

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

Petitions: 41-025-08-1-4-00959
41-025-09-1-4-01386
Petitioner: Mac's Convenience Stores, LLC
Respondent: Johnson County Assessor
Parcel: 41-02-34-032-016.000-025
Assessment Years: 2008 and 2009

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner initiated assessment appeals with the Johnson County Property Tax Assessment Board of Appeals (PTABOA) by filing Forms 130 dated October 1, 2009, for petition 41-025-08-1-4-00959 and June 7, 2010, for petition 41-025-09-1-4-01386.
2. The PTABOA issued notice of its decision on June 29, 2010, for petition 41-025-08-1-4-00959, and on April 29, 2011, for petition 41-025-09-1-4-01386.
3. The Petitioner appealed to the Board by filing Forms 131 on August 9, 2010, and June 9, 2011. The Petitioner elected to have these appeals heard according to small claims procedures.
4. The Board issued notices of hearing to the parties dated March 7, 2012.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on April 26, 2012. He did not inspect the property.
6. Milo Smith, certified tax representative, appeared on behalf of the Petitioner. Michael Watkins, county appraiser, represented the Johnson County Assessor. Both were sworn as witnesses.

Facts

7. The property is a convenience store located at 1141 East Main Street in Greenwood. (The Forms 131 and property record card identify the street address as Greenwood Road.)

8. The PTABOA determined the assessed value for 2008 is \$220,500 for land and \$9,200 for improvements (total \$229,700). It determined \$220,500 for land and \$20,600 for improvements (total \$241,100) for 2009.
9. The Petitioner claimed the total assessment for each year should be \$159,300.
10. The Petitioner initially appealed the 2007, 2008, and 2009 assessments. During the Board's hearing, the parties agreed that the 2007 assessment should be changed to \$159,300.

Record

11. The official record for this matter is made up of the following:
 - a. The Petitions,
 - b. A digital recording of the hearing,

Petitioner Exhibit 1 - Witness and exhibit list, one page statement of position, and property record card,
Respondent Exhibit 6 - Sales disclosure form,
Respondent Exhibit 7 - Special warranty deed,
Board Exhibit A - Form 131 Petitions,
Board Exhibit B - Notices of Hearing on Petition,
Board Exhibit C - Hearing Sign In Sheet,
 - c. These Findings and Conclusions.

Contentions

12. Summary of the Petitioner's case:
 - a. The Respondent has the burden of proof. Because the 2007 assessment was changed by stipulation agreement to \$159,300 during the hearing, the increase in the 2008 assessment is greater than 5% and the burden of proof for that year falls on the Respondent. If the Petitioner prevails on the 2008 appeal, the increase from 2008 to 2009 is also more than 5%. *Smith testimony*.
 - b. The property record card shows the assessor made no annual adjustments for 2008 or 2009. *Smith testimony; Pet'r Ex. 1*. The 2007 stipulated value of \$159,300 should be carried forward to 2008 and 2009. *Smith testimony*.
 - c. The Petitioner frequently buys multiple stores at one time. The total purchase price is allocated among individual stores to arrive at an estimated price for each store. *Smith testimony*.

- d. The assessed value was increased based on a single sales disclosure form. The sales price of the property does not prove its individual assessment is correct. If sales ratio studies show values have increased or decreased, a uniform market adjustment should be applied to all the properties in the neighborhood rather than to an individual property. There is no indication that any market adjustment factor was applied to every property in the neighborhood. *Smith testimony.*

13. Summary of the Respondent's case:

- a. In *Jacobsen v. Tippecanoe County Assessor* (Ind. Bd. of Tax Rev. Mar. 22, 2012), the Board concluded that assessor had the burden of proof for the first year and Jacobsen had the burden of proof for the second year. Based on that case and the fact that in Indiana each year of assessment stands alone, the Petitioner has the burden of proof for the 2008 and 2009 appeals. *Watkins testimony.*
- b. The Petitioner purchased the property for \$395,000 on December 28, 2007. The sales disclosure form and the deed establish the sale was an arm's-length transaction and a good indication of the market value of the property. This sale date is within the time frame considered reasonable for the 2008 assessment and within days of the valuation date for the 2009 assessment. The sale indicates the property could be worth as much as \$395,000. The assessment should remain unchanged for both 2008 and 2009. *Watkins testimony; Resp't Exs. 6, 7.*
- c. In Indiana, each tax year stands by itself and is not affected by other tax years. Previous and subsequent tax years are not relevant to the tax year at issue. *Watkins testimony.*

Analysis

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving the assessment is wrong and what its correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). But the General Assembly enacted Ind. Code § 6-1.1-15-17.2, which shifts the burden to the assessor in cases where the assessment under appeal increased by more than 5%:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor_or township assessor (if any) for the immediately preceding assessment date for the same property. 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.

15. The assessor determined virtually the same values for 2007 through 2009. During the appeals process, however, the PTABOA increased the 2009 assessed value to \$241,100. This increase is only 4.9%. Those numbers, of course, are less than 5% increases.
16. The Petitioner's argument that there were more than 5% increases depends on calculating from a substantially reduced valuation. But the settlement agreement to change the 2007 assessment to \$159,300 does not support application of the burden shifting provision in Ind. Code § 6-1.1-15-17.2.
17. Judicial policy strongly favors settlement agreements. They allow courts to operate more efficiently and allow parties to fashion the outcome of their disputes through mutual agreement. Our Supreme Court has held that "[t]he law encourages parties to engage in settlement negotiations in several ways. It prohibits the use of settlement terms or even settlement negotiations to prove liability for or invalidity of a claim or its amount. *Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005). The strong policy justification for denying settlements precedential effect in a property tax case is that allowing parties to use the settlement would have a chilling effect on the incentive of the parties to resolve cases. *Id.* at 1228.
18. Coupled with Ind. Code § 6-1.1-15-17.2, these cases present an unusual scenario. Nevertheless, general principles about the limitations of settlements are persuasive. There are many reasons for parties to make such agreements. We will not speculate what those reasons might have been and we will not apply the settlement to other matters. Specifically, the settlement agreement for 2007 did not establish a new base line for purposes of the 5% rule in the burden shifting statute to the other appeals.
19. Accordingly, the Petitioner has the burden of proof for the 2008 and 2009 appeals because those assessments did not increase by more than 5% over the assessed value determined by the county assessor for the immediately preceding assessment date.
20. The Petitioner did not meet its burden of proof. The Petitioner did not offer any substantial market value-in-use evidence. According to Mr. Smith's conclusory statement, the agreed 2007 assessed value of \$159,300 should be carried forward to 2008 and 2009. But such unsupported conclusions do not help make a case.
21. In Indiana each year stands alone. *See Thousand Trails Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 1072, 1077 (Ind. Tax Ct. 2001); *Quality Stores, Inc. v. State Bd. of Tax Comm'rs*, 740 N.E.2d 939, 942 (Ind. Tax Ct. 2000); *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998). This principle is consistent with the fact that under Indiana's current assessment system the valuation date for each assessment year is different.
22. The Petitioner did nothing to satisfy its burden to establish the market value-in-use of its property.

23. When a taxpayer fails to provide probative evidence supporting the position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. See *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

24. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with these findings of fact and conclusions of law, the assessments will not be changed.

ISSUED: July 25, 2012

Commissioner, Indiana Board of Tax Review

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- 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>>