

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

Petition: 48-003-12-1-5-10000
Petitioner: Frank Van Landingham
Respondent: Madison County Assessor
Parcel: 48-11-10-400-076.000-003
Assessment Years: 2010-2012¹

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 his 2012 assessment appeal with the Madison County Assessor by filing a Petition for Review of Assessment by Local Assessing Official (Form 130) with the Madison County Assessor on February 6, 2013. The Petitioner also filed a Petition for Correction of an Error (Form 133) with the Madison County Assessor on this same date.
2. The Madison County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on April 18, 2013. Because only one Form 115 was issued, the Board can only assume that the PTABOA addressed the issues listed on both petitions. The PTABOA's Form 115 indicates a March 1, 2012, assessed value of \$0. However, the parties indicated that at some point they had reached an agreement that the assessed value of the subject property is \$70,000.
3. The Petitioner filed a Petition for Review of Assessment (Form 131) with the Board on May 6, 2013, because he disagreed with the portion of the PTABOA's determination unrelated to value. He elected the Board's small claims procedures.
4. The Board issued a notice of hearing on November 12, 2013.
5. Administrative Law Judge (ALJ) Joseph Stanford held the Board's administrative hearing on December 20, 2013. He did not inspect the property.
6. Frank Van Landingham appeared *pro se* and was sworn as a witness. Attorneys Brian Cusimano and Marilyn Meighen appeared for the Respondent.² Anthony Garrison was sworn as a witness for the Respondent, but did not testify.

¹ While the parties agreed that the assessment year under appeal is 2012, for reasons discussed herein the Petitioner's claim appears to also involve the 2010 and 2011 assessment years.

Facts

7. The property under appeal is a single-family home located at 812 Bittersweet Lane in Anderson.
8. The Petitioner does not challenge the assessed value of the property.

Record

9. The official record for this matter is made up of the following:
 - a) Petition for Review of Assessment (Form 131) with attachments,
 - b) A digital recording of the hearing,
 - c) Exhibits:³
 - Board Exhibit A – Form 131 petition with attachments.
 - Board Exhibit B – Notices of Hearing dated November 12, 2013,
 - Board Exhibit C – Hearing sign-in sheet,
 - d) These Findings and Conclusions.

Contentions

10. Summary of the Petitioner's case:
 - a) The Petitioner purchased the subject property in December of 2009. He recorded the deed and informed local officials that he was not living at the property. He told local officials that he lives in Bloomington and requested that the tax bill for the subject property be sent to him at his Bloomington address. He never filed or signed any paperwork regarding a "homestead exemption."⁴ *Van Landingham testimony; Bd. Ex. A.*
 - b) Nevertheless, the subject property carried a "homestead exemption" for 2010-pay-2011 and 2011-pay-2012. Upon discovering this error, the County Auditor mailed the Petitioner a bill for \$1,892.00 in back taxes for those two years. The County Auditor also assessed the Petitioner an additional \$189.20 for a 10% civil penalty, for a total bill of \$2,081.20. *Van Landingham testimony; Bd. Ex. A.*

² Attorney Grace Chimples was also present, but she did not participate in the hearing.

³ Neither party submitted any exhibits at the hearing.

⁴ There is no statute that exempts homesteads from taxation. The Board will assume the Petitioner is referring to the standard deduction for homesteads provided under Ind. Code § 6-1.1-12-37.

- c) The Petitioner argues that he does not owe this money. Further, he argues this is a mistake resulting from someone's "incompetence," or worse yet, money being taken from him to go "in someone's pocketbook." *Van Landingham argument*.
11. Summary of the Respondent's case:
- a) There is no dispute that the subject property does not qualify as a homestead for the entire time that the Petitioner has owned it. He does not live there; it is not his homestead. *Cusimano argument*.
- b) Whether the back taxes are legal, and whether penalties should be applied, are issues that are outside the Board's jurisdiction. The Board is specifically limited to reviewing the assessed valuation of tangible property, property tax deductions, property tax exemptions, or property tax credits. *Cusimano argument* (citing *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904 (Ind. Tax Ct. 2002); Ind. Code § 6-1.5-4-1 and its predecessor statute, Ind. Code § 6-1.1-30-11).
- c) That is not to say that the Petitioner lacks any recourse in this matter. But the Petitioner's remedy is to file a lawsuit in a court of general jurisdiction. *Cusimano argument* (citing *Irwin Mortgage Corp. v. Ind. Bd. Of Tax Review*, 775 N.E.2d 720 (Ind. Tax Ct. 2002)).

Burden of Proof

12. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.
13. First, Ind. Code section 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, 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." Ind. Code § 6-1.1-15-17.2(b).
14. Second, Ind. Code section 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15." Under those circumstances, "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is

correct.” Ind. Code § 6-1.1-15-17.2(d). This change is effective March 25, 2014, and has application to all appeals pending before the Board.

15. The Petitioner is not challenging the assessed value of the subject property. Thus, the burden shifting provisions of Ind. Code section 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioner.

Analysis

16. The Petitioner failed to make a prima facie case that the Board should strike the back taxes and penalties imposed by the County Auditor.
 - a) An assessing official generally has three (3) years to correct an assessment under Ind. Code § 6-1.1-9-4. Though not necessarily controlling here, the Board looks to this principle in its analysis.
 - b) Further, a county auditor has the authority to determine that a homestead deduction was given in error, and then to recover any taxes lost as a result of that error. *See* Ind. Code § 6-1.1-12-37(f); Ind. Code § 6-1.1-36-17.
 - c) Here, the subject property received the homestead standard deduction for the 2010 and 2011 tax years. The parties agree that the subject property was not the Petitioner’s homestead and therefore did not qualify for the homestead standard deduction. Because the property did not qualify for the deduction, the County Auditor was within his or her authority, under Ind. Code § 6-1.1-12-37(f), to remove the deduction and bill the Petitioner for the taxes that would have been owed if no error existed. Whether the Petitioner actually filed for the deduction has no bearing on the County Auditor’s authority to correct the error.
 - d) As for the penalty imposed by the county, the Board lacks the authority to address the Petitioner’s claim. The Board is a creation of the legislature, and it has only those powers conferred by statute. *Matonovich v. State Bd. of Tax Comm’rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999). The relevant statute reads:
 - (a) The Indiana board shall conduct an impartial review of all appeals concerning:
 - (1) the assessed valuation of tangible property;
 - (2) property tax deductions;
 - (3) property tax exemptions;
 - (4) property tax credits;that are made from a determination by an assessing official or county property tax assessment board of appeals to the Indiana board under any law.
 - (b) Appeals described in this section shall be conducted under IC 6-1.1-15.

Ind. Code § 6-1.5-4-1.

- e) The Tax Court has held the Board’s enabling statute “did not grant any power to the State Board to review penalties imposed by the County for the late payment of property taxes,” because it contemplated only a review of assessments, deductions, exemptions, and credits.⁵ *Whetzel*, 761 N.E.2d 904.
- f) Given the clear language of *Whetzel*, the Board lacks the subject matter jurisdiction to afford the Petitioner relief with regards to the penalties attached to his bill for back taxes.⁶
- g) The Petitioner failed to make a prima facie case for striking his bill for back taxes owed and for removing the penalties imposed with that bill.

Conclusion

- 17. The County Auditor has the authority to remove a homestead deduction given in error and recover taxes lost as a result. As to the tax penalties, the Board lacks the jurisdiction to review their validity.

Final Determination

In accordance with these findings and conclusions of law, the Petitioner’s claims for relief are denied, and the Board finds for the Respondent.

ISSUED: June 16 , 2014

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

⁵ *Whetzel* cited Ind. Code § 6-1.1-30-11 which has since been repealed, but is now in effect in substantially similar language in Ind. Code § 6-1.5-4-1(a).

⁶ While the Board lacks the authority to review penalties, it does note that imposing a penalty on a taxpayer for back taxes resulting from mistakes of county officials seems unduly harsh.

- 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>>.