
**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Maurice and Mary Jane Buening,)	Petition No. 16-008-08-3-1-00001
)	Petition No. 16-008-09-3-1-00001
Petitioners,)	Petition No. 16-008-10-3-1-00001
)	
v.)	Parcel No. 16-14-34-140-001.000-008
)	
)	Decatur County
Decatur County Assessor,)	Marion Township
)	Assessment years 2008, 2009, and 2010
Respondent.)	

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

May 20, 2013

FINAL DETERMINATION

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.

ISSUE

The Petitioners filed Petitions for Correction of an Error (Form 133) for the 2008, 2009, and 2010 assessment years claiming that their tax refunds received from the Decatur County Auditor were not calculated correctly. Does the Board have jurisdiction to address the Petitioners' claims regarding the tax refunds?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject property consists of 71.2 acres of farmland located at 1000 South and 100 West, Westport, Indiana.
2. The Petitioners initiated these appeals with the Property Tax Assessment Board of Appeals (PTABOA) by filing Form 133 Petitions on December 21, 2011, for years 2008, 2009, and 2010.
3. On April 25, 2012, the PTABOA issued its determinations for all three years stating it would not change the assessed values due to the fact the assessed values were correct and because it was the responsibility of the county auditor to compute and distribute the refunds.
4. On June 11, 2012, the Petitioners filed three Form 133 Petitions seeking the Board's review. They state the total refund for the subject parcel for the three years should be \$268.87.
5. Administrative Law Judge Paul Stultz held the hearing on March 7, 2013. He did not conduct an on-site inspection of the property.
6. The PTABOA determined the total assessed value of the property is \$78,000 for 2008, \$81,200 for 2009, and \$83,100 for 2010.¹
7. Mary Jane Buening, County Assessor Dorene Greiwe, and James Morris were sworn as witnesses and testified at the hearing. Maurice Buening, County Auditor Tami Wenning, Lori Leach, and Rhonda Heger were sworn, but they did not testify.

¹ The parties agreed to the 2008 and 2010 PTABOA values. The Petitioners also agreed on the 2009 PTABOA value. The Respondent, however, observed that the 2009 assessed value was subsequently lowered.

8. The Petitioners presented the following exhibits:
 - Exhibit 1 – Property record card (PRC) for subject property,
 - Exhibit 2 – Corrected PRC for subject property,
 - Exhibit 3 – Property tax receipt #1177511,
 - Exhibit 4 – Property tax receipt #1196513,
 - Exhibit 5 – Petitioners’ calculation of correct amount of refund,
 - Exhibit 6 – An email from Gail Snyder to the Petitioners dated January 11, 2012,
 - Exhibit 7 – An email from the Decatur County Assessor to the Petitioners dated January 11, 2012,
 - Exhibit 8 – An email from the Petitioners to the county auditor dated February 13, 2012,
 - Exhibit 9 – An email from the Petitioners to the county auditor dated April 26, 2012,
 - Exhibit 10 – Summary of the Petitioners’ contentions.

9. The Respondent presented the following exhibits:
 - Exhibit R1 – Real Property Assessment Guidelines for 2002 – Version A, chapter 2 at 117, 118, and 119,
 - Exhibit R2 – Original 2008 PRC,
 - Exhibit R3 – Corrected 2008 PRC,
 - Exhibit R4 – Original 2009 PRC,
 - Exhibit R5 – Corrected 2009 PRC,
 - Exhibit R6 – 2010 PRC showing original and corrected values,
 - Exhibit R7 – Notice of Assessment by Assessing Official (Form 113) for 2009,
 - Exhibit R8 – Form 113 for 2010,
 - Exhibit R9 – 2008 pay 2009 auditor correct screen,
 - Exhibit R10 – Form 113 for 2009 and 2009 pay 2010 auditor correct screen,
 - Exhibit R11 – Form 113 for 2010 and 2010 pay 2011 auditor correct screen.

10. The following additional items are recognized as part of the record:
 - Board Exhibit A – The 131 Petition,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing Sign in Sheet.

SUMMARY OF THE PETITIONERS' CASE

11. The measured acreage of the farmland was not correct. Soil type CM was corrected from 34.91 acres to 28.45 acres for March 1, 2010. For the 2010 assessment the true tax value (TTV) for the soil type CM went from \$53,410 to \$43,530 due to the change in acreage. *Pet'r Ex. 1, 2.* The refund was \$16.05 for all three years. The correct amount of the refund should have been \$269.78. *Mary Jane Buening testimony; Pet'r Ex. 5.*
12. The Petitioners were told the 2010 assessment would be corrected on the tax bill for the second installment in November 2011. *Mary Jane Buening testimony.*
13. There is a creek running through the parcel and some woodland. *Mary Jane Buening testimony.*
14. The Respondent never provided an explanation about how the refund of \$16.05 was figured. *Mary Jane Buening testimony.*

SUMMARY OF THE RESPONDENT'S CASE

15. The Petitioners were never over assessed on acreage. They misunderstood the process used to assess farmland. The farmland on a parcel is assessed as follows:
 - a. The total TTV of all soil types is divided by the total measure of farmland acres. The result is the average TTV per acre of all the farmland.
 - b. The average farmland TTV per acre is multiplied by the actual acres of farmland owned. The result is the TTV of farmland.
 - c. Measured acreage using a geographic information system (GIS) will not equal the actual acreage shown on a deed. The GIS is not that exact due to, for example, the curvature of the earth. *Morris testimony.*
16. The County Assessor changed the measured acres to equal the actual farmland acres for the Petitioners. The total TTV of farmland changed very little due to the assessing

process described above. For the 2009 assessment the average TTV per farmland acre went from \$1,168 to \$1,158. This changed the total land value from \$80,700 to \$80,000 (total assessed value of \$80,500). *Morris testimony; Resp't Ex. R5*. It did not change the total number of acres for which the Petitioners were assessed. The Petitioners have always been assessed for 69.1 acres of farmland. *Morris testimony*.

17. The creek and woodland areas about which the Petitioners expressed concern have negative influence factors applied to them because they have a lesser value than tillable farmland. *Morris testimony*.

ANALYSIS

18. The Board lacks jurisdiction to address the Petitioners' assertions that the county auditor calculated the refund incorrectly.
19. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001) (citing *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). By statute, the Board must conduct an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, property tax exemptions, and property tax credits that are made from a determination by an assessing official or county property assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1.
20. No statute authorizes the Board to review taxes due or the accuracy of calculations made by the county auditor to process a refund.

SUMMARY OF FINAL DETERMINATION

21. The Board does not have jurisdiction to address the accuracy of the tax refunds processed by the county auditor.

This Final Determination of the above captioned matter is issued on the date first written above.

Commissioner, Indiana Board of Tax Review

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- 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>