

REPRESENTATIVE FOR PETITIONER: Paul Jones, Jr., Jones Pyatt Law, LLC

REPRESENTATIVES FOR RESPONDENT: Marilyn Meighen, Attorney at Law
Brian Cusimano, Attorney at Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Flynn & Zinkan Properties I, LLC,)	
)	Petition No.: 29-006-16-3-4-01406-17
Petitioner,)	
)	Parcel No.: 29-11-31-002-003.000-006
v.)	
)	Assessment Year: 2016
Hamilton County Assessor,)	
)	
Respondent.)	
)	

Date 3-4-21

FINAL DETERMINATION

I. Introduction

1. The parties have filed cross-motions for summary judgment in Flynn & Zinkan Properties I, LLC's appeal from the denial of its claim for deduction under Ind. Code § 6-1.1-12-38 (improvements made to comply with rules governing fertilizer and pesticide storage). To receive the deduction for a given assessment date, a property's owner must complete a statement by the end of the calendar year and file both that statement and a certification from the state chemist by January 5 of the next year.

2. Flynn owns the property at issue. Flynn's lessee, TruGreen, apparently completed a statement during 2016 and filed the statement and the chemist's certification before January 5, 2017. TruGreen was denied the deduction because it did not own the property. Flynn then attempted to rectify the problem by completing the deduction statement in its

own name and filing that statement two weeks after the January 5 deadline. We agree with the Assessor that Flynn, as the property's owner, failed to timely apply for the deduction and that its failure barred Flynn for receiving the deduction for that that year.

II. Procedural History

3. Flynn filed a petition for correction of error challenging the denial of its claimed deduction. On August 17, 2017, the Hamilton County Property Tax Assessment Board of Appeals ("PTABOA") denied the petition. Flynn then timely appealed to us.
4. After we set the matter for hearing, the parties filed a joint motion asking for leave to file summary judgment motions in lieu of the scheduled hearing. We granted the motion and the parties filed cross-motions for summary judgment with accompanying designations and briefs. The parties designated the following evidence in support of their motions:

Petitioner Exhibit A	January 19, 2017 email from Emily Smith to Sadie Eldridge with Statement for Deduction of Assessed Valuation (Fertilizer and Pesticide Storage Improvements)
Respondent Exhibit A	Affidavit of Robin M. Mills
Respondent Exhibit A1	Warranty Deed
Respondent Exhibit A2	Statement of Deduction of Assessed Valuation (Fertilizer and Pesticide Storage Improvements)
Respondent Exhibit A3	Certification of Qualification for Property Tax Deduction from Indiana State Chemist and Seed Commissioner
Respondent Exhibit B	Form 133 petition and denial letter from Robin M. Ward, Hamilton County Assessor

III. Undisputed Facts

5. Flynn owns the subject property and leases it to TruGreen. In December 2016, TruGreen filed with the Hamilton County Auditor a Statement for Deduction of Assessed Valuation (Fertilizer and Pesticide Storage Improvements) along with a Certification of Qualification for Property Tax Deduction from the Indiana State Chemist and Seed Commissioner. Neither party designated TruGreen's deduction statement as evidence or

described what TruGreen wrote in that statement. According to the PTABOA, the “deduction was rejected due to lack of ownership.” *Resp’t Exs. A, A1, A2, B.*

6. On January 17, 2017, Flynn completed a deduction statement in its own name. Two days later, it filed the statement with an email indicating that the form had been “updated with the owner of record and executed by the same.” On April 10, 2017, Flynn filed a certification from the state chemist. That certification was dated December 19, 2016. The only reasonable inference from the designated evidence is that it was the same certification that TruGreen previously filed. *Pet’r Ex. A; Resp’t Exs. A, A2, A3.*
7. Flynn was granted the deduction for 2017 forward. But it did not receive the deduction for 2016. *Resp’t Exs. A, A1, A2, A3.*

IV. Conclusions of Law

A. Summary Judgment Standard

8. Our procedural rules allow parties to move for summary judgment “pursuant to the Indiana Rules of Trial Procedure.” 52 IAC § 4-7-3. Summary Judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See Wittenberg Lutheran Village Endowment Corp. v. Lake Cty. Prop. Tax Assessment Bd. of App.*, 782 N.E.2d 483, 487 (Ind. Tax Ct. 2003). The party moving for summary judgment must make a prima facie case showing both those things. *See Coffman v. PSI Energy, Inc.*, 815 N.E.2d 522, 526 (Ind. Ct. App. 2004). If the movant satisfies its burden, the non-movant cannot rest upon its pleadings but instead must designate sufficient evidence to show that a genuine issue exists for hearing. *See Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). In deciding whether a genuine issue exists, we must construe all facts and reasonable inferences in favor of the non-movant. *See Carey v. Ind. Physical Therapy, Inc.*, 926 N.E.2d 1126, 1128 (Ind. Ct. App. 2010).
9. Indiana Code § 6-1.1-12-38 provides “a person” with a deduction for the “person’s property” in an amount equal to the difference between the overall assessment and the

assessed value of improvements made to comply with rules adopted by the state chemist for fertilizer and pesticide storage. I.C. § 6-1.1-12-38(a). The deduction is only available if the person either owns the property or is buying it under contract on the assessment date. I.C. § 6-1.1-12-38(c). To get the deduction, the person

[m]ust file a certified statement in duplicate, on forms prescribed by the department of local government finance, with the auditor of the county in which the property is subject to assessment. In addition to the certified statement, the person must file a certification by the state chemist listing the improvements that were made to comply with the fertilizer storage rules adopted under IC 15-16-2-44 and the pesticide storage rules adopted by the state chemist under IC 15-16-4-52. Subject to section 45 of this chapter, the statement must be completed and dated in the calendar year for which the person wishes to obtain the deduction, and the statement and certification must be filed with the county auditor on or before January 5 of the immediately succeeding calendar year. Upon the verification of the statement and certification by the assessor of the township in which the property is subject to assessment, or the county assessor if there is no township assessor for the township, the county auditor shall allow the deduction.

I.C. § 6-1.1-12-38(b).

10. The parties agree that Flynn’s property substantively qualified for the fertilizer-and-pesticide deduction. The state chemist certified that the property qualified in December 2016, and local officials gave Flynn the deduction for 2017. The sole dispute is procedural: Did Flynn’s failure to complete and file a deduction statement in its own name until after January 5, 2017, disqualify it from receiving the deduction for 2016?
11. The Assessor argues that it did. She points to the express language of the fertilizer- and pesticide-deduction statute and to language elsewhere in the same chapter indicating that “a person who fails to apply for a deduction . . . under this article by the deadlines prescribed by this article may not apply for the deduction . . . retroactively.” I.C. § 6-1.1-12-45(c).
12. Flynn, by contrast, argues that it timely applied for the deduction because the deduction statement it filed on January 19, 2017, merely updated TruGreen’s earlier filing with the

correct information about the property's owner. In Flynn's view, to hold otherwise would subvert the legislature's intent to "incentivize and relieve the burden associated with improving fertilizer and pesticide storage facilities to property owners." *Petitioner's Brief in Support of Summary Judgment*, at 3. Flynn likens this case to *Rohrman v. Tippecanoe Cty. Ass'r*, 901 N.E.2d 95 (Ind. Tax Ct. 2009) and *Jones v. Jefferson Cty. Ass'r*, 6 N.E.3d 1088 (Ind. Tax Ct. 2014), two cases Flynn argues stand for the proposition that formal procedural requirements should not prevent a taxpayer from proceeding on the merits. Flynn also points to language from Ind. Code § 6-1.1-12-36(a) providing that a person who receives the fertilizer-and-pesticide deduction (and other specified deductions) for a particular year and remains eligible need not file a statement to apply for the deduction in the following year.


13. Taking the last argument first, Ind. Code § 6-1.1-12-36(a)'s plain language belies Flynn's position. That section relieves a taxpayer from having to continue to apply for a deduction going forward, provided the taxpayer has already been granted the deduction and remains eligible. It does not allow a taxpayer to do the opposite: receive a deduction and then have the deduction apply retroactively to previous years regardless of whether the taxpayer applied for the deduction in those years.
14. We also disagree with Flynn's argument that it merely "updated" TruGreen's timely filed statement. As the Assessor correctly notes, the statute requires the property's *owner* to complete the statement by the end of the calendar year for which it claims the deduction and to file that statement and the chemist's certification by January 5 of the next year. Flynn does not argue that the statute permitted Flynn to authorize TruGreen to act as its agent. Even if it did, Flynn did not designate any evidence to support that TruGreen acted as its agent. Thus, there was no timely filing by Flynn to "update." This is not a case where Flynn corrected some inaccuracy in its otherwise timely filed deduction statement.

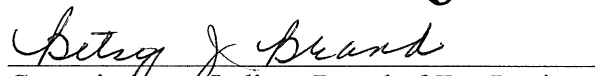
15. And contrary to Flynn's arguments, *Rohrman* and *Jones* do not create a broad exception to statutory procedural requirements. In *Rohrman*, the taxpayer timely filed a petition for judicial review but improperly named the Fairfield Township Assessor as the sole respondent. *Rohrman*, 901 N.E.2d at 96. After the 45-day deadline to petition for judicial review had run, the taxpayer amended its petition to name the Tippecanoe County Assessor as the respondent. *Id.* at 96-97. The Tax Court denied the county assessor's motion to dismiss explaining that Trial Rule 15 laid out conditions under which an amendment changing the party against whom a claim is asserted will relate back to the date of the original pleading. *Id.* at 97-98. Because the taxpayer's amendment satisfied those conditions, it related back. *Id.* Flynn, however, does not cite to any authority for applying the Trial Rules to a statute that establishes the procedures for obtaining a property tax deduction.
16. In *Jones*, the assessor moved to dismiss the taxpayer's appeal because the taxpayer did not timely request the Board to prepare a certified administrative record. *Jones*, 6 N.E.3d at 1049. The Tax Court denied the motion, finding that the assessor had waived that ground for dismissal by failing to timely object to the taxpayer's procedural defect. *Id.* at 1050. By contrast, Flynn does not assert that the Assessor waived the right to object to its lack of timeliness in applying for the fertilizer-and-pesticide deduction, nor has it designated any facts that might support such a claim.
17. Finally, even if we assume that the statutory deadlines at issue admit to some exception for extraordinary circumstances, Flynn has not designated any evidence to excuse its lack of timeliness. Indeed, it designated nothing beyond a cursory email to the Auditor's office attaching its deduction statement.
18. While we recognize that this is a harsh result, the statute's plain language requires it. We therefore find that there is no genuine issue of material fact and that the Assessor is entitled to judgment as a matter of law.

Conclusion

19. Because it is undisputed that Flynn did not complete and file its certified statement claiming the fertilizer-and-pesticide deduction within the statutory deadlines for doing so, we find, as a matter of law, that Flynn was precluded from receiving the deduction for 2016. We therefore deny Flynn's summary judgment motion and grant summary judgment for the Assessor.

Date: 3-4-21


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>.