

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions [Lake County]

Petition #: 45-001-02-1-4-00001
Petitioners: Frank Faust, Jr. & Frances Simmons
Respondent: Department of Local Government Finance
Parcel #: 001-25-42-0108-0002
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 Petitioners filed a Form 139L petition on March 17, 2004.
2. The Board issued a Notice of Hearing to the parties dated May 28, 2004.
3. The Department of Local Government Finance (the "DLGF") filed a Motion to Dismiss with the Board on June 8, 2004. The Petitioners submitted a response to the Motion to Dismiss to the Board on June 23, 2004.
4. The DLGF filed a Motion to Withdraw the Motion to Dismiss with the Board on June 29, 2004. On July 1, 2004, the Board granted the DLGF's Motion to Withdraw the Motion to Dismiss.
5. A hearing was held on July 7, 2004, at 11:00 a.m. in Crown Point, Indiana, before Special Master Dalene McMillen.

Facts

6. The subject property is located at 1520 Broadway, Gary, Calumet Township in Lake County.
7. The subject property is a single story, 2,500 square foot, brick commercial retail building on a lot measuring 3,175 square feet.
8. The Special Master did not conduct an on-site inspection of the property.

9. The assessed value of the subject property as determined by the DLGF:
Land: \$10,700 Improvements: \$38,800.
- The assessed value requested by the Petitioners:
Land: \$5,700 Improvements: \$16,800.
10. The following persons were present at the hearing:
For the Petitioners: Frances Simmons, Property Owner.
Robert N. Moise, Witness.
- For the DLGF: David Depp, Sr. Appraiser, Cole-Layer-Trumble Company.
11. Persons sworn in at the hearing:
- For the Petitioners: Frances Simmons, Property Owner.
Robert N. Moise, Witness.
- For the DLGF: David Depp, Sr. Appraiser, Cole-Layer-Trumble Company.

Issues

12. This petition raises two issues for the Board's review. The first issue for review is a procedural matter and addresses the question of whether the Petitioners have satisfied the statutory requirements for filing the Form 139L petition. The second issue is whether the assessed value of the subject property is overstated.
13. Summary of Petitioners' contentions regarding the statutory compliance of the Form 139L:
- a) The Petitioners received Notice of Assessment of Land and Structures (Form 11/Lake County) for the 2002 assessment on December 29, 2003. The notice advised the Petitioners that the informal hearing process must be initiated on or before February 11, 2004.
 - b) The Petitioners did not contact the assessing officials or request an informal hearing to discuss the assessment reflected on this notice.
14. Summary of Respondent's contentions regarding the statutory compliance of the Form 139L:
- a) The Notice of Assessment of Land and Structures (Form 11/Lake County) required the Petitioners to request an informal hearing on or before February 11, 2004.
 - b) The records kept by the DLGF show that the Petitioners did not make a request or participate in the statutorily required informal hearing process.

Record

15. The official record for this matter is made up of the following:
- a) The petition, and all subsequent pre-hearing or post-hearing submissions by either party.
 - b) The tape recording of the hearing labeled BTR #304.
 - c) Exhibits:
 - Petitioners' Exhibit 1 – A copy of the Form 139L petition with attachments.
 - Petitioners' Exhibit 2 – Summary of Petitioners' arguments.
 - Petitioners' Exhibit 3 – A copy of the subject property record card.
 - Petitioners' Exhibit 4 – A copy of a property record card for the Rozelle Hammond property.
 - Petitioners' Exhibit 5 – A copy of a property record card for the Mercantile National Bank of Indiana property.
 - Petitioners' Exhibit 6 – A copy of the Notice of Assessment of Land and Structures (Form 11/Lake County), dated December 29, 2003.
 - Petitioners' Exhibit 7 – The Petitioners' response to the brief filed by the DLGF.
 - Petitioners' Exhibit 8 – A copy of the letter of rebuttal filed by the DLGF in response to the Petitioners' evidence.
 - Petitioners' Exhibit 9 – The Petitioners' response to the DLGF Motion to Dismiss.
 - Petitioners' Exhibit 10 – Summary of Petitioners' arguments.

 - Respondent's Exhibit 1 – A copy of the Form 139L petition with attachments.
 - Respondent's Exhibit 2 – A copy of the subject property record card.
 - Respondent's Exhibit 3 – The DLGF letter of rebuttal of the Petitioners' evidence.
 - Respondent's Exhibit 4 – A copy of the envelope used for mailing the Notice of Assessment.
 - Respondent's Exhibit 5 – A copy of the envelope used to mail copies of the additional evidence from the DLGF to the Petitioners.
 - d) These findings and conclusions.

Analysis

16. The applicable rules and case law governing this issue are:
- a) In order for the taxpayers to preserve their right to appeal to the Indiana Board of Tax Review, the taxpayers must request and participate, as required, in the

informal hearing process not later than forty-five (45) days after the date of the notice of reassessment (Form 11/Lake County). *Ind. Code § 6-1.1-4-34(c)(1)*.

- b) A taxpayer must have received a final determination resulting from the informal hearing process in order to appeal to the Indiana Board of Tax Review. *Ind. Code § 6-1.1-4-34(c)(2)*.
 - c) The taxpayers have the right to challenge their property assessment. However, the taxpayers bear the responsibility attached to that right. The legislature created specific appeal procedures for assessment challenges and the taxpayers “must comply with the statutory requirements of filing” petitions for review in a timely manner. *Williams Industries v. State Board of Tax Commissioners*, 648 N.E.2d 478 (Ind. Tax 1995).
17. The Petitioners did not meet the statutory requirements for filing the Form 139L petition with the Board for the following reasons:
- a) The Petitioners were required to request and participate in the informal hearing process with the DLGF before filing a Form 139L petition with the Board. (*Ind. Code § 6-1.1-4-34*)
 - b) Notice of Assessment of Land and Structures (Form 11/Lake County) was given to the Petitioners on November 14, 2003. The notice informed the Petitioners of the informal hearing process and the deadline for requesting an informal hearing. (*Simmons testimony; Depp testimony; Petitioners’ Exhibit 6.*)
 - c) The Petitioners acknowledged they did not request or participate in the informal hearing process. The DLGF also has no record of the Petitioners requesting or participating in the informal hearing process. (*Simmons testimony; Depp testimony.*)

Conclusions

18. The Petitioners failed to establish that they complied with the statutory procedures for filing the Form 139L with the Board. The Petitioners’ Form 139L petition is dismissed and the assessment established by the DLGF is undisturbed.
19. Because the Petitioners’ petition has been dismissed, the Board will not examine the issue of whether the assessed value of the subject property is overstated.

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.