

REPRESENTATIVE FOR PETITIONER:

Tony L. Hiles, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Julie Newsome, Huntington County Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Tony L. Hiles,	)	Petition No.:	35-005-11-3-5-82427-15
)		
Petitioner,	)	Parcel No.:	35-05-14-100-394.500-005
)		
v.	)	County:	Huntington
)		
Huntington County Assessor,	)	Township:	Huntington
)		
Respondent.	)	Assessment Year:	2011

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

September 11, 2017

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. Is the Petitioner able to challenge the subject property's value on a Form 133 petition?
And if so, did the Petitioner prove the subject property's assessment is incorrect?

PROCEDURAL HISTORY

2. The Petitioner initiated his 2011 assessment appeal by filing a Petition for Correction of an Error (Form 133) with the Huntington County Auditor on May 8, 2015. On October 19, 2015, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations denying the Petitioner any relief. On December 4, 2015, the Petitioner filed his Form 133 with the Board.

3. On June 13, 2017, the Board's administrative law judge (ALJ), Jennifer Bippus, held an administrative hearing on the petition. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Mr. Hiles appeared *pro se*. Deputy County Assessor Julie Newsome and Huntington County Assessor Terri Boone appeared for the Respondent. All were sworn and testified.

5. The Petitioner offered the following exhibits:

Petitioner Exhibit 1: "List of Errors" on property record card,
Petitioner Exhibit 2a: Subject property record card page 1,
Petitioner Exhibit 2b: Subject property record card page 2.

6. The Respondent offered the following exhibits:

Respondent Exhibit 1: 2011 Subject property record card.

7. The following additional items are recognized as part of the record:

Board Exhibit A: Form 133 with attachments,
Board Exhibit B: Hearing notice dated May 10, 2017,
Board Exhibit C: Hearing sign-in sheet.

8. The property under appeal is a single-family residence located at 319 Swan Street in Huntington.

9. The PTABOA determined a 2011 total assessment of \$37,800 (land \$100 and improvements \$37,700).¹
10. The Petitioner requested a total assessment of \$4,500 (land \$2,000 and improvements \$2,500).

JURISDICTIONAL FRAMEWORK

11. 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

12. The subject property is over assessed. Mr. Hiles purchased the property at a tax sale on October 28, 2010, and paid the back taxes for the two prior years. Mr. Hiles received title to the property on February 7, 2012, and ultimately was responsible for the 2011 taxes. *Hiles argument and testimony; Pet'r Ex. 1, 2a, 2b.*
13. The property record card includes several errors. Specifically, Mr. Hiles "believes" the home is situated on a crawl space because "it is floor joists on a footer." The home lacks vinyl siding, heating, bath fixtures, a kitchen sink, and water heater. In 2012, adjustments were made on the property record card to correct these errors via "the reassessment on a Form 130." *Hiles argument; Pet'r Ex. 1, 2a, 2b.*
14. The Respondent has erroneously assessed this property as a rental property for the 2011 assessment year. The property has not been utilized as a rental property since 2005.

¹ Ms. Newsome indicated that because the "income approach" was used to value the property, the entire \$37,800 assessment was allocated to the improvements.

Furthermore, no one has lived in the home since 2009. This error was corrected for assessment year 2012 and beyond. *Hiles argument; Pet'r Ex. 2a, 2b.*

RESPONDENT'S CONTENTIONS

15. The subject property is correctly assessed. The property was assessed via the "rental income approach" in 2009, 2010, and 2011. In 2009, the previous property owner submitted rental income for the subject property, and that evidence was used to calculate the assessment. The Petitioner failed to inform the Respondent of any changes to the property until 2012. For assessment year 2012 and beyond, the assessment was based "more on" the cost approach. *Newsome testimony; Resp't Ex. 1.*
16. The fundamental issue here is that a Form 133 can only be used to appeal objective issues. Here, the Petitioner is seeking to have the assessment changed, and that must be done via a Form 130. *Newsome argument.*

ANALYSIS²

17. Here, the Petitioner seeks to correct alleged errors on the subject property's 2011 assessment via a Form 133 petition, which the Department of Local Government Finance (DLGF) has prescribed for use in the correction of error process under Ind. Code § 6-1.1-15-12.³ But only objective errors that can be corrected with exactness and precision can be addressed with a Form 133. These forms are not for changes that require subjective judgment. Ind. Code § 6-1.1-15-12; *O'Neal Steel v. Vanderburgh Co. Property Tax Assessment Bd. of Appeals*, 791 N.E.2d 857, 860 (Ind. Tax Ct. 2003); *Barth Inc. v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1124, 1128 (Ind. Tax Ct. 2001); *Bender v. State Bd. of Tax Comm'rs*, 676 N.E.2d at 1114 (Ind. Tax Ct. 1997); *Reams v. State Bd. of Tax*

² The Petitioner initiated his appeal via a Form 133. The challenge of a property's value is not available via a Form 133. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the burden rests with the Petitioner.

³ The Board notes, the Petitioner's standing may be affected by recent legislative changes. See Ind. Code § 6-1.1-15-0.7 as added by P.L. 204-2016 § 12 effective July 1, 2016. Because the Respondent did not argue the Petitioner lacked standing, the Board will not raise the issue *sua sponte*.

Comm'rs, 620 N.E.2d 758, 760 (Ind. Tax Ct. 1993); *Hatcher v. State Bd. of Tax Comm'rs*, 561 N.E.2d 852, 857 (Ind. Tax Ct. 1990).

18. A determination is objective if it hinges on simple, true or false findings of fact. *See Bender*, 676 N.E.2d at 1115. “[W]here a simple finding of fact does not dictate the result or discretion plays a role, [the] decision is considered subjective and may not be challenged through a Form 133 filing.” *Id.*
19. In this case, the Respondent testified that she assessed the property in 2011 using the income approach. The Petitioner did not dispute that. In fact, he listed that as one of the purported errors. In reviewing the property record cards, it is not entirely clear how the 2011 assessment was determined. Thus, the Board relies on the agreement of the parties that the 2011 assessment was determined using the income approach.
20. That being the case, the Petitioner failed to explain how any of the purported errors he alleged affects the assessment. When using the income approach to assess a property, an assessor relies on market income and expenses, not components of cost. Errors in things such as the number of plumbing fixtures, foundation type, and other alleged mistakes that the Petitioner alleged would only affect the assessment if the cost approach was used. Here, the parties ultimately agreed the cost approach was not used in 2011. According to the testimony of both parties, it appears the alleged errors have been corrected on the subject property record card for the subsequent years.⁴
21. The final question is whether the Respondent’s choice of using the income approach could be considered an objective error, if indeed it actually is an error. The Board finds that it cannot be. The methodology used to compute an assessment clearly involves subjective judgment. Here, the subject property had been a rental property prior to 2011. The Board finds no objective rule, and the Petitioner did not point to any, requiring an

⁴ The Board is unable to determine if the Respondent has subsequently corrected the alleged foundation error because Mr. Hiles did not provide enough information to precisely indicate what type of foundation the home is situated on.

assessor to use a different methodology to assess such a property for a year that it is not rented.

22. 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 Twp. Ass'r*, 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.”) The Petitioner alleged an assortment of errors, but he failed to prove that any of the errors are objective. Here, the Petitioner is unable to challenge the value of the property via a Form 133.⁵ Consequently, he failed to make a prima facie case.

SUMMARY OF FINAL DETERMINATION

23. The Board finds for the Respondent.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

⁵ Additionally, the Petitioner cannot avoid the statutory time limitations associated with the Form 131 review process by filing his claim on a Form 133. *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). *See also Lake Co. Prop. Tax Assessment Bd. of Appeals v. BP Amoco Corp.*, 820 N.E.2d 1231, 1236-1237 (Ind. 2005) (stating that because the taxpayer failed to challenge its assessments within the applicable time period for which a Form 130 was available, it was foreclosed from using a Form 133 for that purpose).

- 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 of 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>>.