

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

**Petitions:** 45-034-15-1-4-00491-20  
45-034-15-1-4-00492-20  
**Petitioner:** Cotton Holdings LLC c/o Walter J. Cotton  
**Respondent:** Lake County Assessor  
**Parcels:** 45-10-12-456-002.000-034 (“501 Joliet Street”)  
45-10-12-476-001.000-034 (“641 Joliet Street”)  
**Assessment Year:** 2015

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

**Procedural History**

1. Cotton Holdings LLC contested the 2015 assessments of its two commercial properties located on Joliet Street<sup>1</sup> in Dyer. The St. John Township Assessor (“Township Assessor”) assessed 501 Joliet Street at \$994,100 (\$983,900 for land and \$10,200 for improvements) and 641 Joliet Street at \$4,153,200 (\$3,050,200 for land and \$1,103,000 for improvements).
2. Cotton filed Form 131 petitions, which requested a reduced assessed value for the properties, directly with us after the Lake County Property Tax Assessment Board of Appeals failed to issue a determination for either parcel within 180 days of Cotton filing its notices of appeal. *See* Ind. Code § 6-1.1-15-1.2(k) (allowing taxpayers to appeal to the Board if the county board has not issued a determination within 180 days of the date the notice of appeal was filed). On both petitions, Cotton elected to proceed under our small claims procedures.
3. On December 13, 2021, our designated administrative law judge, Joseph Stanford (“ALJ”), held a telephonic hearing on Cotton’s petitions. Neither he nor the Board inspected the property.
4. Richard Anderson appeared as counsel for Cotton. Zachary Price and Brian Cusimano appeared as counsel for the Assessor. The following people testified: Brian Chalik, Cotton’s vice president; Michael Schultz, a certified tax representative; St. John Township Assessor Deborah Walters; and Nyamat Singh, chief deputy for the Lake County Assessor (“Assessor”).

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<sup>1</sup> The addresses Cotton listed on the Form 131 petitions are “Behind RR & 501 Joliet” for parcel 45-10-12-456-002.000-034 and “Part of 641 Joliet” for parcel 45-10-12-476-001.000-034. For ease of reference, we refer to the properties as “501 Joliet Street” and “641 Joliet Street,” respectively.

## Record

5. The official record for this matter includes the following:

- Petitioner Exhibit 2: June 3, 2014 facsimile from the Township Assessor to Richard Anderson,
- Petitioner Exhibit 3: 2014-pay-2015 tax statements for both parcels,
- Petitioner Exhibit 4: 2015-pay-2016 tax statements for both parcels,
- Petitioner Exhibit 5: May 16, 2016 requests for an informal conference, regarding the 2015 assessments,
- Petitioner Exhibit 6: June 10, 2016 memorandum from the Department of Local Government Finance,
- Petitioner Exhibit 7: 2016-pay-2017 tax statements for both parcels,
- Petitioner Exhibit 8: Cotton's May 10, 2017 requests for an informal conference regarding the 2016 assessment for both parcels
- Petitioner Exhibit 9: Form 134 reports for the 2016 assessment for both parcels,
- Petitioner Exhibit 10: Property Record Cards showing 2017-2020 assessed values for 641 Joliet Street and 2016-2018 values for 501 Joliet Street,
- Petitioner Exhibit 11: Property Record Card showing 2017-2020 assessed values for 501 Joliet Street.<sup>2</sup>
  
- Respondent Exhibit A: 2015 Form 11 notice for 641 Joliet Street,
- Respondent Exhibit B: 2015 Form 11 notice for 501 Joliet Street,
- Respondent Exhibit C: May 16, 2016 request for an informal conference regarding the 2015 assessment for 641 Joliet Street; Power of Attorney for Richard E. Anderson,
- Respondent Exhibit D: May 16, 2016 request for an informal conference regarding the 2015 assessment for 501 Joliet Street; Power of Attorney for Richard E. Anderson,
- Respondent Exhibit E: Form 11 mailing list.

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

## Objections

7. Each party made an objection that the ALJ took under advisement. First, Cotton objected on relevance grounds to Walters' testimony that Cotton filed its 2015 personal property return late. *Anderson argument*. According to the Assessor, Cotton's tardiness in filing its personal property return for the same year is relevant to the issue of whether Cotton timely filed the real property appeals at issue here. *Price argument*. Walters' testimony

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<sup>2</sup> Cotton offered a set of exhibits, one for each parcel. The contents mirror each other. For example, Exhibit 3 from each set is the 2015 pay 2016 tax statement for the corresponding parcel. The lone exception is that 501 Joliet Street has an additional exhibit (Exhibit 11).

is marginally relevant to that issue. Although we overrule the objection, we give the testimony no weight.

8. The Assessor objected to the admission of Petitioner's Exhibits 10 and 11—property record cards (“PRCs”) showing the parcels’ assessments for 2016-2018 and 2017-2020. The Assessor argued (1) that the PRCs are irrelevant because they address tax years after 2015, and (2) that they relate to settlement negotiations. *Cusimano argument*. Cotton responded that the exhibits are relevant because they demonstrate both a “track record here of assessments being appealed if they’re out of whack” and the Assessor’s agreement to reduce the 2016 assessment, which has carried forward to later years. *Anderson argument*.
9. To the extent Cotton offered the exhibits to support a value for the subject property, we sustain the Assessor’s objection. As the Indiana Supreme Court has explained, the law encourages parties to engage in settlement negotiations in several ways, such as by “prohibit[ing] the use of settlement terms or even settlement negotiations to prove liability for or invalidity of a claim or its amount. *Dep’t of Local Gov’t Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (citing Ind. Evidence Rule 408). It also provides that a settlement is neither a judgment nor an admission of liability. *Id.* at 1227-28 (citing *Four Winns, Inc. v. Cincinnati Ins. Co.*, 471 N.E.2d 1187, 1190 (Ind. Ct. App. 1984)). That strong policy justifies denying settlements precedential effect in property tax cases; to do otherwise would have a “chilling effect on the incentive of all assessing officials to resolve cases outside the courtroom.” *Id.* at 1228 (quoting *Boehning v. State Bd. of Tax Comm’rs*, 763 N.E.2d 502, 505 (Ind. Tax Ct. 2001)). In any event, each assessment year stands alone. *Fisher v. Carroll Cnty. Ass’r*, 74 N.E. 3d 582 (Ind. Tax Ct. 2017). Evidence of a property’s assessment in one year therefore has little bearing on its true tax value in another. *See, e.g., Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001).
10. As to Cotton’s second reason for offering the exhibits—that they show a pattern of Cotton appealing its assessments—they have roughly the same marginal relevance as Walters’ testimony about Cotton’s tardy filing of its 2015 personal property return. We therefore overrule the objection and admit Exhibits 10 and 11 for that limited purpose. But we give them no weight.

### Findings of Fact

11. The subject parcels are in St. John Township. In 2014, the year preceding these appeals, the parcels were assessed at \$305,000 (501 Joliet Street) and \$2,850,300 (641 Joliet Street). *Pet’r Exs. 3-4*.
12. Although the Township Assessor assesses property within St. John Township, the Assessor’s office mails Form 11 Notices of Assessment for all real property in the county. *See Walters testimony*.

13. In October 2015, the Assessor's office sent out Form 11 notices for the 2015 assessment date. The office uses Masters Touch, a vendor out of Washington, to handle its mailing. The Assessor offered what Nyamat Singh, her current chief deputy, identified as a mailing list for the county's 2015 Form 11 notices. Singh did not testify as to how or by whom the list was prepared. The list just contains parcel numbers, including the subject parcels. It does not include addresses, mailing dates, or any other information. Although Singh testified that the list indicates to her that Form 11 notices were mailed to Cotton, she did not explain why. *Singh testimony; Resp't Ex. E at 1,049.*
14. The Assessor's office gave the Township Assessor's office copies of Form 11 notices for the subject parcels. Under "Date of notice" they list October 13, 2015. They both list Cotton's correct address. Although the notices list the correct assessments for 2015, they list incorrect values for the previous year: \$4,111,700 for 641 Joliet Street, and \$993,500 for 501 Joliet Street. *Walters testimony; Pet'r Exs. 3-4; Resp't Exs. A-B.*
15. The files for the subject parcels maintained by the Township Assessor's office contain no returned mail. That led the current Township Assessor, Deborah Walters,<sup>3</sup> to conclude that the Form 11 notices were not returned as undeliverable. *Walters testimony.*
16. Brian Chalik gets the mail for Cotton and handles its real estate taxes and appeals. During his tenure, he has dealt with approximately 10 parcels at any one time. He had previously filed tax appeals for the subject parcels in 2012 and 2013. He did not receive a Form 11 notice for either parcel for the 2015 assessment date. He did receive tax statements for that assessment date, and he filed the current appeals on May 16, 2016, within 45 days of receiving those statements. *Chalik testimony; Pet'r Exs. 4-5.*

## Analysis

### A. Cotton timely filed its appeals

17. The Assessor raises a threshold issue: she claims that Cotton's appeals should be dismissed because they were not timely filed. The legislature has created specific appeal procedures by which a taxpayer may challenge an assessment. If a taxpayer chooses to exercise its appeal rights, it must follow those procedures by filing an appropriate petition within the statutory deadline. *Williams Industries v. State Bd. of Tax Comm'rs*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995).
18. For the assessment year at issue in these appeals, a local official who assessed a property had to give the taxpayer notice of the assessment. I.C. § 6-1.1-15-1(a) (2015); *see also*, I.C. § 6-1.1-4-22(a) (2015). To challenge that assessment, the taxpayer needed to file an appeal no later than 45 days after the date of the assessing official's notice. I.C. § 6-1.1-15-1(c) (2015). If the assessor did not give the required notice, a taxpayer could file an

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<sup>3</sup> In 2015, Walters worked in the Township Assessor's office handling personal property appeals. *Walters testimony.*

appeal by the later of (1) May 10, or (2) 45 days after a tax statement mailed by the county treasurer. I.C. § 6-1.1-15-1(d) (2015).<sup>4</sup>

19. The timeliness of Cotton's appeals hinges on whether the Assessor mailed Form 11 notices to Cotton on October 13, 2015, as she alleges, or whether Cotton's first notice of its assessments was the tax statements, as Cotton alleges. If the Assessor is correct, Cotton's May 16, 2016 appeals are untimely. If Cotton is correct, they are timely.
20. Indiana courts, including the Tax Court, have addressed various cases in which a party's rights hinged on whether a document or notice was mailed. The results have largely turned on the facts of each case. For example, testimony from a taxpayer's president that he had given a tax return to his secretary to mail did not suffice to show mailing. *Tri-Creek Lumber Co. v. Sate Bd. of Tax Comm'rs*, 558 N.E.2d 1130, 1131 (Ind. Tax Ct. 1990). By contrast, testimony from a company's controller that he personally reviewed a tax-credit application, checked its address and postage, and mailed it before its due date, constituted reasonable evidence of mailing. *Indiana Sugars, Inc. v. Sate Bd. of Tax Comm'rs*, 683 N.E.2d 1383, 1387 (Ind. Tax Ct. 1997).
21. Although preferable, testimony from someone who personally remembers mailing the specific document at issue is not always required. Detailed evidence about office procedures may also create a reasonable inference of mailing. *U-Haul Co. of Indiana, Inc. v. Ind. Dep't of State Revenue*, 896 N.E.2d 1253, 1257 (Ind. Tax Ct. 2008); *but see, F & F Construction Co. v. Royal Globe Ins. Co.*, 423 N.E.2d 654, 656 (Ind. Ct. App. 1981).
22. In *U-Haul*, the Tax Court addressed a summary judgment motion in which the taxpayer claimed the Indiana Department of State Revenue had not issued a proposed assessment within the statutory deadline. The department claimed it had timely mailed notice of the proposed assessment, while the taxpayer denied having ever received notice. *Id.* at 1256. Three of the department's employees who were directly involved with processing the proposed assessment testified as to the department's normal business practices, which included placing a copy of proposed assessments in taxpayers' files before mailing them. When proposed assessments were returned, employees noted that fact in the department's computer records. One employee testified that she reviewed a draft of the department's audit report with the taxpayer's representative before the proposed assessment was printed. Although the employee responsible for mailing the assessment did not remember placing it in the mail, she indicated that she must have done so because she put a copy in the taxpayer's file, and there was nothing in the department's computer records showing that the original was returned. *Id.* at 1257.
23. The Tax Court explained that evidence of an organization's "routine practice" is relevant to prove the organization's conduct on a particular occasion "was in conformity with that routine practice." *Id.* The Court therefore held that the department's designated evidence

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<sup>4</sup> In 2017, the Legislature repealed Ind. Code § 6-1.1-15-1 and replaced it with Ind. Code § 6-1.1-15-1.1. *P.L. 232-2017*.

raised a reasonable inference that it timely mailed the proposed assessment, which created a factual issue that the Court reserved for trial. *Id.*

24. Just as circumstantial evidence may support an inference that documents were mailed and create an accompanying presumption of receipt, evidence that documents were not received may rebut the presumption of receipt and even raise an inference that they were not mailed in the first place. *See P/S, Inc. v. Ind. Dep't of State Revenue*, 853 N.E.2d 1051, 1054-55 (Ind. Tax Ct. 2006) (explaining that where an administrative agency "sends notice through the regular course of mail," a rebuttable presumption arises that it was received); *American Family Ins. Group v. Ford*, 293 N.E.2d 524, 526-527 (Ind. Ct. App. 1973) ("[J]ust as proof of proper mailing . . . justifies the inference that [a document] was received . . . , proof that it was not received justifies the inference that it was never mailed."). Proving a negative can be difficult, and conclusory statements do not suffice. *See P/S, Inc. v. Ind. Dep't of State Revenue*, 853 N.E.2d 1051, 1054-55 (Ind. Tax Ct. 2006) (citing *Ennis v. Dep't of Local Gov't Fin.*, 835 N.E.2d 1119, 1123 (Ind. Tax Ct. 2005)).
25. We have very limited circumstantial evidence in this case to create a presumption that the Form 11 notices were mailed, much less that they were mailed on any specific date. At most, we have copies of Form 11 notices with at least some incorrect information on them, and a mailing list that simply lists parcel numbers and no other information. While Singh testified that the list indicated to her that the Form 11 notices were mailed, she did not explain why. Unlike the Department of Revenue's witnesses in *U-Haul*, who offered detailed evidence about the department's mailing procedures and testified to facts suggesting that the department had complied with those procedures in the case at issue, the Assessor offered no evidence about her procedures for creating or mailing Form 11 notices.
26. While Chalik's testimony that Cotton did not receive the Form 11 notices is less than compelling, it is sufficient to rebut any presumption of mailing or receipt that the Assessor might have created. Chalik is the person responsible both for getting the mail and handling tax appeals. And he filed an appeal timely after receiving tax statements for the parcels. We therefore find that Cotton timely filed its appeals and turn to their merits.

**B. Because neither side met its burden of proof under Ind. Code § 6-1.1-15-17.2, the assessments must revert to their 2014 levels.**

27. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule under specified circumstances, including where the assessment under appeal represents an increase of more than 5% over the prior year's assessment. I.C. § 6-1.1-15-17.2(a)-(b). Under those circumstances, the assessor has the burden of proving the assessment is correct. If the assessor fails to meet her burden, the burden shifts to the taxpayer to prove the correct assessment value. If neither party meets its burden, the assessment reverts to the prior year's level. I.C. § 6-1.1-15-17.2(b); *Southlake Ind., LLC v. Lake Cnty. Ass'r*, 174 N.E.3d 177, 179 (Ind. 2021).

28. As discussed above, the 2014 assessments were \$305,000 for 501 Joliet Street and \$2,850,300 for 641 Joliet Street. In 2015, those assessments increased by far more than 5%, jumping to \$993,500 and \$4,111,700, respectively. The Assessor therefore had the burden of proving the assessments were correct. She did not offer any evidence to support her assessments, opting instead to rely solely on her claim that Cotton's appeals were untimely. Cotton similarly failed to offer any probative evidence to show the parcels' correct assessments for 2015. At most, it pointed to values that it and the Assessor had stipulated to for the following assessment year. As already explained, the stipulations stemmed from settlement negotiations and cannot be used to show that the Assessor admitted the stipulated values were correct. In any case, the stipulations address only 2016 and therefore are not probative of the parcels' values for 2015.
29. Because neither side met its burden of proof, the 2015 assessments revert to their 2014 levels: \$305,000 for 501 Joliet Street and \$2,850,300 for 641 Joliet Street.


### Conclusion

30. Cotton timely filed its appeals. Neither party offered any probative evidence to meet their respective burdens of proof under Ind. Code § 6-1.1-15-17.2. The assessments therefore must be reduced to their 2014 levels: \$305,000 for 501 Joliet Street and \$2,850,300 for 641 Joliet Street.

Date: 3/14/2022

  
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>.