

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 03-005-18-1-3-00105-20
Petitioner: Coca-Cola Bottling Co.
Respondent: Bartholomew County Assessor
Parcel: 03-95-24-210-008.100-005
Assessment Year: 2018

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. On September 3, 2019, Coca-Cola Bottling Company filed a Form 130 petition contesting its 2018 assessment. It checked the box indicating that it was alleging a clerical, mathematical, or typographical mistake. Coca-Cola claimed that the Assessor erred by using a base rate from a “land order” that was not approved by the Bartholomew Property Tax Assessment Board of Appeals (“PTABOA”) until after the assessment date.
2. The PTABOA issued a Form 115 determination denying Coca-Cola’s appeal and determining the following values:

Land: \$45,500 Improvements: \$0 Total: \$45,500
3. Coca-Cola then filed a Form 131 petition with the Board, electing to proceed under our small claims procedures. On February 23, 2021, Erik Jones, our designated administrative law judge (“ALJ”), held a telephonic hearing on Coca-Cola’s petition. Neither he nor the Board inspected the property. Milo Smith appeared as Coca-Cola’s certified tax representative. Bartholomew County Assessor Ginny Whipple represented herself. Both were sworn as witnesses and testified.

Record

4. The parties offered the following exhibits:

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| Petitioner Ex. 1 | Excerpt from 2011 Real Property Assessment Guidelines |
| Petitioner Ex. 2 | I.C. § 6-1.1-15-1.1(a)(1)-(g)(2). |
| Petitioner Ex. 3 | Slideshow presentation of DLGF Cyclical Reassessment |
| Petitioner Ex. 4 | DLGF Cyclical Reassessment Memorandum (March 21, 2018) |
| Petitioner Ex. 5 | Barry Wood e-mail dated 12/19/18, |
| Petitioner Ex. 6 | Copy of Barry Wood E-mail dated 12/19/18, |

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| Petitioner Ex. 7 | First Bartholomew County Workplan, |
| Petitioner Ex. 8 | Ginny Whipple E-mail dated 9/28/18, |
| Petitioner Ex. 9 | 2012 Land Order, |
| Petitioner Ex. 10 | 2015-2018 Bartholomew County land values, |
| Petitioner Ex. 11 | 2017 PRC, |
| Petitioner Ex. 12 | 2018 PRC, |
| Petitioner Ex. 13 | 2018 PRC with petitioner corrections. |
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| Respondent Exhibit A | Whipple Resume, |
| Respondent Exhibit B | Statement of Professionalism, |
| Respondent Exhibit C | 2017 PRC, |
| Respondent Exhibit D | 2018 PRC, |
| Respondent Exhibit E | Aerial Photo of Parcel, |
| Respondent Exhibit F | Definitions, |
| Respondent Exhibit G | Reassessment Cycle, |
| Respondent Exhibit H | Barry Wood Email to Milo Smith dated 12/13/18, |
| Respondent Exhibit I-1 | Copy of Bartholomew County Reassessment Plan, |
| Respondent Exhibit I-2 | DLGF Letter of 7/15/2013, |
| Respondent Exhibit J | I.C. § 6-1.1-2-1.5, |
| Respondent Exhibit K | Duties of the Department – Assessor's Manual pp. 18-19, |
| Respondent Exhibit L | Email from Barry Wood dated 2/25/2019, |
| Respondent Exhibit M | Email from DLGF Counsel David Marusarz dated 6/10/2019, |
| Respondent Exhibit N | Email from DLGF Counsel David Marusarz dated 2/14/2020, |
| Respondent Exhibit O | PTABOA Minutes 2/6/2018, |
| Respondent Exhibit P | Commercial Land Application, |
| Respondent Exhibit Q | Industrial Land Application, |
| Respondent Exhibit R | Email from Chris Wilkening dated 4/1/2019, |
| Respondent Exhibit S | Email from Ginny (Whipple) to Melissa (Michie) dated 4/23/2019, |
| Respondent Exhibit T | Email from Ginny to Melissa dated 4/22/2019, |
| Respondent Exhibit U | Copy of Form 11 for Subject Parcel 6/15/2018, |
| Respondent Exhibit V | Copy of 2018 Assessment Calendar 1/17/2018, |
| Respondent Exhibit W | Fundamentals of Mass Appraisal – IAAO, |
| Respondent Exhibit X | I.C. § 6-1.1-4-13.6. |

5. The record also includes the following:
- (1) all petitions and other documents filed in this appeal,
 - (2) all orders and notices issued by the Board or our ALJ, and
 - (3) an audio recording of the hearing.

Contentions

A. Coca-Cola's contentions

6. The Assessor misapplied the statutory cyclical reassessment process. The legislature enacted Indiana Code § 6-1.1-4-4.2, which requires counties to create reassessment plans covering four-year cycles over which all properties in the jurisdiction are to be reassessed. The first year of the initial four-year cycle covered the March 1, 2015 assessment date. The fourth year was for the January 1, 2018 assessment date. *Smith testimony and argument; Pet'r Exs. 2-7.*
7. To determine the subject property's value for 2017, the Assessor used the base rates from the county's original four-year reassessment plan, which were \$30,000/acre for primary land and \$9,000/acre for undeveloped land. She did not use those base rates for 2018. Instead, she used rates from a new land order, which she did not formally present to the PTABOA until February 6, 2018. The values from that land order should not have been applied until the following year, which would have been the first year of a new four-year reassessment cycle. *Smith testimony and argument; Pet'r Exs. 9-13.*
8. Although the Assessor contends that she had discretion to apply the new land order to the 2018 assessment, neither the statute nor guidance from the Department of Local Government Finance ("DLGF") support that proposition. Coca-Cola pointed to a memorandum from Barry Wood, the DLGF's assessment division director, outlining the dates that county assessors should complete their reassessment plans within the four-year window. It also pointed out that the Assessor's plan said the land order would be presented to the PTABOA in the fourth year of the cycle. *Smith testimony and argument; Pet'r Exs. 1, 4, 9.*
9. The Assessor used the cost approach from the DLGF's guidelines to assess Coca-Cola's property. Smith therefore recalculated the assessment using the base rates from what he argued was the correct land order—the one from the original reassessment plan—and claimed that the property should be assessed for \$18,100 (\$17,700 for primary land, and \$400 for type 13 land). *Smith testimony; Pet'r Ex. 13.*
10. Finally, Coca-Cola disagreed with the Assessor's contention that it was attempting to circumvent the appeal system by filing a correction-of-error claim for what was really a challenge to the property's assessed value. Coca Cola pointed to an excerpt from chapter 2 of the DLGF's 2011 Real Property Assessment Guidelines referring to pricing methods and base rates as "mathematical functions":

The most important issue to consider next is the assessing official's task of establishing the market value for residential, commercial, industrial, and agricultural homesite land as of March 1, 2011. The pricing method and base rate are mathematical functions to arrive at this desired value.

Because Ind. Code § 6-1.1-15-1.1(b) allows taxpayers to appeal clerical, mathematical, or

typographical mistakes within three years after taxes were first due, Coca-Cola argued that its appeal was timely. *Smith argument; Resp't Exs. 1-2.*

B. The Assessor's Contentions

11. According to the Assessor, Coca-Cola has tried to circumvent the appeal process by alleging a clerical, mathematical, or typographical error to mask what is really a challenge to the property's assessed value. Such a challenge had to be filed within 45 days of the Assessor issuing a Form 11 notice. The Assessor issued Form 11 notices, including the notice to Coca-Cola advising it of the subject property's 2018 assessment, on June 15, 2018. If Coca-Cola was trying to appeal the base rates determined by the land order, it needed to bring that appeal within 45 days of February 6, 2018, when the Assessor submitted the land order to the PTABOA. *Whipple testimony and argument; Resp't Exs. L, M, U, X.*
12. In any event, the Assessor contends that Coca-Cola misunderstands how land orders are created and applied as part of the cyclical reassessment cycle. Assessors could establish land values during any year of the four-year reassessment cycle. Bartholomew County's cyclical reassessment plan specified that the Assessor needed to submit land values by year four, which was 2018. Pursuant to the reassessment plan, she collected and verified sales through the end of 2017 and submitted land values to the PTABOA in February 2018. After that, she worked on neighborhood analyses and other tasks that needed to be completed before January 1, 2018 values for individual properties could be set and Form 11 notices could go out. That is the process all assessors follow. According to an e-mail from Barry Wood, it appeared that she had met the statutory requirements. *Whipple Testimony and argument; Resp't Exs. G, I-1, I-2, L-N.*

Analysis

13. Coca Cola's appeal petition was untimely. Indiana Code § 6-1.1-15-1.1 sets different deadlines for different types of appeals. To appeal the assessed value of its property for assessment dates prior to January 1, 2019, a taxpayer had to file notice by the earlier of (1) 45 days after the date notice of assessment was mailed, or (2) 45 days after the date the tax statement was mailed. I.C. § 6-1.1-15-1.1(b)(1). By contrast, a taxpayer could file notice raising a claim of error due to a "clerical, mathematical, or typographical mistake" and certain other enumerated errors any time within three years after "the taxes were first due." I.C. § 6-1.1-15-1.1 (a)(2)-(6), (b).
14. Coca-Cola checked the box on its Form 130 petition to indicate it was alleging a clerical, mathematical, or typographical mistake, and it filed the petition well within three years of when the taxes on the 2018 assessment were first due. But simply calling something a clerical, mathematical, or typographical mistake does not make it so.
15. The 2017 changes to Indiana's appeal statutes make that clearer than ever. Under the old correction of error statute, and its Form 133, taxpayers were granted longer periods to

raise certain challenges than under the Form 130. The Form 133 was dispatched with the repeal of Ind. Code § 6-1.1-15-12 and its bifurcated recodification is under Ind. Code § 6-1.1-15-1.1 and Ind. Code § 6-1.1-15-12.1. But the new statutory regime retained separate statutes of limitation for errors of assessed value and other claims of error. The disputes over the correct form have ended, but the arguments over timeliness continue.

16. Now that there is no Form 133, and the statute enabling it and the administrative rules interpreting it have been repealed, should we continue to look to the subjective/objective standard invented by the Tax Court in *Hatcher v. Indiana State Bd. of Tax Comm'rs*, 561 N.E.2d 852 (Ind. Tax Ct. 1990) to determine the timeliness of the new Form 130? For the following reasons, we find that we should not.
17. First, the *Hatcher* test was based on the New Jersey Tax Court's analysis of that state's correction of error statute. *Hatcher*, 561 N.E.2d at 855; *Red Bank Borough v. New Jersey Bell Telephone Co.*, 8 N.J. Tax 152 (N.J. Tax Ct. 1986). The Indiana Legislature has declined to expressly codify the *Hatcher* test or add language similar to the New Jersey statute in the new Ind. Code § 6-1.1-15-1.1. Moreover, the legislature chose new language that must be analyzed on its own terms.
18. Second, in analyzing the Forms 130 and 133, the Indiana Supreme Court reversed the Tax Court and expressly declined to apply the *Hatcher* test. *Lake County Prop. Tax Assessment Bd. of Appeals v. BP Amoco Corp.*, 820 N.E.2d 1231, 1234 n.5 (Ind. 2005); *Lake County Prop. Tax Assessment Bd. of Appeals v. U.S. Steel Corp.*, 820 N.E.2d 1237, 1240 n. 3 (Ind. 2005). The Supreme Court determined it was "unnecessary to apply the objective/subjective distinction to resolve this case." *U.S. Steel Corp.*, 820 N.E.2d at 1240 n. 3.¹
19. Third, *Hatcher* was adopted when evidence of methodological errors constituted probative evidence of an erroneous assessment. Since then, the *Town of St. John* cases resulted in the promulgation of a new valuation standard, and subsequent case law established that only "objectively verifiable" evidence is sufficient to establish that an assessment is incorrect.² Because the taxpayer must present evidence of the property's market value in use, *Hatcher* has been largely rendered obsolete because merely identifying a methodological error is insufficient to challenge the assessed value.
20. Accordingly, we decline to apply *Hatcher* and instead follow our Supreme Court's direction in *BP Amoco* and *U.S. Steel*. If a claim is fundamentally a challenge to the "assessed value," the shorter statute of limitations will apply. Merely describing a

¹ Rather, it held challenges to assessed value methodology could "be made only to the current year's assessment, not prior years." *BP Amoco Corp.*, 820 N.E.2d at 1232. Because the taxpayer failed to file in the "time periods for which Form 130 was available," it was "foreclosed from using Form 133 . . ." *Id.* at 1237.

² *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674 (Ind. Tax Ct. 2006); *Wigwam Holdings LLC v. Madison Cnty. Ass'r*, 115 N.E.3d 531, 538 (Ind. Tax Ct. 2018) ("It is well established that when a taxpayer claims its property assessment is too high, it has the burden to prove its claim with market-based evidence. *See, e.g., McKeeman v. Steuben Cnty. Ass'r*, 10 N.E.3d 612, 614 (Ind. Tax Ct. 2014). Merely challenging the Assessor's methodology will not suffice. *See, e.g., Gillette v. Brown Cnty. Ass'r*, 54 N.E.3d 454, 456 (Ind. Tax Ct. 2016)).

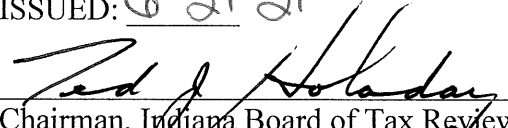
challenge to assessed value as one of the other enumerated errors cannot suffice to trigger the longer statute of limitations. To allow that would ignore the legislative intent behind the separate statutes of limitation. Because the errors Coca-Cola has alleged challenge its property's assessed value, it needed to file its appeal within the 45-day deadline established in Ind. Code § 6-1.1-15-1.1(b)(1).

21. Nothing in the excerpt from the 2011 Real Property Assessment Guidelines cited by Coca-Cola changes that fact. To the contrary, it emphasizes that assessors must try to determine market value for land. Under the Guidelines' mass-appraisal methodology, assessors examine sales to determine unit values—such as price per square foot, price per acre, or price per front foot—for lots within assessment neighborhoods. 2011 REAL PROPERTY ASSESSMENT GUIDELINES, ch. 2 at 13. They then multiply those base rates by the parcel's size: if they determined a base rate of \$100 per acre for primary commercial land and a property has two acres of primary land, its assessment is \$200 (assuming no adjustments, such as applying an influence factor, are needed). *See id.* at 75. In that sense, the base rate is an input to a mathematical equation. But the property's market value-in-use—and hence its correct assessed value—is not a mathematical function.
22. Coca-Cola does not claim to have met the 45-day deadline for appealing its assessed value. To the contrary, it relies solely on the three-year limitations period for challenging mathematical errors. Its petition was therefore untimely.

Conclusion

23. Coca-Cola did not timely file an appeal to contest the assessed value of its property. We find for the Assessor and order no change.

ISSUED: 6-21-21



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 of 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>.