be taxed. The taxpayers in the *Production Geophysical Services* case did not allege the absence of any assessable personal property. Under the facts of the instant case, where it is essentially undisputed that no assessable personal property was located in Colorado on the assessment date, the Board finds Petitioner was not foreclosed from filing an abatement and refund petition. Indeed, it was the testimony of Respondent’s witness that this is what the Arapahoe County Assessor’s Office instructed Petitioner to do, per their standard operating procedures.

The Board notes that it is the responsibility of a personal property owner to submit an annual Personal Property Declaration Schedule to the assessor no later than April 15 of each year. *See* § 39-5-108, C.R.S. When a personal property owner fails to do so, an assessor may make a “Best Information Available” valuation. § 39-5-116, C.R.S. A “Best Information Available” assessment should not be invalidated “by reason of” the Assessor not receiving a declaration schedule. §39-5118, C.R.S. The Board finds this statute is not controlling of the outcome of this case, where the validity of the assessment is not challenged on the grounds of the Assessor’s lack of a declaration schedule. The ground asserted for the abatement is not a challenge to value by reason of the lack of a declaration schedule, but rather by reason of the absence of personal property in Colorado. The Board recognizes that Petitioner was required to file a Personal Property Declaration Schedule indicating the personal property was no longer in Colorado and the business had ceased operations. However, the Board notes that although Petitioner may have been required to file a Personal Property Declaration Schedule by April 15, 2018, for 2017, it would have indicated that Petitioner had no property to declare for 2017. *See* C.R.S. § 39-5-116. The Board finds the remedy of abatement was available to Petitioner, and that taxes were erroneously levied for 2017. The Board concludes that an abatement and refund is warranted in this case for tax year 2017, and that it would be inequitable affirm the assessment of taxes on the personal property that was not located in Colorado on the assessment date.

ORDER

The petition is **GRANTED**. Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2017 actual value for the subject property of \$0. The Arapahoe County Assessor is directed to change his/her records accordingly.

APPEAL RIGHTS

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of Section 244-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 28th day of January, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Valerie Bartell

Valerie Bartell

Concurring Board Member:

Diane DeVries

Diane DeVries

*Concurring without modification
pursuant to § 39-2-127(2), C.R.S.*

I hereby certify that this is a true
and correct copy of the decision of
the Board of Assessment Appeals.

Yesenia Araujo
Yesenia Araujo