REPRESENTATIVE FOR PETITIONERS:
Don Wertheimer

REPRESENTATIVE FOR RESPONDENT:
Mario J. Zappia, Zappia Zappia & Stipp

BEFORE THE
INDIANA BOARD OF TAX REVIEW

115 LAND TRUST, *et. al*.,	)	
	)	Pet. Nos. *See* Exhibit A
Petitioners,	)	
	)	Parcel Nos. *See* Exhibit A
v.	)	
	)	County: St. Joseph
ST. JOSEPH COUNTY ASSESSOR,	)	
	)	Townships: Various
Respondent.	)	
	)	
	)	Assessment Year: 2006
	)	

Appeals from Final Determinations of the
St. Joseph County Property Tax Assessment Board of Appeals

FINAL DETERMINATION DISMISSING PETITIONS

The Indiana Board of Tax Review ("Board") has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Because the Petitioners' principals received approximately 100 determinations from the St. Joseph County Property Tax Assessment Board of Appeals ("PTABOA") at the same time, they missed the statutory deadline to file 20 appeals with the Board. One of those

appeals involved a property assessed for more than $2.1 million dollars that the Petitioners claim was worth either $175,000 or $400,000. While the Board sympathizes with the Petitioners, those facts do not give the Board authority to waive the statutory filing deadline. Neither does the mere fact that the PTABOA's Form 115 determinations erroneously instructed the Petitioners that they had to file their appeals within 30 days instead of the 45 days as allowed by statue. The Board therefore dismisses all 20 Form 131 petitions.

PROCEDURAL HISTORY BEFORE THE BOARD

2. On March 27, 2009,[1] the Petitioners filed 20 Form 131 petitions with the Board. Don Wertheimer signed each petition as the Petitioner's attorney. Each petition was also signed by Steven Kollar, who identified himself on the petition as the property owner, and Eric LaFaucia, who signed in the space designated for a certified tax representative.[2]

3. In each case, the Petitioner attached a copy of the PTABOA's Form 115 determination. For 18 of the 20 petitions, the Form 115 determination indicated on its face that it had been mailed on February 2, 2009. As to the other two petitions, one (Pet. no. 71-026-06-1-4-01207) had a Form 115 determination with a mailing date of February 3, 2009, and the other (Pet. no. 71-026-06-1-5-09213) had a Form 115 determination with a mailing date of May 14, 2008. Thus, on its face, each Form 131 petition was filed more than 45 days after the PTABOA issued its corresponding Form 115 determination.

4. On April 4, 2009, the Board issued notices of defect indicating that the appeals appeared to have been untimely filed. In response, the Board received a letter from Mathew Parker in which Mr. Parker opened by referring to "our rejected tax appeals sent to your office on March 27th 2009." *Exhibit B attached to February 5, 2010 Order Scheduling Hearing on Board's Jurisdiction*. Mr. Parker then wrote "I realize these appeals were late and not

[1] The petitions are stamped as having been received on March 30, 2009, but they were postmarked March 27, 2009.
[2] Mr. LaFaucia is not included in the Department of Local Government Finance's most recent list of certified tax representatives. http://www.in.gov/dlgf/files/Master_Tax_Rep_List_Alphabetical.pdf (accessed March 13, 2011).

within the allowed time frame of the board for review," but outlined circumstances that he contended justified the Board hearing the appeals. *Id.*

5. Based on Mr. Parker's letter, the Board designated David Pardo, its administrative law judge, to conduct a hearing for the purpose of determining whether the Board had jurisdiction to hear the appeals. After sending out notice, the ALJ held a hearing on April 6, 2010.

6. The following people were sworn-in as witnesses:

    Steven Kollar
    Kevin Klaybor, PTABOA member
    Ross Portolese, PTABOA member
    Ralph J. Wolfe, PTABOA member
    Dennis Dillman, PTABOA member

7. Mario Zappia appeared as counsel for the Respondent. Don Wertheimer appeared as counsel for the Petitioners. Mr. Wertheimer did not file a notice of appearance as required by 52 IAC 22-3-2 and as ordered by the ALJ. Nonetheless, there does not appear to be any dispute that Mr. Wertheimer was authorized to represent the Petitioners, and he signed all of the Form 131 petitions. The Board therefore treats Mr. Wertheimer's representation as proper. The Board, however, cautions Mr. Wertheimer to follow its rules and the orders of its ALJs in future proceedings.

8. The Petitioners offered the following exhibits, all of which were admitted into evidence:[3]

Petitioners' Exhibit 1:	Section IV of Form 130 petition with typewritten and handwritten notes; June 18, 2008 correspondence from Carol M. Stelter to Kollar; "TX Report" with handwritten notes; "RX Report"
Petitioners' Exhibit 2:	Settlement statement for 115 South Lafayette Blvd. (2 pgs)
Petitioners' Exhibit 3:	Document entitled "Special Message to Property Owner," and property tax bill
Petitioners' Exhibit 4:	May 1, 2009 letter from Matthew Parker to the Board

[3] Petitioners' exhibits 1-3 were admitted over objection.

9. The Respondent offered the following exhibits, all of which were admitted into evidence:

Respondent's Exhibit 1:	Form 115 determination for 56093 Tanglewood Dr. with May 1, 2009 letter from Parker to the Board
Respondent's Exhibit 2:	Form 115 for 114 Eckman with Parker letter
Respondent's Exhibit 3:	Form 115 for 2606 Colfax with Parker letter
Respondent's Exhibit 4:	Form 115 for 1138 Broadway with Parker letter
Respondent's Exhibit 5:	Form 115 for 1814 Carroll with Parker letter
Respondent's Exhibit 6:	Form 115 for 1318 Kaley (with "Correction" handwritten on the first page) and Parker letter
Respondent's Exhibit 7:	Form 115 for 1626 Fassnacht with Parker letter
Respondent's Exhibit 8:	Form 115 for 1633 Florence with Parker letter
Respondent's Exhibit 9:	Form 115 for 1612 Michigan with Parker letter
Respondent's Exhibit 10:	Form 115 for 1602 S. Michigan with Parker letter
Respondent's Exhibit 11:	Form 115 for 1774 Prairie Ave. with Parker letter
Respondent's Exhibit 12:	Form 115 for 721 Sample with Parker letter
Respondent's Exhibit 13:	Form 115 for 1918 Lincolnway West with Parker letter
Respondent's Exhibit 14:	Form 115 for 115 S. Lafayette with Parker letter
Respondent's Exhibit 15:	Form 115 for 712 Geyer St. with Parker letter
Respondent's Exhibit 16:	Form 115 for 3517 Bulla St. with Parker letter
Respondent's Exhibit 17:	Form 115 for 60844 Lilac Rd. with Parker letter
Respondent's Exhibit 18	Form 115 for 820 E. 4th St. with Parker letter and property record card
Respondent's Exhibit 19:	Form 115 for 52805 Lilac Rd.
Respondent's Exhibit 20:	Form 115 for 1621 Miami

10. All pleadings and documents filed in 20 appeals at issue as well as all orders issued by the Board are part of the record, as is the digital recording of the Board's hearing.

FINDINGS OF FACT

11. Steven Kollar is a principal of the various Petitioners. *See Kollar testimony*. Kollar re-develops real estate. *Id*. He also buys properties with the goal of renovating those properties, bringing them to marketable value, and selling them. *Id*. At the time of the hearing, Kollar was "involved with" about 80 properties. *Kollar testimony*. Between one-third and one-half of those properties had tenants; the rest were being rehabilitated in hopes of reselling them. *Id*.

12. Kollar's office is located at 115 S. Lafayette Blvd., one of the properties at issue in these appeals. *Kollar testimony*. That property contains a class-C building with five floors and 20,000 square feet of usable space. *Id*. On March 6, 2006, 115 Land Trust bought that property for $175,000 after the property had been on the market for five years. *Id.; Pet'rs Ex. 2*. The monthly mortgage payment on the property is $2,585.64. *Kollar testimony*. The property also has monthly operating expenses of several thousand dollars. *Id*. At the time of the hearing, the building was less than 40% occupied. *Id.* In fact, one of the tenants gave notice that he was moving out. Factoring in that loss, the property generates gross monthly rent of about $3,000. *Id*.

13. For the March 1, 2006 assessment date, 115 S. Lafayette Blvd. was assessed for $2,101,900. The taxes based on that assessment were more than $80,000. *See Kollar testimony; Pet'rs Ex. 3*. At some point before the PTABOA issued its Form 115 determination for that property, Kollar had a telephone conversation with someone from the county. *Kollar testimony*. Although Kollar initially testified that he did not know who that person was, after hearing Dennis Dillman 's voice at the Board's hearing, he believed that the person was Dillman. *Id.* According to Kollar, he and Dillman discussed the fact that 115 Land Trust had paid $175,000 for the property. *Id*. Dillman then asked for a copy of an appraisal that had been performed for Kollar's lender, State Farm, in which the appraiser valued the property at $400,000. *Id.; see also, Dillman testimony* (acknowledging that he spoke to someone about the property, but that testifying that he did not recognize Kollar's voice). According to Kollar, he provided a copy of the appraisal to "this office" and they agreed on a value of $400,000. *Kollar testimony*.[4]

[4] The Respondent objected to Kollar's testimony about his conversation with Dillman on grounds that it was unreliable hearsay, especially given that Kollar could not clearly identify who he had spoken to. The ALJ took the objection under advisement. The Board now overrules that objection. The Petitioners did not offer Kollar's testimony to prove the truth of the matter asserted by Dillman, but instead to show that Kollar and Dillman had an agreement or at least that Kollar believed that they had an agreement. Kollar's testimony therefore was not hearsay *See* Indiana Evidence Rule 801(c) (defining hearsay as is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted). In any event, the Board's procedural rules allow it to admit hearsay. 52 IAC 2-3-7. That being said, Kollar's equivocation in identifying who he had spoken to leads the Board to give his testimony little or no weight. And, as explained *infra*, even if Kollar and Dillman had reached an agreement, that fact would not give the Board the authority to hear the untimely filed appeal.

14. Before issuing its Form 115 determination, the PTABOA forwarded to Kollar or to Kollar's wife a portion of what appears to be a Form 130 petition. That document contains the heading "Section IV: Results of Township Assessor/Petitioner Conference." *Pet'rs Ex. 1*. The address and petition number for the 115 S. Lafayette Blvd. property are handwritten toward the top of the page. *Id*. The following typewritten language appears below those items:

> AFTER REVIEW OF YOUR APPEAL, THE PROPERTY TAX ASSESSMENT BOARD OF APPEALS (PTABOA) RECOMMENDS A VALUE OF $400,000[5] FOR 2006 PAYABLE 2007.
> PLEASE CIRCLE AGREE OR DISAGREE FOR THE PROPOSED VALUE.
> *** PLEASE SIGN AND RETURN WITHIN TEN (10) DAYS TO THE ASSESSOR* OFFICE.
> ****** THANK YOU FOR YOUR CONSIDERATION IN THIS MATTER******
> PLEASE NOTE: IF NO RESPONSE THE PROEPRTY TAX ASSESSMENT BOARD OF APPEALS WILL SET A HEARING DATE FOR YOUR APPEAL *

Pet'r Ex. 1. The phrase "OR DISAGREE" is circled with handwriting above it that says "see note *," which refers to a handwritten note below the typewritten material. *Id*. That handwritten note reads: "*Note: From purchase date to June 13, 2007 value is $175,000. On June 13, 2007, Loan was obtained with Sate Farm for improvements and agree to the $400,000 AFTER June 13, 2007." *Pet'r Ex. 1*. The document is signed by David Wesolowski, the St. Joseph County Assessor, and by Kollar's wife, who Kollar testified was a co-owner of 115 S. Lafayette Blvd.[6] *Id.; Kollar testimony.* There is also a handwritten asterisk by the signature of Kollar's wife. *Pet'r Ex. 1*.

15. Although Kollar testified that he did not circle "DISAGREE" or write the note at the bottom of the page, he testified on cross examination that he did not believe that Dillman or anyone from the PTABOA had done so either. *Kollar testimony*. Indeed, the only logical inference is that Kollar's wife did those things.

[5] The $400,000 is handwritten.
[6] Presumably, Koller meant that his wife was a co-principal in 115 Land Trust, the entity that owned the property.

16. Kollar and his various related entities filed more than 100 property tax appeals. *Kollar testimony*. They received Form 115 determinations on approximately 80 to 120 of those appeals at the same time. *Id*. Each determination includes the following statement: "If you do not agree with the action of the County Property Tax Assessment Board of Appeals, the Indiana Board of Tax Review will review the action if you file a form 131 petition with the County Assessor of this county **WITHIN THIRTY (30) DAYS** of the mailing of this notification." *Resp't Exs. 1-20 (emphasis in originals)*. That statement is wrong. Pursuant to Indiana Code § 6-1.1-15-3(d), a party seeking review of a PTABOA determination has 45 days—not 30 days—from the date that notice of the determination is given to file a petition for review. And the statute calls for that petition to be filed with the Board instead of the county assessor, although the taxpayer must mail a copy of the petition to the county assessor. *See* I.C. § 6-1.1-15-3(d).[7]

17. Kollar employed Matthew Parker and Eric LaFauce part time. *Id*. Beginning on February 3, 2009, Parker and LaFauce spent more than their normal 20 hours per week in an effort to perfect appeals on those properties for which Kollar had received Form 115 determinations. *Id*. Parker and LaFauce were able to do so for approximately 80 of the properties. *Id*. But they did not submit the Form 131 petitions for the 20 properties at issue here until at least three days past the statutory deadline. *See id*.; *see also, Wertheimer stipulation* ("We will stipulate that these were submitted anywhere from four to seven days maybe three to seven days beyond the 45-day period. . . ."); *Pet'rs Ex. 4 (Parker letter*) ("I realize these appeals were late and not within the allowed time frame of the board for review.").

CONCLUSIONS OF LAW AND DISCUSSION

18. The legislature has created specific appeal procedures by which a taxpayer can challenge his property's assessment. If a taxpayer chooses to exercise his appeal rights, he must follow those procedures by filing an appropriate petition in a timely manner. *Williams*

[7] Where taxpayers have mistakenly filed petitions at a county assessor's office rather than at the Board's central office, the Board has deemed those petitions to have been filed with the Board.

Industries v. State Bd. of Tax Comm'rs, 648 N.E.2d 713, 718 (Ind. Tax. Ct. 1995). To that end, Indiana Code § 6-1.1-15-3 provides that a taxpayer must file a petition for review with the Board "not later than forty-five (45) days after the date of the notice given to the party or parties of the determination of the [PTABOA]." I.C. § 6-1.1-15-3(d).

19. Here, the undisputed evidence shows that the Petitioners filed their Form 131 petitions at least three days past the statutory deadline. In closing argument, the Petitioners noted that, while each Form 115 determination contains a reference to the date that it was mailed, there is no certification to show that the determination was actually mailed and nobody testified to that fact. While that may be true, the Board's procedural rules provide that there is a "rebuttable presumption that the notice of [a PTABOA] determination is mailed on the date of the notice." 52 IAC 2-4-2(e). Moreover, counsel for the Petitioners stipulated earlier in the hearing that the Form 131 petitions were all filed between three and seven days after the statutory deadline. Parker made a similar admission in his letter to the Board. And Kollar testified that Parker and LaFauce began working to get information together for the appeals to the Board beginning on February 3, 2009, which was 52 days before the petitions were filed.

20. Nonetheless, the Petitioners urge the Board to exercise jurisdiction based on equitable considerations and the undue hardship that the Petitioners will suffer—particularly in connection with 115 S. Lafayette Blvd.—if the Board dismisses these appeals. While the Board has some sympathy for the Petitioners' plight, it must nonetheless dismiss the appeals.

21. The Board is a creation of the legislature, and it therefore has only those powers the legislature has granted to it. *Whetzel v. Dep't of Local Gov't Fin*., 761 N.E.2d 904, 908 (Ind. Tax Ct. 2002). Nowhere has the legislature explicitly given the Board authority to waive the statutory deadline for filing a petition for review. Indeed, courts have often required strict compliance with statutory appeal deadlines as a prerequisite to an agency acquiring jurisdiction. *See e.g. Amico v. Review Bd. of the Indiana Dep't of Workforce*

Development, 2009 Ind. App. Lexis 3052 *4, 8-9 (Ind. Ct. App. 2009) (affirming Unemployment Insurance Review Board's dismissal of appeal from an initial eligibility determination); *Szymanski v. Review Bd. of the Indiana Dep't of Workforce Development*, 656 N.E.2d 290, 293 (Ind. Ct. App. 1995).

22. But that rule is not absolute. Thus, the Indiana Supreme Court has upheld regulations promulgated by the Indiana Employment Relations Board ("IEERB") that allowed the IEERB "for good cause shown" to extend a deadline under the Administrative Orders and Procedures Act ("AOPA"). *Charles A. Beard Classroom Teachers Ass'n v. Bd. of School Trustees*, 668 N.E.2d 1222 (Ind. 1996). Under AOPA, a party wishing to preserve an objection to an administrative law judge's order must file that objection with the agency's ultimate authority "within fifteen (15) days (or any longer period set by statute) . . ." *Id*. at 1223-24 (quoting Ind. Code § 4-21.5-3-29(d)). The IEERB had granted a teacher's union a continuance of the 15-day deadline to appeal from an adverse ruling by an administrative law judge. *Id*. at 1224. The IEERB then ruled for the union on the merits. *Id*. On judicial review, the court of appeals affirmed the trial court's order reversing the IEERB, finding that the 15-day restriction was a jurisdictional limit that the IEERB could not extend. *Id*.

23. In vacating the court of appeals' decision, the Indiana Supreme Court found that the regulations were within the scope of the IEERB's legislatively conferred power because: (1) the agency's enabling statute authorized it to "adopt, promulgate, amend, or rescind rules it deems necessary and administratively feasible to carry out [the Collective Bargaining Statute] in accordance with IC 4-22-2"; and (2) the IEERB presumably believed that providing for extensions of time would aid it in carrying out its responsibilities under the Collective Bargaining Statute. *Id.* at 1225. The court also noted that AOPA specifically authorized agencies to adopt procedural rules as long as those rules were not inconsistent with AOPA. *Id*. at 1225 (quoting I.C. § 4-21.5-5-35).

24. The court then rejected the court of appeals' conclusion that the IEERB's regulations were not set "by statute" and were therefore inconsistent with AOPA. *Id*. at 225. In the

court's eyes, the regulations were "set by statute" in the sense that they were in conformance with the IEERB's enabling statute. *Id*. The court found this conclusion "particularly compelling" in light of the high deference and low-level of scrutiny generally given to agency regulations on review. *Id*. at 1225-26. Given, (1) that the AOPA deadline was expressly subject to "any longer period of time set by statute," and (2) that the IEERB's enabling statute specifically allowed the agency to adopt rules it deemed necessary to carry out Indiana's collective bargaining law, the court held that the IEERB's regulations did not clearly conflict with AOPA. *Id*. at 1226. Finally, the court added that its conclusion comported with "the general notion that agencies have implicit powers to regulate their duties." *Id*.

25. Unlike the IEERB, the Board has not promulgated a procedural rule allowing a taxpayer to seek additional time for filing a petition for review. It is not even clear that the Board could do so; Indiana Code § 6-1.1-15-3(d) differs from the AOPA provision at issue in *Charles A. Beard Classroom Teachers Ass'n* in that it does not explicitly make its 45-day deadline for filing a petition for review subject to "any longer period set by statute"

26. The Petitioners, however, point to *Rohrman v. Tippecanoe County Assessor*, 901 N.E.2d 95 (Ind. Tax Ct. 2009) for the proposition that equitable considerations justify the Board exercising jurisdiction in absence of prejudice to the Assessor. In that case, the taxpayer had filed an amended petition for judicial review solely to change the respondent from the Fairfield Township Assessor to the Tippecanoe County Assessor. *Rohrman v. Tippecanoe County Assessor*, 901 N.E.2d 95, 96 (Ind. Tax Ct. 2009). The Tippecanoe County Assessor moved to dismiss, alleging that the Tax Court lacked both personal and subject matter jurisdiction because the taxpayer had not named her as a respondent and had not served her with a copy of the amended petition until 53 days after the Board's final determination. *Id*.

27. In denying the county assessor's motion, the Tax Court first explained that the taxpayer's failure to name the county assessor in his original petition for judicial review was not the type of error that implicated the court's subject matter jurisdiction, but rather the type of

error that may have prevented the court from *exercising* its jurisdiction. *Id*. at 97 (citing *K.S. v. State*, 849 N.E.2d 538, 541-42 (Ind. 2006) and *Packard v. Shoopman*, 852 N.E.2d 927, 930-32 (Ind. 2006)). And that error could be waived. *Packard*, 852 N.E.2d at 930-32.

28. Second, the court explained that Trial Rule 15(C) provides an exception to the general rule requiring that a new defendant to a claim be added before the statute of limitations runs. Thus, under Trial Rule 15(C), an amended pleading changing a party against whom a claim is asserted relates back to the date of the original pleading if it asserts a claim or defense that arose out of the conduct, transaction or occurrence set forth in the original pleading, and, within 120 days of commencement of the action, the party to be brought in: (1) has received such notice that he will not be prejudiced in maintaining a defense on the merits; and (2) knew or should have known that but for a mistake concerning the identity of the proper party, the action would have been brought against him. *Id*. (citing T.R. 15(C)). The Tax Court then explained that all of Trial Rule 15(C)'s requirements had been met.

29. *Rohrman* does not apply to this case. The Petitioners have not filed any amended petitions. Even if they had, there were no timely filed original petitions to relate back to. And the Assessor did not waive his claim that the petitions were untimely filed. Indeed, the Board *sua sponte* raised the issue of timeliness when it sent defect notices to the Petitioners and then scheduled the petitions for a jurisdictional hearing. The Assessor maintained his position that the petitions were untimely at the Board's hearing, which was the earliest point at which he was called upon to take any position concerning the Petitioners' appeals.

30. While *Charles A. Beard Classroom Teachers Ass'n and Rohrman* do not apply to the facts at hand, the Board recognizes that it nonetheless might have some inherent authority to hear a petition that was filed after Ind. Code § 6-1.1-15-3(d)'s 45-day deadline even absent a duly promulgated rule allowing it to do so. To the extent that such authority

exists, it would necessarily be invoked only by compelling circumstances, such as where unforeseen events have made compliance with the statutory deadline virtually impossible.

31. That is not the case here. While Kollar was faced with the admittedly difficult task of filing more than 80 Form 131 petitions within a 45-day window, that was one of the risks he assumed by filing so many appeals at the local level in the first instance. The task might have been time consuming, but it was far from impossible. And while the Board recognizes the potential hardship posed by dismissing the appeal for the office building at 115 S. Lafayette Blvd., Kollar was aware of what was riding on that appeal from the day it was filed at the local level. Given those stakes, one would think that a petition for that property would have been the first Form 131 petition that Kollar and his employees filed.

32. Granted, Kollar testified that he and someone at "this office," who he thought was Dillman, had agreed to settle the 115 S. Lafayette Blvd. appeal by changing the assessment to $400,000. *See Kollar testimony*. But the only writing that addresses whether the parties had agreed to settle that appeal shows otherwise. The PTABOA recommended changing the property's assessment to $400,000. But Kollar's wife, who Kollar described as a co-owner of the property, disagreed with that recommendation. And the document is clear that if the taxpayer disagreed, the appeal would proceed. Thus, Kollar could not reasonably have believed that the appeal had been settled.

33. Even if the parties had agreed to settle the 115 S. Lafayette Blvd appeal, that agreement would not change the Board's decision. Had Kollar timely filed a petition for review, the Board could have enforced such an agreement. But Kollar waited until after the statutory deadline for appealing to the Board had expired. That may not foreclose Kollar from enforcing any agreement through a collateral proceeding; the Board offers no opinion on such matters. But the failure to timely file a Form 131 petition prevents the Board from exercising jurisdiction to address the issue.

34. Finally, the Petitioners claim that the Form 115 determinations were facially defective because those determinations advised the Petitioners that they were required to file their

Form 131 petitions within 30 days—instead of 45 days—from the date that the determinations were mailed. The Petitioners, however, did not offer any authority to support the notion that the error somehow prevented the Form 115 determinations from triggering the statutory period for filing a Form 131 petition with the Board. The Petitioners' claim might have some merit if the error had overstated, rather than understated, the statutory deadline. For example, if the Form 115 determinations had listed the appeal period as 60 days, the Petitioners might believably have claimed that they were misled into missing the statutory filing deadline. Even with the error at hand, a taxpayer might conceivably conclude that it would be impossible to timely file Form 131 petitions within 30 days and decide to not even try. But the Petitioners offered no evidence of such detrimental reliance in this case.[8] In fact, the Form 131 petitions themselves all contained a notice advising the Petitioners of the correct filing deadline.

SUMMARY OF FINAL DETERMINATION

35. The Petitioners failed to timely file their Form 131 petitions with the Board. To the extent that the Board might have the authority to address untimely filed petitions, the Petitioners did not present facts that would be sufficient to invoke that authority. The Board therefore dismisses the Petitioners' appeals.

_____
Chairman, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

[8] Even if the Petitioners had detrimentally relied on the Form 115 determination's erroneous information, it is not a foregone conclusion that such reliance would have extended the statutory filing deadline. *See Middleton Motors, Inc. v. Indiana Dep't of State Revenue*, 269 Ind. 282, 283, 380 N.E.2d 79, 81 (1978) (rejecting taxpayer's claim that the State was estopped from asserting that the trial court lacked jurisdiction because the deputy director for the Department of State Revenue had told the taxpayer that it had two years from the payment of a final installment to file an action to reclaim any excessive tax.). The Board, however, need not decide that question here.

- Appeal Rights -

You may petition for judicial review of this final determination under 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 Indiana 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/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>