



INSPECTOR GENERAL REPORT

2005-07-0381

March 12, 2008

INDIANA BOARD OF TAX REVIEW

Inspector General David O. Thomas and Staff Attorney Amanda Schaeffer, with assistance from the State Board of Accounts, report as follows:

This report addresses the review of the Indiana Board of Tax Review (IBTR) by the Office of the Inspector General (OIG).

I.

The IBTR is a state agency of approximately 20 persons with the purpose of coordinating and reviewing the appeal of property tax assessments.

The IBTR began in 1975 when the Legislature created the State Board of Tax Commissioners. IC 6-1.1-30-1 (1975). This entity's purpose was two-fold: (1) to provide assistance to local government entities on the assessment of property taxes and (2) to provide and coordinate a process for the appeal of these assessments through its Division of Appeals.

In 2001, the Legislature separated these two functions of the State Board of Tax Commissioners into two entities: the Indiana Department of Local Government Finance in IC 6-1.1-30-1.1 and the IBTR in IC 6-1.5-1. *See Public*

Law 198-2001. The former group continues to provide advice and assistance to local governments in the determination of property tax assessments, and the latter group (IBTR) handles the appeal of these assessments similar to the previous Division of Appeals.

An IBTR “final determination” is the final state agency decision regarding the assessment of the tax on the particular parcel of land, and this decision may then be appealed directly to the Indiana Tax Court. IC 33-26-3-1(2).

The former structure of the State Board of Tax Commission included a full-time Director for the Division of Appeals (now the IBTR). *Formerly:* IC 6-1.1-30-11 (repealed in IC 6-1.5-1). However, the Director position was eliminated in the 2001 legislation, and leadership of the IBTR was vested in a bipartisan commission. IC 6-1.5-2-1. In contrast, leadership of the Indiana Department of Local Government Finance remained with a single Commissioner acting as the Director. IC 6-1.1-30-1.1(b).

IBTR Commissioner appointments are made by the Governor of the State, and the two current Commissioners were originally appointed in 2002 and 2004.

II.

In 2005, it was originally reported to the OIG in an anonymous complaint that the leadership of the IBTR was challenged. A review of the IBTR was made at that time without the benefit of a reporting party, and no criminal or ethics violations were determined. However, the OIG referred this matter back to the IBTR Commissioners on July 19, 2006, outlining the complaint and inviting the

Commissioners to address the concerns raised.

An additional complaint came to the OIG after this referral, outlining various challenges to the IBTR leadership, these including allegations that final determinations were being issued without the statutory quorum of the Commissioners. The OIG then commenced a second and expanded investigation of the IBTR. This included new areas which required the involvement of the State Board of Accounts (SBOA), multiple interviews and extensive legal research.

More specifically, the SBOA, on behalf of the OIG, reviewed 1,770 final determinations. Furthermore, OIG staff interviewed 12 of the 19 IBTR employees. The 1975 enabling legislation of the State Board of Tax Commissioners was researched along with the 2001 amendments which created the two new entities, the promulgated rules of the IBTR in 52 IAC 1 were reviewed, and a comparison of the current IBTR agency structure was made with other state agencies.

III.

Regarding OIG jurisdiction, the OIG enabling statute states that the Inspector General is responsible for addressing fraud, waste, abuse and wrongdoing in agencies. IC 4-2-7-2(b). It is charged by the Indiana Legislature to conduct investigations and “recommend policies and carry out other activities designed to deter, detect, and eradicate fraud, waste, abuse, mismanagement, and misconduct in state government.” IC 4-2-7-3(2). The OIG shall also provide

advice to an agency on developing, implementing, and enforcing policies and procedures to prevent or reduce the risk of fraudulent or wrongful acts within the agency, IC 4-2-7-3(8), and recommend legislation to the Governor and General Assembly to strengthen public integrity laws, including the Code of Ethics. IC 4-2-7-3(9).

The IBTR is a state agency as defined in IC 4-2-7(1)(a) and therefore subject to the jurisdiction of the OIG pursuant to IC 4-2-7-2(b).

IV.

Based upon this jurisdiction and its investigation, the OIG makes the following findings and recommendation.

A.

FINDINGS

1.

The OIG finds no criminal or Code of Ethics violations by the IBTR.

2.

Of the 1,770 final determinations reviewed by the SBOA at the request of the OIG, 58 of those final determinations were not in compliance with IC 6-1.5-2-1(f) in that the decisions did not have a quorum of the Commissioners' signatures or contained no Commissioner signature. Of these same 1,770 final

determinations, a letter notifying the taxpayer of the final determination was sent in 161 instances before a quorum of Commissioner signatures was entered on the jacket of the final determination, this being the method by which the Commissioners approve the final determinations as required in 52 IAC 2-6-4(e).

Regarding these quorum violations, it may be relevant to note that a remedy exists for taxpayers who wish to contest IBTR final determinations by an appeal to the Indiana Tax Court. A taxpayer may also appeal a decision to the Indiana Tax Court if the IBTR fails to make a final determination by the statutory deadline. IC 6-1.5-5-6(e)(2).

3.

Although the complaint alleged bias in some of the final determinations, no findings of bias could be substantiated. However, the determination of bias in these final determinations is difficult to assess in that differing interpretations of the sometimes complicated rules apply to these final determinations and may best be assessed by IBTR leadership and judicial review by the Indiana Tax Court.

The OIG does, however, question the need for four levels of appellate review within the 19-member IBTR, these levels including the initial review by the Hearing Officers, a review of these written findings by Program Directors (although this level of review appears to incorporate substantial benefits to the final determinations), a third review by Senior Administrative Law Judges and then the fourth and final review by the Commissioners. This multi-layer structure also invites differing interpretations of the applicable rules.

It is our opinion that all of these findings should be assessed, determined and addressed by IBTR management through the following recommendation.

B.

RECOMMENDATION

Based upon the above authority and findings, it was recommended to the Governor that the third statutory Commissioner be appointed pursuant to IC 6-1.5-2-1 and that a single Chair be selected. We are advised this appointment has been made. This Chair should lead the IBTR similar to that of an agency Director, and more similar to the structure which previously existed with the Director position for the Division of Appeals in the previous State Board of Tax Commissioners entity before the 2001 amendments separated the two entities.

Specifically, a single Chair determining the day to day operations, addressing the staffing and staffing concerns, and scrutinizing the current four-layer system of final determinations would be more efficient and consistent with typical state agency structures which often are led by a single Director.

Although there is a financial savings by not staffing the salary of the third Commissioner, and although the IBTR caseload may not currently demand the third Commissioner for the limited function of approving final determinations, these factors are outweighed by the improved management requirements as

evidenced by the above findings.

Dated this 12th day of March, 2008.

A handwritten signature in black ink, appearing to read "David O. Thomas". The signature is written in a cursive style and is positioned above a horizontal line.

David O. Thomas, Inspector General, and
Amanda Schaeffer, Staff Attorney