COUNSEL FOR PETITIONER:
Robert A. Romack, Esq.

COUNSEL FOR RESPONDENT:
Nick J. Cirignano, Esq.

BEFORE THE
INDIANA BOARD OF TAX REVIEW

RIVER CITY STORAGE, LLC,	)	Petition No.: 82-027-10-3-4-82872-15
	)	
Petitioner,	)	Parcel No.: 82-06-24-017-159.052-027
	)	
v.	)	County: Vanderburgh
	)	
VANDERBURGH COUNTY ASSESSOR,	)	Assessment Year: 2010
	)	
Respondent.	)	

Appeal from the Final Determination of the
Vanderburgh County Property Tax Assessment Board of Appeals

August 3, 2017

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. River City Storage, LLC filed a Form 133 Petition for Correction of an Error claiming that its taxes for the 2010 assessment date, as a matter of law, were illegal. River City settled its appeal of the 2009 assessment, and although it did not appeal 2010, it believes

that Ind. Code § 6-1.1-15-1(e) (as it existed at the time) required the 2009 reduction to carry forward to 2010, because the Vanderburgh County Assessor had originally valued the property for the same amount in both years. Given the appeal statutes as a whole, the longstanding principles that each tax year—and each appeal process—stands alone, and Indiana's strong public policy of encouraging settlements by, among other things, denying them precedential effect, we do not believe that River City's interpretation reflects the legislature's intent. In any case, the correction-of-error process is not available to challenge an assessment's legality, which is what River City seeks to do here.

PROCEDURAL HISTORY

2. On May 7, 2013, River City filed its Form 133 petition with the Vanderburgh County Auditor and Assessor. The Auditor and Assessor both disapproved the petition, as did the Vanderburgh County Property Tax Assessment Board of Appeals ("PTABOA"). River City then timely filed a request for review by the Board. River City filed its request with the Auditor as directed. Although the Auditor file-stamped the petition on January 27, 2014, indicating that she had forwarded the petition to the Board, we did not receive it. On June 22, 2015, River City filed a copy of the petition with us, which we accepted.

3. On April 26, 2017, our designated administrative law judge, Jacob Robinson ("ALJ"), held a hearing on the petition. Neither he nor the Board inspected the property.

4. Kevin D. Chestnut, River City's director, and Jacqueline Doty-Fox, a Vanderburgh County hearing officer, testified under oath. At the hearing's outset, River City orally moved for default judgment and summary judgment. The ALJ took both motions under advisement.

5. River City offered the following exhibits:

Exhibit 1:	2010 property record card for the subject property
Exhibit 2:	2010 pay 2011 tax bill for the subject property
Exhibit 3:	Notice of Stipulated Agreement Order of Dismissal, Stipulation Agreement, form letter from Kathy Glaser, tax mapping supervisor, regarding refund, Vanderburgh County Substitute for IRS Form W-9
Exhibit 4:	Refund Check for 2009-pay-2010, check number 00202868
Exhibit 5:	January 31, 2012 PTABOA Memorandum and Form 114 hearing notice
Exhibit 6:	Form 115 determination
Exhibit 7:	2011 pay 2012 tax bill for the subject property
Exhibit 8:	2011 property record card for the subject property
Exhibit 9:	Form 133 petition for the March 1, 2010 assessment date
Exhibit 10:	March 13, 2014 refund request on County Form 17T with copy of certified mail receipt

6. The Assessor offered the following exhibits:

Exhibit A:	Stipulation Agreement and Notice of Stipulated Agreement Order of Dismissal
Exhibit B:	November 4, 2010 Form 11 Notice of Assessment for the subject property
Exhibit C:	Form 133 petition for the March 1, 2010 assessment date

7. The following additional items are recognized as part of the record:

Board Exhibit A:	Form 133 petition
Board Exhibit B:	Hearing notice
Board Exhibit C:	Hearing sign-in sheet

We also incorporate into the record all filings by the parties, including their proposed findings of fact and conclusions of law, and all orders and notices issued by the Board or ALJ.

FINDINGS OF FACT

8. The Assessor assessed the subject property at $3,211,400 for 2009 and 2010. River City filed a Form 131 petition for review of the 2009 assessment, but it did not appeal the

2010 assessment, which it had been given notice of on November 4, 2010. *Pet'r Ex. 1; Resp't Ex. B; Doty-Fox testimony.*

9. On February 7, 2012, River City entered into a Stipulation Agreement with the Assessor. The parties agreed that the property was "over assessed based on the income and expenses provided by the Taxpayer," and that "new value" was $1,550,000. The agreement did not reference the 2010 assessment. Based on the agreement, we issued a Notice of Stipulated Agreement and dismissed River City's 2009 appeal. We indicated that our acceptance of the agreement "should not be construed as a determination regarding the propriety of the agreement either implicitly or explicitly." *Pet'r Ex. 3; Resp't Ex. A; Doty-Fox testimony.*

10. The Assessor assessed the property at $3,047,600 for 2011. River City sought review, and the PTABOA reduced the assessment to $1,550,000. *Pet'r Exs. 6, 8; Doty-Fox testimony.*

CONCLUSIONS OF LAW

A. OBJECTIONS

11. The Assessor objected to the admission of River City's Exhibits 5-8, and 10—documents relating to River City's appeal of the 2011 assessment, a property record showing the assessments for 2008-2012, and a refund claim for taxes based on the 2010 assessment—on relevance grounds. Our ALJ overruled the objection to the refund claim (Ex. 10) and took the rest under advisement.

12. Relevant evidence is generally admissible. Ind. Evidence Rule 402. Evidence is relevant if it tends to make a fact of consequence "more or less probable than it would be without the evidence." Evid. R. 401. "This often includes facts that merely fill in helpful background information . . . even though they may only be tangentially related to the issues presented." *Hill v. Gephart*, 62 N.E.3d 408, 410 (Ind. Ct. App. 2016).

13. Exhibits 5-8 mostly relate to a different assessment year than the one at issue. But they provide background helpful to understanding River City's main argument—that its settlement of the 2009 assessment automatically dictated all succeeding years' assessments until the next year for which the Assessor changed the property's valuation, which happened in 2011. We therefore overrule the Assessor's objections to exhibits 5-8 and adopt the ALJ's ruling admitting Exhibit 10.

B. DISCUSSION

1. River City's Oral Motions

14. We begin by denying River City's motions for default and summary judgment. Our procedural rules allow, but do not require, us to issue an order of default for four specific reasons:

> (1) failure of the petitioner to state a claim on which relief can be granted;
> (2) failure of a party to comply with a rule or order of the board or administrative law judge;
> (3) disruptive, vulgar, abusive, or obscene conduct or language by a party or authorized representative; or
> (4) failure of a party to provide or exchange evidence in accordance with this article.

52 IAC 2-10-2(a).

15. River City claims that the Auditor's failure to file the Form 133 petition with us "constitutes a waiver." But it did not explain how that failure fits within any of the permissible reasons for issuing a default order under our rules. In any case, the Auditor is not even a party to this appeal. And River City did not point to any authority allowing us to hold a non-party's mistake against an actual party.

16. As for River City's summary judgment motion, our procedural rules require a party to move for summary judgment prior to the hearing. *See* 52 IAC 2-6-8(a). River City failed to do so, and our ALJ has already held a hearing on the merits. We therefore deny River

City's summary judgment motion and base our determination on the evidence and arguments offered at the hearing, to which we now turn.

2. The Merits of River City's Claim

17. River City claims that its 2010 assessment is illegal as a matter of law because Ind. Code § 6-1.1-15-1 required its property to be assessed at the same value the parties stipulated to in settling River City's 2009 appeal. That statute, which has since been repealed,[1] provided:

> (c) In order to obtain a review of an assessment or deduction effective for the assessment date to which the notice referred to in subsection (b) applies, the taxpayer must file a notice in writing . . . not later than forty-five (45) days after the date of the notice referred to in subsection (b).
>
> (d) A taxpayer may obtain a review by the county board of the assessment of the taxpayer's tangible property effective for an assessment date for which a notice of assessment is not given as described in subsection (b). To obtain the review, the taxpayer must file a notice in writing. . . . The notice to obtain a review must be filed not later than the later of:
>
> (1) May 10 of the year; or
>
> (2) forty-five (45) days after the date of the tax statement mailed by the county treasurer, regardless of whether the assessing official changes the taxpayer's assessment.
>
> (e) A change in an assessment made as a result of a notice for review filed by a taxpayer under subsection (d) after the time prescribed in subsection (d) becomes effective for the next assessment date. *A change in an assessment made as a result of a notice for review filed by a taxpayer under subsection (c) or (d) remains in effect from the assessment date for which the change is made until the next assessment date for which the assessment is changed under this article.*

I.C. § 6-1.1-15-1(2010 repl. vol.) (emphasis added). According to River City, once a taxpayer appealed an assessment it did not have to file appeals for succeeding years where the original assessments did not change. Any reduction of the prior year's assessment automatically dictated the same reduction in the succeeding years.

[1] Ind. Code § 6-1.1-15-1 was repealed in its entirety effective July 1, 2017. *See* 2017 Ind. Acts 232, § 9.

18. As the Indiana Supreme Court has recently summarized, our goal in statutory interpretation is to "determine and abide by the legislature's intent." *Ind. Alcohol and Tobacco Comm'n v. Spirited Sales, Inc*. 2017 Ind. LEXIS 556 *8 (Ind. July 21, 2017). To do so, we must start with the statute's plain language, "giving its words their ordinary meaning and considering the structure of the statute as a whole." *Id*. We should not render any word or part meaningless if it can be reconciled with the rest of the statute. *Id*. We must also be mindful of both what the statute says and what it does not say. *Id*. To the extent ambiguity exists, we must give effect to the legislature's intent as best we can ascertain it. *Id.*

19. The language on which River City relies is ambiguous. River City assumes that "the assessment" at the end of subsection (e) refers to the value determined by the assessor for the subsequent year. But it might just as easily refer to the determination in the prior year's appeal and reflect the legislature's attempt to prohibit the insidious practice of assessors improperly trying to override the decisions of reviewing authorities and simply reinstating an assessment that was adjudicated as being too high. This interpretation is buoyed by the fact that the statute requires the change to "remain in effect" until the next assessment date. Language that the change would "apply" or "carry forward" would be more consistent with River City's interpretation.

20. We therefore must construe the statute to determine whether River City's interpretation reflects the legislature's intent. Based on the appeal statutes as a whole and the longstanding interpretations of those statutes, we do not believe it does. In that regard, we find Ind. Code § 6-1.1-15-17.2, commonly known as the "burden-shifting statute," instructive. Normally, a taxpayer has the burden of proof in an assessment appeal. But two circumstances trigger a shift of the burden to the assessor to prove that the assessment was correct: (1) where it represents an increase of more than 5% over the prior year's assessment, and (2) where the taxpayer successfully appealed the prior year's assessment, and the assessment currently under appeal is more than the amount determined in the prior year's appeal, "regardless of the amount of the increase." I.C. §

6-1.1-15-17.2(a) and (d). Failure to meet that burden means that the assessment reverts to the prior year's value, "(1) as last corrected by an assessing official; (2) as stipulated or settled by the taxpayer and the assessing official; or (3) as determined by the reviewing authority."

21. The second triggering circumstance shows the effect the legislature intended to give a prior year's appeal on succeeding years' assessments. It did not intend to eliminate the need to appeal those succeeding years, but instead chose to create a presumption that the amount determined in the prior year's appeal was correct and would roll forward unless the assessor proved a higher value. Even then, the legislature excluded situations, like the one before us, where the value determined in the prior year's appeal was based on the income approach. *See* I.C. § 6-1.1-15-17.2(d) ("However, this subsection does not apply for an assessment date if the real property was valued using the income capitalization approach in the appeal.").

22. River City's interpretation is also inconsistent with years of Tax Court precedent holding that each tax year stands alone. *See, e.g. Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001); *Barth, Inc. v. State Bd. of Tax Comm'rs,* 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998). Had the legislature intended to overrule that precedent, it would have used clearer language to do so.

23. Indeed, the Tax Court recently pointed to that longstanding principle in rejecting River City's interpretation of Ind. Code § 6-1.1-15-1(e), albeit in a slightly different context and without specifically citing that statute. *Fisher v. Carroll Cnty. Ass'r,* 74 N.E. 3d 582 (Ind. Tax Ct. 2017). In *Fisher*, the taxpayer's assessment increased dramatically between 2011 and 2012, remained the same between 2012 and 2013, and then increased slightly in 2014. She appealed only the 2012 and 2014 assessments. *Id*. at 584, 588. She contested the Board's finding that her assessment increased by less than 5% between 2013 and 2014, and its corresponding decision to assign her the burden of proof in her appeal of the 2014 assessment. *Id*. at 588. She argued that she did not need to appeal her 2013

assessment, because it was the same as 2012. Thus, if she won her 2012 appeal (which she argued she should), the 2013 assessment would necessarily also be reduced to a point far below the 2014 assessment. The Court disagreed, explaining that because real property is valued annually, "each tax year—and each appeal process—stands alone." *Id*. Because the taxpayer did not appeal her 2013 assessment, the Court held that the Board did not err in finding that she had the burden of proof for 2014. *Id*.

24. Finally, the underlying facts in this case further caution against River City's proposed interpretation. The value River City seeks to impose for 2010 is not an adjudicated amount, but rather a negotiated settlement. And the written settlement agreement says nothing about the 2010 assessment.

25. Indiana law strongly favors settlements. They allow courts to operate more efficiently and parties to resolve their disputes through mutual agreement. As the Indiana Supreme Court has explained, the law encourages parties to engage in settlement negotiations in several ways, such as by "prohibit[ing] 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) (citing Ind. Evidence Rule 408). It also provides that a settlement is neither a judgment nor an admission of liability. *Id*. at 1227-28 (*citing Four Winns, Inc. v. Cincinnati Ins. Co*., 471 N.E.2d 1187, 1190 (Ind. Ct. App. 1984)). That strong policy justifies denying settlements precedential effect in property tax cases; to do otherwise would have a "'chilling effect on the incentive of all assessing officials to resolve cases outside the courtroom.'" *Id.* at 1228 *(quoting Boehning v. State Bd. of Tax Comm'rs*, 763 N.E.2d 502, 505 (Ind. Tax Ct. 2001)).

26. The legislature enacted the language at issue against the backdrop of this important policy. Once again, had the legislature intended to alter that policy—and to change parties' expectations that a settlement would only cover the tax year under appeal unless otherwise agreed to—it would have said so more clearly. Indeed, it used clear language

when it decided to give effect to settlements of prior years' appeals under the burden-shifting statute. *See* I.C. § 6-1.1-15-17.2 (including an assessment "as stipulated or settled by the taxpayer and the assessing official" in defining the prior year's assessment).

27. In any case, River City used the wrong procedure to challenge its assessment. For the 2010 tax year, a taxpayer had two ways to challenge an assessment: (1) the general appeal procedures laid out under Ind. Code § 6-1.1-15-1, which we refer to as the Form 130/131 procedure (named for the forms generally used to prosecute those appeals at the local and state level), or (2) the correction-of-error process under Ind. Code § 6-1.1-15-12, for which a Form 133 petition was used. The Form 130/131 procedure was only available to challenge a current year's assessment; it could not be used to challenge assessments from prior years. *Lake County Prop. Tax Assessment Bd. of Appeals v. BP Amoco Corp.*, 820 N.E.2d 1231, 1233 (Ind. 2005). A taxpayer could use the procedure to challenge any element of that assessment, but it had to file its appeal within tight deadlines. *See* I.C. § 6-1.1-15-1(c) and (d) (2010 repl. vol.).

28. By contrast, the correction-of-error process could be used to correct errors from prior years. When River City filed its Form 133 petition in May 2013, there was no time limitation for filing such petitions. *See Hutcherson v. Hamilton County Ass'r*, 2 N.E.3d 138, 142 (Ind. Tax Ct. 2013) (holding that, following the repeal of 50 IAC 4.2-3-12 on April 1, 2000, neither the correction of error statute nor its accompanying regulations included any time limit for filing Form 133 petitions). Unlike the Form 130/131 procedure, however, the correction-of-error process was only available to correct a limited subset of errors, including the specific error alleged by River City—that its "taxes, as a matter of law, were illegal." I.C. § 6-1.1-15-12(a)(6) (2010 repl. vol.); see also, *Muir Woods, Inc. v. O'Connor*, 36 N.E.2d 1208, 1210 (Ind. Tax Ct. 2015) ("[T]he types of errors that are correctable using a Form 133 appeal procedure are expressly limited; whereas, the types of errors correctable using a Form 130/131 appeal procedure are not.").

29. In *BP Amoco*, the Indiana Supreme Court reviewed the differences between the two procedures. Based on a regulation promulgated by the now-defunct State Board of Tax Commissioners, the Court found that a taxpayer had to challenge the legality of an assessment through the Form 130/131 procedure, and that the correction-of-error process was simply a vehicle for correcting the assessment once its illegality was determined:

> We think it apparent from the language and structure of Regulation 3-12 that appeals could not be made on Form 133 to challenge a "procedure or method used in determining [an] assessment" on grounds that the taxes were illegal as a matter of law. Such challenges to "the methodology used in generating an assessment" were required to utilize the "appeal provisions for that purpose" (*i.e.*, Form 130). Said differently, if the Tax Court had decided a challenge on Form 130 to "a procedure or method used in determining [an] assessment…in favor of [the] taxpayer," that would have constituted a declaration that the taxes were illegal as a matter of law, and then the challenging taxpayer (and certain other taxpayers) would have been entitled to use Form 133 to have their assessments corrected and Form 17T to obtain refunds.
>
> …
>
> In short, *appeals challenging the legality of assessments were required to be made on Form 130*. Assessments determined to be illegal could be corrected (and refunds obtained) using Form 133. The names of the respective forms, set forth above, well illustrate the distinction: Form 130 is called a "Petition for Review of Assessment"; Form 133, a "Petition for Correction of Error."

BP Amoco, 820 N.E.2d at 1236 (emphasis added; internal citations omitted); *see also*, *Lake County Property Tax Assessment Bd. of Appeals v. U.S. Steel Corp*., 820 N.E.2d 1237, 1240 (Ind. 2005) (holding that the "legislative and regulatory scheme required [the taxpayer] to set forth in its contentions that local property tax officials had illegally reduced the aggregate assessed valuation in the relevant jurisdiction on Form 130, subject to the time limitations and other requirements of Indiana Code Section 6-1.1-15-1 and Indiana Administrative Code Title 50 Section 4.2-3-4.").

30. Both *BP Amoco* and *U.S. Steel* rely heavily on an administrative regulation that, while effective for the assessment years at issue in those cases, had been repealed by the time the Court issued its decisions. Nonetheless, the Court explained, "we do not discern anything in current law that is inconsistent [with the repealed provision] or the

interpretation we give it today." *BP Amoco*, 820 N.E.2d at 1234. *U.S. Steel* also notes that the "*legislative* and regulatory scheme" required a Form 130/131 appeal when challenging the legality of the officials' actions. *U.S. Steel*, 820 N.E.2d at 1239 (emphasis added). Because the legislative scheme referenced in *U.S. Steel* largely remained intact through the times relevant to this case, and the repealed regulation is consistent with that law, we are bound by the Supreme Court's holdings in *BP Amoco* and *U.S. Steel*.

31. River City contests the legality of its 2010 assessment. But it needed to first pursue its claim using the Form 130/131 appeals process. Because River City failed to challenge the legality of its 2010 assessment under the Form 130/131 procedure within the deadline prescribed for bringing such a challenge, its assessment was never determined to be illegal, and there is no error to correct through a Form 133 petition.[2]

CONCLUSION

32. River City failed to timely appeal its 2010 assessment using the Form 130/131 process. We disagree with its argument that Ind. Code § 6-1.1-15-1(e) dictated that the result of its 2009 appeal automatically carried forward to 2010 and eliminated the need to file such an appeal. We therefore find for the Assessor.

We issue this Final Determination on the date first written above.

_____
Chairman, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

[2] River City alleged only that its "taxes, as a matter of law, were illegal." We do not address whether any of the other grounds under the correction-of-error process apply.

- 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>.