REPRESENTATIVE FOR PETITIONER:
Karen Freeman-Wilson, Attorney

REPRESENTATIVE FOR RESPONDENT:
None

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Chase Land, LLC,	)	Petition: 45-001-03-4-9-00001
	)	
Petitioner,	)	Parcel: 25-40-0035-0011
	)	
v.	)	
	)	County: Lake
Department of Local Government	)	
Finance,	)	Township: Calumet
	)	
Respondent.[1]	)	Assessment Year: 2003

Appeal from the Final Determination of the
Department of Local Government Finance

DISMISSAL ORDER

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

[1] The Board lists the Department of Local Government Finance ("DLGF") as the Respondent because Chase filed a Form 139 Petition for Review of Department of Local Government Finance Action. As explained in this decision, however, the DLGF is not the proper respondent in a case, such as this, where a property owner appeals from the denial of an Economic Revitalization Area deduction for real property.

INTRODUCTION

1. There are specific statutory procedures for appealing from the denial of an economic revitalization area ("ERA") deduction, also commonly known as an abatement. And a property owner must follow those procedures if it wants to appeal to the Board. Because Chase Land, LLC did not follow the statutory procedures for appealing from the denial of its real-property ERA deduction, the Board lacks jurisdiction to hear Chase's appeal.

FACTS AND PROCEDURAL HISTORY

2. The subject property is located at 700 Chase Street in Gary. *Board Ex. A*. Chase claims that, in 2000, the Gary City Council adopted a resolution designating the subject property as an ERA. *Paxton testimony; Pet'r Ex. 1*. According to Chase, the property was granted an ERA deduction based on Chase's plan to build an industrial facility. *Paxton testimony*. Chase finished building that facility in December 2000. It is now occupied by ChemCoaters, a company that applies chemical coatings to steel and aluminum. *Baker testimony*.

3. Chase claims that it received its deduction for the 2001 and 2002 assessment dates. But in 2005, when Chase received its tax bill based on the 2003 assessment, the deduction had not been applied. *Paxton testimony*. To correct that problem, Toni Baker, ChemCoaters' controller, spoke to representatives of the Lake County Auditor's office. *Baker testimony*. Ms. Baker, however, was not sure that Chase ultimately received 100% of the deduction. *Id.* Kathy Paxton, Chase's controller, also believed that Chase had received an adjustment on its taxes to address the problem. *Paxton testimony.* But like Ms. Baker, she was unsure that the adjustment gave Chase 100% of the deduction to which was entitled. *Id*.

4. What happened next is not entirely clear. Chase did not offer anything to show that it filed a written request for an informal conference with the Lake County Auditor. Chase similarly failed to show that the Lake County Property Tax Assessment Board of Appeals

("PTABOA") ever addressed Chase's claim that the subject property had been improperly denied a deduction for 2003. Instead, on July 18, 2005, Chase filed with the Board a Form 139 Petition for Review of Department of Local Government Finance Action. *Board Ex. A*. That petition included a box to be checked indicating that Chase had attached a copy of the "Notice of Local Government Finance Action." *Id*. Alongside that box, Chase wrote "Not Received." *Id*. Chase, however, did attach a copy of an August 1, 2006, letter from Pam Eustace, an assessor/auditor from the Department of Local Government Finance's ("DLGF") budget division. In that letter, Ms. Eustace said that the DLGF was reviewing Chase's petition for appeal, but that several things were missing, including a timely filed abatement application, business tangible personal property returns, and a list of new equipment. *Id*.

5. On February 10, 2009, the Board's Administrative Law Judge ("ALJ"), Ellen Yuhan, held a hearing on Chase's appeal. Chase appeared at the hearing through counsel, Karen Freeman-Wilson. No responding party appeared.

6. Neither the Board nor the ALJ inspected the subject property.

7. The following people were sworn in as witnesses for Chase:

   Kathy Paxton, Controller

   Antoinette Baker, Controller for ChemCoaters, LLC

   Dan Phillips, Original partner in ChemCoaters, LLC

8. Chase submitted the following exhibits:

   Petitioner's Exhibit 1 – Gary City Council Resolution No. 2744; Application for ERA designation; "Prerequisite Questionnaire for Tax Abatement"; Form SB-1Statement of Benefits; Form 322 ERA/PP; Single page with list of various business's addresses and telephone numbers; Affirmative Action Equal Employment Policy,

   Petitioner's Exhibit 2 – Check dated July 9, 2004, from Chase to the Lake County Treasurer; Copies of tax bills for 2002 pay 2003,

   Petitioner's Exhibit 3 – 1/27/06 memorandum from Kathy Stoll to Stacey Prigge

with copies of tax bills for 2004 pay 2005; facsimile confirmation report.

9. The Board recognizes the following additional items as part of the record of proceedings:

    Board Exhibit A – Form 139 petition

    Board Exhibit B – Notice of hearing

    Board Exhibit C – Hearing sign-in sheet

    Board Exhibit D – Proof of mailing

ANALYSIS

10. The Board lacks jurisdiction to address Chase's appeal. The Board is a creature of the legislature and therefore has only those powers conferred by statute. *See Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)(addressing the authority of the now abolished State Board of Tax Commissioners). And "[a]ll doubts regarding a claim to power of a governmental agency are resolved against the agency." *State ex rel. ANR Pipeline Co. v. Indiana Dep't of State Revenue*, 672 N.E.2d 91, 94 (Ind. Tax Ct. 1996). Thus, where the General Assembly has laid out statutory procedures for appealing to the Board, parties must substantially follow those procedures before the Board can hear their appeals. Here, Chase did not follow the statutorily mandated procedures for appealing from the denial of its claimed ERA deduction.

11. Chase appealed from the denial of an ERA deduction that it claimed should have been applied to its 2003 real property assessment. Indiana Code § 6-1.1-12.1 sets out detailed procedures for obtaining ERA deductions. For example, a designating body must find that a particular area within its jurisdiction is an ERA. Ind. Code § 6- 1.1-12.1-2(a)(2008 replacement vol.). A property owner may apply for a deduction based on plans to rehabilitate real property located within that ERA. I.C. § 6- 1.1-12.1-3(2008 replacement vol.); I.C. § 6- 1.1-12.1-5 (2008 replacement vol.). If the designating body has approved the real property ERA deduction and established the number of years over

which the deduction is to apply, the county auditor must make the appropriate deduction. I.C. § 6- 1.1-12.1-5(f)(2008 replacement vol.).

12. The statute also lays out specific procedures for appeal if the county auditor denies or alters a real property deduction approved by a designating body. I.C. § 6-1.1-12.1-5(j) (2008 replacement vol.). While the ERA statutes have been amended several times, those appeal procedures have not changed between 2005, when Chase was first notified that it had been denied its claimed deduction, and the present. *Compare* I.C. § 6-1.1-12.1-5(j) (2008 replacement vol.) with I.C. § 6-1.1-12.1-5(j) (2005 supp.). Those procedures are as follows:

> A property owner may appeal a determination of the county auditor under subsection (f) to deny or alter the amount of the deduction by requesting a preliminary conference with the county auditor not more than forty-five (45) days after the county auditor gives the person notice of the determination. An appeal initiated under this subsection is processed and determined *in the same manner that an appeal is processed and determined under IC 6-1.1-15*.

I.C. § 6-1.1-12.1-5(j) (emphasis added).

13. Unlike Ind. Code § 6-1.1-12.1-5(j), Ind. Code § 6-1.1-15-1 has been amended since 2005. With one exception, though, the key procedures have remained the same. If an appeal cannot be resolved through an informal conference with the appropriate local official, the county PTABOA must hold a hearing and issue a determination. I.C. § 6-1.1-15-1 (k) – (n)(2008 replacement vol.); I.C. § 6-1.1-15-1(i) – (m)(2005 supp.). The property owner can then appeal to the Board from the PTABOA's determination. I.C. § 6-1.1-15-3 (2008 replacement vol.); I.C. § 6-1.1-15-3(2005 supp.). The key difference between the procedures in 2005 and the current procedures lies in that last step; in 2005 a taxpayer could not appeal to the Board unless the PTABOA issued a determination, whereas now, a taxpayer can file an appeal with the Board if the PTABOA fails to hold a hearing or issue a determination within statutorily specified times for taking those actions. *See* P.L. 219-2007 § 38 (adding subsection (o) to I.C. § 6-1.1-15-1). That change, however, applies only to appeals in which taxpayers began the appeal process at the local level

after June 30, 2007. P.L. 219-2007 § 156(a)(1). Thus, it does not apply to Chase's appeal.

14. Arguably, Chase also could have proceeded under Ind. Code § 6-1.1-15-12, which calls for the correction of certain errors in a tax duplicate. Among the errors correctable under that statute are that the taxes "as a matter of law, were illegal" I.C. § 6-1.1-15-12(a)(6) – (7) (2008 replacement vol.). Assuming, without deciding, that Chase could have proceeded under Ind. Code § 6-1.1-15-12, that statute also lays out specific procedures for prosecuting an appeal. For taxes—such as the ones at issue here—that are not based on assessments made by the DLGF, any correction must be approved by two of the following three officials: the township assessor (if any), the county assessor, and the county auditor. I.C. § 6-1.1-15-12(d)(2008 replacement vol.). If two of those three officials do not agree, the auditor must refer the appeal to the PTABOA for a determination. *Id*. The taxpayer can then appeal the PTABOA's determination to the Board, which shall conduct the appeal in the same manner as appeals are conducted under Ind. Code § 6-1.1-15-4 through 8. Ind. Code § 6-1.1-15-12(e)(2008 replacement vol.).

15. Chase did not follow the appeal procedures under either the ERA statute or the statute governing correction of errors. Under both statutes, the Lake County PTABOA needed to hold a hearing and issue a determination before Chase could appeal to the Board. And Chase offered nothing to show that the Lake County PTABOA did either of those things. Instead, it appears that Chase never sought a PTABOA hearing because it mistakenly thought that it needed to proceed through the DLGF.[2] But the DLGF had nothing to do with approving or denying Chase's ERA deduction. Thus, Chase's failure to follow the

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[2] At one time, the DLGF, rather than the county auditor, approved or denied deduction applications for new manufacturing and new research-and-development equipment. *See* I.C. 6-1.1-12.1-5.4(e) (2002). Property owners could then appeal to the Board by filing a Form 139 petition, as Chase did in this case. I.C. 6-1.1-12.1-5.4(h)(2002). But Chase has appealed the denial of a deduction for real property, not personal property. And that procedure has never applied to appeals involving real property ERA deductions. In fact, in 2003 and 2004, a property owner appealed the denial of a real property deduction by filing a complaint in circuit or superior court. *See* I.C. § 6-1.1-12.1-5(j) (2003 supp.); P.L. 245-2003 § 9. That changed in 2005 when the General Assembly amended Ind. Code § 6-1.1-12.1-5 to reflect the current appeal procedure. P.L. 193-2005, § 1.

appropriate statutory procedures leaves the Board without jurisdiction to hear Chase's appeal.

16. The Board's enabling statute (Ind. Code § 6-1.5) reinforces the Board's finding that it lacks jurisdiction. That statute has two sections describing appeals that the Board must address. One, Ind. Code § 6-1.5-5-1(a), directs the Board to review appeals of final determinations made by the DLGF under five specific statutes, none of which involves ERA deductions.[3] The other, Ind. Code § 6-1.5-4-1(a), requires the Board to review all appeals concerning: "(1) the assessed valuation of tangible property; (2) property tax deductions; or (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." And subsection (b) says that such appeals "shall be conducted under Indiana Code § 6-1.1-15."

17. Chase's appeal does not meet the requirements of either section. As already noted, the ERA-deduction statute is not included in Ind. Code § 6-1.5-5-1(a)'s list of underlying statutes from which final determinations of the DLGF may be appealed to the Board. Regardless, the DLGF did not issue a final determination. Similarly, Chase did not appeal from the final determination of an assessing official or PTABOA as required by Ind. Code § 6-1.5-4-1(a). At best, Ms. Baker testified that she had some conversations with representatives from the Lake County Auditor's office. But a county auditor is not an assessing official within the meaning of Ind. Code § 6-1.5-4-1(a). A county auditor's duties do not include assessing property. *See generally,* I.C. § 36-2-9 (2006). This interpretation is consistent with Ind. Code § 6-1.1-1-1.5, which defines "assessing official," as "(1) a township assessor (if any); (2) a county assessor; or (2) a member of a county property tax assessment board of appeals." I.C. § 6-1.1-1-1.5(a)(2008 replacement vol.).

[3] The following statutes are listed: I.C. § 6-1.1-8, I.C. § 6-1.1-14-11, I.C. § 6-1.1-16, I.C. § 6-1.1-26-2, and I.C. § 6-1.1-45-6. Ind. Code § 6-.1.5-5-1(a).

18. Thus, because Chase did not follow the steps necessary to give the Board jurisdiction, the Board must dismiss Chase's appeal.

19. Even if the Board was to address the merits of Chase's appeal, Chase failed to make a prima facie case because it did not show what, if any, relief it was entitled to. Both Ms. Paxton and Ms. Baker testified that the auditor had adjusted Chase's taxes to address Chase not having received its 2003 deduction. But neither Ms. Chase nor Ms. Baker could say what those adjustments were, just that they were unsure whether the adjustments gave Chase 100% of its deduction.

Summary of Determination

20. Because Chase did not follow the appropriate statutory procedures to appeal the denial of a real property ERA deduction, the Board lacks jurisdiction. The Board therefore dismisses Chase's appeal.

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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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>