

REPRESENTATIVE FOR PETITIONER: Greg Poore, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT: Frank Agostino, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

AP Manufacturing,)	Petitions: 71-011-08-3-3-00612-18
)	71-011-09-3-3-00613-18
Petitioner,)	71-011-10-3-3-00614-18
)	
v.)	Parcel: 71-04-13-427-001.000-011
)	
St. Joseph County Assessor)	County: St. Joseph County
)	
Respondent.)	Assessment Years: 2008-2010

4-6 2021

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and after considering the issues, now finds and concludes as follows:

INTRODUCTION

1. AP Manufacturing (“AP”) filed Form 133 correction of error petitions with the St. Joseph County Assessor arguing that there were mathematical errors in their 2008, 2009, and 2010 assessments. AP claims that those assessments should have been trended from the 2007 assessment based on the 2007 settlement agreement. But these claims are not mathematical errors that can be resolved without resorting to subjective judgment. For that reason, we find they are not appropriate for the Form 133 appeal process and must be denied.

PROCEDURAL HISTORY

2. AP Manufacturing timely filed Form 133 claims for 2008, 2009, and 2010 for a property located at 13065 Anderson Road in Granger, Indiana contesting that the Assessor made

mathematical errors in the assessments. The St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) held a hearing on January 18, 2018. The PTABOA denied the appeals, AP then filed Form 131s with the Board.

3. The Board’s administrative law judge, Jennifer Thuma, held a telephonic hearing on January 7, 2021. Greg Poore, St. Joseph County Assessor Rosemary Mandrici, Chief Deputy Assessor Patricia St. Clair, Rural Property Manager Marci Mangus, and Patricia Henry, Property Tax Supervisor for the Auditor’s Office, were sworn as witnesses.

4. The assessments for the years under appeal were:

	Land	Improvements	Total
2008	\$370,800	\$6,295,500	\$6,666,300
2009	\$370,800	\$6,295,500	\$6,666,300
2010	\$370,800	\$6,295,500	\$6,666,300

5. The parties submitted the following exhibits

- Petitioner’s Exhibit A-2008: Screenshots of Form 133-Files
- Petitioner’s Exhibit B-2008: AP Parts Form 133
- Petitioner’s Exhibit C-2008: 2008 Form 131
- Petitioner’s Exhibit D-2008: Form 133 Denial
- Petitioner’s Exhibit E-2008: Letter to IBTR with attachments
- Petitioner’s Exhibit F-2008: Explanation of Late Tax Bills with Graph
- Petitioner’s Exhibit A-2009: Screenshots of Form 133 Files
- Petitioner’s Exhibit B-2009: AP Parts 2009 Form 133
- Petitioner’s Exhibit C-2009: 2009 Form 131
- Petitioner’s Exhibit D-2009: Form 133 Denial
- Petitioner’s Exhibit E-2009: Letter to IBTR with attachments
- Petitioner’s Exhibit A-2010: Computer Screen Photo of Form 133 Files
- Petitioner’s Exhibit B-2010: AP Parts 2010 Form 133
- Petitioner’s Exhibit C-2010: 2010 Form 131
- Petitioner’s Exhibit D-2010: 2010 Form 133 Denial
- Petitioner’s Exhibit E-2010: Letter to IBTR with attachments

- Respondent’s Exhibit 1-2008: Form 131
- Respondent’s Exhibit 2-2008: Form 133
- Respondent’s Exhibit 3-2008: Letter with attachments
- Respondent’s Exhibit 4-2008: Assessor’s staff member letter
- Respondent’s Exhibit 5-2008: Property Record Card
- Respondent’s Exhibit 6-2008: Power of Attorney
- Respondent’s Exhibit 7-2008: Valuation History and Memo
- Respondent’s Exhibit 8-2008: Photo
- Respondent’s Exhibit 1-2009: Form 131

Respondent's Exhibit 2-2009:	Form 133
Respondent's Exhibit 3-2009:	Letter with attachments
Respondent's Exhibit 4-2009:	Assessor's staff member letter
Respondent's Exhibit 5-2009:	Property Record Card
Respondent's Exhibit 6-2009:	Power of Attorney
Respondent's Exhibit 7-2009:	Valuation History and Memo
Respondent's Exhibit 8-2009:	Photo
Respondent's Exhibit 1-2010:	Form 131
Respondent's Exhibit 2-2010:	Form 133
Respondent's Exhibit 3-2010:	Letter from Rep with attachments
Respondent's Exhibit 4-2010:	Assessor's staff member letter
Respondent's Exhibit 5-2010:	Property Record Card
Respondent's Exhibit 6-2010:	Power of Attorney
Respondent's Exhibit 7-2010:	Valuation History and Memo List
Respondent's Exhibit 8-2010:	Photo

FINDINGS OF FACT

6. In 2012, The Assessor and AP agreed to a value of \$2,000,000 for the 2007 assessment. Based on that agreement, the Board dismissed the 2007 appeal. The agreement included this provision: "(3) the compromise concerns only the assessment made for March 1, 2007, and does not affect the assessed value determined for any other date except to the extent that a subsequent assessment depends upon the determination made for March 1, 2007." *Pet'r. Exs. 2008-E, 2009-E, 2010-E.*

7. AP made no additions or significant changes to the property for the years under appeal. On December 6, 2012, AP Manufacturing mailed Form 133 appeals for 2008, 2009 and 2010 to the St. Joseph County Auditor and at some later time took a copy to the Assessor. The appeals were received at the St. Joseph County Government building on December 10, 2012. After several visits and inquiries, AP's tax representative provided another copy of the petitions to the Assessor on July 9, 2015. The Assessor accepted the forms believing them to be new appeals for filing, stamping them "Received" on July 9, 2015. *Poore testimony; Pet'r Exhibits 2008-A, 2009-A, 2010-A; Pet'r. Exs. 2008-E; 2009-E; 2010-E.*

8. The 2008 taxes were first due on December 11, 2009. The 2009 taxes were first due on May 10, 2010. The 2010 taxes were first due on November 10, 2011. *Henry testimony.*

ANALYSIS

9. The Assessor contends that AP's appeals were untimely, arguing that they were not filed until 2015. But the facts show the Form 133 appeals were received on December 10, 2012, before the three-year deadline running from when the 2008 taxes were first due, and well before the deadline for the other two assessment years. Thus, we now turn to whether AP is entitled to any relief.
10. Although AP filed Form 131 petitions with the Board, these appeals originated as Form 133 appeals, and must be treated as such. For the assessment years at issue, a taxpayer had two ways to challenge an assessment: (1) the general appeal procedure described in Ind. Code § 6-1.1-15-1, under which taxpayers use Forms 130 and 131 to appeal at the local and state levels, respectively, and (2) the correction-of-error process under Ind. Code § 6-1.1-15-12.¹ The general appeal procedure was only available to challenge a current year's assessment; taxpayers could not use it to challenge assessments from prior years. *Lake Cnty. Prop. Tax Assessment Bd. of Appeals v. BP Amoco Corp.*, 820 N.E.2d 1231, 1233 (Ind. 2005). A taxpayer could use the procedure to challenge any aspect of that assessment, but it had to file its appeal within a tight deadline: the later of 45 days after a notice of a change in assessment was given or May 10. *See* Ind. Code § 6-1.1-15-1(c) and (d) (2001 supp. – 2003 supp.).
11. The correction-of-error process did not have the same restrictive filing deadline as the general appeal procedure but the range of errors it could be used to correct was much narrower. The correction-of-error statute identified only eight categories of errors that could be addressed:
- (1) The description of the real property was in error.
 - (2) The assessment was against the wrong person.
 - (3) Taxes on the same property were charged more than one (1) time in the same year.
 - (4) There was a mathematical error in computing the taxes or penalties on the taxes.
 - (5) There was an error in carrying delinquent taxes forward from one (1) tax duplicate to another.

¹ In 2017, the Indiana General Assembly repealed the correction of error statute, and thus the Form 133 appeal process. *P.L.232-2017*. Now, all claims related to an assessment are appealed using the Form 130, with certain types of claims having an extended filing deadline.

- (6) The taxes, as a matter of law, were illegal.
- (7) There was a mathematical error in computing an assessment.
- (8) Through an error of omission by any state or county officer, the taxpayer was not given credit for an exemption or deduction permitted by law.

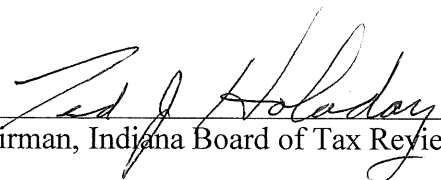
Ind. Code § 6-1.1-15-12(a) (2011 supp.). The DLGF promulgated the Form 133 for use in bringing claims under the correction-of-error statute. That form referenced only challenges under subdivision (a)(6) through (a)(8).

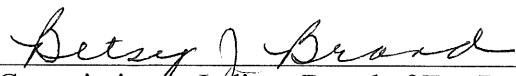
- 12. AP claims these appeals were appropriate for a Form 133 because they involve a “math error.” Specifically, it argues that the 2008 assessment, as well as the subsequent years, should have been trended from the 2007 settlement value. The Assessor disagrees, arguing that this claim is not an objective error but requires subjective judgement, and thus not appropriate for a Form 133.
- 13. The Assessor is correct that Form 133s can only be used to correct objective errors. In interpreting the correction-of-error statute, the Tax Court has repeatedly held that a Form 133 petition could “remedy only errors which can be corrected without resort to subjective judgment and according to objective standards.” *Muir Woods*, 36 N.E.3d 1208 at 1213 (Ind. Tax Ct. 2015) (quoting *Hatcher v. State Bd. of Tax Comm'rs*, 561 N.E.2d 852, 857 (Ind. Tax Ct. 1990)).
- 14. Under Indiana’s current assessment system—which has applied since 2002 and is based on real-world evidence—valuation questions inherently require subjective judgment to resolve. *See id.* at 1213 (quoting *Wirth v. State Bd. of Tax Comm'rs*, 613 N.E.2d 874, 878 (Ind. Tax Ct. 1993); *see also, Town of St. John, et al. v. State Bd. of Tax Comm'rs*, 698 N.E.2d 399, 400 (Ind. Tax Ct. 1998) (“[A] calculation of the effect of real world evidence on an individual assessment will typically require subjective judgment The court does not foresee any opportunity to apply real world evidence retroactively by using the Form 133 process.”).
- 15. We are unconvinced that the assessments under appeal are the result of a “math error.” This is not a matter of two plus two equaling five, but rather a disagreement over whether it should have been two plus two in the first place. Such a dispute is not appropriate for

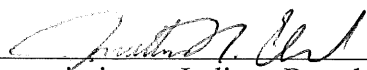
the restricted nature of claims allowed under a Form 133 appeal. To make the determination as to whether this was a mathematical error, we would first need to examine the intent of the parties in entering into the 2007 settlement agreement, a subjective analysis. In addition, we would also need to determine whether the Assessor's trending for the years under appeal was correct, another subjective analysis.

CONCLUSION

16. AP filed Form 133 appeals well after the deadline for the more expansive issues provided for in the Form 130. Thus, it was limited to those claims specifically enumerated in the correction of error statute. But it failed to prove that there was a mathematical error in the assessment, or any other claim appropriate for a Form 133. For that reason, we find that AP is not entitled to any relief for the years under appeal.


Chairman, Indiana Board of Tax Review


Commissioner, Indiana Board of Tax Review


Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.