REPRESENTATIVES FOR PETITIONER:
Jeffrey Bennett, Bradley Hasler, Bingham McHale, LLP

REPRESENTATIVES FOR RESPONDENT:
Mark E. GiaQuinta, Melanie L. Farr, Haller & Colvin, P.C.

BEFORE THE
INDIANA BOARD OF TAX REVIEW

VERIZON DATA SERVICES, INC.,	)	
	)	**Petition No. 02-073-05-1-7-00118**
Petitioner,	)	
	)	**Parcel No.: Personal Property**
	)	**6430 Oakbrook Parkway**
vs.	)	**Fort Wayne, Indiana 46825**
	)	
	)	
WASHINGTON TOWNSHIP ASSESSOR,	)	**County: Allen**
ALLEN COUNTY ASSESSOR, and	)	
ALLEN COUNTY PROPERTY TAX	)	**Township: Washington**
ASSESSMENT BOARD OF APPEALS,[1]	)	
	)	**Assessment Year: 2005**
Respondents.	)	
	)	

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

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[1] When Verizon filed is appeal to the Board, Ind. Code § 6-1.1-15-3(a) provided that the official or entity who "made the original determination under appeal" was a party to the Board's proceedings. Ind. Code § 6-1.1-15-3(a)(2006 repl. vol.). A county assessor could also appear as an additional party by filing a notice of appearance "before the review proceedings." I.C. § 6-1.1-15-4(p) (repl. vol. 2006); *see also* 50 IAC 2-6-6(2006) (laying out procedure for county assessor to appear as an additional party). In their filings, the parties have captioned the Washington Township Assessor, the Allen County Assessor, and the Allen County Property Tax Assessment Board of Appeals as respondents. Although it is unclear whether all three are proper parties, Verizon has not moved to dismiss any of them. Under those circumstances, the Board will treat all three nominal respondents as parties and will refer to them collectively as "Allen County."

FINAL DETERMINATION GRANTING VERIZON DATA SERVICES INC.'S MOTION FOR SUMMARY JUDGMENT

I. Introduction

The parties have filed cross-motions for summary judgment on the same issue: Did the Allen County Property Tax Assessment Board of Appeals ("Allen County PTABOA") act in a timely manner when it issued its determination in Verizon's personal property assessment appeal? The answer turns on whether Ind. Code § 6-1.1-16-1(a)(2)'s deadline for a county PTABOA to change a personal property assessment—including a "final determination by the board of an assessment changed by an assessing official"—applies to PTABOA determinations that decide taxpayer appeals. While answering yes may potentially lead to some conflicts with current procedures under the general appeal statute (Ind. Code § 6-1.1-15-1), that potential did not exist when the legislature enacted Ind. Code § 6-1.1-16-1(a)(2)'s predecessor statute. Those potential conflicts therefore do little to show the legislative intent behind § 6-1.1-16-1(a)(2). Instead, both Ind. Code § 6-1.1-16-1(a)(2)'s plain language and the language of Chapter 16 as a whole lead the Board to conclude that the legislature intended Ind. Code § 6-1.1-16-1(a)(2)'s deadline to apply when a PTABOA decides a taxpayer's personal property appeal. Because the Allen County PTABOA did not issue its determination within that deadline, Verizon's assessment must be reduced to the amount that Verizon reported on its return.

II. Procedural History

The Allen County PTABOA issued its Form 115 determination on May 7, 2007. Verizon then timely appealed to the Board by filing a Form 131 petition. Verizon filed a Motion for Summary Judgment, to which Allen County responded. Allen County also cross-moved for

summary judgment on the same issue. The parties designated the following materials in support of, and in response to, those cross motions:

Verizon

Exhibit A: Affidavit of James C. Smith, including paragraphs 1-11 thereof;
Exhibit B: Copy of Verizon's 2005 Business Tangible Personal Property Return for the Verizon Data Center, including supplemental schedules and forms attached thereto;
Exhibit C: Copy of the Form 113/PP Notice of Change in Assessment for the March 1, 2005 assessment date for the Verizon Data Center;
Exhibit D: Copy of the Form 115 Notification of Final Assessment Determination for the March 1, 2005 assessment date for the Verizon Data Center;
Exhibit E: Respondents' Response to Request for Admission No. 2 and Respondents' Answers to Interrogatories Nos. 2 and 3;
Exhibit F: Verizon's March 1, 2009 Business Tangible Personal Property Assessment Return for the March 1, 2009 assessment;
Exhibit G.: Form 113/pp-Notice of Assessment/Change for Verizon's March 1, 2009 Assessment;
Exhibit H: Form 114/pp-Notice of Hearing on Petition for Verizon's March 1, 2009 Assessment;
Exhibit I: Verizon's Notice for Review of its March 1, 2009 Assessment; and
Exhibit J: Form 115 Notification of Final Assessment Determination for Verizon's March 1, 2009 Assessment.

Allen County

Affidavit of F. John Rogers
Supplemental Affidavit of F. John Rogers
Affidavit of Leisa Patrick
Supplemental Affidavit of Leisa Patrick
All of the exhibits designated by Verizon

Verizon also filed a Motion to Strike Portions of Affidavits seeking an order striking various portions of the affidavits of F. John Rogers and Leisa Patrick. Rogers was the Allen County PTABOA's attorney, and Patrick, who is now the Allen County Assessor's senior personal property deputy, worked in the Washington Township Assessor's personal property division during the period relevant to this appeal.

On March 29, 2010, David Pardo, the Board's designated administrative law judge ("ALJ"), held a hearing on the parties' cross-motions for summary judgment and Verizon's motion to strike. The ALJ later granted the parties' request to further brief two specific issues that were addressed at the hearing: (1) the meaning of Ind. Code § 6-1.1-16-2; and (2) the meaning of Ind. Code § 6-1.1-16-1(a)(2) as it existed before being amended by P.L. 146-2008 § 144. The parties filed their additional briefs by the ALJ's May 5, 2010 deadline. Neither the ALJ nor the Board inspected property under appeal.

III. Motion to Strike

Verizon moved to strike paragraphs 3-6, 10, and part of paragraph 7 of Rogers's affidavit. *Motion to Strike at 2-6.* In paragraphs 3-6, Rogers points to, and quotes from, several statutes to describe: (1) what he claims is the Allen County PTABOA's authority to act in various capacities, and (2) what Ind. Code § 6-1.1-3-20's notice requirement addresses. *See Rogers Aff. at ¶¶ 3-5.* Paragraphs 7 and 10 provide the following:

> 7. In regard to the appeal filed by the Petitioner in this matter, PTABOA did not request the Washington Township, Allen County Assessor to furnish information to it under I.C. § 6-1.1-3-19 before *the Washington Township, Allen County Assessor changed the assessed value claimed by Verizon pursuant to I.C. § 6-1.1-16-1. Nor did the PTABOA take any other action to assume the primary assessing function with respect to Verizon's personal property tax return. Finally, the PTABOA took no action to change the values on the taxpayer's return under I.C. § 6-1.1-16-1(a).*
>
> 10. Based on Verizon filing its appeal on October 28, 2005, the Washington Township, Allen County Assessor's office could not have attempted to hold a preliminary informal meeting with Verizon prior to October 30, 2005, and the PTABOA could not have held a hearing and issued its final determination, Form 115, on or before October 30, 2005.

Rogers Aff. at ¶¶ 6-7, 10 (emphasis added).

Verizon claims that paragraphs 3-6 consist solely of Rogers's legal conclusions. Verizon makes the same claim about the last two highlighted sentences in paragraph 7 and the last clause

in paragraph 10. As to the rest of paragraph 10 and the highlighted portion of paragraph 7's first sentence, Verizon argues that Rogers did not show sufficient familiarity with the Washington Township Assessor's office to support his statements. *Motion to Strike, at 2-5.* Similarly, Verizon moved to Strike paragraph 8 of Patrick's affidavit, arguing that it contains Patrick's inadmissible legal conclusions about a taxpayer's appeal rights under Ind. Code § 6-1.1-15. *Motion to Strike, at 5-6.*

Except where they conflict with the Board's procedural rules or property tax appeal statutes, the Indiana Rules of Trial Procedure may be applied to Board proceedings. 52 IAC 2-1-2.1. *See also*, 52 IAC 2-6-8 (allowing a party to move for summary judgment or partial summary judgment "pursuant to the Indiana Rules of Trial Procedure."). Trial Rule 56, which governs summary judgment proceedings, provides: "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. . . ." Ind. Trial Rule 56(E). In that vein, Rule 602 of the Indiana Rules of Evidence provides that "[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter," and Rule 704(b) provides that "[w]itnesses may not testify to . . . legal conclusions."

Under the Board's procedural rules, however, an administrative law judge "shall regulate the proceedings in . . . a manner without recourse to the rules of evidence." 52 IAC 2-7-2(a)(2). So the mere fact that a statement in an affidavit violates a rule of evidence does not necessarily make the statement inadmissible in a Board proceeding. Nonetheless, the purposes behind the rules of evidence inform the Board's decisions about whether to admit evidence and how much weight to give it. A witness's pure legal conclusions are not entitled to any weight; and in

appropriate circumstances, such as when the witness's testimony about his legal conclusions unnecessarily lengthens or otherwise interferes with a hearing, an ALJ may exclude that testimony. But there is no need to do so here. To the extent that the affidavits of Rogers and Patrick contain any pure legal conclusions, the Board simply gives those conclusions no weight.

Verizon's other complaint—that Rogers and Patrick made statements about which they lacked personal knowledge—arguably presents a stronger case for exclusion, even on summary judgment. While the Board may admit statements about which a witness lacks personal knowledge and simply decline to give those statements any weight, excluding such statements pursuant to a timely objection can promote a cleaner, less-confusing record.

Verizon points to two statements about which it claims Rogers did not show that he had any personal knowledge: (1) that "the Washington Township . . . Assessor changed the assessed value claimed by Verizon pursuant to I.C. § 6-1.1-16-1," and (2) that the Washington Township Assessor's office could not have attempted to hold a preliminary informal meeting with Verizon before October 30, 2005. *Rogers Aff. at ¶¶7, 10.* As to the first statement, the Board disagrees with Verizon. Rogers affirmed that he represented the Allen County PTABOA at all times relevant to this appeal. *Rogers Aff. at ¶ 2.* That affirmation supports a reasonable inference that Rogers had access to PTABOA records showing that the township assessor had changed Verizon's self-reported assessment. In any case, nobody disputes that the Washington Township Assessor changed Verizon's self-reported assessment. *See, e.g., Pet'r Ex. A, Smith aff. at ¶ 10.*

The second statement, however, is a little more problematic. Rogers did not offer anything to support an inference that he was familiar with the operations of the Washington Township Assessor's office or that he otherwise personally knew whether the assessor could have held a preliminary informal meeting with Verizon. But Patrick made similar

representations in paragraph 15 of her affidavit, saying that she had never scheduled a preliminary conference and a PTABOA hearing within two days of an appeal being filed and that, given Verizon's request for delays and the notice requirements for a PTABOA hearing, it would have been impossible to schedule those things before October 30, 2005. *Patrick Aff. at ¶ 15*. Verizon did not object to Patrick's statements. Under those circumstances, the Board sees no need to exclude Rogers's cumulative statements.

For the reasons explained above, the Board denies Verizon's motion to strike.

IV. Summary Judgment Motions

A. Facts

For the most part, the parties do not dispute the underlying facts. On May 15, 2005, Verizon filed a business personal property return reporting an assessment of $21 million. *Smith Aff. at 3*; *Pet'r Ex. B*. Using the schedules promulgated by the Department of Local Government Finance ("DLGF"), Verizon actually reported much higher depreciated cost for its property. But Verizon claimed an adjustment on grounds that its property should be assessed based on fair market appraisals rather than on the DLGF's schedules. *See Patrick Aff. at ¶5; Pet'r Ex. B.*

On September 15, 2005, the Washington Township Assessor issued a Form 113/PP Notice of Assessment/Change increasing Verizon's reported assessment by $36,823,690—the amount of Verizon's claimed adjustment. That left a total assessment of $57,823,690. *Smith Aff., at ¶ 9; Pet'r Ex. C.* Less than 45 days later, on October 27 or October 28, 2005, Verizon filed a letter notifying the Washington Township and Allen County assessors that it was appealing the changed assessment reflected on the Form 113. In that letter, Verizon also requested a preliminary conference. *Smith Aff. at ¶ 10; Patrick Aff., Ex. 1*.

Leisa Patrick communicated with Brad Hasler, one of Verizon's attorneys, about scheduling an informal preliminary meeting. *Patrick Aff. at ¶ 10*. Hasler indicated that Verizon wanted a date that would allow its representatives to attend the meeting in person. *Id*. Although the parties ultimately met on July 12, 2006, they did not resolve the appeal. *See id*. Two weeks later, Hasler requested that a PTABOA hearing not be scheduled until he could coordinate with his client. *Id*.

The PTABOA heard Verizon's appeal on October 26, 2006. *Patrick Aff. at ¶ 13*. On May 7, 2007, the PTABOA issued a Form 115 Notification of Final Assessment Determination reflecting an assessment of $50,777,790. *Pet'r Ex. D*.

The following timeline lays out the key events in the context of the parties' arguments:

- May 15, 2005: Verizon files its personal property return.
- September 15, 2005: The Washington Township Assessor issues Form 113.
- October 27 or 28, 2005: Verizon appeals the Washington Township Assessor's action by requesting a preliminary conference.
- **October 30, 2005**: Last day under Ind. Code § 6-1.1-16-1(a)(2) for the Allen County PTABOA to have acted on Verizon's assessment.
- Unspecified date: Hasler requests the Washington Township Assessor to schedule the preliminary conference on a date when his client is available.[2]
- **November 14, 2005**: Last day Allen County and Washington Township assessors could have filed an appeal under Ind. Code § 6-1.1-16-2(a) ("Section 2").

[2] Patrick did not specify when Hasler made his request. *See Patrick Aff. at ¶ 10*. The Board's timeline is illustrative, and it does not intend the placement of Hasler's request at any particular point on that timeline to be a finding of fact.

- July 12, 2006: Washington Township Assessor and Verizon have Preliminary conference.

- July 26, 2008: Hasler requests that the Allen County PTABOA not set a hearing until he can consult with his client.

- October 26, 2006: Allen County PTABOA holds hearing on Verizon's appeal.

- **May 7, 2007**: Allen County PTABOA issues its final determination.

B. Conclusions of Law and Discussion

1. Summary Judgment Standard

The Board's procedural rules allow parties to file summary judgment motions. 52 IAC 2-6-8. Those motions are made "pursuant to the Indiana Rules of Trial Procedure." *Id.* Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Wittenberg Lutheran Village Endowment Corp. v. Lake County Property Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 487 (Ind. Tax Ct. 2002). The party moving for summary judgment must make a prima facie showing of both those things. *Coffman v. PSI Energy, Inc.*, 815 N.E.2d 522, 526 (Ind. Ct. App. 2004). If the moving party satisfies its burden, the non-moving party cannot rest upon its pleadings but instead must designate sufficient evidence to show that a genuine issue exists for trial. *Id.* In deciding whether a genuine issue exists, the Board must construe all facts and reasonable inferences in favor of the non-moving party. *See Carey v. Ind. Physical Therapy, Inc.*, 926 N.E.2d 1126, 1128 (Ind. Ct. App. 2010).

2. Parties' Contentions

Verizon claims that Ind. Code § 6-1.1-16-1(a)(2) required the Allen County PTABOA to issue its Form 115 determination on or before October 30, 2005, and that the Allen County PTABOA's failure to do so made Verizon's self-reported assessment final. Conversely, Allen

County argues that a PTABOA can act in two different capacities: (1) as a primary assessing entity that can *sua sponte* review and change assessments whether reported by taxpayers or made by assessors, and (2) as a body that addresses taxpayer appeals. According to Allen County, Ind. Code § 6-1.1-16-1(a)(2)'s deadline applies only where a PTABOA acts as a primary assessor. Because the Allen County PTABOA issued its determination in the context of deciding Verizon's appeal, Allen County contends that Ind. Code § 6-1.1-16-1(a)(2)'s October 30 deadline did not apply. Regardless, Allen County claims both that Verizon waived its right to rely on Ind. Code § 6-1.1-16-1(a)(2) and that Verizon was estopped from doing so.

3. Discussion

a. Ind. Code § 6-1.1-16-1(a)(2)'s plain language encompasses PTABOA determinations that resolve taxpayer appeals.

When interpreting a statute, a court or quasi-judicial body must first ask whether the statute's language is clear and unambiguous. *State v. American Family Voices, Inc*., 898 N.E.2d 293, 297 (Ind. 2008). Where the language is clear, a court does not apply the rules of construction other than to give the words and phrases appearing in the statute their plain, ordinary, and usual meanings. *Id; see also*, I.C. § 1-1-4-1(1) (providing that, unless the construction is repugnant to the legislature's intent or the statute's context, "[w]ords and phrases shall be taken in their plain, or ordinary and usual sense."). Where a statute is ambiguous, however, the rules of statutory construction may be applied to determine and implement the legislature's intent. *Town of Dyer v. Town of St. John*, 919 N.E.2d 1196, 1200 (Ind. Ct. App. 2010).

Thus, the Board's analysis necessarily begins with Ind. Code § 6-1.1-16-1's language. As it existed from 2002 through 2008, that statute provided, in relevant part:

(a) Except as provided in section 2 of this chapter, an assessing official, county assessor, or county property tax assessment board of appeals may not change the assessed value claimed by a taxpayer on a personal property return unless the assessing official, county assessor, or county property tax assessment board of appeals takes the action and gives the notice required by IC 6-1.1-3-20 within the following time periods:

(1) A township or county assessing official must make a change in the assessed value and give the notice of the change on or before the latter of:
   (A) September 15 of the year for which the assessment is made; or
   (B) four (4) months from the date the personal property return is filed if the return is filed after May 15 of the year for which the assessment is made.

(2) A county assessor or *county property tax assessment board of appeals must make a change in the assessed value, including the final determination by the board of an assessment changed by a township or county assessing official*, or county property tax assessment board of appeals, and give the notice of the change on or before the latter of:
   (A) *October 30 of the year for which the assessment is made*; or
   (B) five (5) months from the date the personal property return is filed if the return is filed after May 15 of the year for which the assessment is made.

(3) The department of local government finance must make a preliminary change in the assessed value and give the notice of the change on or before the latter of:
   (A) October 1 of the year immediately following the year for which the assessment is made; or
   (B) sixteen (16) months from the date the personal property return is filed if the return is filed after May 15 of the year for which the assessment is made.

(b) Except as provided in section 2 of this chapter, if an assessing official, a county assessor, or a county property tax assessment board of appeals fails to change an assessment and give notice of the change within the time prescribed by this section, the assessed value claimed by the taxpayer on the personal property return is final.

. . . .

I.C. § 6-1.1-16-1(2004)(emphasis added).[3]

Verizon focuses specifically on subdivision (a)(2)'s requirement for a PTABOA to make a change in assessed value "including a final determination by the [PTABOA] of an assessment

[3] Indiana Code § 6-1.1-16-1(a)'s deadlines do not apply if a taxpayer: (1) fails to file a return that substantially complies with Title 6, Article 1.1 and the DLGF's regulations, or (2) files a fraudulent return with the intent of evading paying property taxes. I.C. § 6-1.1-16-1(d). Allen County, however, makes no claim that Verizon acted fraudulently or that Verizon's return was not substantially compliant.

changed by a township or county assessing official," within the specified deadline. Verizon argues that the quoted language clearly requires a PTABOA to decide a taxpayer's appeal and give notice of its determination by the later of October 30 or five months after the taxpayer files its return. Otherwise, Verizon argues, subsection (b) makes the taxpayer's self-reported assessment final.

Verizon's suggested reading hinges on the phrase "final determination." Unfortunately, that phrase is not defined anywhere in Title 6 of the Indiana Code. Various dictionaries, however, define the word "determination." For example, Black's Law Dictionary defines it as "1. A final decision by a court or administrative agency. . . ." BLACK'S LAW DICTIONARY 514 (9th ed. 2009). And Merriam-Webster defines it as: "**1 a :** a judicial decision settling and ending a controversy **b :** the resolving of a question by argument or reasoning**. . . 3 a** : the act of deciding definitely and firmly; *also* **:** the result of such an act of decision . . . **4** : a fixing or finding of the position, magnitude, value, or character of something: as **a** : the act, process, or result of an accurate measurement. . . ." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed.)(emphasis in original).

Those definitions all support Verizon's reading of the statute. Specifically, the Black's Law Dictionary entry describes a body making a decision in a judicial or quasi-judicial capacity, which is what a PTABOA does when it decides a taxpayer's appeal. While Merriam-Webster's alternate definitions encompass a wider array of decisions, those definitions are broad enough to include a decision made by a quasi-judicial body resolving an appeal. And nothing in Ind. Code § 6-1.1-16-1(a)(2) purports to exclude such decisions from the statute's ambit.

Nonetheless, Ind. Code § 6-1.1-16-1(a)(2)'s phrasing is less than perfectly clear. For example, the legislature could have referred to a PTABOA making a final determination of a

taxpayer's "appeal" or "notice of review." Thus, while the Ind. Code § 6-1.1-16-1(a)(2)'s language strongly supports Verizon's proposed reading, it arguably contains at least some ambiguity. The Board, therefore, turns to Allen County's argument that a different legislative intent emerges when the property tax statutes are read as a whole.

b. When read as a whole, the property tax statutes show that the legislature intended Ind. Code § 6-1.1-16-1(a)(2)'s deadline to apply to PTABOA determinations that resolve taxpayer appeals.

Upon reading Ind. Code § 6-1.1-16-1(a)(2) in light of the rest of Chapter 16 and the property tax statutes as a whole, the Board still concludes that the legislature intended Ind. Code § 6-1.1-16-1(a)(2)'s deadline to apply to a PTABOA when it decides taxpayer appeals. Although Allen County claims that Ind. Code § 6-1.1-16-1(a)(2) must be harmonized to avoid conflicts with the general appeal statute (Ind. Code § 6-1.1-15-1), the conflicts that Allen County posits did not exist when the legislature first enacted Ind. Code § 6-1.1-16-1(a)(2)'s predecessor. Regardless, the legislature recognized the possibility that Chapter 16's deadlines might conflict with deadlines elsewhere in the property tax code and directed that the shortest deadlines should control. Finally, Allen County's suggested reading of Ind. Code § 6-1.1-16-1(a)(2) would render portions of Ind. Code § 6-1.1-16-2 meaningless—a result that the Board must presume the legislature did not intend.

i. While Ind. Code § 6-1.1-16-1(a)(2) currently may require a PTABOA to decide a taxpayer's appeal before the taxpayer even files its notice of review, that conflict did not exist when the legislature enacted Ind. Code § 6-1.1-16-1(a)(2)'s predecessor.

In arguing that Ind. Code § 6-1.1-16-1(a)(2) must be harmonized with Ind. Code § 6-1.1-15-1, Allen County points to the rule of statutory construction holding that statutes *in pari materia* should be construed together and harmonized. *See Hecht v. State*, 853 N.E.2d 1007,

1011 (Ind. Ct. App. 2006). Only when there is an "irreconcilable conflict" between statutes may a court interpret the legislative intent as being that one statute must give way to the other. *Id*.

Allen County argues that reading Ind. Code § 6-1.1-16-1(a)(2) as applying to a PTABOA when it decides taxpayer appeals would conflict with Ind. Code § 6-1.1-15-1's detailed procedures for those appeals. For example, Ind. Code § 6-1.1-15-1 requires an assessor whose assessment a taxpayer has appealed to attempt to hold a preliminary meeting with the taxpayer to resolve as many issues as possible and to notify the PTABOA of the results from that meeting within 10 days. I.C. § 6-1.1-15-1(h)(2) and (i)(2010 repl. vol.). If the parties cannot resolve their dispute at the informal meeting, the PTABOA must hold a hearing within 180 days of the taxpayer having filed its notice of review and issue a determination within 120 days of that hearing. I.C. § 6-1.1-15-1(k) and (n)(2010 repl. vol.).

But the mere fact that Ind. Code § 6-1.1-15-1 may allow the PTABOA more time to conduct a hearing and issue a determination than what Verizon argues is allowed by Ind. Code § 6-1.1-16-1(a)(2) does not necessarily mean that the two statutes conflict. The statutes can be harmonized by reading the more specific statute—Ind. Code § 6-1.1-16-1(a)(2)—as requiring local officials to act quicker in personal property appeals than might otherwise be required under the general appeal statute. For example, Ind. Code § 6-1.1-15-1 does not compel a PTABOA to wait until the 180th day to hear a taxpayer's appeal. In many cases, the PTABOA can meet Ind. Code § 6-1.1-16-1(a)(2)'s deadline for deciding personal property appeals while still following all of Ind. Code § 6-1.1-15-1's procedures.

Nevertheless, there are at least two scenarios where a PTABOA's deadline to decide a taxpayer's personal property appeal would actually run before the taxpayer even files its notice of review initiating that appeal:

- Where a county assessor changes the taxpayer's assessment anytime after September 15, the taxpayer has until at least October 31 to file an appeal,[4] yet the PTABOA's deadline to decide that appeal would be October 30.

- Where a taxpayer files its return after May 15 and a township assessor changes that assessment four months after the filing date, the taxpayer has 45 days from the assessor's action to file its appeal, while the PTABOA would have only one month from the assessor's action to decide that appeal.

Under those scenarios, Verizon's proposed reading of Ind. Code § 6-1.1-16-1(a)(2) would arguably be inconsistent with the obligations that Ind. Code § 6-1.1-15-1 places on assessors. Those obligations are largely mandatory. Thus, a PTABOA "shall" (1) hold a hearing if the taxpayer's appeal is not resolved through an informal preliminary meeting, and (2) give written notice of its determination. I.C. § 6-1.1-15-1(k) and (n)(2010 repl. vol.). Those actions would be futile if the PTABOA's deadline for issuing a determination had already passed before the taxpayer even filed an appeal.

Those potential conflicts, however, did not exist when the legislature first enacted Ind. Code § 6-1.1-16-1's predecessor. In 1965, the legislature added section 1209 to 1961 Ind. Acts c. 319. That section read as follows:

> Notwithstanding any other provision of this act, no assessing official or board may change the assessment made in respect to a personal property return which has been filed in substantial compliance with the provisions of this act and the regulations duly adopted by the state board of tax commissioners as required by law, unless such assessing official or board shall have taken such action and shall have given notice thereof as required by section 413[5] within the following time limitations:
>
> (1) Any such change in assessment by a township or county assessing official shall be made and the notice thereof given not later than the

[4] *See* I.C. § 6-1.1-15-1(c)(2010 repl. vol.) (requiring a taxpayer seeking review of an assessment to file written notice with the official that assessed the taxpayer's property "not later than forty-five (45) days" after the official's action).

[5] Section 413 refers to 1961 Ind. Acts c. 319 § 413 as added by 1963 Ind. Acts. c. 333 § 12, which was the predecessor to Ind. Code § 6-1.1-3-20.

> *fifteenth day of November of the year for which such assessment is made or not later than six months from the date such personal property return was filed* if the return was filed after May 15 of such year.
>
> (2) Any such change in assessment by a county board of review, including the final determination by the board of an assessment changed by a township or county assessing official, shall be made and the notice thereof given not later that the *fifteenth day of February of the year immediately following year for which such assessment is made or not later than nine months from the date such personal property return was filed* if the return was filed after May 15 of the tax year.
>
> (3) Any such change in assessment by the states board of tax commissioners, including the final determination on review of an assessment made by a county board of review pursuant to section 1201, shall be made and the notice thereof given not later than the first day of October of the year immediately following the year for which such assessment is made or not later than sixteen months from the date such personal property return was filed if the return was filed after May 15 of the tax year.
>
> Upon the failure of any such assessing official or board to take action and give notice thereof within the time prescribed by this section, the assessment for the taxpayer shall be final in an amount equal to the assessment last duly claimed by the taxpayer in respect to such personal property return.

1961 Ind. Acts c. 319, § 1209 as added by 1965 Ind. Acts c. 333, § 3 (emphasis added).

Thus, the PTABOA's deadline to act fell three months after the county and township assessors' deadlines for changing a taxpayer's self-reported assessment. And a taxpayer had only 30 days, instead of the current 45 days, to appeal an assessor's decision to increase that self-reported assessment. *Compare* 1961 Ind. Acts c. 319, § 1201 as amended by 1965 Ind. Acts c. 280, § 4 *with* I.C. § 6-1.1-15-1(c)(2010 repl. vol.). That allowed a PTABOA sufficient time to hear a taxpayer's personal property appeal and issue a decision. Although the legislature re-codified the property tax statutes in 1971 and again in 1975, those deadlines remained the same. The current situation—where, under limited circumstances, a PTABOA's deadline to rule on a taxpayer appeal can run before the taxpayer's deadline to file that appeal—arose from later

amendments.[6] Because the conflicts that Allen County now points to did not exist when the legislature first enacted Ind. Code § 6-1.1-16-1(1)(a)'s predecessor statute, those conflicts shed little light on the legislature's original intent.

ii. The legislature anticipated potential conflicts and resolved them in favor of the shorter deadlines.

Even if the potential conflicts between a PTABOA's deadline under Ind. Code § 6-1.1-16-1(a)(2) and Ind. Code § 6-1.1-15-1's procedures had existed from the outset, the legislature anticipated those types of conflicts and directed that the shorter deadlines should control:

> The provisions of this chapter do not extend the period within which an assessment or change in an assessment may be made. If a shorter period for action and notice is provided elsewhere in this article, that provision controls. However, if any other conflict exists between the provisions of this chapter and the other provisions of this article, the provisions of this chapter control with respect to assessment adjustments.

I.C. § 6-1.1-16-4 (2004). Granted, the fact that the legislature provided guidance for resolving potential conflicts does not necessarily mean that one should read Ind. Code § 6-1.1-16-1(a)(2) in a manner that conflicts with Ind. Code § 6-1.1-15-1 instead of harmonizing the two statutes. But it counsels against straining Ind. Code § 6-1.1-16-1(a)(2)'s language for the sake of harmonization.[7]

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[6] *See e.g.* 1983 Ind. Acts 69, § 4 (changing township and county assessors' deadlines under Ind. Code § 6-1.1-16-1(a) from November 15 or six months from filing to September 15 or four months from filing and PTABOA's deadline from February 15 of the succeeding year or nine months from filing to October 30 of the assessment year or five months from filing); 1997 Ind. Acts 6, § 78 (making county assessor's deadline to match PTABOA's deadline); 1993 Ind. Acts 41, § 11 (changing deadline for filing a petition for review at the local level to the later of 45 days from notice of a change in assessment or May 10).

[7] Even without Ind. Code § 6-1.1-16-4, the Board would resolve any irreconcilable conflict between Ind. Code § 6-1.1-15-1 and Ind. Code § 6-1.1-16-1(a)(2) in favor of the latter. Of the two statutes, Ind. Code § 6-1.1-16-1(a)(2) is more specific in addressing determinations of personal property assessments. *See Northwest Towing & Recovery v. State*, 919 N.E.2d 601, 606 (Ind. Ct. App. 2010) ("[W]hen two statutes conflict, a statute dealing with a subject in a specific manner controls over a statute dealing with the same subject in general terms.").

iii. By giving assessors the right to seek Board review when a PTABOA fails to comply with Ind. Code § 6-1.1-16-1(a)(2)'s deadline, the legislature showed its intent that the deadline apply to determinations of taxpayer appeals.

On the other hand, Allen County's reading of Ind. Code § 6-1.1-16-1(a)(2) as applying only to determinations made by a PTABOA when exercising its primary assessing authority runs afoul of a different interpretational rule: courts will not presume the legislature intended to enact a statute that is a nullity or that has useless or ineffectual provisions. *Wayne Twp. v. Hunnicut,* 549 N.E.2d 1051, 1054 (Ind. Ct. App. 1990). But that is what Allen County would have the Board do, at least with respect to a portion of Ind. Code § 6-1.1-16-2(a) ("Section 2").

At the times relevant to this appeal, Section 2 provided:

> Sec. 2 (a) If a county property tax assessment board of appeals fails to change an assessed value claimed by a taxpayer on a personal property return and give notice of the change within the time prescribed in section 1(a)(2) of this chapter, the township assessor or the county assessor may file a petition for review of the assessment by the Indiana Board. The township assessor or the county assessor must file the petition for review in the manner provided in IC 6-1.1-15-3(c). The time period for filing the petition begins to run on the last day that the county board is permitted to act on the assessment under section 1(a)(2) of this chapter as though the board acted and gave notice of its action on that day.

I.C. § 6-1.1-16-2(a)(2004). Section 2 fits neatly with Ind. Code § 6-1.1-16-1(a)(2) if the latter is read as applying to a PTABOA when it acts in its capacity as a body that decides taxpayer appeals. Absent Section 2, a PTABOA's failure to timely decide a taxpayer's appeal would automatically extinguish a township or county assessor's intervening assessment without that official having had the opportunity to defend his assessment.

Granted, Section 2's appeal rights are purely prophylactic in those instances where the deadline for appealing to the Board expires before the deadline for a taxpayer to file its notice of review initiating an appeal to the PTABOA. But that scenario arises because of amendments that

were enacted after Section 2's predecessor.[8] As explained above, when the legislature first enacted the predecessors to Ind. Code §§ 6-1.1-16-1 and Section 2, a taxpayer had to appeal an assessor's action changing the taxpayer's self-reported assessment well before the PTABOA's deadline for deciding that appeal. Even now, assessors can eliminate the need for a prophylactic appeal by changing a taxpayer's self-reported assessment early enough to ensure that the taxpayer's appeal will be due before the PTABOA's deadline to decide that appeal expires. In other words, an assessor need not wait until his own statutory deadline to change a taxpayer's self-reported assessment.

Conversely, if, as Allen County suggests, Ind. Code § 6-1.1-16-1(a)(2) applies only to a PTABOA acting in its primary assessing capacity, it becomes difficult to see what function Section 2 would serve. The statutes governing personal property assessments do not make PTABOA approval a prerequisite for county or township assessor's assessment to become effective. *See generally* I.C. § 6-1.1-3 (governing personal property assessments); I.C. §§ 6-1.1-9-1 and -3 (delineating authority for increasing assessments upon discovering omitted or undervalued property); I.C. § 6-1.1-16-1. Thus, there would be no call for an assessor to appeal to the Board based on the PTABOA's failure to act within Ind. Code § 6-1.1-16-1(a)(2)'s deadline if that deadline applied only to a PTABOA exercising its primary assessment function. Presumably, the assessor would be content with the PTABOA failing to act, thereby ensuring that the assessor's valuation is the final word. For example, if a county assessor raised a taxpayer's self-reported assessment by $1 million, there would be two ways to override his decision: (1) a taxpayer could appeal, or (2) the PTABOA could *sua sponte* decide to change the assessment. If the taxpayer did not appeal and the PTABOA failed to timely act on its own

[8] Section 2's predecessor was enacted at the same time as Ind. Code § 6-1.1-16-1(a)(2)'s predecessor. *See* 1961 Ind. Acts c. 319, §1210 as added by 1965 Ind. Acts c. 333, § 4.

authority, the county assessor's decision would stand. The assessor would only risk snatching defeat from the jaws of victory by taking an appeal to the Board under Section 2.

Allen County, however, points out that both the township and county assessor can change a taxpayer's assessment and that those two officials may not always agree. Thus, Allen County argues that Section 2 gives those officials a chance to have a higher authority decide their dispute. Without Section 2, if the PTABOA did not act timely to resolve the assessors' dispute, the county assessor's assessment would stand and the township assessor would have no recourse.

The Board disagrees. If Section 2 were intended simply to give township and county assessors the opportunity to have a third party resolve their assessment disputes, a township assessor's failure to appeal would leave the county assessor's valuation intact. But Indiana Code § 6-1.1-16-1(b) contemplates something different—that an assessor must file an appeal under Section 2 to keep a PTABOA's inaction from causing that assessment to revert to the amount reported on a taxpayer's return:

> *Except as provided in section 2 of this chapter,* if an assessing official or a county property tax assessment board of appeals fails to change an assessment and give notice of the change within the time prescribed by this section, the assessed value claimed by the taxpayer on the personal property return is final."

I.C. § 6-1.1-16-1(b)(2010 repl. vol.) (emphasis added).

Also, Allen County's claim that Section 2 offers a mechanism for resolving disputes between township and county assessors does not explain why a *county* assessor would need the right to appeal. To the contrary, if a county assessor disagrees with either the taxpayer's self-reported assessment or the township assessor's intervening assessment, the county assessor can simply change that assessment.

A 2008 amendment further negates Allen County's position. Following that amendment, Section 2 now provides: "If a [PTABOA] fails to change an assessed value claimed by a

taxpayer on a personal property return and give notice of the change within the time prescribed in section 1(a)(2) of this chapter, the township assessor, *or the county assessor if there is no township assessor for the township*, may file a petition for review of the assessment by the Indiana Board. . . ." Ind. Code § 6-1.1-16-2(a)(2010 repl. vol.) (emphasis added); *see also*, 2008 Ind. Acts 146, §145. Thus, the county assessor can appeal to the Board only when, by definition, there is no dispute with a township assessor.

Nonetheless, Allen County responds that Section 2 gives a county assessor a last chance to be heard if both she and the PTABOA fail to change a taxpayer's assessment within Ind. Code § 6-1.1-16-1(a)(2)'s deadline. While that might give some effect to the portion of Section 2 that deals with county assessor appeals, it is too big a stretch. The legislature undoubtedly enacted Chapter 16 to give taxpayers repose. If the legislature wanted to provide the county assessor with more time to review a taxpayer's return, it would have given the county assessor a different deadline; the legislature would not have extended the assessor's deadline under the guise of an appeal to the Board.

iv. Ind. Code § 6-1.1-16-1(a)(3)'s deadline for the DLGF to make a preliminary change in assessed value does not support Allen County's position.

Allen County also argues that Ind. Code § 6-1.1-16-1(a)(2) should be read in conjunction with the subdivision that immediately follows it. That subdivision—Ind. Code § 6-1.1-16-1(a)(3)—gives the DLGF a deadline of October 1 of the year following a taxpayer filing its return (or 16 months after the return is filed if the return is filed after May 15) to make a "preliminary change in the assessed value." And Ind. Code § 6-1.1-16-1(e) gives the taxpayer the right to appeal the DLGF's preliminary determination to the Board. Thus, argues Allen County, subdivisions (a)(2) and (a)(3) should be read together as providing the PTABOA and

DLGF the opportunity to change a taxpayer's return before the appeal process starts rather than as part of the appeal process.

Once again, Ind. Code § 6-1.1-16-1's predecessor statute belies Allen County's claim. That statute originally said nothing about appeals from preliminary determinations; instead, the legislature required the State Board of Tax Commissioners ("State Board") to make any change to a taxpayer's self-reported assessment, "including the final determination on review of an assessment made by a county board of review pursuant to section 1201," no later than October 1 of the following year (or 16 months from the taxpayer filing its return if the return was filed after May 15). 1961 Ind. Acts c. 319 § 1209(3) as added by 1965 Ind. Acts c. 333, § 3. The State Board preceded what are now the DLGF and the Board, and like PTABOAs, it acted both as a primary assessor and as a quasi-judicial body that decided taxpayer appeals.[9]

Indeed, if there was any doubt that the legislature wanted the deadlines now contained in Ind. Code § 6-1.1-16-1(a)(2) and (3) to apply to PTABOAs and the State Board when those bodies acted to decide taxpayer appeals, the legislature erased that doubt by including the following savings provision when it first enacted those deadlines:

> Sec. 1213. *Notwithstanding the limitations of section 1209* [the predecessor to Ind. Code § 6-1.1-16-1], any such change of assessment of personal property for a year prior to the year 1965 which, as of the effective date of this act, is *legally under review* by either a county board of review or the state board of tax commissioners *shall be subject to the following limitations in lieu of the limitations set forth in clause (2) and clause (3) of section 1209*:
>
> (1) Any such change in assessment to be made by a county board of review or the state board of tax commissioners shall be finally determined and notice

[9] *See* 1961 Ind. Acts c. 319, § 1006 as amended by 1963 Ind. Acts c. 333, § 20 and by 1965 Ind. Acts c. 280, § 3 (giving State Board the right to review an assessment and reassess property upon giving taxpayer notice); 1961 Ind. Acts c. 319, § 1203 (requiring the State Board to hold a hearing and assess property after receiving a petition for review); 1961 Ind. Acts c. 319, § 1101 as amended by 1963 Ind. Acts c.333, § 36 (giving a county board the authority to increase assessments if it discovered that taxable property had been omitted); 1961 Ind. Acts c. 319, § 1201 (requiring county board to hold a hearing and assess property upon receiving a petition for review).

thereof given as required by section 413 by such board not later than July 31, 1965.

(2) Any such change in assessment made and finally determined by a county board of review pursuant to clause (1) of this section *and then appealed to the state board of tax commissioners for review* shall be finally determined by the state board of tax commissioners and notice thereof given as required by section 413 not later than October 1, 1965.

Upon the failure of a county board of review or the state board of tax commissioners to take action and give notice thereof as required by this section, the assessment for the taxpayer shall be final in an amount equal to the assessment last duly claimed by the taxpayer.

1961 Ind. Acts c. 319, § 1213 as added by 1965 Ind. Acts c. 319, § 7 (emphasis added).

The savings provision plainly was designed to keep the deadlines in subdivisions (2) and (3) of section 1209 (the predecessor to Ind. Code § 6-1.1-16-1) from depriving PTABOAs and the State Board of the ability to decide appeals that were already pending when section 1209 was enacted. The legislature later amended the subdivision governing the State Board (and its successor, the DLGF) to apply only when the State Board made a "preliminary change" in assessed value and to give a taxpayer the right to appeal that preliminary determination.[10] But the legislature did not similarly amend the subdivision governing PTABOA actions. The Board therefore must assume that the legislature did not intend to change that subdivision's original meaning.

v. 50 IAC 4.2-3.1-7 does not change the Board's conclusion.

As the last pillar supporting its interpretation of Ind. Code § 6-1.1-16-1(a)(2), Allen County relies on 50 IAC 4.2-3.1, an administrative rule that the DLGF adopted in 2010. One

[10] *See* 1997 Ind. Acts 6, § 78 (amending Ind. Code § 6-1.1-16-1(a)(3) to require the State Board to make a "preliminary change" in assessed value, including a "preliminary determination on review of an assessment made by a PTABOA under Ind. Code § 6-1.1-12-2.1" and adding subsection (e) regarding appeals from preliminary determinations); 2002 Ind. Acts 90, § 144 (amending Ind. Code § 6-1.1-16-1(a)(3) to eliminate "including a preliminary determination on review of an assessment made by a county property tax assessment board of appeals under IC 6-1.1-15-2.1.").

section—50 IAC 4.2-3.1-7—specifically addresses what the DLGF refers to as the PTABOA's "direct review" of assessments under Ind. Code § 6-1.1-13. That section provides, in relevant part:

> (e) When conducting a review of a taxpayer's personal property return, a [PTABOA] must make a change in the assessed value, including the final determination by the board of an assessment changed by a township assessor, if any, or the county assessor, and give the notice of the change on or before the latter of:
>
> *(1) October 30 of the year for which the assessment is made; or*
>
> *(2) five (5) months from the date the personal property return is filed*;
>
> if the return is filed after May 15 of the year for which the assessment is made provided the return has been filed in substantial compliance with this article. If the taxpayer fails to file a return, a notice of assessment must be given within the ten (10) year period after the date on which the return should have been filed. If a fraudulent return has been filed, there is no limitation of time within which it may act. If the taxpayer fails to file a personal property return that substantially complies with the provisions of this article, the assessment may be increased if notice is given within three (3) years after the date the return is filed. *These time limitations apply to the review function of the property tax assessment board of appeals, but not the appeal function under IC 6-1.1-15*.

50 IAC 4.2-3.1-7 (filed Feb 26, 2010, 2:43 p.m.; 20100324-IR-050090576FRA)(emphasis added).

Although the DLGF's rule does not expressly purport to interpret Ind. Code § 6-1.1-16-1, clearly the October 30-or-five-months-from-filing deadline that the rule references is taken from that statute. Thus, the rule appears to interpret Ind. Code § 6-1.1-16-1(a)(2) as applying only to situations where a PTABOA reviews an assessment at its own discretion and not to situations where the PTABOA decides taxpayer appeals.

The Board gives great deference to the DLGF's interpretive rules regarding substantive assessment issues. But as to the issue at hand, which addresses whether a statutory procedural deadline applies in the context of an administrative appeal, the Board must respectfully disagree with the DLGF's interpretive rule. For the reasons explained above, the Board concludes that

the legislature intended for Ind. Code § 6-1.1-16-1(a)(2)'s deadline to apply to a PTABOA when it decides taxpayer appeals.

c. The doctrines of waiver and estoppel do not apply.

Finally, Allen County argues that Verizon either waived the right to rely on Ind. Code § 6-1.1-16-1(a)(2) or was estopped from doing so. But even when viewed in the light most favorable to Allen County, the designated evidence cannot reasonably be construed to support either claim.

i. Verizon did not waive its right to rely on Ind. Code § 6-1.1-16-1(a)(2).

Waiver is "the intentional relinquishment of a known right; an election by one to forego some advantage he might have insisted upon." *Lafayette Car Wash, Inc. v. Boes*, 282 N.E.2d 837, 839 (Ind. 1972). According to Allen County, Verizon somehow relinquished its rights under Ind. Code § 6-1.1-16-1(a)(2) by: (1) waiting until two days before the Allen County PTABOA's October 30 deadline for issuing a final determination to file written notice asking for a preliminary conference, (2) requesting that the conference be delayed so Verizon's representatives could attend, and (3) acquiescing in the schedule that the assessor ultimately made. But those actions did not equate to Verizon intentionally relinquishing its right to rely on Ind. Code § 6-1.1-16-1(a)(2). Verizon simply filed its notice of review within the statutory deadline and attempted to follow Ind. Code § 6-1.1-15-1's procedures, one of which required Verizon to request a preliminary conference. *See* I.C. § 6-1.1-15-1(b)(2005 supp.)("In order to appeal a current assessment and have a change in the assessment effective for the most recent assessment date, the taxpayer must request in writing a preliminary conference . . . ."). By themselves, those actions did not amount to Verizon intentionally relinquishing its right to rely on Ind. Code § 6-1.1-16-1(a)(2). True, Verizon could have pointed out that the PTABOA's

deadline for issuing a final determination lapsed shortly after Verizon filed its notice of review. But Verizon was not required to do so. In fact, the Allen County PTABOA did not actually take any action contrary to Ind. Code § 6-1.1-16-1(a)(2) until it issued its final determination.

The Board recognizes that Verizon's filing of its request for a preliminary meeting so close to the Allen County PTABOA's deadline to issue a determination made it impractical, and maybe even impossible, for the PTABOA to meet that deadline. But Verizon's actions did not convey that it was relinquishing its right to hold the Allen County PTABOA to the deadline. Nor did Verizon's actions prevent the Washington Township Assessor from taking advantage of the remedy provided by Section 2 (Ind. Code § 6-1.1-16-2(a)) and appealing to the Board after it was clear that the Allen County PTABOA was not going to issue a timely final determination.

ii. Verizon was not estopped from relying on Ind. Code § 6-1.1-16-1(a)(2).

Estoppel is a judicial doctrine grounded in equity, and it takes many forms, including equitable estoppel, collateral estoppel, judicial estoppel, promissory estoppel, estoppel by deed, and estoppel by record. *In re: Marriage of Zoller*, 858 N.E.2d 124, 127 (Ind. Ct. App. 2006); *Roberts v. Alcoa, Inc.*, 811 N.E.2d 466, 475 (Ind. Ct. App. 2004). Allen County waived any estoppel claim because it failed to identify the particular theory of estoppel on which it relied. *See id*. (finding that party failed to identify which particular estoppel theory he relied on, but addressing estoppel argument notwithstanding waiver). In fact, Allen County mentioned estoppel only in passing, saying "Verizon should be estopped from claiming the violation of a deadline where its conduct was a substantial factor in delaying the scheduling of a preliminary conference; though even if Verizon had not sought delays, the conference was not required to be held earlier than thirty (30) days from . . . the date of Verizon filing its appeal." *Allen County's response to Verizon's summary judgment motion at 12*.

Regardless, equitable estoppel appears to be the only theory that Allen County even arguably raised. Indiana courts have described the elements of equitable estoppel in various ways. For example, in *City of Crown Point v. Lake County*, the court described the elements as: "(1) lack of knowledge and of the means of knowledge as to the facts in question, (2) reliance upon the conduct of the party estopped, (3) action based thereon of such a character as to change his position prejudicially." *City of Crown Point v. Lake County*, 510 N.E.2d 684, 687 (Ind. 1987) (quoting *Dalmer v. Blaine*, 114 Ind. App. 534, 542-43, 51 N.E.2d 885, 889 (1943)). In *Caito Foods v. Keyes*, the court offered the following slightly different description of those elements: "1) a representation or concealment of a material fact; 2) made by a party with knowledge of the fact and with the intention that the other party act upon it; 3) *to a party ignorant of the fact*; and 4) which induces the other party to rely or act upon the fact to his detriment." *Caito Foods v. Keyes*, 799 N.E.2d 1200, 1202 (Ind. Ct. App. 2003) (emphasis in original). However stated, the doctrine is grounded on the person against whom estoppel is sought having committed either actual or constructive fraud. *Paramo v. Edwards*, 563 N.E.2d 595, 599 (Ind. 1990).

Allen County did not designate evidence that could support an equitable estoppel under any formulation of that doctrine. The mere fact that Verizon filed an appeal by asking for a preliminary conference did not actually or constructively mislead Allen County about the Allen County PTABOA's obligations under Ind. Code § 6-1.1-16-1(a)(2). To the contrary, "[a]ll persons are charged with the knowledge of the rights and remedies prescribed by statute." *Middleton Motors v. Ind. Dep't of State Revenue*, 269 Ind. 282, 285, 380 N.E.2d 79, 81 (1978) (rejecting estoppel claim by taxpayer who alleged that official had erroneously represented

procedures for claiming a tax refund). And Verizon did not represent either explicitly or implicitly that it would forego its rights under Ind. Code § 6-1.1-16-1.

Similarly, Allen County offered nothing to support a reasonable inference that it detrimentally relied on Verizon's actions. Allen County points only to what it characterizes as Verizon's delay in scheduling a preliminary conference. But Allen County has designated no facts to support the notion that, had Verizon agreed to schedule a preliminary conference in the normal course: (1) the Allen County PTABOA would have issued its determination by October 30, 2005, or (2) either the Allen County Assessor or the Washington Township Assessor would have filed an appeal to the Board under Section 2. To the contrary, Leisa Patrick affirmed that she had never scheduled a preliminary conference and PTABOA hearing within two days of a taxpayer having filed an appeal. *Patrick Aff. at ¶ 15*.

V. Conclusion

On its face, Ind. Code § 6-1.1-16-1(a)(2) strongly appears to require a PTABOA to issue its final determination on a taxpayer's personal property appeal by the later of October 30 or five months from the date that the taxpayer filed its substantially compliant return. The Board reaches the same conclusion when it reads the property tax statutes as a whole, especially in the context of Chapter 16's other provisions. Any potential conflicts that such a reading of Ind. Code § 6-1.1-16-1(a)(2) creates with Ind. Code § 6-1.1-15-1's general appeal procedures, while unfortunate, stem from amendments to both statutes made after the legislature originally enacted Ind. Code § 6-1.1-16-1(a)(2)'s predecessor. Those potential conflicts therefore do little to show a contrary intent. Because the Allen County PTABOA issued its determination of Verizon's personal property appeal well beyond Ind. Code § 6-1.1-16-1(a)(2)'s deadline, Verizon's self-reported assessment is final.

The Board therefore DENIES Allen County's motion for summary judgment and GRANTS Verizon's motion for summary judgment. Because the summary judgment in Verizon's favor is dispositive, the Board enters a final determination in Verizon's appeal.

VI. Order

The Board enters final determination in favor of Verizon and ORDERS that Verizon's March 1, 2005 personal property assessment be reduced to the amount reported by Verizon on its return.

So Ordered this _____ day of _____ , 2010

_____
Chairman, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>

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