

REPRESENTATIVE FOR PETITIONER:

Carla Bishop, Tax Representative

REPRESENTATIVE FOR RESPONDENT:

Douglas Masson, Attorney, HOFFMAN, LUHMAN & MASSON, PC

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Lafayette Hotel Partnership,)	Petition No.: 79-004-03-1-4-20033
)	Parcel: 158-17300-0040
Petitioner,)	
)	
v.)	
)	Tippecanoe County
Fairfield Township Assessor,)	Fairfield Township
)	Assessment Year: 2003
Respondent.)	

July 9, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), has reviewed the evidence and arguments presented in this case. The parties presented the following issues:

- I. Was the 2003 appeal timely filed?
- II. Did the parties stipulate to the correct 2003 assessment?

Of course, the Board can only determine those issues if it has jurisdiction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. On May 16, 2005, the Petitioner filed a Form 131 Petition for Review of Assessment with the county assessor seeking a review of the 2003 assessment.
2. Paul Stultz, the designated Administrative Law Judge, held a hearing on that petition in Lafayette on April 10, 2007.
3. The following persons were sworn as witnesses:
 - Carla Bishop, representative for the Petitioner,
 - Jan Payne, Fairfield Township Assessor.
4. The following exhibits were presented for the Petitioner:
 - Petitioner's Exhibit 1 - Summary of issues,
 - Petitioner's Exhibit 2 - Form 130 Petition,
 - Petitioner's Exhibit 3 - Letter to Tippecanoe Assessor dated August 9, 2004,
 - Petitioner's Exhibit 4 - Public Law 23-2004,
 - Petitioner's Exhibit 5 - Board memorandum, dated May 2004, regarding appeal deadlines,
 - Petitioner's Exhibit 6 - Form 130, Section IV: Results of the Assessor/Petitioner conference,
 - Petitioner's Exhibit 7 - Form 115,
 - Petitioner's Exhibit 8 - Form 131 Petition.
5. The Respondent did not present any exhibits.
6. The following items are officially recognized as part of the record of proceedings:
 - Board Exhibit A - The Petition,
 - Board Exhibit B - Notice of Hearing,

Board Exhibit C - Hearing Sign In Sheet,

Board Exhibit D - Notice of Appearance for Douglas Masson.

7. The Administrative Law Judge did not conduct an on-site inspection of the subject property.
8. The current total assessed value of the property for 2003 is \$4,110,600 (land \$1,181,500 and improvements \$2,929,100).
9. The Petitioner contends the total assessed value should be \$2,048,700 (land \$1,046,300 and improvements \$1,002,400).

FACTS AND CONTENTIONS

10. The subject property is a Ramada Inn located at 4221 SR 26E, Lafayette, Indiana.
11. The relevant facts are not in dispute. *Bishop testimony; Payne testimony.*
12. The 2003, pay 2004, tax bill was mailed to the Petitioner on May 10, 2004. *Bishop testimony; Pet'r Ex. 1.* The assessed value had not changed from 2002. *Payne testimony.* The Petitioner filed written notice (Form 130) on June 10, 2004, purporting to appeal the 2003 assessment. *Pet'r Ex. 2.* Upon receipt, the local officials changed the year of appeal to 2004, based on the filing date. *Id.* In a subsequent letter, the Petitioner again asserted the year of appeal was 2003. *Pet'r Ex. 3.* After discussion, the parties stipulated the value should be reduced. The township assessor prepared the appropriate section of the Form 130, indicating the agreement applied only to the March 1, 2004, assessment date. *Pet'r Ex. 6.* Upon receipt of this document, the Petitioner's representative added the notation "and 3/1/03," initialed the change, and returned the document to the township assessor with a cover letter explaining the addition. *Id.* The township assessor forwarded this document to the county assessor's staff, which performed the clerical functions of preparing and mailing a Notification of Final Assessment Determination

(Form 115) reflecting a reduction for both 2003 and 2004. *Pet'r Ex. 7*. The township assessor did not enter the years on the Form 115. Instead, this entry was apparently made in the Tippecanoe County Assessor's Office without the Respondent's knowledge.

Payne testimony. The township assessor subsequently notified both the county auditor and the county assessor of the purported error. *Id.* The Petitioner received no amended Form 115 and was not aware of any problem until the claim for the 2003 refund was denied. *Bishop testimony*.

13. The Petitioner contends it timely filed written notice to appeal the 2003 assessment on June 10, 2004, because the tax bill for that assessment was issued on May 10, 2004. *Bishop testimony; Pet'r Ex. 1, 3, 4*. An Indiana Board of Tax Review memorandum interprets Public Law 23-2004, section 81, to mean an appeal for 2003 can be filed 45 days after receiving the 2003, pay 2004, tax statement. *Bishop testimony; Pet'r Exs. 4, 5*.
14. The Form 115 plainly states the stipulated reduction applies to both 2003 and 2004. *Bishop testimony; Pet'r Ex. 7*.
15. The Respondent contends written notice appealing the 2003 assessment was not timely. *Payne testimony*. Public Law 23-2004, section 81, states a taxpayer may file an appeal 45 days after the 2002, pay 2003, tax bill is received. *Id.* The Petitioner paid the first installment of the 2002 assessment on September 15, 2003. *Id.* The Petitioner's filing on June 10, 2004, is therefore well after the 45-day statutory period for appeal. *Masson argument*. In *Douglas M. McCoy v. Bloomington Twp. Assessor (Monroe County)*, the Board rejected the Petitioner's proposed interpretation. *Id.*
16. The township assessor never intended to stipulate for the 2003 assessment year, only the 2004 assessment year. *Payne testimony*. The township assessor may not exceed the authority given to her by the legislature and cannot stipulate to an appeal that was not timely filed. *Masson argument*.

JURISDICTION

17. The Board conducts an impartial review of appeals determinations from an assessing official or a county property tax assessment board of appeals that concern assessed value of tangible property, property tax deductions, and property tax exemptions. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.

ANALYSIS

18. The Board has the jurisdiction and authority conveyed by statute. The Board must "conduct an impartial review of all appeals ... from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law." Ind. Code § 6-1.5-4-1.
19. In order to appeal an assessment the taxpayer must request, in writing, a preliminary conference with the county or township official. If there still is disagreement, the county property tax assessment board of appeals (PTABOA) must hold a hearing. Ind. Code § 6-1.1-15-1.
20. A taxpayer may obtain a review of a PTABOA action with respect to the assessment. In order to obtain a review by the Board under this section, the party must file a petition for review with the appropriate county assessor not later than thirty days after the notice of the PTABOA action is given to the taxpayer. Ind. Code § 6-1.1-15-3(a) and (c).
21. Nothing in the statutes implies a legislative desire to permit circumvention of the administrative process. *State Bd. of Tax Comm'rs v. Mixmill Mfg.*, 702 N.E.2d 701, 704 (Ind. 1998). "[T]he legislature intended to require the taxpayer to follow all statutory procedures for review before going to the Tax Court. This is not an irrational requirement." *Id.*; see also *State Bd. of Tax Comm'rs v. L. H. Carbide*, 702 N.E.2d 706, 707 (Ind. 1998).

22. At the time the Form 115 was issued, apparently neither party realized there were conflicting interpretations of the purported agreement. Although the unresolved issues are not identified on the Form 115, the parties clearly disagreed after the informal conference on the year of appeal and the scope of a purported stipulation agreement between the parties.¹ Rather than going through the PTABOA, however, the Petitioner instead filed a Form 131 petition to the Board. At the administrative hearing, neither party offered any evidence that the PTABOA had held a hearing to make a determination on the issues. The front of the Form 115 includes the notation that the notification was issued as a result of a township assessor/petitioner conference rather than a PTABOA hearing. *Pet'r Ex. 7*. Additionally, Section V of the Form 115, Determination by County Property Tax Assessment Board of Appeals, is blank. *Id.*
23. The statutes and case law discussed above make it very clear that the process the legislature has established for review of property tax assessments must go through the PTABOA. It is also clear that a PTABOA decision is required before any further review can proceed. In *Mixmill* and *L. H. Carbide*, the Supreme Court determined that taxpayers could not skip completion of the administrative review process and proceed with judicial review. In this case, the Petitioner presented a slightly different question because it seeks only to advance to the next step of the administrative review process with its 131 Petition to the Board. This difference, however, is not enough to justify a different result. The

¹ If the matter is not resolved by the PTABOA and the Board conducts subsequent proceedings to consider this case on the merits, the parties are cautioned that they should present substantial, probative evidence to establish what the assessment of the subject property should be. Specifically, the settlement for the 2004 assessment would not be probative evidence for any other assessment year.

Board must conclude that it lacks jurisdiction to make a determination about the disputed assessment until the PTABOA has made a determination.²

CONCLUSION

24. The Board does not have jurisdiction to make a final determination about the assessment because the PTABOA has not made a determination.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the Indiana Board of Tax Review dismisses this case without prejudice. The effect of this dismissal will be to permit the PTABOA to issue a determination. This Final Determination is issued on the date first written above.

Commissioner, Indiana Board of Tax Review

² The Petitioner clearly filed an appeal that it identified and intended to apply to the 2003 assessment. Although local assessing officials apparently believed that appeal was not timely for 2003 and converted it to an appeal for 2004, the Petitioner is entitled to a specific ruling from the assessors and the PTABOA regarding its claim for 2003 in order that it might appeal, if necessary. (Of course, that ruling could be that the attempt to appeal the 2003 assessment is untimely.) It is inappropriate to preclude a taxpayer's right to appeal by the Respondent or the PTABOA simply ignoring the claim for 2003. Furthermore, the Respondent's argument that Public Law 23-2004, Sec. 81 only authorizes a taxpayer to file an appeal 45 days after receiving the 2002, pay 2003, tax bill is wrong. When the PTABOA makes a determination, it should consider another non-code section enacted by the legislature that provides additional opportunity to challenge certain assessments, *notwithstanding* the time requirements in Ind. Code § 6-1.1-15-1. Public Law 1-2004, Sec. 78 became effective on May 10, 2002. Section 78 allows a petitioner to file an appeal within forty-five days of receiving its 2003 tax statement. Section 78 says nothing about changes from the prior assessment being a prerequisite for the opportunity to appeal. Therefore, the fact that the assessed value of the subject property was the same for the 2002, 2003, and 2004 assessments is irrelevant. The evidence established that the tax bill for the 2003 assessment was mailed on May 10, 2004. The Petitioner initiated an appeal on June 10, 2004, within the forty-five day period after receiving that tax statement. The Petitioner filed a timely 2003 appeal. The Respondent's contention that she did not have authority to settle on a 2003 assessment is without merit.

- 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>