

REPRESENTATIVE FOR PETITIONERS: Andrew A. Crosmer, Attorney at Law, Rubino, Crosmer, Smith & Sersic.

REPRESENTATIVE FOR RESPONDENT: None

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

Joseph F. and Bernice J. Belovich,)	
)	Claim for Refund for Erroneous or
Petitioners)	Excessive Tax Payment
)	
v.)	County: Lake
)	
Lake County Auditor,)	Township: Calumet
)	
Respondent)	Parcel Nos.: 43-0247-0003
)	43-0247-0004
)	43-0247-0005
)	
)	Assessment Years: 1985-1988

Review of the Claim for Refund
for Erroneous or Excessive Tax Payment

August 18, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

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 was:
ISSUE – Whether the Petitioners are entitled to a full refund of taxes paid on the subject property for the years 1985-1988.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-26-1, the Petitioners filed a Form 17T, Claim for Refund, requesting a refund of the taxes paid on the subject parcels. A letter requesting the refund of the taxes was sent to the Auditor of Lake County on June 14, 1990. The Form 17T was filed on July 23, 1990 and forwarded to the Board on November 18, 1991.
3. On January 23, 1992, the Board informed the Petitioners that they had failed to state one of the statutorily prescribed bases upon which a claim for refund may be considered and, therefore, the Board was unable to approve the claim for refund.
4. On June 24, 1992, the Petitioners again filed the Form 17T claiming that the taxes as a matter of law were illegal. It appears no action was taken by the Lake County Auditor's office until the Petitioners sent a third letter requesting the refund on August 8, 1995. On November 16, 1995, the tax refund claim was sent to the Board.

Hearing Facts and Other Matters of Record

5. Prior to the hearing, on June 25, 2003, the Petitioners submitted a list of witnesses and exhibits to be presented at the hearing.
6. Pursuant to Ind. Code § 6-1.1-16-2a, a hearing was held on July 10, 2003, at Crown Point, Indiana before Ellen Yuhan, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

7. The following persons were present at the hearing:
 - For the Petitioners: Andrew A. Crosmer, Attorney.
 - Joseph F. Belovich, Petitioner.
 - Bernice J. Belovich, Petitioner.

8. Although formal written notice of the hearing was mailed to the Lake County Assessor, Lake County Auditor, and the Calumet Township Assessor, no one appeared at the administrative hearing on their behalf.

9. Both Mr. and Mrs. Belovich were sworn in as witnesses. However, only Mr. Belovich presented testimony.

10. The following exhibits were presented:
 - For the Petitioners:
 - A. List of witnesses.
 - B. List of exhibits:
 1. A letter dated June 14, 1990, to Anna Anton, Auditor of Lake County, from the Petitioners.
 2. County Claim form 17T dated July 23, 1990.
 3. A letter dated October 31, 1991, from James Nagy, attorney for the Petitioners, to the Lake County Auditor's office regarding the petition for refund.
 4. A letter dated November 13, 1991, from Mr. Nagy to the Lake County Auditor's office, confirming an agreement to submit the Petitioners' claim to the State Board of Tax Commissioners.
 5. A letter dated November 18, 1991, from the Lake County Auditor to the State Board of Tax Commissioners forwarding the Petitioners' Form 17T.
 6. A letter dated January 23, 1992, from the State Board of Tax Commissioners to Mr. Nagy regarding the failure to state one of the statutorily prescribed basis for tax refund on the Form 17T.
 7. A letter dated June 24, 1992, to the Lake County Auditor from the Petitioners regarding an amended claim and compliance for refund of real estate taxes.
 8. An amended claim for Refund of Real Estate Taxes, Form 17T, date stamped June 24, 1992.
 9. Copies of bills and receipts for real estate taxes for property in question from 1985 to 1989, date stamped June 24, 1992.
 10. A letter dated August 8, 1995, to the Lake County Auditor from the Petitioners regarding the status of the request for refund of real estate taxes.

11. A letter dated November 16, 1995, to the State Board of Tax Commissioners from Samuel Orlich, Lake County Auditor, requesting the status on the refund request/petition.
12. A letter dated August 8, 1997, to the State Board of Tax Commissioners from the Petitioners requesting the status of the refund request/petition.
13. A letter dated June 14, 2002, to the State Board of Tax Commissioners from Andrew Crosmer, attorney for the Petitioners, requesting the status of the refund claim.
14. A letter dated January 17, 2003, from the Department of Local Government Finance to Mr. Crosmer regarding the status of the Petitioners' claim.
15. Copies of Indiana Court of Appeals decisions:
City of Gary v. Belovich, 504 N.E. 2d 286 (Ind. App. 1987);
City of Gary v. Belovich, 544 N. E. 2d 178 (Ind. App. 1989); and
City of Gary v. Belovich, 623 N. E. 2d 1084 (Ind. App. 1993).

For the Respondent: None

11. The following additional items are officially recognized by the Board as part of the record of proceedings:
 - Board Exhibit A- Form 17T
 - Board Exhibit B- Notice of Hearing
12. Official notice is also taken by the Board of the following additional relevant documents:
 1. Correspondence between the Lake County Auditor's office and Charles C. Brooks, Jr., Assistant Lake County Attorney; and
 2. Three orders of the Porter County Superior Court.
13. The property is located at 380 S. Grand Boulevard, Gary, Calumet Township, Lake County. The Administrative Law Judge did not view the property.

Jurisdictional Framework

14. This matter is governed by the provisions of Ind. Code § 6-1.1-26, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.

15. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-26-2.

Procedure for Refunds for Erroneous or Excessive Tax Payments

16. A person, or his heirs, personal representative, or successors, may file a claim for a refund of all or a portion of a tax installment which he has paid. The claim must be filed with the auditor of the county in which the taxes were originally paid, filed within three (3) years after the taxes were first due, and filed on the prescribed form. Furthermore, the claim must be based upon one (1) of the following grounds:
 - (1) Taxes on the same property have been assessed and paid more than once for the same year;
 - (2) The taxes, as a matter of law, were illegal;
 - (3) 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.
17. If the claim is based on the grounds specified in two (2) or three (3) as shown above, the county auditor shall forward the claim for refund to the Board. The Board shall review each refund claim and certify its approval or disapproval and return the claim to the county auditor. Ind. Code § 6-1.1-26-2(a)(b).
18. Before the Board disapproves the refund claim, the Board shall notify the claimant of its intention to disapprove the claim and of the time and place fixed for a hearing on the claim. The Board shall conduct the hearing in the same manner that assessment appeal hearings are conducted. Ind. Code § 6-1.1-26-2(c).
19. When a claim for refund is allowed either by the county board of commissioners, the State Board, or the Indiana tax court, the claimant is entitled to a refund. The amount of the refund shall equal the amount of the claim so allowed plus interest at the statutory rate allowed from the date on which the taxes were paid or payable, which ever is later, to the date of the refund. The county auditor shall, without an appropriation being required,

issue a warrant to the claimant payable from the county general fund for the amount due the claimant under this section. Ind. Code § 6-1.1-26-5(a).

Petitioner's Burden

20. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
21. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
22. The State will not approve the claim for refund unless the petitioner has established a 'prima facie case'. [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of Issues

ISSUE – Whether the Petitioners are entitled to a full refund of taxes paid on the subject property for the years 1985-1988.

23. The Petitioners contend that the taxes paid for the years 1985-1988 for the subject parcels should be refunded in full, in addition to interest at the statutory rate allowed.

24. The applicable rules governing this issue are:

Ind. Code § 6-1.1-26

Procedure for filing a claim for refund and the administrative process for such claims.

Ind. Code § 6-1.1-10-5(a)

Property is exempt from property taxation if it is owned by a city or town and is used to provide a municipal service.

25. Evidence and testimony considered particularly relevant to this determination include the following:

(a) The Petitioners purchased the subject property, a fire station in Gary, Indiana, at a Commissioners' sale in November 1984 and received the deed in December 1984.

Belovich testimony.

(b) The City of Gary remained on the property and the Petitioners filed a complaint alleging inverse condemnation. The inverse condemnation action was finally decided in the Petitioners' favor on June 6, 1990; the court determined the date of taking as December 10, 1984. *Belovich testimony; Petitioners' Exhibits B3 and B15.*

(c) During the inverse condemnation proceedings, the courts indicated that they had no jurisdiction over the refund of taxes and the request for the refund would have to be made to the Lake County Auditor's office. *Belovich testimony.*

(d) On June 14, 1990, eight days after the Indiana Supreme Court's denial of the City of Gary's petition for transfer, the Petitioners requested a refund of the taxes paid for 1985-1988. *Belovich testimony.* The amount claimed for refund is \$33,773.88 plus 6% interest per annum from the date that the taxes were payable to the date of the refund. *Belovich testimony; Petitioners' Exhibit B1 and B2.*

(e) On June 28, 1990, the Assistant Lake County Attorney advised the Lake County Auditor that the claim was based upon the basis that the taxes as a matter of law were illegal, and the claim should be forwarded to the Board. *Brooks letter.*

(f) Due to the correction of an error made in the original Form 17T, the Form 17T shows the date July 23, 1990; the original tax payment receipts were given to Kathy Rollins of the Tax Sale Department on July 25, 1990. *Belovich testimony; Petitioners' Exhibit B2.*

- (g) By letter dated October 30, 1991, the Lake County Auditor's office denied the request for a refund.
- (h) On November 18, 1991, the Lake County Auditor submitted the Form 17T and other documents, including a copy of the court order, to the State Board of Tax Commissioners. *Petitioners' Exhibit B5.*
- (i) On January 23, 1992, the State Board of Tax Commissioners indicated that due to the Petitioners' failure to state one of the statutorily prescribed bases for a refund it was unable to approve the refund of the real estate taxes. *Belovich testimony; Petitioners' Exhibit B6.*
- (j) On June 24, 1992, the Petitioners made a second request for the refund of the taxes; the request included a letter of explanation, the Form 17T, and the amount and date of taxes paid. *Belovich testimony; Petitioners' Exhibits B7, B8, and B9.*
- (k) The Lake County Auditor was again advised that because the basis for the claim was that the taxes as a matter of law were illegal, the claim should be forwarded to the State Board. *Brooks letter.*
- (l) A third claim for refund was made on August 8, 1995; this claim was submitted to the State Board on November 16, 1995. *Belovich testimony; Petitioners' Exhibits B10 and B11.*
- (m) The Petitioners did not file a claim for refund until the ruling on the inverse condemnation action was final because they felt they did not have a claim until all administrative remedies had been exhausted. *Belovich testimony.*
- (n) The Petitioners believe that the initial letter attached to the Form 17T was clear regarding the reason for the refund. Furthermore, they did not prepare the Form 17T; it was prepared and submitted by the auditor's office, so if there were any omissions, it was the doing of the auditor's office. *Belovich testimony.*
- (o) The award for damages did not include taxes. The value of the property was based strictly on an appraisal of the property's fair market value. Nowhere in the court order is there mention of reimbursement or rebate of tax monies. *Belovich testimony; Petitioners' Exhibit B15.*

Analysis of ISSUE

26. The Petitioners contend that the taxes paid for the years 1985 through 1988 for the subject parcels should be refunded in full, plus the statutorily allowed interest, from the date of payment to the date of refund because the property was taken by the City of Gary in December 1984.
27. Although the procedural history is lengthy and complicated, several relevant facts have been decided in judicial proceedings in local and appellate courts prior to this administrative hearing. The key issues resolved by the courts were as follows: (a) the Petitioners owned the property at the time of the taking by inverse condemnation, and (b) the taking by the City of Gary occurred on December 10, 1984.
28. The courts' decisions, for purposes of this matter, are equivalent to establishing the City of Gary as the owner of the property.
29. There has been no dispute that the Petitioners paid the taxes for the time period in question.
30. Pursuant to Ind. Code § 6-1.1-10-5(a), property is exempt from property taxation if it is owned by a city or town and is used to provide a municipal service. Accordingly, the property would have been tax-exempt when owned by the City of Gary. No taxes were due, so the Petitioners are entitled to a refund of taxes.
31. However, while the Petitioners are due a refund, the Board must also address the question of what tax installments may be refunded. A claim for a refund of all or a portion of a tax installment must be filed within three (3) years after the taxes were first due. Ind. Code § 6-1.1-26-1.
32. The Petitioner filed a claim for refund for the tax years 1985 payable 1986, 1986 payable 1987, 1987 payable 1988, and 1988 payable 1989. However, this claim for refund was

not filed until 1990, after the Indiana Supreme Court ruled on the inverse condemnation action.

33. Regardless of the cause of the delay in filing the claim for refund, the Petitioners had only the statutory time limit to file for a refund. *Indiana Department of State Revenue v. Horizon Bancorp and First Citizens Bank*, 644 N.E. 2d 870 (Ind. 1994).
34. The Petitioners filed the initial Form 17T in July 1990; therefore the refund could only be calculated for the three year period beginning July 1987. Since the Petitioners did not pay any 1989 taxes payable in 1990, the tax installments that could be refunded would be tax payments due: November 1987, May 1988, November 1988, May 1989, and November 1989.
35. The amount of the refund shall equal the amount of the claim so allowed plus interest at the statutory rate allowed from the date on which the taxes were paid or payable, whichever is later, to the date of the refund. *Ind. Code § 6-1.1-26-5(a)*.
36. It is determined the Petitioners are entitled to a refund of the tax installments identified above, in addition to interest at the statutory rate allowed.¹

Summary of Final Determination

Determination of ISSUE: *Whether the Petitioners are entitled to a full refund of taxes paid on the subject property for the years 1985-1988.*

37. It is determined the Petitioners are entitled to a refund of five tax installments, in addition to interest at the statutory rate allowed.

¹ The Board notes the statutory rate of interest was 6% until January 1, 2002; the rate changed to 4% for refund claims filed after December 31, 2001. Ind. Code § 6-1.1-26-5(a).

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

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.