

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00001
Petitioner: Boguslaw K. & Anna Kaczmarek
Respondent: Department of Local Government Finance
Parcel #: 007162704570014
Assessment Year: 2002

The Indiana Board of Tax Review (the "Board") issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners filed a Form 139L petition on January 6, 2004.
2. The Board issued a Notice of Hearing to the parties dated May 28, 2004.
3. The hearing was held on July 8, 2004, at 10:30 a.m. in Crown Point, Indiana, before Special Master Dalene McMillen.

Facts

4. The subject property is located at 2642 44th Street, Highland, North Township in Lake County.
5. The subject property is a residential property consisting of a 1992 two-story 2,368 square foot dwelling with attached garage and a 1992 one-story 990 square foot dwelling on a 60' x 125' (7,500 sq. ft.) lot.
6. The Special Master did not conduct an on-site inspection of the property.
 - a) The assessed value of the subject property as determined by the Department of Local Government Finance (DLGF):
Land: \$24,700 Improvements: \$248,700 Total: \$273,400.
 - b) The total assessed value requested by the Petitioners:
Land and Improvements: \$215,000.

7. The following persons were present at the hearing:
For the Petitioners: Anna Kaczmarek, homeowner.

For the Respondent: David Depp, Senior Appraiser for Cole-Layer-Trumble (CLT) representing the DLGF.

David Johns, CLT Staff.
8. Persons sworn in at the hearing:

For the Petitioners: Anna Kaczmarek, homeowner.

For the Respondent: David Depp, Senior Appraiser for CLT.

Issues

9. This petition raises two issues for the Board's review. The first issue is a procedural matter and addresses the question of whether the Petitioners have satisfied the statutory requirements for filing the Form 139L petition. The second issue is whether the assessed value of the subject property is overstated.
10. Summary of Petitioners' contentions regarding the statutory compliance of the Form 139L:
a) The Petitioners received Notice of Assessment of Land and Structures (Form 11/Lake County) for the 2002 assessment on November 14, 2003.
b) The Petitioners did not contact the assessing officials or request an informal hearing to discuss the assessment reflected on this notice.
11. Summary of Respondent's contentions regarding the statutory compliance of the Form 139L:
a) The Notice of Assessment of Land and Structures (Form 11/Lake County) required the Petitioners to request an informal hearing on or before December 29, 2003.
b) The records kept by the DLGF show that the Petitioners did not request or participate in the statutorily required informal hearing process. The 2002 appeal should therefore be dismissed, although the Petitioners could file a new appeal for their 2003 assessment.

Record

12. The official record for this matter is made up of the following:
a) The petition, and all subsequent pre-hearing or post-hearing submissions by either party.
b) The tape recording of the hearing labeled BTR #306.

- c) Exhibits:
- Petitioners' Exhibit 1 – An exhibit coversheet and Ticor Title Insurance settlement statement, dated August 11, 1997.
 - Petitioners' Exhibit 2 – A copy of the small residential income appraisal report for 2640-42 44th Street, Highland, Indiana, dated September 30, 2002.
 - Petitioners' Exhibit 3 – Hand drawn sketch of the subject dwelling.
 - Petitioners' Exhibit 4 – Copy of the Form 139L petition.
 - Petitioners' Exhibit 5 – A copy of the 2002 payable 2003 tax statement for the subject property.
 - Petitioners' Exhibit 6 – A copy of the Notice of Assessment of Land and Structures (Form 11/Lake County), dated November 14, 2003.
- Respondent's Exhibit 1 – A copy of the Form 139L petition.
- Respondent's Exhibit 2 – A copy of the 2002 property record card for the property under appeal.
- d) These findings and conclusions.

Analysis

13. The applicable rules and case law governing this issue are:
- a) In order for the taxpayer to preserve their right to appeal to the Indiana Board of Tax Review, the taxpayer must request and participate, as required, in the informal hearing process not later than forty-five (45) days after the date of the notice of reassessment (Form 11). *Ind. Code § 6-1.1-4-34(c)(1)*.
 - b) A taxpayer must have received a final determination resulting from the informal hearing process in order to appeal to the Indiana Board of Tax Review. *Ind. Code § 6-1.1-4-34(c)(2)*.
 - c) The taxpayer has the right to challenge their property assessment. However, the taxpayer bears the responsibility attached to that right. The legislature created specific appeal procedures for assessment challenges and the taxpayer “must comply with the statutory requirements of filing” petitions for review in a timely manner. *Williams Industries v. State Board of Tax Commissioners*, 648 N.E. 2d 478 (Ind. Tax 1995).
14. The Petitioners did not meet the statutory requirements for filing the Form 139L petition with the Board for the following reasons:
- a) The Petitioners were required to request and participate in the informal hearing process with the DLGF before filing a Form 139L petition with the Board. (*Ind. Code § 6-1.1-4-34*).
 - b) Notice of Assessment was given to the Petitioners on November 14, 2003. The Notice of Assessment informed the Petitioners of the informal hearing process

and the deadline for requesting an informal hearing. (*Kaczmarek testimony; Depp testimony; Pet. Ex. 6.*)

- c) The Petitioners acknowledge they did not request or participate in the informal hearing process. The DLGF also has no record of the Petitioners requesting or participating in the informal hearing process. (*Kaczmarek testimony; Depp testimony*).

Conclusions

- 15. The Petitioners failed to establish that they complied with the statutory procedures for filing the Form 139L with the Board. The Petitioners' Form 139L petition is dismissed and the assessment established by the DLGF is undisturbed.
- 16. Because the Petitioners' petition has been dismissed, the Board will not examine the issue of whether the assessed value of the subject property is overstated.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

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.