

REPRESENTATIVE FOR PETITIONERS:  
Steven K. Jones, *Pro se*

REPRESENTATIVES FOR RESPONDENT:  
Stacey O'Day, Allen County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

STEVEN K. JONES and,	)	Petition No.
CHERYL R. KUHN,	)	02-042-20-1-5-00885-21
	)	
Petitioners,	)	
	)	
	)	
v.	)	Parcel No.
	)	02-03-27-126-004.000-042
ALLEN COUNTY ASSESSOR, and	)	
	)	
	)	
Respondent.	)	2020 Assessment

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

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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 Petitioners, Steven K. Jones and Cheryl R. Kuhn (“Jones”), seeks a refund of a tax levied for the Equipment Replacement Fund (the “Fund”) by the Northeast Allen County Fire Protection District (“Fire District”). Because the Indiana Board of Tax Review (the “Board”) lacks jurisdiction, 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 final determination approving the Fire District. The participating units 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 1<sup>st</sup> after the date the agreement is recorded; the second made the agreement effective on the July 1<sup>st</sup> after the latter of the date the agreement is adopted or executed.<sup>1</sup>
3. Jones filed an appeal with Allen County Property Tax Assessment Board of Appeals, which issued its Form 115 denying relief on October 26, 2021. On December 8, 2021, Jones filed his Form 131 with the Board, seeking a refund of the property tax assessed for

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<sup>1</sup> The Final Determination approving the fund 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, Dennis A. DeWitt v. Department of Local Government Finance, et.al., Pet. 02-062-20-9-5-00887-21, also heard on August 29, 2022. 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 also 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.

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.

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. Jones, Stacey O’Day, and Nick Jordan testified under oath.
6. The Petitioner introduced the following exhibits:
  - Petitioner Exhibit 1: Forms 139 and attachments thereto, including Form 115, 2021 Tax Statement, Letter of J. Brian Tracey, title page and page 12 of the Interlocal Cooperation Agreement, title page and page 14 of the Interlocal Cooperation Agreement Letter of Allen County Recorder Anita Mather, and E-mail from “Bill” to Steve Herman.
7. The Respondent did not introduce any exhibits.
8. The Board also recognizes as part of the record of proceedings the Forms 139, Notices of Hearing Board, hearing sign-in sheet, the digital recordings of the hearings, and all motions and responses filed with the Board prior to the hearing.

#### **PETITIONER’S CONTENTIONS**

9. Jones incorporated his prior testimony in Petition No. 02-042-20-9-5-00884-21, et. seq. He objected to the process that took place in passing the Fire District. Jones contended that the Fire District was improperly passed, and the DLGF did not sufficiently investigate whether the tax was properly enacted for the 2020 tax year. Jones argued that the Fire District tax should not be applied until the following year because the interlocal agreement was recorded in 2021. Accordingly, he seeks a refund of the taxes paid toward the Fire District for the 2020 tax year.

## RESPONDENTS' CONTENTIONS

10. Stacey O'Day argued that this dispute relates to the DLGF final determination, and the assessor and the PTABOA lacked jurisdiction over these claims under *Morris v. Hamilton Cty. Assessor*, 175 N.E.3d 875, (Ind. Tax Ct. 2021).
11. Nick Jordan argued the auditor had no authority to review the recording date for the interlocal agreement, and must follow the certified budget orders from DLGF.

## ANALYSIS

12. 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.
13. In contrast, decisions by DLGF in regard to objections to the establishment of a property tax cumulative fund or imposition of a levy are appealed to the Indiana Tax Court. I.C. § 6-1.1-41-9(c).
14. The claims stated in Jones's petition do not fall into any of the categories under which the Board has authority to review DLGF's actions. Review of a DLGF final determination regarding an objection to a fund or levy is expressly reserved for the Indiana Tax Court. Likewise, Jones has failed to cite a statute that would grant the Board the authority to review any obligations of DLGF to investigate the timeliness of the recording of the interlocal agreement.

15. Jones does not challenge an assessment, a deduction, an exemption, or a tax credit. However, the Legislature has granted taxpayers the right to bring claims before the Board challenging the “legality or constitutionality of a property tax or assessment.” I.C. § 6-1.1-15-1.1(a)(6). The scope of this jurisdiction is far from settled. The courts’ recent efforts to resolve when a case belongs before DLGF, the Board, or the Tax Court have resulted in a mishmash of incomplete, inconsistent, and contradictory conclusions.<sup>2</sup>
16. The Assessor cites to *Morris* for the proposition that the Board lacks jurisdiction over the claims raised by Jones. In that case, the taxpayer likewise challenged the implementation and compliance of interlocal agreements for a fire district. *Morris*, 175 N.E.3d at 876. However, the taxpayer did not seek any specific relief from the Board, such as a refund, but only a declaratory judgment. *Id.*
17. The Tax Court analyzed the jurisdiction of the Board and the jurisdiction of the Tax Court separately and independently. *Morris*, 175 N.E.3d at 879-81. The Tax Court’s analysis of the Board’s jurisdiction began and ended with the Board’s enumerated powers under I.C. § 6-1.5-4-1. *Id.* at 879. The Tax Court offered no analysis of the Board’s jurisdiction to consider a taxpayer’s challenges to the “legality” of a property tax under I.C. § 6-1.1-15-1.1(a)(6), and it affirmed the Board’s dismissal of the case on the grounds it lacked jurisdiction.

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<sup>2</sup> See *Morris v. Hamilton Cty. Assessor*, 175 N.E.3d 875, (Ind. Tax Ct. 2021) (where trial court dismissed lawsuit on grounds that jurisdiction to challenge application of property tax levy funds was exclusive to the Tax Court, but the Tax Court held it did not have jurisdiction); *DSG Lake, LLC v. Petalas*, 156 N.E.3d 677, (Ind. Ct. App. 2020) (holding a contract dispute between a county official and a contractor belonged in the Tax Court without concluding whether it could have been brought before either the IBTR or DLGF; advocating a process by which tax questions could be certified to the Tax Court); *Sw. Allen Cty. Fire Prot. Dist. v. City of Fort Wayne*, 142 N.E.3d 946 (Ind. Ct. App. 2020) and *City of Fort Wayne v. Sw. Allen Cty. Fire Prot. Dist.*, 82 N.E.3d 299 (Ind. Ct. App. 2017) (concluding first that a dispute regarding an annexation statute and the revenues collected belonged in a court of general jurisdiction, and then on subsequent appeal that the dispute belonged *both* before the trial court and DLGF/Tax Court); *Muir Woods Section One Ass'n v. Fuentes*, 136 N.E.3d 647, 655 (Ind. Ct. App. 2019) (finding the case “presents a claim of tax overpayment and inadequate remedy at law” and belongs before the Tax Court despite the absence of statutory jurisdiction); *Robinson v. Ind. Dep't of Local Gov't Fin.*, 99 N.E.3d 684, 691 (Ind. App. 2018) (concluding that the “case does not belong in a court of general jurisdiction. It might not belong in the Tax Court, either . . . .”); *Daw v. Hancock Cty. Assessor*, 116 N.E.3d 1 (Ind. Tax Ct. 2018) and *Daw v. Hancock Cty. Assessor*, 120 N.E.3d 1158 (Ind. Tax Ct. 2019) (holding that stormwater fees are a tax within the Tax Court’s jurisdiction and then holding on rehearing that the Tax Court was not the “appropriate forum”).

18. As for the Tax Court's jurisdiction, it held that the taxpayer's claims "at heart" asserted violations of the terms of the interlocal agreement rather than the breach of a particular tax statute. *Morris* 175 N.E.3d at 881. Accordingly, the Tax Court ruled it lacked jurisdiction and affirmed the determination of the Board.
19. The fundamental difference between *Morris* and the case at bar is that Jones is clearly seeking a refund on the grounds that the property tax was illegally levied for the 2020 tax year. Because of these differences, and the Tax Court's lack of analysis of I.C. § 6-1.1-15-1.1(a)(6), the Board cannot conclude that *Morris* is dispositive.
20. The lynchpin of this matter is Jones's claims of procedural irregularities in the establishment of the fund and the imposition of the levy. The Board concludes that the Legislature has clearly created a process for challenging the establishment of a fund and the imposition of a levy through an objection before DLGF followed by a direct appeal to the Tax Court under I.C. § 6-1.1-41-9(c). The Board finds instructive the Tax Court's analysis in *Daw v. Hancock Cty. Assessor*, 120 N.E.3d 1158, 1161-62 (Ind. Tax Ct. 2019), where it held that the failure of the taxpayer to challenge a storm water district through a remonstrance statute precluded a later challenge before the Tax Court. The Board has no express role in the appeals of funds and levies, and the Board's general jurisdiction over challenges to illegal property taxes cannot bypass the specific avenue for relief afforded by the objection statute. Accordingly, the Board finds this matter must be dismissed as the Board lacks jurisdiction to hear these claims.
21. Nonetheless, the Board has reviewed the evidence before it. Taxpayers have good cause to be upset when it appears that local officials are nonresponsive, ignore contractual provisions, or suggest someone "backdate" a document. However, it would seem the officials eventually heeded the taxpayers' objections. The original interlocal agreement contained the following language:

The effective date of this Agreement shall be July 1 following the date of recordation of this Agreement with the Allen County Recorder.

See Page 12 of Interlocal Agreement recorded as Document #20211000777. In contrast, the version of the interlocal agreement amended on September 14, 2020, contained this language:

The effective date of this Agreement shall be July 1 of the year in which the Agreement is adopted or the actual date of the signatures, whichever is later.

See Page 14 of Interlocal Agreement recorded as Document #20211000778. The local officials amended the contract to remove the provision making the interlocal agreement effective upon recordation. Based on the plain terms of the amended interlocal agreement, the delay in recording the agreement did not impact the effective date of the levy. Therefore, even if the Board had jurisdiction over this matter, Jones has failed to prove that the Fire District levy constituted an illegal property tax for the 2020 tax year.

#### CONCLUSION

22. The Board has no authority to review the establishment of the fund or the imposition of the levy, and this matter must be dismissed.

**FINAL DETERMINATION**

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

ISSUED: 11/28/2022

  
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Chairman, Indiana Board of Tax Review

  
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Commissioner, Indiana Board of Tax Review

  
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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>.