

REPRESENTATIVE FOR PETITIONER:

Richard D. Hockett, *pro se*.

REPRESENTATIVE FOR RESPONDENT:

Marilyn S. Meighen, Attorney.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

RICHARD D. HOCKETT,)	Petition No.: 29-020-09-1-5-00001a
)	
Petitioner,)	Parcel No.: 13-15-01-00-04-001.000
)	
v.)	County: Hamilton
)	
)	Township: Fall Creek
HAMILTON COUNTY ASSESSOR,)	
)	2009 Assessment Year
Respondent.)	

July 14, 2016

FINAL DETERMINATION ON SUMMARY JUDGMENT

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

Issue

Is the Hamilton County Assessor entitled to summary judgment on grounds that Richard Hockett failed to timely appeal his 2009 assessment at the local level?

Procedural History before the Board

1. The subject property is located at 11300 Geist Bay Court, Fortville, IN 46040. On April 27, 2010, Hockett filed a Form 131 petition with the Board, listing the assessment year

under appeal as March 1, 2009. He listed his mailing address as being the same as the subject property. Among other things, Hockett alleged that he “did not receive Form F11 in the mail to dispute the value within the 45 day window” and that he “found out the assessed value when [he] received the tax bill on 04/23/11.”

2. On June 3, 2010, we issued a Notice of Defect in Completion of Assessment Appeal Form, directing Hockett to attach “a copy of the written document initiating the appeal at the county/township level,” and a copy of the determination of the property tax assessment board of appeals (“PTABOA”). The defect notice required Hockett to cure the defects by July 5, 2010, and informed him that his petition would be denied if he failed to do so. We issued a second defect notice on June 28, 2010, again directing Hockett to attach a copy of the PTABOA’s determination. On August 9, 2010, we issued a final determination dismissing the April 27, 2010 Form 131 petition.
3. On November 18, 2010, Hockett filed a second Form 131 petition. He included the same allegations from his earlier petition. He also alleged, “At the county assessor’s office, I went to file an appeal but was told it was too late at the county level. I started the appeal process going forward for taxes assessed in 2010, payed (sic) in 2011.” He further alleged that 180 days had passed since he was told his 2009 appeal was untimely. He attached a copy of a Notice of Assessment of Land and Structures – Form 11 R/A for the 2009 assessment year. The Form 11 notice indicated it was issued on September 25, 2009. He also attached a “Request for Preliminary Conference,” in which he claimed his property was assessed too high. The Request for Preliminary Conference lists the assessment year at issue as 2010 and bears a stamp showing it was filed on April 26, 2010.
4. We issued notice setting a hearing for November 6, 2013. On September 18, 2013, the Assessor filed a motion for summary judgment and designation of evidence together with a brief in support of her motion. She designated the affidavit of Kim Powell, which she labeled as Exhibit A, together with the following exhibits attached to that affidavit:

Exhibit A-1: Form 11 notice,

Exhibit A-2: Hockett's original Form 131 petition,
Exhibit A-3: Hockett's second Form 131 petition,
Exhibit A-4: Hockett's April 26, 2020 Request for Preliminary Conference.

5. Hockett did not respond to the Assessor's motion. On October 24, 2013, our designated administrative law judge, Jamie Harris ("ALJ"), issued an order converting the hearing to a pre-hearing conference to discuss, among other things, whether the assessment year at issue in Hockett's appeal was 2009 or 2010, and whether he wanted leave to amend his Form 131 petition. Five days later, the ALJ issued a notice changing the location and time (but not the date) of the conference.
6. The order and notice were mailed to the address listed on Hockett's Form 131 petition, but the notice was returned, indicating that Hockett had moved to Carlsbad California and that the time for forwarding mail had expired. On October 31, 2013, our appeals coordinator e-mailed Hockett a copy of the notice and requested a new address. Hockett responded with a new address and we mailed a copy of the notice to the new address the same day. It was not returned. Hockett failed to appear at the conference or to request a continuance. At no time prior to October 31, 2013, did Hockett file anything to notify us, the Assessor, or the Assessor's counsel of his new address.

Undisputed Facts

7. On September 25, 2009, a Notice of Assessment of Land and Structures for 2009 was issued to Hockett at 11300 Geist Bay Ct., Fortville, IN 46040. *Powell Aff. at ¶¶ 2, 7, Ex. A-1.*
8. Hockett did not file a written notice for review within 45 days of that date. Indeed, he did not file any notice with the Assessor referring to the 2009 assessment year. The only thing Hockett filed was his April 27, 2010 Request for Preliminary Conference, which explicitly referenced only the 2010 assessment year. *Powell Aff. at ¶¶ 8, 11; Ex. A-4.*

Conclusions of Law and Analysis

A. Summary Judgment Standard

9. Our procedural rules allow parties to file summary judgment motions. 52 IAC 2-6-8. Those motions are made “pursuant to the Indiana Rules of Trial Procedure.” *Id.* Summary judgment is appropriate only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Wittenberg Lutheran Village Endowment Corp. v. Lake County Prop. Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 487 (Ind. Tax Ct. 2002). The party moving for summary judgment must make a prima facie showing of both those things. *Coffman v. PSI Energy, Inc.*, 815 N.E.2d 522, 526 (Ind. Ct. App. 2004). It is not enough for a moving party to show that the party carrying the burden of proof lacks evidence on necessary element; instead, the moving party must affirmatively negate the opponent’s claim. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014).
10. If the moving party makes the required showing, the non-moving party cannot rest upon its pleadings but instead must designate sufficient evidence to show the existence of a genuine issue for hearing. *See Coffman*, 815 N.E.2d at 526. In deciding whether a genuine issue exists, we must construe all facts and draw reasonable inferences in favor of the non-moving party. *See Carey v. Ind. Physical Therapy, Inc.*, 926 N.E.2d 1126, 1128 (Ind. Ct. App. 2010).

B. Discussion

11. The Assessor contends we should dismiss Hockett’s Form 131 petition because the designated evidence shows he never filed an appeal at the county level for the 2009 assessment year. We agree.
12. Although taxpayers have the right to challenge an assessment, they must comply with the statutory requirements for doing so. *See Williams Industries v. State Bd. of Tax Comm’rs*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995). Where notice of an assessment is

given, a taxpayer seeking review of that assessment must file a written appeal¹ with the assessing official who gave the notice not later than 45 days from the date of the notice. I.C. § 6-1.1-15-1(c). If the parties do not resolve the appeal through a preliminary informal conference, the PTABOA must then hold a hearing and issue a determination within statutory deadlines. I.C. § 6-1.1-15-1(k), (n). A taxpayer may appeal to us from a PTABOA determination. I.C. § 6-1.1-15-3(d). If the PTABOA fails to either hold a hearing or issue a determination within the statutory deadlines, the taxpayer may appeal to us without waiting any longer for the PTABOA to act. *See* I.C. § 6-1.1-15-1(o). But there is no provision for a taxpayer to appeal an assessment directly to us without first exhausting his remedies at the local level.

13. In her affidavit, Kim Powell, an employee of the Assessor, affirmed she had personal knowledge that a Form 11 Notice was issued to Hockett for the 2009 tax year. She included a copy of that notice, which on its face shows it was issued on September 25, 2009. She also affirmed that there is no record of Hockett having filed an appeal with the Assessor for the 2009 assessment year. While Hockett did file a Request for Preliminary Conference, that request specified the assessment year under appeal as 2010.
14. Thus, the Assessor made a prima facie showing that Hockett did not appeal his 2009 assessment at the local level, a procedural prerequisite to appealing to us. That showing satisfies the Assessor's burden on summary judgment. To avoid entry of a final determination against him, Hockett could no longer rest on the unsworn allegations in his Form 131 petition; he instead needed to designate evidence to create a genuine issue of material fact. He failed to designate any evidence or otherwise respond to the Assessor's summary judgment motion. Indeed, beyond his initial filings, Hockett showed no interest in prosecuting his appeal, as evidenced by his failure to notify us (and presumably the

¹ The statute requires a taxpayer to file a "notice in writing." I.C. § 6-1.1-15-1(c). We use the term "appeal" to avoid confusion because the statute also refers to "notice[s]" issued by assessing officials.

Assessor) of his new address, as well as his failure to either appear at the scheduled pre-hearing conference or request a continuance.²

SUMMARY OF FINAL DETERMINATION

15. The Assessor made a prima facie showing that Hockett did not file an appeal of his 2009 assessment at the local level. Hockett failed to designate any evidence to create genuine issue of material fact or otherwise respond to the Assessor's summary judgment motion. We therefore grant the Assessor's motion and dismiss Hockett's appeal.

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

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>>.

² Our determination addresses only 2009—the year listed on Hockett's Form 131 petition. Hockett did not amend his petition or otherwise indicate he was appealing the 2010 assessment to us. At the prehearing conference, which Hockett did not attend despite having received notice, the Assessor indicated the parties had settled Hockett's 2010 appeal at the local level.