

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

Petitions: 41-025-08-1-4-00960
41-025-09-1-4-01106
Petitioner: Mac's Convenience Stores, LLC
Respondent: Johnson County Assessor
Parcel: 41-02-34-032-017.000-025
Assessment Year: 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 an assessment appeal with the Johnson County Property Tax Assessment Board of Appeals (PTABOA) by filing Forms 130 dated October 1, 2009, for petition 41-025-08-1-4-00960 and June 7, 2010, for petition 41-025-09-1-4-01106.
2. The PTABOA issued notice of its decision on June 29, 2010, for petition 41-025-08-1-4-00960, and on April 29, 2011, for petition 41-025-09-1-4-01106.
3. The Petitioner filed an appeal to the Board by filing Form 131 on August 9, 2010, for petition 41-025-08-1-4-00960 and June 9, 2011, for petition 41-025-09-1-4-01106. The Petitioner elected to have these appeals heard according to small claims procedures.
4. The Board issued a notice 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 1183 West Main Street in Greenwood.
8. The PTABOA determined the assessed value for 2008 is \$370,100 for land and \$249,100 for improvements (total \$619,200). For 2009, the PTABOA determined the assessed value is \$370,100 for land and \$295,500 for improvements (total \$665,600).

9. The Petitioner claimed the total assessment should be \$547,400 for both 2008 and 2009.
10. The Petitioner initially appealed the 2007, 2008, and 2009 assessments. Immediately before the Board's hearing, the parties stipulated that the 2007 assessment should be changed to \$547,400.

Record

11. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 - Witness and exhibit list, one page statement of position, and property record card,
Respondent Exhibit 2 - List of physical feature changes,
Respondent Exhibit 3 - Property record card prior to PTABOA review,
Respondent Exhibit 4 - Property record card after PTABOA review,
Respondent Exhibit 5 - Aerial photograph of the parcel,
Board Exhibit A - Form 131 Petitions with attachments,
Board Exhibit B - Notices of Hearing on Petition,
Board Exhibit C - Hearing Sign In Sheet,
 - d. 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 \$547,400 the increase in the 2008 assessment is greater than 5% and the burden of proof for that year falls on the Respondent. 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 to the property for either 2008 or 2009. *Smith testimony; Pet'r Ex. 1.* The 2007 stipulated value of \$547,400 should be carried forward to 2008 and 2009. *Smith testimony.*
 - c. Mr. Smith has inspected the site, but he did not verify the measurements of the improvements. *Smith testimony.*

13. Summary of the Respondent's case:
- a. The assessor determined the assessments for this property for 2007 through 2009 were \$619,200. In *Jacobsen v. Tippecanoe County Assessor* (Ind. Bd. of Tax Rev. Mar. 22, 2012), the Board concluded that assessor had the burden of proof the first year and Jacobsen had the burden of proof the second year regardless of the result of the first year appeal. Based on that case, the Petitioner has the burden of proof for the 2008 appeal. *Watkins testimony*.
 - b. The Petitioner provided no evidence to require a change in the 2008 assessment. *Watkins testimony*.
 - c. The PTABOA changed the assessor's assessment for 2009 from \$619,200 to \$665,600 based on changes in physical features of the parcel discovered by the PTABOA review. The PTABOA determined that two utility sheds had been omitted from the original assessment, the size of the convenience store and canopy should be increased, and the amount of paving should be reduced. *Watkins testimony; Resp't Exs. 2-5*.
 - d. The increase in the assessment was computed using the cost approach. The change in the assessment from 2008 to 2009 is solely due to these corrections. They resulted in the land assessment remaining at \$370,100 and the improvements increasing to \$295,500. *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 the 2007 through 2009 assessed values did not increase, with the assessment for each year set at \$619,200. During the appeals process the PTABOA discovered omitted improvements that increased the 2009 assessed value to \$665,600.
16. The Petitioner's argument that there was more than 5% increase with the 2008 assessment depends on calculating from a substantially reduced valuation. But the settlement agreement to change the 2007 assessment to \$547,400 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 in the other appeals.
19. The 2009 assessment, however, presents a different situation. The assessed value increased from \$619,200 in 2008 to \$665,600 in 2009, an increase of approximately 7.5%. If the numbers were the only consideration, then Ind. Code § 6-1.1-15-17.2 would dictate that the Respondent must prove the 2009 assessed valuation is correct. But this statute also requires comparing assessments for the same property. The Respondent presented undisputed evidence that the PTABOA made several corrections, *including the addition of two previously omitted utility sheds*. The Petitioner did not dispute those corrections. Therefore, the 2009 assessment was not for the same property.
20. The language of the statute must be applied as it was written. "Where the language is unambiguous, the Court has no power to construe the statute for the purpose of limiting or extending its operation." *Joyce Sportswear Co. v. State Bd. of Tax Comm'rs*, 684 N.E.2d 1189, 1192 (Ind. Tax Ct. 1997). Under the plain language of Indiana Code § 6-1.1-15-17.2, the burden shifts to the assessor when the assessed value of the *same property* increases by more than five percent. Here, the 2008 and 2009 assessments are not for the same property. Therefore, Indiana Code § 6-1.1-15-17.2 does not apply to the 2009 assessment.
21. Accordingly, the Petitioner has the burden of proof in both the 2008 and 2009 appeals.

22. 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 \$547,400 should be carried forward to 2008 and 2009. But such unsupported conclusions do not help make a case.
23. 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.
24. The Petitioner did nothing to satisfy its burden to establish the market value-in-use of its property.
25. 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

26. 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>>