

REPRESENTATIVE FOR PETITIONERS:  
Dennis A. DeWitt, *Pro se*

REPRESENTATIVES FOR RESPONDENTS:  
David J. Marusuarz, Attorney at Law  
Emily Crisler, Attorney at Law

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

DENNIS A. DEWITT,	)	Petition No.
	)	02-062-20-9-5-00887-21
Petitioner,	)	
	)	
	)	
v.	)	Parcel No.
	)	02-04-07-102-002.000-062
DEPARTMENT OF LOCAL	)	
GOVERNMENT FINANCE,	)	
	)	
	)	
Respondent.	)	2020 Assessment

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Appeal from the Final Determination of the  
Department of Local Government Finance

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**FINAL DETERMINATION**

The Indiana Board of Tax Review (the “Board”) has 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. The Petitioner, Dennis A. DeWitt (“DeWitt”), appeals the actions of the Department of Local Government Finance (“DLGF”) relating to the approval of an establishment of the Equipment Replacement Fund (the “Fund”) and imposition of the Fund’s levy for the Northeast Allen County Fire Protection District (“Fire District”). Because the Indiana Board of Tax Review (the “Board”) lacks statutory authority to review these approvals by DLGF, this matter must be dismissed.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

2. In June of 2020, the elected officials of Cedar Creek Township, Springfield Township, and the Town of Grabill, as participating units in the Fire District, established the Fund by resolution or ordinance. On July 14, 2020, at least ten verified taxpayers objected to the Fund by petition filed with DLGF. On August 25, 2020, DLGF held a hearing on the objections. On September 24, 2020, DLGF issued its Objection Determination approving the Fire District.<sup>1</sup> The participating units also entered into an interlocal cooperation agreement as part of the Fire District, and two versions were recorded on January 5, 2021. The first made the agreement effective on the July 1st after the date the agreement is recorded; the second made the agreement effective on the July 1st after the latter of the date the agreement is adopted or executed.
3. On December 9, 2021, more than a year after the DLGF final determinations, DeWitt filed his Form 139 with the Board, seeking a refund of the property tax assessed for the Fund for the 2021 tax year on the grounds that the interlocal agreement relating to the Fund was not recorded until January 5, 2021.

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<sup>1</sup> DLGF also issued a Final Determination approving the levy on July 30, 2020. The Final Determination was not introduced as an exhibit in this matter. The Board takes judicial notice of the Final Determination as part of the record of the companion case to this matter, Douglas R. Samuels v. Department of Local Government Finance, 02-042-20-9-5-00881-21, also heard on August 29, 2022.

4. This matter was heard on August 29, 2022, in Indianapolis with Commissioner Jonathan Elrod designated as the Administrative Law Judge (the “ALJ”).
5. Present were David J. Marusuarz, Emily L. Crisler, Douglas R. Samuels, Dennis A. Dewitt, Lori Dewitt, Stacey O’Day, and Nick Jordan. Lori DeWitt, Dennis A. DeWitt, and David J. Marusuarz testified under oath.
6. The Petitioner introduced the following exhibits:
  - Petitioner Exhibit 1: IBTR Notice of Hearing
  - Petitioner Exhibit 2: Form 114
  - Petitioner Exhibit 3: Allen County PTABOA agenda
  - Petitioner Exhibit 4: Form 115
  - Petitioner Exhibit 5: Summary of arguments
  - Petitioner Exhibit 6: Form 114
  - Petitioner Exhibit 7: Form 130
  - Petitioner Exhibit 8: Form 115
  - Petitioner Exhibit 9: Form 131
  - Petitioner Exhibit 10: Form 139
  - Petitioner Exhibit 11: Tax Statements
  - Petitioner Exhibit 12: Letter of J. Brian Tracey
  - Petitioner Exhibit 13: Title page and page 12 of Interlocal Cooperative Agreement; Title page and page 14 of Interlocal Cooperative Agreement
  - Petitioner Exhibit 14: Letter of Anita Mather, Allen County Recorder
  - Petitioner Exhibit 15: E-mail from “Bill”
7. The Respondent did not introduce any exhibits.
8. The Board also recognizes as part of the record of proceedings the Forms 139 (and attachments including the, Notices of Hearing, hearing sign-in sheet, the digital recordings of the hearing, and all Board orders, motions, and responses filed with the Board.

#### **PETITIONER’S CONTENTIONS**

9. DeWitt lamented that the Fire District was rushed through and “shoved down our throats.” He contended that the Fire District was improperly established, and DLGF did not sufficiently investigate whether the tax was properly levied for the 2020 tax year. Accordingly, he seeks a refund of the taxes paid toward the Fire District for the 2020 tax

year. He paid an attorney \$1,045 to write a letter to bring this to the attention of DLGF and the State Board of Accounts but received no response from them. He wants the Fire District to be held to the terms of the interlocal agreement, which would make the tax effective on July 1, 2022, and not the year before.

#### RESPONDENT'S CONTENTIONS

10. DLGF stated that it was an oversight when it failed to respond to DeWitt's attorney's letter, and counsel offered an apology on behalf of the agency. However, DLGF argued that a Form 139 must be filed within forty-five days of DLGF's final determination on an objection, and DeWitt's Form 139 was untimely filed. In approving a maximum levy request, DLGF's review is pursuant to I.C. § 36-8-19-6(e)(5). While the statute requires an agreement, it does not specify an interlocal agreement, and it does not require the agreement to be recorded. From DLGF's statutory obligation, it believed it received all documents necessary to approve the fund. DLGF asserted it does not have authority to weigh in on interlocal agreements or enforce them.

#### ANALYSIS

11. The Board has limited jurisdiction to hear disputes regarding property taxes. *See Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904 (Ind. Tax Ct. 2002) (holding that the Board's predecessor agency "was a creation of the Legislature and therefore only had those powers conferred by statute"); *see also Morris v. Hamilton Cty. Assessor*, 175 N.E.3d 875, (Ind. Tax Ct. 2021). The Board has authority to hear challenges to the actions of assessing officials in regard to the assessed valuation of tangible property, property tax deductions, property tax exemptions, and property tax credits. I.C. § 6-1.5-4-1. Additionally, the Board has authority to hear challenges to actions of DLGF in regard to public utility companies under I.C. § 6-1.1-8, equalization orders under I.C. § 6-1.1-14-11, personal property assessments under IC 6-1.1-16, and enterprise zones under I.C. § 6-1.1-45-11. *See* I.C. § 6-1.5-5-1.
12. In contrast, decisions by DLGF relating to the establishment of a fund or imposition of a levy are appealed to the Indiana Tax Court. I.C. § 6-1.1-41-9(c).

13. The claims stated in DeWitt's petition do not fall into any of the categories under which the Board has authority to review DLGF's actions. To the extent DeWitt has raised a challenge to a DLGF final determination regarding the establishment of a fund or the imposition of a levy, an appeal must be brought before the Indiana Tax Court. More broadly, no statute grants the Board the authority to review the actions of DLGF generally, and the Board has no jurisdiction to consider whether DLGF should have inquired into the terms of the interlocal agreement. Accordingly, the Board must dismiss this appeal.<sup>2</sup>

#### CONCLUSION

14. The Board has no authority to review DLGF's actions regarding the establishment of the Fire District or the imposition of the levy.

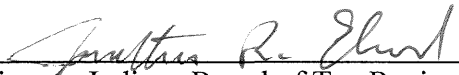
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<sup>2</sup> Because the Board lacks jurisdiction, the question of the timeliness of the appeal is moot.


**FINAL DETERMINATION**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now dismisses for lack of subject matter jurisdiction.

ISSUED: 11/28/2022

  
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 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>.