

REPRESENTATIVE FOR PETITIONER:

Floyd L. Piles, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Brian Cusimano, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

FLOYD L. PILES, INC.,	)	Petition No.	73-025-13-1-4-20034-15
)		
Petitioner,	)	Parcel No.:	73-13-26-300-009.000-025
)		
v.	)	County:	Shelby
)		
SHELBY COUNTY ASSESSOR,	)	Township:	Jackson
)		
Respondent.	)	Assessment Year:	2013

AUGUST 15, 2016

ORDER GRANTING RESPONDENT’S MOTION TO DISMISS

This matter comes before the Indiana Board of Tax Review (“Board”) on a Form 131 petition (the “Petition”) filed by Floyd L. Piles, Inc. (“Petitioner”). The Shelby County Assessor (“Respondent”), by counsel, filed a motion urging the Board to dismiss the Petition. The Board, having considered Respondent’s motion and being duly advised, hereby finds that Respondent’s motion should be GRANTED.

FACTS

1. The Shelby County Property Tax Assessment Board of Appeals (“PTABOA”) issued its Notification of Final Assessment Determination (“Form 115”) on December 17, 2014.

2. Petitioner filed the Petition with the Board on March 10, 2015. On May 12, 2015, the Board sent a Notice of Defect to Petitioner on the grounds that the Petition he filed was untimely. Petitioner was notified that he must file a corrected form and provide evidence of timely filing before June 11, 2015, to cure the defect.
3. Respondent filed a Motion to Dismiss with the Board on May 14, 2015, on the grounds that the Petition was not timely filed based on the procedural requirements found in Ind. Code § 6-1.1-15-3(d).
4. On June 12, 2015, the Board received a response to the Notice of Defect from Petitioner in the form of a letter indicating that he received the Form 115 “sometime in mid or late January but was out of the country for two weeks during this period.” Petitioner did not return the original Petition or the requested attachment with his letter in response to the notice.
5. A hearing was scheduled for November 10, 2015, which initially was to address Respondent’s Motion to Dismiss and then the merits of the appeal. On October 20, 2015, Respondent filed a Motion to Bifurcate Proceedings, which, if granted by the Board, would result in two separate hearings, one on Respondent’s Motion to Dismiss and one on the merits of Petitioner’s appeal. The Board granted Respondent’s motion on October 22, 2015. The Board ordered that the hearing on November 10, 2015, would address only Respondent’s Motion to Dismiss. A hearing on the merits would be scheduled for a future date depending on the Board’s ruling on Respondent’s Motion to Dismiss. Administrative Law Judge Gary Ricks conducted the hearing.
6. At the hearing, the following individuals were sworn and testified:

For Petitioner:	Floyd L. Piles
For Respondent:	Anne Thurston, Shelby County Assessor Erica Glackman, Shelby County Deputy Assessor

7. Respondent presented the following exhibits:
 - Exhibit A – Property record card for the subject property
 - Exhibit B – Form 115
 - Exhibit C – Form 131
 - Exhibit D – Letter to the Board from Petitioner.
8. Petitioner presented the following exhibits:
 - Exhibit 1 – Property Tax Assessment Appeals Fact Sheet
 - Exhibit 2 – Letter to Petitioner from Respondent.
9. In addition, the following items are also part of the record:
 - Board Exhibit 1 – Form 131 and attachments
 - Board Exhibit 2 – Notice of Appeal
 - Board Exhibit 3 – Response to Notice of Defect
 - Board Exhibit 4 – Hearing sign-in sheet.

SUMMARY OF RESPONDENT’S CASE

10. Pursuant to Ind. Code § 6-1.1-15-3(d), in order to obtain review of a PTABOA determination, a party must file a Form 131 with the Board not later than forty-five days after the date of the determination. Ms. Glackman and Ms. Thurston both testified that the Form 115 was signed, dated, and mailed on December 17, 2014. Respondent contends that credible evidence, such as sworn testimony of a witness, is sufficient to prove timely mailing. *Glackman testimony; Thurston testimony; Cusimano argument.*
11. Respondent contends that since the final determination was mailed on December 17, 2014, the forty-five day deadline for Petitioner to initiate its appeal was February 2, 2015. *Cusimano argument.*
12. Respondent contends that the Petition was signed by Petitioner on March 2, 2015, approximately 28 days after the deadline to file an appeal.¹ The Board’s file stamp indicates the appeal was not received by the Board until March 10, 2015. As a result, Petitioner’s appeal was filed well beyond the statutory deadline. Consequently, Petitioner’s appeal should be dismissed. *Cusimano argument.*

¹ Petitioner’s Form 131 was actually signed on March 4, 2015.

SUMMARY OF PETITIONER'S CASE

13. Petitioner claims he did not receive the Form 115 in time to make a timely filing of the Petition. After receiving the Notice of Defect from the Board informing Petitioner of the untimely filing, he sent a letter to the Board stating that he did not receive the final determination until “sometime in mid or late January but was out of the country for two weeks during this period.” At the hearing, he testified that he did not receive the final determination until sometime in late February. He is also uncertain as to how or where he received the Form 115. He is not certain if it arrived at his address or if he picked it up at the Assessor’s office. He admitted his memory is often poor, but he also believes mail is frequently not delivered to the proper address. *Piles testimony.*

ANALYSIS

14. Ind. Code § 6-1.1-15-3(d) provides:

In order to obtain a review by the Indiana board under this section, the party must, not later than forty-five (45) days after the date of the notice given to the party or parties of the determination of the county board:

- (1) file a petition for review with the Indiana board; and
- (2) mail a copy of the petition to the other party.

15. The Indiana Tax Court has held that “the sworn testimony of a witness constitutes sufficient evidence to prove timely mailing.” *Indiana Sugars, Inc., v. State Board of Tax Commissioners*, 683 N.E.2d 1383, 1387 (Ind. Tax Ct. 1997). Consequently, the Board finds the testimony of Ms. Thurston and Ms. Glackman to be credible evidence that the Form 115 was mailed on December 17, 2014.
16. On the other hand, Petitioner did not offer any evidence, such as a postmarked envelope or any other documentation, indicating the Form 115 was not mailed on December 17, 2014. Furthermore, at the hearing, Petitioner testified that he received the Form 115 in February, but in his letter to the Board, he stated that he received the Form 115 in January. He is also unsure as to how or where he received it. As a result, the Board finds

Petitioner provided no credible evidence that he did not receive the Form 115 in a timely manner. Because Petitioner provided no credible evidence, and because his Petition was filed with the Board well beyond the statutory deadline, the Board finds the appeal should be dismissed.

FINAL DETERMINATION

Petitioner failed to timely file the Petition with the Board in accordance with Ind. Code § 6-1.1-15-3(d). IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, that Respondent's Motion to Dismiss is hereby GRANTED and the Petition is hereby DISMISSED.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Distribution List:

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