STATE OF INDIANA

Board of Tax Review

ROBERT A. & SHARON FERGUSON Petitioners	)	On Appeal from the Hamilton County Property Tax Assessment Board of Appeals
v.	)	Petitions for Review of Assessment, Form 131
	)	Petitions No. 29-015-95-1-2-05002 29-015-96-1-2-05002A
HAMILTON COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS, COUNTY AUDITOR, COUNTY COMMISSIONERS AND WASHINGTON TOWNSHIP ASSESSOR Respondents	)	Parcel No. 0906310001042000

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

Whether the Petitioners are entitled to a refund for the 1995 and 1996 assessment years.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. Robert and Sharon Ferguson (Petitioners) filed petitions requesting a correction of error for several years. The Form 133 petitions were filed with the Hamilton County Auditor's office on March 26, 2001. The Hamilton County Assessor and the Washington Township Assessor approved the petitions on April 10, 2001. On May 11, 2001, the Petitioners filed Form 17T, Claims for Refund. On June 5, 2001, the Hamilton County Auditor's office notified the Petitioners that the Hamilton County Commissioners denied the Form 17T claim for refund for the 1995 and 1996 years.

3. Pursuant to Ind. Code § 6-1.1-26-3(b), the Petitioners appealed the decision of the Hamilton County officials. On June 27, 2001, the Petitioners filed the Form 131 petitions requesting a review by the State pursuant to Ind. Code § 6-1.1-15-3.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was conducted on January 8, 2002, before Hearing Officer Dalene McMillen. Testimony and exhibits were received into evidence. Mr. Robert Ferguson represented the Petitioners. Ms. Debbie Folkerts, PTABOA Secretary, and Ms. Nancy Fletcher, Auditor's Representative, represented Hamilton County. Ms. Jerolyn Ogle represented Washington Township.

5. At the hearing, the following documents were made part of the record and labeled as Board's exhibits:

   Board's Ex. A – A copy of the 131 petition with attachments.
   Board's Ex. B – Form 117, Notice of Hearing on Petition.

6. At the hearing, the Petitioners submitted a copy of a floor plan from Signature Homes. The floor plan has been entered into the record and labeled Petitioners' Exhibit 1.

7. The Respondents submitted no written evidence at the hearing.

8. The Petitioners' property is located at 17718 Wollow Creek Way, Westfield, Indiana 46074 in Washington Township in Hamilton County.

Testimony Presented

9. The Petitioners, upon refinancing their home in 2000, discovered that the square foot area of the second story of their residence was incorrect. As a result, the Petitioners filed Form 133 petitions with the Hamilton County Auditor's office. The Hamilton County Assessor and the Washington Township Assessor approved the Form 133 petitions. The Petitioners filed Claims for Refund for several years. The Petitioners received refunds for 1997, 1998 and 1999. The assessment was corrected for 2000. The County Commissioners denied the Claims for Refund for 1995 and 1996. The notification of denial cited to Ind. Code § 6-1.1-26-1 and Ind. Code § 6-1.1-26-4 (b).

10. The Petitioners contend that the limitations for claiming refunds in Ind. Code § 6-1.1-26-1 do not apply to their situation.

11. The Petitioners contend that when their property was assessed in 1995, the data collector knowingly gave the county information that the data collector knew was wrong.

12. The Petitioners further contend that pursuant to Ind. Code § 6-1.1-26-6(d), since the county knew the information was wrong, the county should have notified the Petitioners that they were paying excess taxes.

13. The Petitioners also cited to Ind. Code § 6-1.1-26-2, stating that a hearing should have been held within thirty (30) days after the date of the notice.

14. The Petitioners do not dispute that they received a Form 11, Notice of Assessment of Land and Structures, in 1995 when the property was first assessed. The Petitioners agreed that the opportunity to question the reassessment comes when they receive postcards, notices and tax statements. The Petitioners admitted that they wouldn't have questioned the Form 11 when they received it.

15. The Form 11 outlines the rights, procedures, and deadlines for the taxpayers to appeal an assessment. It also contains information on the property, such as square footage by floor level, number of bathrooms, garage, and exterior features.

16. The Respondents assert their denial of the Form 17T claim for refunds is appropriate because the claims were not filed within three (3) years after the taxes were first due, as required by Ind. Code § 6-1.1-26-1.

Conclusions of Law

1. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

A. Indiana's Property Tax System

2. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.

3. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John,* 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V)*.

4. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V,* 702 N.E. 2d at 1039 – 40.

5. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Id* at 1040. Only evidence relevant to this inquiry is pertinent to the State's decision.

B. Burden

6. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review

to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners,* 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners,* 689 N.E. 2d 765, 769 (Ind. Tax 1997)).

7. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. "Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies." *Bell v. State Board of Tax Commissioners,* 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal. 50 IAC17.

8. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." *Id* (citing *Herb v. State Board of Tax Commissioners,* 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley,* 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners,* 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).

9. The taxpayer's burden in the State's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V,* 702 N.E. 2d at 1040.

10. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.

11. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark,* 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners,* 634 N.E. 2d 882, 887 (Ind. Tax 1994).

C. Claim for Refund

12. Pursuant to Ind. Code § 6-1.1-26-1, 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 state board of tax commissioners; and
    (4) based upon one (1) of the following grounds:
        (i) Taxes on the same property have been assessed and paid more than once for the same year.
        (ii) The taxes, as a matter of law, were illegal.
        (iii) 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.

13. In order for the Claim for Refund to be effective for 1995 and 1996, the claim must be filed within three (3) years after the taxes were first due. In this appeal, the Petitioners filed the Form 17T Claim for Refund on May 11, 2001. The claim was not filed within the three (3) years time period established by Ind. Code § 6-1.1-26-1. The Petitioners did receive refunds for 1997, 1998 and 1999 which fall within the provisions of Ind. Code § 6-1.1-26-1

14. The Petitioners contend that the provisions of Ind. Code § 6-1.1-26-1, specifically the three (3) year limitation, do not apply.

15. First, the Petitioners contend that the data collector willingly gave the county information that was wrong. Other than the Petitioners' statements, no evidence was presented to support this contention.

16. Second, the Petitioners contend that the county failed to give them written notice that an excess payment was made and that they may be entitled to a refund as set forth in Ind. Code § 6-1.1-26-6(d). The Petitioners did not present any evidence to show that Ind. Code § 6-1.1-26-6(d) was relevant or applied to their situation.

17. Ind. Code § 6-1.1-26-6 applies when the amount paid exceeds the amount of taxes due. As provided by Ind. Code § 6-1.1-26-6, the county treasurer shall place the portion of the tax assessment payment, which exceeds the amount actually due, as shown by the tax duplicate, or special assessment records in a surplus tax fund. The Petitioners have failed to provide any documentation that the amount paid was in excess of the amount shown due on the tax duplicate for 1995 and 1996.

18. Finally, the Petitioners cited to Ind. Code § 6-1.1-26-2, stating that the State did not hold a hearing within 30 days after the date of the notice of the petition. Again the Petitioners did not explain how Ind. Code § 6-1.1-26-2 is relevant or applies to their situation.

19. Ind. Code § 6-1.1-26-2 applies to claims for refund that are forwarded to the State. Claims for refund are forwarded to the State if: (1) the claim for refund is on an assessment made or determined by the State; and (2) the claim is based on the grounds that the taxes, as a matter of law, were illegal or there was a mathematical error. The Petitioners' assessment was not made or determined by the State, therefore Ind. Code § 6-1.1-26-2 does not apply.

20. The Petitioners received a Form 11 in 1995, and for whatever reason, chose not to file a petition at that time. The Petitioners instead waited until 2001 to file petitions. The provisions of Ind. Code § 6-1.1-26-1 clearly state the limitations for claiming a refund.

21. For all of the reasons set forth above, the Petitioners are not entitled to a refund for 1995 and 1996. No change is made as a result of this issue.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of_____, 2002.

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Chairman, Indiana Board of Tax Review