

REPRESENTATIVE FOR PETITIONER:

Carter C. Boyd Jr., pro se

REPRESENTATIVES FOR RESPONDENT:

Lisa Garaffolo, Boone County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | |
|------------------------|---|-----------------------------------|
| Carter C. Boyd Jr., |) | Petition Nos: 06-005-03-9-1-00001 |
| |) | 06-005-04-9-1-00001 |
| |) | |
| Petitioner, |) | Parcel: 0191148031 |
| |) | |
| v. |) | |
| |) | County: Boone |
| Boone County Assessor, |) | Township: Eagle |
| |) | |
| Respondent. |) | Assessment Years: 2003 and 2004 |

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

November 20, 2008

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUES

1. The issue presented for consideration by the Board was whether the taxpayer received sufficient notice of a change in his property's assessed value for the property's retroactive assessments and tax bills to be valid.

PROCEDURAL HISTORY

2. The Boone County PTABOA issued its determinations on July 13, 2007. On August 21, 2008, Carter C. Boyd Jr., the Petitioner, filed Form 131 Petitions for Review of Assessment with the Board.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Alyson Kunack, the Board's designated Administrative Law Judge (ALJ) held a hearing on August 26, 2008, in Lebanon, Indiana.
4. The following persons were sworn and presented testimony at the hearing:
For the Petitioner:
Carter C. Boyd Jr., Petitioner

For the Respondent:
Lisa Garaffolo, Boone County Assessor
Jeffrey B. Wolfe, witness
Charles T. Ewing, witness
5. The Petitioner presented the following exhibits:
Petitioner Exhibit 1 – Summary of the case,
Petitioner Exhibit 2 – Form 11 dated August 18, 2003,
Petitioner Exhibit 3 – Form 11 dated February 24, 2006,
Petitioner Exhibit 4 – Tax bills for 2003 and 2004.

6. The Respondent presented the following exhibits:
 - Respondent Exhibit 1 – Property Record Card (PRC) for the subject property,
 - Respondent Exhibit 2 – Report of Assessment for Omitted or Undervalued Property and Assessment Penalties,
 - Respondent Exhibit 3 – PTABOA hearing notes,
 - Respondent Exhibit 4 – Indiana Code § 6-1.1-9-4,
 - Respondent Exhibit 5 – Form 11 dated February 24, 2006,
 - Respondent Exhibit 6 – Form 133 filed October 26, 2006,
 - Respondent Exhibit 7 – Form 133 petitions filed on May 8, 2006, for each tax year,
 - Respondent Exhibit 8 – PTABOA hearing notice,
 - Respondent Exhibit 9 – Letter from the Petitioner,
 - Respondent Exhibit 10 – Letter from the County Assessor in place of Form 115,
 - Respondent Exhibit 11 – Letter from the County Attorney Eileen Sims,
 - Respondent Exhibit 12 – Form 115 determination and Form 133 petition filed for 2002,
 - Respondent Exhibit 13 – Note from the Petitioner citing I.C. § 6-1.1-9-4,
 - Respondent Exhibit 14 – Form 130 for 2002,
 - Respondent Exhibit 15 – Form 131 petition for 2003,
 - Respondent Exhibit 16 – Form 131 petition for 2004,
 - Respondent Exhibit 17 – Form 115 determination for 2002,
 - Respondent Exhibit 18 – IBTR Notice of Hearing.

7. The Board officially recognizes the following additional items as part of the record of proceedings and labels them Board Exhibits:
 - Board Exhibit A – The Form 131 Petition,
 - Board Exhibit B – Notice of Hearing dated July 2, 2008,
 - Board Exhibit C – Hearing Sign-in sheet.

8. The subject property is a residence located at 4617 Summersong Road in Zionsville, Eagle Township in Boone County.

9. The ALJ did not inspect the subject property.

10. For 2003 and 2004, the PTABOA denied the Petitioner’s request for refund and determined that the assessed value of the property was properly increased to \$105,600 for

the land and \$212,900 for the improvements, for a total assessed value of \$318,500 for the March 1, 2003, and March 1, 2004, tax years.

11. The Petitioner contends the assessed value of the property should remain \$105,600 for the tax years at issue.

JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made 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(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

13. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
15. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*,

803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

PETITIONER'S CONTENTIONS

16. The Petitioner contends that the county gave him insufficient notice of a retroactive increase in his property's assessed value. *Boyd testimony*. According to Mr. Boyd, he purchased the land and improvements from a builder in June of 2001. *Id.* He received and paid tax bills for 2003 and 2004. *Id.* Mr. Boyd testified the county only assessed him for the land. *Id.* However, Mr. Boyd argues, it was not his obligation to identify and report the error to the assessor. *Id.* According to the Petitioner, unlike income taxes, property taxes are not based on a self-assessment system, and it is not the taxpayer's job to find errors. *Id.*
17. Mr. Boyd testified that in February 2006, he received a Form 11 Notice of Assessment of Land and Structures, stating a total assessed value of \$318,500 as of March 1, 2005. *Boyd testimony; Pet.Ex.3*. Subsequently, in April of 2006, Mr. Boyd received additional tax bills for 2003 and 2004, without any notification that the assessment for those years had increased. *Id.; Pet.Ex.4*. He argued that he did not understand the tax bill. *Id.* Mr. Boyd contends that he is entitled to a refund of the taxes he paid because the law requires written notification of assessed values in a clear, easily understandable format provided within the statutory time frame. *Boyd testimony*.
18. The Petitioner argues that Indiana Code §6-1.1-9-1 and § 6-1.1-9-4 require written notice of a change in assessed value due to undervalued or omitted property within three years of the assessment date. *Boyd testimony*. According to Mr. Boyd, the tax bills sent by the Assessor did not include the assessed value, only the amount of tax owed. *Id.; Pet.Ex.4*. Thus, the Petitioner argues, because the assessed value was not shown on the tax bills, and no Form 11 notice was sent for 2003 and 2004, he was not given proper notice of the assessed value's increase. *Id.; Pet.Ex.3 & 4*.

RESPONDENT'S CONTENTIONS

19. The Respondent contends that the tax bills provided sufficient notice to the Petitioner of the change in assessment. *Wolfe testimony*. The Petitioner bought his home, moved in, and applied for the homestead credit in 2001. *Id.* According to the Respondent, he also signed the property record card inspection report in April of 2002, but paid taxes based only on the land value of his property from 2002 to 2004. *Id.* The Respondent argues that the taxpayer has a responsibility to report undervalued property, just as a taxpayer would have the ability to appeal an excessive assessment. *Id.*
20. Mr. Wolfe testified that the assessor consulted the County Attorney, Eileen Sims, who advised the assessor that it could validly collect taxes on the revised assessment from March 1, 2003, to March 1, 2006. *Wolfe testimony; Respondent Ex. 11.*

ANALYSIS

21. Real property is assessed based on its “true tax value,” which means “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, for the property.” Ind. Code § 6-1.1-31-6 (c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). If property is undervalued or omitted from an assessment, an assessor can add the omitted property to the tax rolls or increase the assessment of undervalued property. Ind. Code § 6-1.1-9-1.
22. When omitted or undervalued property is assessed or reassessed, Indiana law prescribes certain procedures that must be followed during the assessment or reassessment process. Indiana Code § 6-1.1-9-1 states that if a county finds property that has been undervalued or omitted in a previous year’s or years’ assessment, “the official or board shall give written notice under... I.C. 6-1.1-4-22 of the assessment or increase in assessment.” Pursuant to Indiana Code § 6-1.1-4-22, “[i]f any assessing official assess or reassesses any real property ..., the official shall give notice to the taxpayer and the county assessor,

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by mail, of the amount of the assessment or reassessment.” Indiana Code § 6-1.1-9-1 also requires that the notice contain “a general description of the property and a statement describing the taxpayer’s right to a review with the county property tax assessment board of appeals under IC 6-1.1-15-1.” Further, Section 6-1.1-9-4 of the Indiana Code limits the time in which the county can act to three years from the date of the assessment in which the error is found.

23. In this case, the Petitioner received tax bills in 2006 purporting to assess additional property tax for the subject property in tax years 2003 and 2004. *Boyd testimony; Pet. Ex.4.* The Petitioner received a Form 11, Notice of Assessment of Land and Structures, identifying a new assessed value for the property on February 24, 2006. The notice, however, specified the new assessment was effective March 1, 2005. While the assessor may have intended the Form 11 to apply for the 2003 and 2004 tax years, nothing on its face indicates that the assessment changed prior to 2005. Thus, the Form 11 failed to meet the notice requirements of Indiana Code § 6-1.1-9-1 and Indiana Code § 6-1.1-4-22 for the 2003 and 2004 tax years.
24. The Petitioner’s case, therefore, centers on whether the tax bills provided adequate notice according to statute. Pursuant to Indiana Code § 6-1.1-9-1, proper notice of an assessment of omitted property or a reassessment of undervalued property describes the property and contains a statement regarding the right to a review of the assessment. Further, the notice must be in writing and identify the amount of the assessment. Indiana Code § 6-1.1-4-22. The Petitioner argues that the tax bill did not identify the amount of the assessment because it was not clear that the figures listed in the value box of 322432 and 373413 for tax years 2003 and 2004 respectively were assessed values. Further, the Petitioner argues, the values do not match the re-assessed value of the property as identified in the February 24, 2006, Form 11 notice for 2005.
25. While the Board agrees that the tax bill may have been confusing in that the value listed in the gross value box was not prefaced by a dollar sign, the Petitioner failed to prove the tax bill was not sufficient notice “of the assessment or increase in assessment.” In

presenting his evidence, the Petitioner showed that the assessed value of his property changed to \$318,500 for 2005. The Petitioner, however, merely concluded that the assessed value of the property was the same in 2003 and 2004. The relevant tax bills, to the contrary, identified a value of \$322,432 for 2003 and \$373,413 for 2004. While the Petitioner claimed that these values were merely “the amount of the tax without the decimal point,” there was no evidence that these values were not, in fact, the assessed values for those tax years. Importantly, regardless of the actual value, the Petitioner was on notice that his assessed value had changed for 2003 and 2004. Moreover, the Petitioner’s “Notes for 6-21-2007, Hearing with PTABOA” states that he received a letter from the assessor dated April 18, 2006, with an “explanation” and attaching a “property card showing improvement at \$212,900.” *Resp. Ex. 3*. Thus, the Petitioner was clearly on notice that his assessment had changed as of April of 2006.

26. Despite this, the Board finds that nowhere on the tax bill in evidence is there any reference to a taxpayer’s right to appeal the assessment. Because, Indiana Code § 6-1.1-9-1 requires that the notice contain “a statement describing the taxpayer’s right to a review with the county property tax assessment board of appeals under IC 6-1.1-15-1,” the Petitioner raised a prima facie case that it did not receive proper notice of the increase in its assessment.¹

27. The Respondent contends that the bills are sufficient notice of the increase in assessment. Its argument focuses on the timeframe in which an assessor can “go back” to assess omitted and undervalued property. *Wolfe testimony*. The Respondent correctly concludes that timeframe to be three years from the date of the assessment in which the error is found. *Id., Resp. Ex. 11*. Yet the Respondent completely failed to address whether the statutory notice requirements were met, and submitted no probative evidence to support their claim that the tax bills gave sufficient notice. Conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*,

¹ The Board also notes that the April 20, 2006, tax bill was not timely notice of a change in assessment for the March 1, 2003, tax year pursuant to Section 6-1.1-9-4 which limits the time in which the county can act to three years from the date of the assessment in which the error is found.

704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).² Therefore, the Respondent failed to rebut the Petitioner's prima facie case.

28. This result, on its face, may appear unfair to other taxpayers that are paying their share of the cost of government, particularly in light of the Petitioner's clear knowledge that his home was not assessed. Further, there can be no question that the Petitioner understood or was informed of his right to review of that assessment change because he is properly before the Board on appeal. However, the laws relating to proper notice and time limitations are in place to protect a taxpayer from an unfair increase in its assessment and to provide reasonable finality in his tax obligations. *See Scheub v. State Bd. of Tax Comm'rs*, 716 N.E.2d 638, 643 (Ind. Tax Ct. 1999) ("The notice required by section 6-1.1-9-1 is mandatory, because it is for the benefit and protection of the taxpayer.") Thus, those laws are strictly construed. *Id.* Despite the Petitioner's clear knowledge of the matters that were required to be contained in the notice, the assessor failed to comply with those notice and time limitations in increasing the Petitioner's assessment for 2003 and 2004. The Board must enforce the law as promulgated by the Legislature and, therefore, the Board must find the reassessment in those years to be without effect.

SUMMARY OF FINAL DETERMINATION

29. The Petitioner established a prima facie case that the assessor failed to provide sufficient notice for an increase in the subject property's assessment for the March 1, 2003, and the March 1, 2004, tax years. The Respondent failed to rebut the Petitioner's case. Therefore, the Board finds in favor of the Petitioner.

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

² The April 18, 2006, letter from the assessor referenced in the Petitioner's "Notes for 6-21-2007, Hearing with PTABOA" may have included the required information in its "explanation" but the letter was not admitted into the record by either party and the Board will not speculate as to its contents.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>.