

REPRESENTATIVE FOR PETITIONER:
Jon A. Schmaltz, Burke Constanza & Cuppy LLP

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

MLC Investment)	Petition Nos.: 45-015-99-3-3-00180
)	45-015-00-3-3-00181
Petitioner,)	
)	Parcel Nos.: 40-52-0094-0001
v.)	
)	
LAKE COUNTY PROPERTY)	County: Lake
TAX ASSESSMENT BOARD OF)	Township: Hanover
APPEALS)	
)	
Respondent.)	Assessment Years: 1999 and 2000

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

February 27, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. The issue presented for consideration by the Board is whether the Petitioner is entitled to an Economic Revitalization Area (ERA) deduction for tax years 1999 and 2000.

Procedural History

2. On May 9, 2003, William J. Smith, on behalf of the Petitioner, filed Form 133 petitions appealing the Lake County Property Tax Assessment Board of Appeals (PTABOA)'s failure to apply an ERA deduction to the assessments for the subject property.
3. The Form 133 petition was disapproved by the local officials and forwarded to the PTABOA. The PTABOA issued its final determination, by letter dated July 8, 2004, denying the Form 133 petition and upholding the assessed value of \$234,440.
4. Upon receipt of the decision by the PTABOA, the Petitioner re-filed the Form 133 petition to the Board on August 2, 2004.

Hearing Facts and Other Matters of Record

5. Pursuant to Ind. Code § 6-1.1-15-4, and § 6-1.5-4-1, a hearing was held on November 29, 2006, in Crown Point, Indiana before Carol Comer, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2. Ellen Yuhan, a program director with the Board, also attended the hearing.
6. William Smith and James Smith, partners in MLC Investment, appeared and participated in the hearing. No one appeared on behalf of the Respondent.
7. The Petitioner submitted the following exhibits:¹
 - Petitioner Exhibit 1 – Form 133 Petitions and supplemental information,
 - Petitioner Exhibit 2 – Letter from James L. Weiser to William Smith dated February 21, 2000,

¹ Petitioner Exhibit 3, the sworn statement of James Kolbas, was not offered into evidence by the Petitioner due to the Affiant's unavailability to execute the affidavit.

Petitioner Exhibit 4 – Affidavit of James Smith regarding tax refund agreement,
Petitioner Exhibit 5 – Affidavit of William Smith regarding tax refund agreement,
Petitioner Exhibit 6 – Affidavit of William Smith regarding abatement documents,
Petitioner Exhibit 7 – Copy of Ind. Code § 6-1.1-12.1-3 (2004),
Petitioner Exhibit 8 – Affidavit of James Smith regarding construction schedule,
Petitioner Exhibit 9 – St. John Town Council Resolution No. 97-12-30E,
Petitioner Exhibit 10 – St. John Town Council Resolution No. 98-01-29A,
Petitioner Exhibit 11 – Assessment records for the subject property,
Petitioner Exhibit 12 – Form SB-1 signed December 1, 1997,
Petitioner Exhibit 13 – Form CF-1 signed December 1, 1997,
Petitioner Exhibit 14 – Form SB-1 signed January 29, 2002,
Petitioner Exhibit 15 – Form CF-1 signed January 29, 2002,
Petitioner Exhibit 16 – Form CF-1 signed November 11, 2002,
Petitioner Exhibit 17 – Form CF-1 signed January 30, 2003,
Petitioner Exhibit 18 – Form CF-1 signed February 24, 2004,
Petitioner Exhibit 19 – Form CF-1 filed February 15, 2005,
Petitioner Exhibit 20 – Form CF-1 filed February 23, 2006.

8. The following items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A - Form 133 petitions,
Board Exhibit B - Notice of Hearing dated April 7, 2006,
Board Exhibit C - Documentation of mailing Notice to the Respondent.

9. The subject property is a commercial building located at 10135 Earl Drive, St. John, in Hanover Township, Lake County.
10. The ALJ did not conduct an on-site visit of the property.
11. For the 1999 and 2000 assessment years, the PTABOA determined the assessed value of the property to be \$7,700 for the land and \$234,440 for the improvements, for a total assessed value of \$242,140.

12. The Petitioner contends that an ERA deduction of 95% should have been applied to the assessment for 1999 resulting in a total assessed value of \$12,107 and an 80% ERA deduction should have been applied for the 2000 assessment resulting in a total assessed value of \$48,428.

Jurisdictional Framework

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.

Administrative Review and Petitioner's Burden

14. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
15. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
16. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life*

Ins. Co. v. Maley, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

Discussion of the Issue

17. The Petitioner contends that it was entitled to receive an ERA deduction in 1999 and 2000. In support of this argument, the Petitioner presented the following:
 - A. The Petitioner contends that it is entitled to an ERA deduction for tax years 1999 and 2000. *Schmaltz argument*. According to the Petitioner, it filed all documents necessary to obtain the ERA deductions. *Id.* Further, it sought and obtained the appropriate designating body's resolution authorizing and creating an economic revitalization area. *Id.* In addition, the Petitioner argues, it followed the statutory processes to obtain those deductions and complied with all of the benefits it promised to provide in exchange for the ERA deduction. *Id.*
 - B. The Petitioner argues that it properly obtained a resolution creating an economic revitalization area for the subject property. *Schmaltz argument*. In support of this contention, the Petitioner submitted the *Town of St. John, Lake County, Indiana*, Resolution No. 97-12-30E, "A Resolution Establishing an Economic Revitalization Area within the Town of St. John, Indiana." *Petitioner Exhibit 9 and 10*. Further, the Petitioner contends that it filed the appropriate Statement of Benefits form in 1997 to be eligible for the ERA deductions and properly filed its statement of compliance forms with those benefits. *Schmaltz argument; Petitioner Exhibits 12 through 20*.
 - C. The Petitioner's witness testified that it started construction on the property in the first quarter of 1998 and that the Petitioner was operating out of the building by September of 1998. *J. Smith testimony; Petitioner Exhibit 8*.

According to James Smith, township and county officials would have been aware of the completion of construction of the improvements because the Petitioner held a big grand opening event on September 29, 1998. *Id.* In fact, the Petitioner argues, the township was aware of the completion of the project because, according to the property record cards, the assessed value of the property increased between 1998 and 1999. *Schmaltz argument; Petitioner Exhibit 11.*

- D. The Petitioner contends, however, that it did not receive notice of any increased assessment that would trigger filing an application for the ERA deduction. *Schmaltz argument.* According to William Smith, the Petitioner never received any notice of assessment or tax bills for tax years 1999 and 2000. *W. Smith testimony; Petitioner Exhibit 6.* Mr. Smith testified that the Petitioner concluded that the lack of tax bills was due to the deductions being applied against the assessed value of the property. *Id.*
- E. The Petitioner argues that its first notice of the increase in assessment came when the Petitioner received notice that the property was sold at a tax sale. *W. Smith testimony.* According to William Smith, the property was sold on September 26, 2001, at tax sale. *Id.* After it received notice of the sale, the Petitioner redeemed the property by paying \$82,092.55 to the Lake County Auditor on February 22, 2002. *Id.* In addition, the Petitioner re-filed its statement of benefits and compliance forms seeking to retroactively obtain the ERA deductions for 1999 and 2000. *Id.*
- F. The Petitioner contends that it is a legitimate business that has operated in northwest Indiana for almost ten years. *William Smith testimony.* According to William Smith, the Petitioner established a business in St. John. *Id.* It has employed workers, paid their salaries, and paid their taxes. *Id.* Thus, the Petitioner argues, it has lived up to all of the benefits it promised St. John in return for the ERA designation of its property. *Schmaltz argument.*

G. The Petitioner further contends that it reached agreement with the Lake County Auditor to apply the ERA deductions to the Petitioner's 1999 and 2000 assessment and to reimburse the Petitioner for the taxes it improperly paid. *Schmaltz argument; Petitioner Exhibit 2*. According to the Petitioner, in January of 2003, representatives of the Petitioner met with Dan Repay who attended the meeting on behalf of the Lake County Auditor. *Id.* The Petitioner's witness testified that Mr. Repay told them that he thought the Petitioner's argument was valid and that he believed the Petitioner was owed the amount it paid to redeem the subject property after tax sale. *J. Smith testimony; Petitioner Exhibit 4*. James Smith testified that Mr. Repay promised to file the proper paperwork but that after the meeting, he never saw any paperwork. *Id.*

Analysis of the Issue

18. The Petitioner argues that it is entitled to an ERA deduction for tax years 1999 and 2000. *Schmaltz argument*. According to the Petitioner, it properly sought and obtained a resolution authorizing and creating an economic revitalization area. *Id.* Further, it followed the statutory processes to obtain those deductions and complied with all of the benefits it promised to provide in exchange for the ERA deduction. *Id.* Thus, the Petitioner argues, the Board should find that an ERA deduction applies retroactively to its property tax assessments for 1999 and 2000.² *Id.*

² The Petitioner also argues that County officials "acquiesced" in the Petitioner's claims on the basis of the January 2003 meeting with Mr. Repay and based on prior undesignated communications with the auditor and township assessor's office. We decline, however, to grant an exemption on the basis of an undocumented "agreement" even where the testimony is uncontroverted. *See Nat'l. Salvage & Service Corp. v. Ind. Dep't. of Env. Mgmt.*, 571 N.E. 2d 548, 556 (Ind. Ct. App. 1991) (Where a witness for National Salvage testified regarding an "unmemorialized, unwitnessed conversation" with an IDEM employee, the Court of Appeals found that "[I]n Indiana, uncontroverted evidence is not necessarily binding on the trier of fact. It may be disbelieved and given no weight.")

19. “A designating body may find that a particular area within its jurisdiction is an economic revitalization area.” Ind. Code § 6-1.1-12.1-2(a). The purpose of an ERA deduction is to encourage “new employment opportunities in an area suffering from economic decline.” *Knauf Fiber Glass v. State Bd. of Tax Comm’rs.*, 629 N.E.2d 959, 962 (Ind. Tax Ct. 1994). Here the Petitioner presented evidence that it filed a statement of benefits to induce the St. John town council to declare its property an economic revitalization area. *See Petitioner Exhibit 12 (Statement of Benefits dated December 1, 1997)*. Further, the town council designated the property as an economic revitalization area. *See Petitioner Exhibits 9 and 10*. Finally, the Petitioner testified that it complied with its statement of benefits by establishing a business on the property, hiring employees, and paying their salaries and taxes. *William Smith testimony*.
20. An owner of property located in an economic revitalization area is entitled to an ERA deduction in “the first year, and any successive year or years, in which an increase in assessed value resulting from the rehabilitation or redevelopment occurs...” Ind. Code §6-1.1-12.1-3. To claim an ERA deduction, however, a “property owner ... must file a certified deduction application, on forms prescribed by the department of local government finance, with the auditor of the county in which the property is located.” Ind. Code § 6-1.1-12.1-5. The deduction application must be filed before May 10 of the year in which the addition to assessed valuation is made unless notice of the addition to assessed valuation or new assessment for any year is not given to the property owner before April 10 of that year, then the deduction application must be filed within thirty days of the date such a notice is mailed to the property owner at the address shown on the records of the township assessor. *Id.*
21. Here, the Petitioner contends that it did not receive any notice of a change in assessment that would trigger its obligation to file an application for deduction prior to learning that its property had been sold in tax sale. After it received notice of the sale, the Petitioner’s witness testified that the Petitioner redeemed

the property on February 22, 2003. *Petitioner Exhibit 6*. In addition, the Petitioner re-filed its statement of benefits, filed its Form 322, Application for Deduction from Assessed Value of Structures in Economic Revitalization Area, and filed the required compliance form on January 19, 2002, to retroactively obtain the ERA deductions for 1999 and 2000. Thus, the Petitioner raised a prima facie case it was entitled to an ERA deduction for its 1999 and 2000 assessments on the subject property.

22. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, despite proper notice of the hearing, the Respondent failed to appear at the hearing. The Respondent may have been able to show that it mailed the notices of property tax assessment "to the property owner at the address shown on the records of the township assessor." *See* Ind. Code § 6-1.1-12.1-5. Or the Respondent may have been able to show that once the Petitioner received notice of the sale of the property at tax sale, the Petitioner failed to file the application for ERA deduction within thirty days. The Respondent, however, submitted no evidence on which we could determine the propriety of the Petitioner's evidence. Thus, the Respondent failed to rebut or impeach the Petitioner's case.

Summary of Final Determination

25. The Petitioner raised a prima facie case that it was entitled to an ERA deduction for tax years 1999 and 2000. The Respondent failed to appear or present any evidence to rebut or impeach the Petitioner's case. The Board, therefore, finds in favor of the Petitioner and holds that a 95% deduction should be applied to the March 1, 1999, assessment of the subject property and an 80% deduction should be applied the March 1, 2000, assessment of the subject property.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Trial Rules are available on the Internet at <http://www.in.gov/judiciary/rules/trial_proc/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.