

**Before the
Indiana Board of Tax Review**

PARK TERRACE ASSOCIATES)	Appeals from the Gibson County
D/B/A PARK TERRACE)	Property Tax Assessment Board
APARTMENT PHASE II, and)	of Appeals
OAKLAND CITY DEVELOPMENT)	
D/B/A PARK TERRACE)	
APARTMENTS PHASE I,)	
)	
Petitioners,)	
)	
v.)	Petitions for Review of Assessments
)	
COLUMBIA TOWNSHIP)	Petition Nos: 26-007-04-1-4-00002
ASSESSOR, GIBSON COUNTY)	26-007-04-1-4-00001
ASSESSOR, and GIBSON COUNTY)	
PROPERTY TAX ASSESSMENT)	
BOARD OF APPEALS)	
)	Parcel Nos.: 0160125900
Respondents.)	0160125800
)	
)	Assessment Year: 2004

**ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT
AND FINAL DETERMINATION**

On April 25, 2005, the Petitioners filed Form 130 petitions requesting preliminary conferences with the Columbia Township Assessor. That date was well after May 10, 2004, but less than 45 days after the Petitioners received tax statements based on their properties' March 1, 2004 assessments. The sole issue before the Board is whether the Petitioners filed their Form 130 petitions within the time required to affect their March 1, 2004, assessments.

They did. On the dates relevant to this appeal, Ind. Code § 6-1.1-15-1 required a taxpayer that had not received notice of a change in assessment to initiate an appeal on or before May 10 of the assessment year it sought to appeal. A non-code provision in P.L. 1-2004, § 78, however, extended that deadline for taxpayers contesting their March 1, 2004, assessments.

Because the Petitioners filed their Form 130 petition within the extended deadline, the Board grants their motion for summary judgment and denies the Respondent's motion. And because the parties have stipulated to the parcels' values, the Board enters its final determination changing each parcel's March 1, 2004, assessment to its corresponding stipulated value.

I. BACKGROUND AND UNDISPUTED FACTS

The parties have stipulated to all of the material facts. On May 20, 2004, separate Form 115 Notifications of Final Assessment Determination were issued for parcel 0160125900, owned by Park Terrace Associates d/b/a Park Terrace Apartments Phase II, and parcel 0160125800, owned by Oakland City Development d/b/a Park Terrace Apartments Phase I. *Joint Stipulation of Facts and Contentions of the Parties ¶¶ 3-4.* Those Form 115 notifications addressed the parcels' March 1, 2002, assessments. *Id.* The Respondents did not issue a notice that the March 1, 2004, assessment for either parcel was being changed. *Joint Stip. at ¶¶ 10-11.* On April 25, 2005, within 45 days of receiving tax statements based on the parcels' March 1, 2004, assessments, the Petitioners filed Form 130 petitions with the Gibson County Assessor and the Columbia Township Assessor requesting preliminary informal conferences. *Joint Stip. at ¶¶ 5-6.*

The parties have stipulated to the parcels' March 1, 2004, assessments once the Board resolves whether the Form 130 petitions were timely filed. If the Board finds that the petitions were untimely, there will be no change to the assessments. If, however, the Board finds that the petitions were timely, the parties agree that the assessed values should be \$480,600 for parcel 0160125900 (Park Terrace) and \$594,900 for parcel 0160125800 (Oakland City). *Joint Stip. at ¶¶ 12-13.*

II. DISCUSSION

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). Here, the parties have stipulated to all the material facts and dispute only what the governing law requires in light of those facts. Thus, the Respondent contends that Indiana Code § 6-1.1-15-1 renders the Petitioners' Form 130 petitions untimely to affect their March 1, 2004, assessments, while Petitioners contend that they timely filed those petitions under a non-code exception to that statute.

Indiana Code § 6-1.1-15-1 provides the deadlines for initiating assessment appeals. And those deadlines vary depending on whether local taxing officials have taken an action requiring the giving of notice. At the times relevant to this appeal, Ind. Code § 6-1.1-15-1 provided that, in order to appeal an assessment and have any resulting change be effective for the most recent assessment date, a taxpayer had to file its request for preliminary conference by the later of: (1) 45 days after notice of a change in assessment was given, or (2) May 10 of that year. Ind. Code § 6-1.1-15-1(b)(2004). In years where a taxpayer did not receive a notice of change in assessment, it could initiate its appeal on or before May 10 and have any resulting change be effective for that year. Ind. Code § 6-1.1-15-1(d)(2004). Any petition filed after May 10 would only affect the following year's assessment. *Id.*

Public Law 1-2004 § 78, however, creates a non-code exception to that May 10 deadline for appeals from 2002-2004 assessments. Thus, under P.L. 1-2004 § 78(c), a taxpayer that did not receive notice of a change in assessment could timely appeal its March 1, 2004, assessment

by filing a written request for preliminary conference within 45 days of receiving a tax statement based on that assessment:

(c) Notwithstanding IC 6-1.1-15-1(b)(2), IC 6-1.1-15-1(c) and IC 6-1.1-15-1(d), in order to appeal an assessment of real property and have a change in the assessment effective for the assessment date in 2002, 2003, or 2004, the taxpayer must, in the manner provided by IC 6-1.1-15-1, as amended by this act, file a written request for a preliminary conference with the township assessor not later than forty-five (45) days after:

- (1) notice of a change of assessment for the assessment date is given to the taxpayer; or
- (2) the taxpayer receives a tax statement for the property taxes that are based on the assessment for the assessment date;

Whichever occurs first.

P.L. 1-2004 § 78(c).

Unfortunately, the immediately following subsection—P.L. 1-2004 § 78(d)—muddies the waters by providing:

An appeal of a taxpayer under subsection (c) must comply with **all other requirements** applicable to an appeal under IC 6-1.1-15-1, **except** that *the provisions of IC 6-1.1-15(b)(2), IC 6-1.1-15(c), and IC 6-1.1-15(d) that prohibit appeals of:*

- (1) *an assessment for an assessment date in 2002 that is filed after May 10, 2002, apply to property taxes imposed for that assessment date;*
- (2) *an assessment for an assessment date in 2003 that is filed after May 10, 2003, apply to property taxes imposed for that assessment date; or*
- (3) *an assessment for an assessment date in 2004 that is filed after May 10, 2004, apply to property taxes imposed for that assessment date.*

P.L. 1-2004 § 78(d)(emphasis added). Read in isolation, the italicized language appears to say that Ind. Code § 6-1.1-15's requirement for requesting a preliminary conference by May 10, applies to 2002-2004 assessments. But that would read the word “except” out of the statute.

P.L. 1-2004 § 78(d) would essentially say first that “all other requirements” of Ind. Code § 6-1.1-15-1 apply and second, that the prohibitions contained in Ind. Code §§§ 6-1.1-15(b)(2), (c) and (d) also apply. If that were the General Assembly’s intent, however, it could have said that all of Ind. Code § 6-1.1-15-1’s provisions apply.

And such a reading would nullify P.L. 1-2004 § 78(c), which functions solely to eliminate Ind. Code § 6-1.1-15-1's May 10 filing deadline for the specified assessment years. The Board, however, must read statutes as a whole. *Park 100 Development Co., v. Indiana State Dep't of Revenue*, 429 N.E.2d 220, 222 (Ind. 1981)('[T]he legislative intent as ascertained from an Act as a whole will prevail over the strict literal meaning of any word or term used therein.'"). And, if possible, it must construe a statute in a manner that gives effect to all its provisions. *Northern Indiana Bank & Trust Co. v. State Bd. of Fin.*, 457 N.E.2d 527, 532 (Ind. 1983)(“It is a rule of statutory interpretation that courts will not presume the legislature to have intended to do a useless thing or to enact a statute that is a nullity.”). Thus, basic tenets of statutory construction prohibit the Board from reading P.L. 1-2004 § 78(d) to impose a May 10 filing deadline for appeals from 2002-2004 assessments. Instead, P.L. 1-2004 § 78(d) simply provides that, while P.L. 1-2004 § 78(c) modifies the filing deadline for appeals from 2002-2004 assessments, it does not change § 6-1.1-15-1's non-deadline-related requirements for initiating an appeal.

Here, the Petitioners filed their Form 130 petitions within the time allowed under P.L. 1-2004 § 78(c). While the Petitioner received Form 115 notifications on May 20, 2004, those notifications addressed the March 1, 2002, assessment date rather than the March 1, 2004, assessment date. So the 45-day period referenced in P.L. 1-2004 § 78(c)(1), which runs from the time a taxpayer is given notice of an assessment change for the specific “assessment date” that the taxpayer seeks to appeal, was not triggered. And the Petitioners filed their Form 130 petitions within 45 days of receiving tax statements based on the March 1, 2004 assessment date as allowed under P.L. 1-2004 § 78(c)(2).

Thus, the undisputed facts show that the Petitioners timely filed their Form 130 petitions. And given the parties' stipulations on the parcels' valuations, the Petitioners are entitled to judgment as a matter of law on their appeals.

III. FINAL DETERMINATION

The Petitioners filed their Form 130 petitions requesting preliminary conferences within the time necessary to appeal their March 1, 2004 assessments. The Board therefore grants the Petitioners' summary judgment motion and denies the Respondents' cross motion. The assessment for parcel 0160125800 must be changed to \$594,900 and the assessment for parcel 0160125900 must be changed to \$480,600.

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

Commissioner, Indiana Board of Tax Review

Distribution:

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>>