
**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

FRANCIS & MARILYN BILBEE,	)	Petition No:	49-700-02-1-5-10000
)		
Petitioner,	)	County:	Marion
)		
v.	)	Township:	Warren
)		
WARREN TOWNSHIP ASSESSOR	)	Parcel No.:	7042430
)		
Respondent.	)	Assessment Year:	2002

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

November 18, 2004

FINAL DETERMINATION

The Indiana Board of Tax Review (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

Issue

1. The issue presented for consideration by the Board was:

Whether the Petitioner timely filed an appeal of the Property Tax Assessment Board of Appeals determination.

Procedural History

2. Francis & Marilyn Bilbee (Petitioners) filed a Form 130, Petition to the Property Tax Board of Appeals for Review of Assessment, for the March 1, 2002, assessment date. The Form 130 petition was filed on July 7, 2003.
3. On September 26, 2003, the Marion County Property Tax Assessment Board of Appeals (PTABOA) issued its Final Assessment Determination on the Petitioners' appeal. The PTABOA denied the appeal and made no change to the assessment.
4. On December 17, 2003, the Petitioners filed a Form 131, Petition for Review of Assessment, with the Board.
5. On January 8, 2004, the Board sent the Petitioners a Notice of Defect. The defects in the petition included: 1) Please complete Sections II, III, & IV of the Form 131; 2) a copy of the Form 130 must be attached; and 3) a copy of the Form 115 must be attached. The Petitioner was given 30 days to correct the defects.
6. On February 5, 2004, the Petitioners returned the Form 131 with the sections completed and a copy of the Form 130 petition. The Petitioners did not attach a copy of the Form 115, nor did the Petitioners explain why the Form 115 was not provided.
7. On March 4, 2004, the Board contacted the Warren Township Assessor's office and requested a copy of the Petitioners' Form 115. The Warren Township Assessor's office faxed a copy of the Form 115 to the Board.
8. Upon receipt of the Form 115, the Board found the Form 131 petition appeared to be untimely filed.
9. On March 19, 2004, the Board sent a second Notice of Defect to the Petitioners. The Notice of Defect stated that the Form 131 petition appeared to be untimely filed and requested the Petitioners provide evidence to show timely filing.

10. Upon receipt of the second Notice of Defect, Mr. Bilbee telephoned the Board. Mr. Bilbee spoke with a program director and a Board member. The statute and filing requirements of the Form 131 petition were explained. Mr. Bilbee was told that he must provide evidence of timely filing or the petition would be denied. The Petitioners presented nothing in response to the second Notice of Defect.

Matters of Record

11. The following items are officially recognized as part of the record of proceedings:
Board Exhibit A – Form 131 petition and attachments filed December 17, 2003.
Board Exhibit B – Notice of Defect dated January 8, 2004.
Board Exhibit C – Response to Notice Defect including completed sections and a copy of the Form 130 petition.
Board Exhibit D – Faxed copy of Form 115, Notification of Final Assessment Determination dated September 26, 2003.
Board Exhibit E – Second Notice of Defect dated March 19, 2004.

Jurisdictional Framework

12. This matter is governed by the provisions of Ind. Code §§ 6-1.1, 6-1.5, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
13. The Board is authorized to issue this final determination, findings of fact and conclusions of law pursuant to Ind. Code § 6-1.5-5-5.

Discussion of Issue

Whether the Petitioner timely filed an appeal of the PTABOA determination

14. The applicable rule governing this issue is:
Ind. Code § 6-1.1-15-3
Sec. 3. (a) A taxpayer may obtain a review by the Indiana board of a county property tax assessment board of appeals action with respect to the

assessment of that taxpayer's tangible property if the county property tax assessment board of appeals' action requires the giving of notice to the taxpayer. A township assessor, county assessor, member of a county property tax assessment board of appeals, or county property tax assessment board of appeals that made the original determination under appeal under this section is a party to the review under this section to defend the determination. At the time that notice is given to the taxpayer, the taxpayer shall also be informed in writing of:

(1) the taxpayer's opportunity for review under this section; and

(2) the procedures the taxpayer must follow in order to obtain review under this section.

(b) A township assessor or county assessor may obtain a review by the Indiana board of any assessment which the township assessor or the county assessor has made, upon which the township assessor or the county assessor has passed, or which has been made over the township assessor's or the county assessor's protest.

(c) In order to obtain a review by the Indiana board under this section, the party must file a petition for review with the appropriate county assessor within thirty (30) days after the notice of the county property tax assessment board of appeals action is given to the taxpayer.

15. Evidence considered particularly relevant to this determination include the following:
- a. The determination of the PTABOA is dated September 26, 2003. The PTABOA determination clearly explains the procedures to follow if the Petitioner disagrees with the PTABOA action. *Board Exhibit D.*
 - b. Ind. Code § 6-1.1-15-3(c) states the petition for review must be filed within thirty (30) days after notice of the PTABOA determination.
 - c. The Form 131 petition was filed December 17, 2003. *Board Exhibit A.*
 - d. The Petitioners provided no evidence to show the Form 131 petition was filed within thirty days after the determination by the PTABOA.

Analysis of the Issue

16. The Petitioner filed the Form 131 petition on December 17, 2003, more than 30 days after the PTABOA determination.
17. The statute is clear, the petition must be filed within thirty (30) days after the notice of the PTABOA action is given.

18. In *Williams Industries v. State Board of Tax Commissioners*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995), the Tax Court wrote:

While a taxpayer has the right to challenge her property's value, she must also bear the responsibilities that are attached to that right. Indeed, because the legislature has created specific appeal procedures by which to challenge assessments, a taxpayer must comply with the statutory requirements of filing the proper petitions within a timely manner. *See Reams, 620 N.E.2d at 760, 761.*

19. The Petitioners were given the opportunity to provide evidence to show that the Form 131 petition was timely filed. The Petitioners failed to respond to the Board's request for evidence showing the Form 131 petition was timely filed.

Summary of Final Determination

Whether the Petitioner timely filed an appeal of the PTABOA determination

20. The Petitioner failed to provide evidence to show that the Form 131 petition was filed timely. The Form 131 petition is denied for failure to follow the statutory requirements for obtaining a review of the PTABOA action.

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

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.