

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

Petition: 82-027-11-1-4-07812
Petitioners: Stonebrook of Evansville, LLC
Respondent: Vanderburgh County Assessor
Parcel: 82-06-35-017-124.011-027
Assessment Year: 2011

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

Procedural History

1. On May 17, 2012, the Petitioner filed written notice for review of its 2011 assessment. On June 22, 2013, the Vanderburgh County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying the Petitioners’ request for relief.
2. Three days later, the Petitioner filed a Form 131 petition with the Board. It elected our small claims procedures. The Respondent did not ask to remove the hearing from small claims.¹
3. On January 27, 2016, our designated administrative law judge, Gary Ricks (“ALJ”), held a hearing on the petition. Neither he nor the Board inspected the property.
4. Eugene Stuard and Lee E. Stuard, appeared as certified tax representatives for the Petitioner. Nick J. Cirignano appeared as counsel for the Respondent.
5. The following people were sworn as witnesses: Eugene and Lee Stuard; William Fluty, the Vanderburgh County Assessor; Cindy Vaught, chief deputy assessor; and Jacqueline Doty-Fox, hearing officer for the Respondent.
6. The subject property is an apartment building with approximately 40 units located at 3600 Covert Avenue in Evansville.
7. The PTABOA determined the following values:
Land: \$391,700 Improvements: \$2,570,800 Total: \$2,962,500

¹ Properties assessed for \$1 million or less are eligible for our small claims procedures. *See* 52 IAC 3-1-2(a)(2). Other appeals may also proceed in small claims, including where, as here, the petitioner elects small claims on its appeal petition and the respondent fails to object to that election. *See* 52 IAC 3-1-2(d).

8. The Petitioner requested a total assessment of \$600,000.
9. The official record of this hearing consists of the following:
 - a. A digital recording of the hearing.

b. Exhibits:

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| Petitioner Exhibit A: | Financial information for tax year 2011 (39 pages), |
| Petitioner Exhibit B: | Additional financial information for tax year 2011 (36 pages), |
| Petitioner Exhibit C: | Financial information for tax year 2010 (4 pages), |
| Petitioner Exhibit F: | Final Settlement Statement and Purchase and Sale Agreement (42 pages), |
| Petitioner Exhibit G: | Copy of check for tax payment, tax statement for 2011 pay 2012 (4 pages), |
| Petitioner Exhibit I: | Form 114 (PTABOA) hearing notice for appeal of 2012 assessment (2 pages), |
| Petitioner Exhibit J: | Property record cards and assessment information for the subject property (30 pages) |
| Petitioner Exhibit RR: | Request to Reconsider Property Tax Appeal (49 pages). ² |
| Respondent Exhibit A: | Notice of Assessment of Land and Structures (Form 11), |
| Respondent Exhibit B: | List of returned (undeliverable) Form 11s for 2011-pay-2012, |
| Respondent Exhibit C: | Form 130 petition and copy of envelope with handwritten notations, |
| Respondent Exhibit D: | Memorandum to PTABOA from Jacqueline Doty-Fox, Vanderburgh Co. Hearing Officer. |

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| Board Exhibit A: | Form 131 petition, |
| Board Exhibit B: | Hearing notice, |
| Board Exhibit C: | Hearing sign-in sheet, |
| Board Exhibit D: | Notice of Appearance for Nick Cirignano. |

- c. These Findings and Conclusions together with all orders issued by the Board or its ALJ and all documents filed by the parties.

² The Petitioner's tax representatives chose a very confusing method for labeling the Petitioner's exhibits. Some exhibits contain multiple loosely related documents that should have been offered as separate exhibits. That is particularly true for Exhibit RR. Also, various documents within Exhibit RR are separately marked with letters that correspond to other exhibits offered by the Petitioner. For example Exhibit RR contains pages A-1 through A-16, B-1, C-1 through C-6, and F-1 through F-4, while the Petitioner separately offered exhibits marked as A, B, C, and F.

Objections

10. The Respondent objected to Petitioner's Exhibits A, C, F, and I-J, arguing they are irrelevant because they contain data for years other than the assessment year under appeal. The ALJ took the objections under advisement.
11. We overrule the objections. The mere fact that financial or sales data is removed from the assessment date does not make such data inadmissible, although a party must explain how it relates to the assessment date for it to carry probative weight. In addition, some of the information in the challenged exhibits relates very closely to the 2011 assessment date at issue in this appeal. In any case, our ruling on the objections has no bearing on the outcome of the Petitioner's appeal. Because we find the Petitioner did not timely file its appeal at the local level, we do not reach the merits.

Petitioner's Contentions

12. The Petitioner has standing to file this appeal. It bought the property out of receivership³ for \$600,000, as evidenced by a May 16, 2012 purchase agreement and a June 21, 2012 closing statement. It filed its appeal the day after it signed the purchase agreement. *Stuard argument, Pet'r Exs. F, RR at A-1.*
13. The Board has held that taxpayers have standing to appeal an assessment as long as they are responsible for the taxes based on that assessment. The Petitioner was responsible for paying, and actually paid, taxes based on the 2011 assessment. Thus, it had standing to bring the appeal. *Stuard testimony; Pet'r Ex. RR at B-1, C-1 through C-6, D-1 through D-8, E-1 through E-9, F-1 through F-4.*
14. The subject property had negative income for 2010 and 2011. Negative net operating income cannot be capitalized. Consequently, the property had a distressed value of \$600,000—the amount the Petitioner paid for it. The Respondent lowered the 2012 assessment to \$599,300, and it remained near that level in following years. *Stuard testimony and argument; Pet'r Exs. A-C.*

Respondent's Contentions

15. The Petitioner did not timely file its appeal with the PTABOA. A copy of the subject property's Form 11 Notice of Assessment of Land and Structures shows it was mailed to the property's then owner of record on February 24, 2012. The Form 11 notice plainly indicates the deadline to appeal was April 9, 2012. The Petitioner did not file its appeal until May 17, 2012—well after the deadline had passed. The deadline is statutory;

³ The Petitioner's tax representative and witness, Eugene Stuard, alternately referred to the property having been bought out of a receivership and out of bankruptcy proceedings.

missing it is fatal to an appeal. *Cirignano argument; Vaught testimony; Resp't Ex. A; see also, Pet'r Ex. J (showing property's transfer history).*

16. Cindy Vaught, who supervises the mailing of Form 11 notices for the Respondent, described the procedures that were in effect in 2011 for mailing those notices. A list of parcels was created from the Respondent's database. The Respondent's office then ran a "batch" process to create a "PDF" of each form. The Respondent's office submitted the files to the county treasurer's office for printing. The treasurer's office printed the forms, folded and stuffed them into envelopes, and returned them to the Respondent's office. The Respondent used a vendor to affix postage and mail the notices. The vendor verified how many pieces of mail it processed. *Vaught testimony.*
17. The U.S. Post Office does not forward Form 11 notices that are undeliverable. Those notices are returned to the Respondent's office, and the Respondent's office keeps a list of them. The Petitioner's name is not on that list of returned Form 11 notices for 2011. *Vaught testimony; Resp't Ex. B.*
18. According to the Respondent, the Petitioner has conflated the issues of timeliness and standing. The Respondent conceded that the Petitioner had standing to appeal the property's assessment. But it needed to do so within the statutory deadline. *Cirignano argument (citing Williams Industries v. State Bd. of Tax Comm'rs, 648 N.E.2d 713 (Ind. Tax Ct. 1995)).*
19. The Respondent acknowledged it has the burden of proof if we reach the merits. Under those circumstances, if we find the Respondent did not meet its burden, the appropriate remedy would be to reduce the assessment to the previous year's level. *Cirignano argument.*

Analysis

20. The Respondent claims the Petitioner did not timely file its appeal at the local level and that we must therefore dismiss the appeal. We agree.
21. The legislature has created specific appeal procedures by which a taxpayer may challenge an assessment. If a taxpayer chooses to exercise its appeal rights, it must follow those procedures by filing an appropriate petition within the statutory deadline. *Williams Industries, 648 N.E.2d at 718.* Where notice of assessment is given, a taxpayer must appeal (file written notice of review) not later than 45 days after the date of the notice. I.C. § 6-1.1-15-1(c).
22. On its face, the Form 11 notice for the subject property's 2011 assessment indicates it was mailed to the property's then owner of record on February 24, 2012. The Respondent offered evidence of its office procedures for mailing Form 11 notices. He similarly offered evidence from which we infer his office followed those procedures in

mailing the Form 11 notice for the subject property. *See U-Haul Co. of Indiana, Inc. v. Ind. Dep't of State Revenue*, 896 N.E.2d 1253, 1257 (Ind. Tax Ct. 2008) (finding that the Department of Revenue's designated evidence created a reasonable inference that it timely mailed a proposed assessment).

23. In any case, the Petitioner did not dispute that the Respondent mailed a Form 11 notice for the subject property, i.e. that notice of the assessment was given. It instead pointed out that it did not sign a contract to buy the property until May 16, 2012 and cited to several of our determinations holding that a taxpayer who is responsible for the taxes based on an assessment is a proper party to an appeal of that assessment. From those two points, the Petitioner apparently reasons that it did not have to file its appeal within the statutory deadline.
24. The Petitioner misunderstands the law. Nothing in our previous determinations purports to relieve taxpayers from the statutory deadlines for filing appeals. Instead, the determinations the Petitioner cites merely explain that a person responsible for paying property taxes based on a given assessment may be a proper party to an appeal of that assessment even if the person did not own the property on the assessment date. The Petitioner's problem is that it bought the property after the deadline to appeal had expired, not that someone else owned the property on the assessment date. Had the Petitioner bought the property in time to file an appeal within 45 days of the Form 11 notice, it might have been able to proceed.

Conclusion

25. Because the Petitioner did not timely file its appeal at the local level, it is not entitled to relief. We find for the Respondent and order no change to the assessment.

Issued: June 22, 2016

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 within forty-five (45) days of 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>>.