

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

Petition No.: 42-022-13-1-5-00001
Petitioner: Armand O'Dell
Respondent: Knox County Assessor
Parcel No.: 42-12-28-211-003.000-022
Assessment Year: 2013

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

PROCEDURAL HISTORY

1. Armand O'Dell ("Petitioner") initiated an appeal with the Knox County Property Tax Assessment Board of Appeals ("PTABOA") by filing a Form 130 dated January 9, 2014.
2. On April 3, 2014, the PTABOA issued its Notification of Final Assessment Determination declining to change the assessment.
3. Petitioner timely filed a Form 131 petition with the Board on May 19, 2014.¹
4. Petitioner elected to have the administrative hearing conducted under the Board's small claims procedures. The Knox County Assessor ("Respondent") did not elect to have the proceeding removed from the Board's small claims procedures.
5. Jacob Robinson, the Board's appointed Administrative Law Judge ("ALJ"), held the administrative hearing on October 27, 2015. The ALJ did not inspect the subject property.
6. Petitioner appeared *pro se*. Knox County Assessor Catherine Lane appeared *pro se* for Respondent. Both were sworn and testified.²

FACTS

7. The subject property is a two unit residential property located at 606 and 608 South 11th Street in Vincennes.

¹ Petitioner's Form 131 petition states that he is appealing the March 1, 2012 assessment. However, the attached PTABOA determination was for the March 1, 2013 assessment, and at the hearing Petitioner confirmed that the year under appeal is 2013.

² Amy Conner, Knox County Deputy Assessor, was present, but was not sworn and did not testify.

8. The PTABOA determined the 2013 assessed value for the land is \$800 and the assessed value for the improvements is \$41,700, for a total assessed value of \$42,500.

RECORD

9. The official record for this matter contains the following:

a) A digital recording of the hearing.

b) Exhibits:

Petitioner: None

Respondent: None

Board Exhibit A: Form 131 petition and attachments

Board Exhibit B: Notice of hearing

Board Exhibit C: Hearing sign-in sheet

c) These Findings and Conclusions.

CONTENTIONS

10. Summary of Petitioner's case:

a) Petitioner testified there was a fire at the subject property on April 10, 2012 that rendered the building useless. Estimates for repairs were not received until September of 2012. Reconstruction did not begin until October of 2012. The unit at 606 South 11th Street was uninhabitable until January of 2013. The unit at 608 South 11th Street was uninhabitable until February of 2013. Petitioner believes the fire department and police department were incompetent in their handling of the situation. He believes that the person responsible for the fire would not have been caught if it had not been for his actions and those of his tenant. Petitioner argues that he should receive a refund of 75% of the taxes he paid for 2012 because he turned a worthless building into a taxable property. He is asking for 75% of the \$940 he paid in taxes, or \$705, as a refund. *O'Dell testimony.*

11. Summary of Respondent's case:

a) Respondent sent out Forms 11 in July of 2012. Upon receiving the forms, Petitioner came in to appeal the assessment of the subject property. Petitioner informed Respondent of the fire damage from earlier in the year. Respondent explained that there was nothing she could do about the previous year's taxes, but she could investigate moving forward because that was the purpose of Form 11. Respondent visited the subject property on July 31, 2012 and confirmed the fire damage. Respondent informed Petitioner she could provide an obsolescence adjustment for the

year the property was vacant to make up for the damage, but Petitioner declined because he felt he deserved a 75% refund. Petitioner missed his appeal deadline by waiting until he received his tax bill the following year. Instead of basing his appeal on the assessment, Petitioner has merely argued that his taxes are too high. *Lane testimony*.

BURDEN OF PROOF

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. Of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
13. First, Ind. Code § 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 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," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "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).
15. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
16. Neither party offered any argument or evidence regarding who has the burden of proof. The ALJ preliminarily ruled that Petitioner bears the burden and the Board now adopts that ruling.

ANALYSIS

17. Petitioner filed petitions for review at both the county level and with the Board. However, Petitioner is not particularly challenging the subject property's assessment. Instead, Petitioner is seeking a refund of 75% of the taxes he paid for 2012.

18. Indiana taxpayers may seek refunds for erroneous or excessive tax payments under Ind. Code § 6-1.1-26-1. That statute provides as follows:

A person, or his heirs, personal representative, or successors, may file a claim for the refund of all or a portion of a tax installment which he has paid. However, the claim must be:

- (1) filed with the auditor of the county in which the taxes were originally paid;
- (2) filed within three (3) years after the taxes were first due;
- (3) filed on the form prescribed by the state board of accounts and approved by the department of local government finance; and
- (4) based upon one (1) of the following grounds:
 - (A) Taxes on the same property have been assessed and paid more than once for the same year.
 - (B) The taxes, as a matter of law, were illegal.
 - (C) There was a mathematical error either in the computation of the assessment upon which the taxes were based or in the computation of the taxes.

Ind. Code § 6-1.1-26-1. If a taxpayer's claim for refund is disapproved by the county auditor, the county treasurer, the county assessor, or by the county board of commissioners, the taxpayer may appeal to the Board. Ind. Code § 6-1.1-26-3(b) and -4(c).

19. Petitioner has not demonstrated that he filed a claim for refund with the Knox County Auditor or that he filed a claim on the prescribed form (Form 17T). Petitioner also failed to establish that his claim for refund is based on any of the permitted statutory grounds. Thus, the Board finds that Petitioner failed to comply with the statutory requirements necessary to invoke the Board's limited authority to hear refund claims. *See Williams Indus. v. State Bd. of Tax Comm'rs*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995) (stating that because the legislature has created specific appeal procedures, a taxpayer must comply with the statutory requirements of filing the proper petitions within a timely manner). Consequently, the Board cannot address the merits of Petitioner's refund claim.
20. To the extent that Petitioner's appeal can be viewed as challenging the assessment, the Board again notes that Petitioner bears the burden of proving that the assessment is incorrect and what the correct assessment should be.
21. Real property is assessed based on its "true tax value," which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of

value. *Id.* A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

22. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2013 assessment year, the valuation date was March 1, 2013. Ind. Code § 6-1.1-4-4.5(f).
23. To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Petitioner failed to offer any evidence regarding the subject property's market value-in-use. Consequently, the Board finds Petitioner failed to make a prima facie case that the 2013 assessment was incorrect.
24. Where Petitioner has not supported its claim with probative evidence, Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E. 2d 1215, 1221-22 (Ind. Tax Ct. 2003).

CONCLUSION

25. The Board concludes that it does not have the authority to address Petitioner's refund claim. The Board further concludes that Petitioner failed to make a prima facie case that the 2013 assessment was incorrect.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the Board finds for Respondent.

ISSUED: January 7, 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 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>>.