

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-018-11-1-5-00700-16
45-018-11-1-5-00702-16
45-018-11-1-5-00704-16
45-018-11-1-5-00705-16
Petitioner: Phillip Cyprian/ACC, Inc.
Respondent: Lake County Assessor
Parcels: 45-13-05-152-011.000-018
45-08-26-231-009.000-018
45-09-28-376-001.000-018
45-09-29-253-013.000-018
Assessment Year: 2011

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated the appeals with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) on July 2, 2012¹. The PTABOA failed to hold hearings within 180 days as required by Ind. Code § 6-1.1-15-1(k). Accordingly, Petitioner filed Form 131 petitions directly with the Board pursuant to Ind. Code § 6-1.1-15-1(o).
2. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
3. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held a hearing on June 5, 2017. Neither the ALJ nor the Board inspected the property.
4. Joseph A. Gomeztagle, tax representative, was sworn as a witness for Petitioner.² Robert Metz and Joseph E. James, Lake County hearing officers, were sworn as witnesses for Respondent.

¹ It is unclear when the appeal for parcel 45-08-26-231-009.000-018 for ACC, Inc. was initiated in that the attached request for a preliminary conference is for the 2008 assessment year.

² Mr. Gomeztagle had power of attorney from Allen J. Mindel, the taxpayer’s attorney. The power of attorney authorized Mr. Gomeztagle to negotiate real property tax matters with the Hobart Township Assessor. Respondent did not object to Mr. Gomeztagle’s representation at the Board’s hearing. The Board will assume that the taxpayer wished for Mr. Gomeztagle to follow the appeal to its disposition.

Facts

5. The subject properties are improved residential properties located in Hobart.
6. Petitioner does not challenge the assessed values of the properties.

Record

7. The official record contains the following:
 - a. A digital recording of the hearing
 - b. Exhibits:

Petitioner presented no exhibits.

Respondent presented the following exhibits:

Parcel 45-13-05-152-011.000-018

Respondent Exhibit 1:	Property record card (“PRC”),
Respondent Exhibit 2:	Request for Preliminary Conference,
Respondent Exhibit 3:	Article 10-Constitution of the State of Indiana,
Respondent Exhibit 4:	2011 payable 2012 tax statement,

Parcel 45-08-26-231-009.000-018

Respondent Exhibit 1:	PRC,
Respondent Exhibit 2:	Article 10-Constitution of the State of Indiana,
Respondent Exhibit 3:	2010 pay 2011 Real Property Maintenance Report,
Respondent Exhibit 4:	2011 pay 2012 Real Property Maintenance Report,
Respondent Exhibit 5:	Subject Property Sales disclosure Form 2011,
Respondent Exhibit 6:	2011 payable 2012 tax statement,

Parcel 45-09-28-376-001.000-018

Respondent Exhibit 1:	PRC,
Respondent Exhibit 2:	Request for Preliminary Conference,
Respondent Exhibit 3:	Article 10-Constitution of the State of Indiana,
Respondent Exhibit 4:	2011 payable 2012 tax statement,

Parcel 45-09-29-253-013.000-018

Respondent Exhibit 1:	PRC,
Respondent Exhibit 2:	Request for Preliminary Conference,
Respondent Exhibit 3:	Article 10-Constitution of the State of Indiana,
Respondent Exhibit 4:	2011 payable 2012 tax statement,

Board Exhibit A:	Form 131 petitions,
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Board Exhibit B: Notices of hearing,
Board Exhibit C: Hearing sign-in sheet,

c. These Findings and Conclusions.

Burden

8. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
9. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code 6-1.1-15-17.2(b).
10. Second, Ind. Code 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).
11. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
12. Petitioner is not challenging the assessed values of the subject properties. Thus, the burden-shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden remains with Petitioner.

Summary of Parties' Contentions

13. Petitioner's case:
 - a. Petitioner contends that there is an additional tax liability appearing on Petitioner's tax statements which is unconstitutional because it was not "approved by the

community.” On the form entitled “Request for Preliminary Conference with Hobart Township Assessor,” Petitioner stated “Taxes levied exceed the state cap allowed but I agree on the assessed value.” *Gomeztagle testimony; Board Ex. 1.*

- b. Mr. Gomeztagle paraphrased Article X, Section 1 of the Indiana Constitution by saying, “The General Assembly shall provide by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for all properties.” According to Mr. Gomeztagle, the tax bill specifically mentions special circumstances for Lake County and St. Joseph County which, he contends, is in violation of the Indiana Constitution. *Gomeztagle testimony.*

14. Respondent’s case:

Mr. Metz contends that the tax bill states that charges not subject to the property tax cap include property tax levies approved by voters through referenda. In Lake County and St. Joseph County, this line item also reflects debt obligations incurred prior to the creating of the tax caps, which may be the situation in this case. *Metz testimony; Resp’t Ex. 4.*³

ANALYSIS

- 15. Petitioner is not contesting the subject properties’ assessments. Instead, Petitioner is challenging the constitutionality of his tax liability on the grounds that it exceeds the “tax cap,” that it was not “approved by the community,” and that portions of it are specific to Lake County and St. Joseph County. The Board however does not reach this issue. Instead, the Board finds as a threshold matter that Mr. Gomeztagle is not an attorney and as a tax representative may not raise “claims regarding the constitutionality of an assessment.” 52 IAC 1-2-1(b) (3). The board will not consider his evidence or arguments as it constitutes the practice of law.

³ Respondent Exhibit 6 in the case of Parcel No. 45-08-26-231-009.000-018.

SUMMARY OF FINAL DETERMINATION

The tax representative cannot raise Petitioner's claim regarding the constitutionality of his tax liability. In accordance with the above findings and conclusions of law, the Board finds for Respondent.

ISSUED: September 1, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.