

REPRESENTATIVE FOR PETITIONERS:

Robin E. Goff, *pro se*

REPRESENTATIVES FOR RESPONDENT:

Wanda O'Neal, Putnam County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Ronnie W. & Robin E Goff,	)	Petition No.:	67-001-06-1-6-00001
	)	Parcel:	00750307000
Petitioners,)		
)		
v.)		
	)	County:	Putnam
Putnam County Assessor ¹,	)	Township:	Clinton
	)	Assessment Year:	2006
Respondent.)		

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

December 5, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

¹ The identity of the proper responding party is not entirely clear in this case. Pursuant to Ind. Code § 6-1.1-15-3, “[a] township assessor, county assessor, member of a county property tax assessment board of appeals, or county property tax assessment board of appeals that made the original determination under appeal” is a party to an appeal to defend its determination. Here, the original determination at issue is the denial of a refund for taxes first due between 1995 and 2002. By statute, three (3) officials are authorized to deny such a refund: the county treasurer, the county auditor and the county assessor. Ind. Code § 6-1.1-26-3(a). The Form 17T included in the Respondent’s exhibits does not indicate which of those three officials denied the Petitioners’ claim. *See Resp’t Ex. 1*. In fact, the Form 17T does not reflect that the Petitioners’ even claimed a refund for taxes that were first due prior to 2003. Nonetheless, because the parties appear to agree that the Petitioners in fact sought a refund of taxes that were first due prior to 2003, the Board shall address the merits of that claim. The Board further assumes that the Putnam County Assessor denied the Petitioners’ claim and therefore is the proper responding party.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The parties presented the following restated issue for consideration by the Board:
Whether the Petitioners are entitled to a refund for taxes first due more than three (3) years prior their refund application

PROCEDURAL HISTORY

2. On or about May 10, 2005, the Petitioners filed County Form No. 17T (Form 17T) requesting a refund of property taxes paid by the Petitioners in prior years. On or about June 22, 2005, the Petitioners filed Form 130 Petition to the Property Tax Assessment Board of Appeals for Review of Assessment (Form 130) requesting a refund of taxes in addition to the refund granted pursuant to their Form 17T. The Putnam County Property Tax Assessment Board of Appeals (PTABOA) issued its Form 115 Notification of Final Assessment Determination (Form 115) on April 26, 2006. On May 18, 2006, the Petitioners filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment (Form 131 petition).

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the hearing was held on September 12, 2006, in Greencastle, Indiana before Alyson Kunack, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioners:

Robin E. Goff, Owner

For the Respondent:

Brenda G. Heacock, Clinton Township Assessor
Wanda O'Neal, Putnam County Assessor
Nancy R. Dennis, Real Estate Director

5. At the hearing, the parties agreed to waive the requirements of 52 IAC 2-7-1 concerning the exchange of summaries of the anticipated testimony of witnesses, witness and exhibit lists, and documentary evidence.
6. The Petitioners did not offer any exhibits.
7. The Respondent offered the following exhibits:
 - Respondent Exhibit 1 – Form 115 dated April 26, 2006; property record card for the subject property; printout showing 2005 tax record; and Form 17T for subject property
 - Respondent Exhibit 2 – Ind. Code § 6-1.1-26-1
8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – The Form 131 Petition
 - Board Exhibit B – Notice of Hearing dated August 10, 2006
 - Board Exhibit C – Hearing Sign-In Sheet
9. The subject property is a residential mobile home located at 2014 Van Bibber Lakes Estates in Greencastle.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2006, the PTABOA determined the assessed value of the subject property to be:
Land: \$16,600 Improvements: \$25,100 Total: \$41,700.

JURISDICTIONAL FRAMEWORK

12. If the county auditor, the county treasurer or the county assessor disapproves a taxpayer's claim for refund, the taxpayer may appeal that decision to the Board. Ind. Code § 6-1.1-26-3(b). The taxpayer "must initiate the appeal, and the [Board] shall hear the appeal in the same manner that assessment appeals are heard by the [Board]." *Id.*

ANALYSIS

Whether the Petitioners are entitled to a refund for taxes first due more than three (3) years prior their refund application

13. The Petitioners contend that they are entitled to a refund of taxes dating back to 1995 regardless of any statutory limitations on the number of years for which a taxpayer may claim a refund. The Petitioners base their position on the fact that Ms. Goff first began to question the validity of the subject property's assessment in 1995. *Goff testimony.*
14. The Respondent contends that Ind. Code § 6-1.1-26-1 limits the time within which a taxpayer may seek a refund to three years. *Dennis testimony; Resp't Ex. 2.*
15. The Petitioners presented the following testimony and argument in support of their contentions:
 - A. Ms. Goff initially questioned the assessment of the subject property as early as 1995. *Goff testimony.* Ms. Goff had talked with her neighbors and found that the Petitioners were paying twice as much as their neighbors were paying. *Id.*
 - B. When Ms. Goff first pursued the possible error, she was told that there were no problems with the assessment. *Goff testimony.* Each year thereafter, Ms. Goff questioned the amount of taxes on the subject property. *Id.*

- C. Ms. Goff testified that nobody told her that she had the right to appeal until 2005. *Goff testimony*. In 2005, Ms. Goff discovered that the Respondent had assessed the subject dwelling as a stick built home rather than as a mobile home. *Id.* The Respondent changed the assessment of the subject dwelling to mobile home. *Id.* After the change, the Petitioners received a refund for their 2003, 2004, and 2005 taxes. *Id.*; *Resp't Ex. 1*.
- D. The Petitioners contend they are entitled to a refund back to 1995 when Ms. Goff first questioned the subject property's assessment. *Goff argument*. The Petitioners contend there should be an exception to the three-year limitation because Ms. Goff tried to bring the error to the Respondent's attention. *Id.*
16. The Respondent presented the following evidence and arguments in support of its position:
- A. The Respondent presented the Form 115 issued by the PTABOA, the property record card for the subject property, the Form 17T filed by the Petitioners to obtain a refund for taxes paid in 2003 and 2004, and other documents to show that the Respondent corrected the Petitioners' assessment and issued a refund. *Resp't Ex. 1*.
- B. The Respondents also cite to Ind. Code § 6-1.1-26-1 for the proposition that a claim for refund must be filed within 3 years after the taxes were first due. *Dennis testimony*; *Resp't Ex. 2*.
- C. The Petitioners received a refund of taxes for 3 years. *Dennis testimony*. The law prohibits the county from refunding taxes past three years. *Id.*
17. The Indiana Code provides, in relevant part:
- A person . . . may file a claim for the refund of all or a portion for a tax installment which he has paid. However, the claim must be:
- * * * * *
- (2) filed within three (3) years after the taxes were first due

Ind. Code § 6-1.1-26-1.

18. The undisputed evidence demonstrates that the Petitioners successfully contested the subject property's assessment for March 1, 2005, and that they filed a Form 17T, pursuant to which they received a refund of taxes paid in 2003 and 2004. *Resp't Ex. 1*. It also appears that the Petitioners were credited with a reduction concerning taxes that were first due in May and November 2005, but which were based on the March 1, 2004, assessment. *See id.; see also*, Ind. Code § 6-1.1-22-9 ("Except as provided in subsections (b) and (c) the property taxes assessed for a year under this article are due in two (2) equal installments on May 10 and November 10 of the following year."). Thus, it appears that the Petitioners received all that they were entitled to receive pursuant to Ind. Code § 6-1.1-26-1. Nevertheless, the Petitioners contend that the Board should waive the requirements of the statute in their case. The Petitioners base their claim on grounds that they first began questioning the validity of their assessment in 1995, but that until 2005, nobody told them they could appeal their assessment.

19. A taxpayer has the right to challenge his or her property assessment. The taxpayer, however, bears the responsibility of complying with the statutory requirements attached to that right, such as the requirements for filing the proper petitions in a timely manner. *See Williams Industries v. State Bd. of Tax Comm'rs*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995). Moreover, all persons are charged with the knowledge of the rights and remedies prescribed by statute. *Middleton Motors v. Ind. Dep't of State Revenue*, 269 Ind. 282, 380 N.E.2d 79, 81 (1978). Thus, if the Petitioners believed that the assessment of the subject property was in error, the Petitioners were responsible for initiating an assessment appeal in a timely manner, regardless of whether anybody specifically informed them of their right to do so.

20. Based on the foregoing, the Petitioners failed to establish their entitlement to a refund of taxes beyond the amount that they have already received.

SUMMARY OF FINAL DETERMINATION

Whether the Petitioners are entitled to a refund for taxes first due more than three (3) years prior their refund application

21. The Petitioners failed to establish that they are entitled to any refund of taxes beyond the amount they have already received. The Board finds for the Respondent.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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>>.