

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions

Petition #: 62-006-02-1-7-00401
Petitioner: Can-Clay Corporation
Respondent: Troy Township Assessor (Perry County)
Parcel #: 108-00021-02
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 Petitioner initiated an assessment appeal with the Perry County Property Tax Assessment Board of Appeals (PTABOA) on a Form 130 petition filed January 4, 2003.
2. The Petitioner received notice of the decision of the PTABOA dated March 25, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on April 21, 2004. Petitioner elected to have this case heard in small claims.
4. On the Form 131 petition the Petitioner attempts to appeal penalties for late filing of property tax returns. The Petitioner contends the "penalty is excessive and unwarranted." The Petitioner "request abatement or reduction of penalty."
5. On August 5, 2004, the Board sent an Order of Dismissal to the Petitioner. The Order of Dismissal explained that the Board did not have the authority to decide this appeal. The Petitioner was given ten (10) days to file a written objection to the Order of Dismissal.
6. The Petitioner did not respond to the Order of Dismissal.

Facts

7. The property is classified as business tangible personal property identified as parcel/key # 108-00021-02.
8. Assessed Value of subject business tangible personal property as determined by the Perry County PTABOA: \$2,498,690.

Record

9. The official record for this matter is made up of the following:
 - a) The Form 131 petition and all attachments including:
Form 130; Form 115; POA; Form 103 Long; copy of postmark; copy of certificate of mailing; Form 113/PP; Request for an extension of time to file; Letter granting an extension of time to file; copy of IC 6-1.1-37-7.
 - b) Order of Dismissal dated August 5, 2004.
 - c) These Findings and Conclusions.

Analysis

10. On the Form 131, the Petitioner states, “This is an appeal of penalties assessed due to late filing of property tax returns as of March 1, 2002.” The Petitioner contends the “penalty is excessive and unwarranted. Respectfully request abatement or reduction of penalty. It is very difficult for a small company to pay this amount in penalties for being 10 days late.” *Form 131 petition, page 2.*
11. The most applicable statutes and case law governing cases are:
 - a) Pursuant to Ind. Code § 6-1.5-4-1, the Board is empowered to review appeals concerning:
 - (1) assessed valuation of tangible property;
 - (2) property tax deductions;
 - (3) property tax exemptions; or
 - (4) property tax credits;made from a determination by an assessing official or county property tax assessment board of appeals.
 - b) The Board is a creation of the Legislature and has only the powers conferred by statute. *Whetzel v. Department of Local Government Finance, 761 N.E. 2d 904 (Ind. Tax 2002)*, citing *Matonovich v. State Board of Tax Commissioners, 705 N.E. 2d 1093, 1096 (Ind. Tax 1999)*; *Hoogenboom-Nofziger v. State Board of Tax Commissioners, 715 N.E. 2d 1018, 1021 (Ind. Tax 1999)*.

Conclusions

12. In *Whetzel*, the Tax Court determined that the statute did not grant the Board power to review penalties imposed by the County for late payment of property taxes. Therefore, the Board did not have the authority to decide *Whetzel*'s appeal of the penalty.
13. While the late filing penalties described on the Form 131 petition are not the same as the late payment penalties described in the *Whetzel* case, it is clear that the statute does not empower the Board to review any penalties imposed by the county. Therefore, the Board does not have the authority to decide this appeal.

14. The Petitioner was given the opportunity to respond to the Order of Dismissal by filing a written objection and requesting that the Order be vacated and set aside. The Petitioner did not respond to the Order.

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.