

REPRESENTATIVE FOR PETITIONER:
Dennis L. Church, Owner

REPRESENTATIVES FOR RESPONDENT:
Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

DPC Enterprises LLC,)	Petition No.: 48-027-11-1-4-00001
)	
Petitioner,)	Parcel No.: 48-04-09-404-074.000-027
)	
v.)	County: Madison
)	
Madison County Assessor,)	Township: Pipe Creek
)	
Respondent.)	Assessment Year: 2009 ¹

March 12, 2014

FINAL DETERMINATION

The Indiana Board of Tax Review (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. Did the Petitioner, DPC Enterprises, LLC, represented by Dennis L. Church, prove it was entitled to a partial refund for taxes paid resulting from the subject property's March 1, 2009, assessment?

¹ While the appeal is numbered as a 2011 appeal, the parties agreed that the assessment year under appeal is actually 2009.

PROCEDURAL HISTORY

2. Mr. Church, the owner of DPC Enterprises, LLC, filed a Form 130 petition with the Madison County Assessor, contesting the real estate taxes resulting from the subject property's March 1, 2009, assessment. It is not clear when Mr. Church filed this petition. The petition is not date-stamped; however, Mr. Church indicated that he signed the petition "July 2011." *Bd. Ex. A.*
3. It is not evident if the Madison County Property Tax Assessment Board of Appeals (PTABOA) took any action on the Petitioner's Form 130. On September 28, 2012, Mr. Church filed a Form 131 petition with the Board. In his original filing with the Board, Mr. Church failed to include a corresponding PTABOA determination. In response to the Board's defect notice, Mr. Church provided four separate PTABOA determinations. However, those determinations appear to only address the subject property's March 1, 2010, and March 1, 2011, assessments. It appears, from the documents provided, that the PTABOA never addressed the Petitioner's 2009 appeal. *Bd. Ex. A.*
4. Given there is no evidence to prove otherwise, the PTABOA failed to hold a hearing within 180 days of the Petitioner's request. Thus, it was proper to bring the 2009 appeal to the Board. *See Ind. Code § 6-1.1-15-1(k) and (o)* (allowing a taxpayer to seek review by the Board if a county PTABOA does not hold a hearing within 180 days of the taxpayer filing its notice of review with the county or township assessor).
5. On December 20, 2013, the Board's administrative law judge, Joseph Stanford (ALJ), held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

6. Mr. Church was sworn in and offered testimony and argument for the Petitioner. No witnesses appeared for the Respondent; Marilyn Meighen offered legal argument.²
7. Neither party presented any exhibits. The Board recognizes the following items as part of the record:
 - Board Exhibit A: Form 131 petition with attachments,
 - Board Exhibit B: Hearing notice,
 - Board Exhibit C: Hearing sign-in sheet.
8. The subject property is a commercial property conducting business as Elwood Car Care, located at 320-322 North Anderson Street, in Elwood.
9. The subject property's March 1, 2009, assessment is not in the record given it is not at issue.

JURISDICTIONAL FRAMEWORK

10. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits, that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONER'S CONTENTIONS

11. The subject property was purchased in September 2010, and Mr. Church paid the property taxes that were due in November 2010. At some point after that, the assessment

² Brian Cusimano and Grace Chimples, both attorneys, were also present in the hearing room for the Respondent; however, neither offered any legal argument.

was appealed, but it is not clear which years were appealed.³ The assessments for at least two years were reduced, and Mr. Church received refunds. *Church testimony.*

12. The March 1, 2009, assessment, however, was never addressed. When Mr. Church inquired, he was informed that he did not own the property in 2009. However, Mr. Church argues that given he paid the property taxes in November 2010 he should be entitled to a refund in 2009 as well. Mr. Church's final argument is that "if I can pay a tax when I don't own a property and if there is a refund because I overpaid in 2011, why wouldn't that refund apply to the taxes I paid in 2010?" *Church argument.*

RESPONDENT'S CONTENTIONS

13. The Board lacks the authority to decide this case given it only has the power and authority granted by statute. While the Board has the authority to decide matters involving valuations, credits, deductions, and exemptions, it generally lacks the authority to decide cases involving refunds.⁴ *Meighen argument.*
14. However, the Board may decide matters of refunds under limited circumstances. This situation is expressly limited to a taxpayer filing a Form 17-T. The criteria for a complaint filed in this manner must allege that the taxes were illegal as a matter of law, the taxes were paid more than once on the same property, or that there was a mathematical error in the computation of the taxes.⁵ In these instances, the complaint would first be heard by the Department of Local Government Finance (DLGF), and the taxpayer would then be entitled to appeal to the Board. Here, that process has not taken place. *Meighen argument.*

³ It appears that the 2010, 2011, and 2012, assessments were reduced. Mr. Church alternately used the terms "tax" and "assessment" in his testimony and argument. In Indiana, real estate taxes are paid one year in arrears of the assessment. Thus, while Mr. Church referred to specific years, at times it is difficult to determine whether he was referring to the tax year or the assessment year.

⁴ Ind. Code § 6-1.5-4-1.

⁵ Ind. Code § 6-1.1-26-1.

15. Regardless, Mr. Church is not entitled to a refund because he was not the property owner on March 1, 2009.⁶ The remedy for the Petitioner in this appeal is to look to the owner of the subject property as of March 1, 2009, for any refund they might be entitled to.

Meighen argument.

BURDEN OF PROOF

16. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its property's assessment is wrong and what its correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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.

17. Here, the subject property's assessed value is not being challenged. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden of proof rests with the Petitioner.

ANALYSIS

18. The Petitioner is not challenging the subject property's assessed value. Further, the Petitioner did not offer any evidence or argument as to the assessed value. In fact, the

⁶ Ind. Code § 6-1.1-2-4.

current assessment for March 1, 2009, is not even part of the record. Thus, the Board has no valuation evidence before it to address.

19. Instead, the Petitioner requests the Board to order a refund on taxes paid resulting from the March 1, 2009, assessment. However, the Board is a creation of the legislature, and it has only those powers conferred by statute. *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999). The relevant statute is Ind. Code § 6-1.5-4-1, which provides as follows:

(a) The Indiana board shall conduct an impartial review of all appeals concerning:

- (1) the assessed valuation of tangible property;
- (2) property tax deductions;
- (3) property tax exemptions; or
- (4) property tax credits;

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.

(b) Appeals described in this section shall be conducted under IC 6-1.1-15.

Ind. Code § 6-1.5-4-1.

20. As the Respondent acknowledged, another statute does give the Board the authority to review claims for refund in very limited circumstances. Specifically, Ind. Code § 6-1.1-26-1 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.

21. If a taxpayer has complied with the provisions of Ind. Code § 6-1.1-26-1, then the Board has the authority to decide denials of claims under Ind. Code § 6-1.1-26-3. Indiana Code § 6-1.1-26-3(b) provides:

(b) If the claim for refund is disapproved by either the county auditor, the county treasurer, or the county assessor, the claimant may appeal that decision to the Indiana board. The claimant must initiate the appeal and the Indiana board shall hear the appeal in the same manner that assessment appeals are heard by the Indiana board.

Ind. Code § 6-1.1-26-3(b).

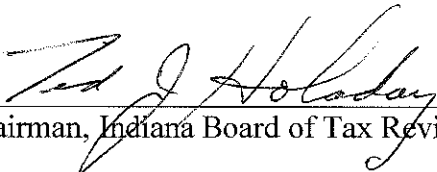
22. However, this appeal does not involve any of the circumstances contemplated by Ind. Code § 6-1.1-26-1 so Ind. Code § 6-1.1-26-3 is not triggered. Moreover, the Petitioner did not follow the procedure required to initiate a review under either statute.
23. Thus, neither the Board's enabling statute, nor any other statute, grants any power to review refunds or order the issuance of a refund to a taxpayer. Given the clear language of the statutes, the Board lacks the subject matter jurisdiction to afford the Petitioner the relief that it seeks with regard to a refund of any taxes resulting from the March 1, 2009, assessment.
24. Further, even if the Board had the authority to decide this case, the Board is unable to find any grounds for which to find for the Petitioner. Again, there is no evidence on the record regarding the subject property's March 1, 2009, assessment, and therefore no conclusive evidence that the assessment was ever actually reduced for that year. Also any assumption that the March 1, 2009, assessment should have been reduced simply because the assessment was reduced in subsequent years is misguided. Each assessment and tax year stands alone. *See Thousand Trails Inc. v. State Bd. of Tax Comm'rs*, 747

N.E.2d 1072, 1077 (Ind. Tax Ct. 2001); *Quality Stores, Inc. v. State Bd. of Tax Comm'rs*, 740 N.E.2d 939, 942 (Ind. Tax Ct. 2000); *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n.14 (Ind. Tax Ct. 1998). This principle is consistent with the fact that under Indiana's current assessment system the valuation date for each assessment year is different.

SUMMARY OF FINAL DETERMINATION

25. The Petitioner did not challenge the March 1, 2009, assessment and offered no valuation evidence. Therefore, there is no change to the assessment. Further, the Board lacks jurisdiction to decide the Petitioner's claim regarding a refund of taxes paid resulting from the 2009 assessment.

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


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>.