

REPRESENTATIVE FOR PETITIONER:

Jason J. Bricker

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

J.A.K. PARTNERS,)	Petition No.: 79-004-97-4-9-00084
)	
Petitioner)	County: Tippecanoe
)	
v.)	Township: Fairfield
)	
TIPPECANOE COUNTY,)	Parcel No.: 156-08102-0470
)	
Respondent)	Assessment Year: 1997
)	

Appeal from the Final Determination of
Tippecanoe County Auditor

May 19, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. The issue presented for consideration by the Board was:
Whether the Petitioner should be allowed a Deduction from Assessed Valuation of Structures in Economic Revitalization Areas (ERA Deduction) for the March 1, 1997 assessment date.

Procedural History

2. A Form 11, Notice of Assessment of Land and Structures, dated July 3, 1997, was mailed to the Petitioner by the Fairfield Township Assessor. The Petitioner received the Form 11 on July 7, 1997. On August 5, 1997, the Petitioner hand-delivered a Form 322 ERA, Application for Deduction of Assessed Valuation of Structures in Economic Revitalization Areas (Application) to the County Auditor.
3. On August 15, 1997, the Tippecanoe County Auditor denied the Petitioner's application for ERA Deduction. The County Auditor used a Form 120, Notice of Disapproval of Exemption, to notify the Petitioner that the ERA abatement was denied.
4. On August 22, 1997, the Petitioner filed a Petition to the Indiana Board of Tax Review for Review of Exemption (Form 132) with the County Auditor. The Petitioner attached copies of the County Auditor's denial of the ERA abatement for 1997, Form 322 ERA, Form 11 C/I, and a letter to the County Auditor dated August 5, 1997. The Form 132 and attachments were forwarded to the Board. The Form 132 and attachments are officially recognized as part of the record as Board Exhibit A.
5. The Form 132 petition is used to appeal the denial of an exemption application. The matter at hand is the denial of the ERA deduction. There is some indication that the Petitioner was provided a Form 132 by the local officials. Even though the Petitioner appealed on an incorrect form, it was clear that the Petitioner was attempting to appeal

the denial of the ERA abatement. Therefore, the Board determines that the Petitioner has constructively appealed the action of the County Auditor.

6. On March 26, 2003, the Board issued an Order of Dismissal. The Petitioner had ten (10) days to file a written objection. The Order is labeled as Board Exhibit B.
7. On April 2, 2003, the Petitioner requested the Order of Dismissal be vacated and set aside. The Petitioner's response is labeled as Board Exhibit C.

Jurisdictional Framework

8. The Board is authorized to hear an appeal of the action of a County, pursuant to Indiana Code § 6-1.1-15-3.

ERA Deduction

9. The Board notes *Rott Development v. State Board of Tax Commissioners*, 647 N.E. 2d 1157 (Ind. Tax 1995). In *Rott Development*, the Tax Court found that Ind. Code § 6-1.1-12.1 did not expressly authorize the Board to review the local officials' denial of an ERA deduction. The lack of express authority, however, did not mean that Rott had no opportunity to appeal the denial of the ERA deduction application. *Id.* Instead, the Tax Court found that the Board had the authority to review the denial of Rott's ERA deduction under Ind. Code § 6-1.1-15-12 because the determination of whether a deduction application was timely does not require resort to subjective judgment. *Id.* at 1160.

Whether the Petitioner's Application was timely filed

10. As stated above, the Township Assessor mailed a Form 11, dated July 3, 1997, to the Petitioner. The Petitioner has acknowledged receiving the Form 11 on July 7, 1997. Since July 4 (holiday), July 5 (Saturday), and July 6 (Sunday) were not business days, it

is obvious from these facts that the Form 11 had to be mailed on July 3 to be received by the Petitioner on July 7.

11. The Statement of Benefits form filed by the Petitioner, as well as instructions the Petitioner received from the County Auditor, state that the Application must be filed by the later of May 10, or 30 days after the Form 11 is *received*. However, the statute governing this matter, Ind. Code § 6-1.1-12.1-5(a) and (b), states that the Application must be filed by the later of May 10, or 30 days after the Form 11 is *mailed* to the property owner. The Board must base its decision on the exact wording of the statute. Thus, the date of mailing is the relevant date.
12. Ind. Code § 4-21.5-3-2 gives guidance in computing the time period for response when a notice is served through the mail. According to Ind. Code § 4-21.5-3-2(e), if notice is served through the United States mail, three days must be added to a period that commences upon the service of that notice. The time period begins when notice is deposited in the United States mail. Ind. Code § 4-21.5-3-2(c)(2).
13. Thus, based on the above, it seems reasonable to conclude that the Petitioner has 30 days from the date the Form 11 was deposited in the mail, plus an extra three days to allow for mailing, to file its Application. The clock begins ticking on the date the Form 11 was deposited in the mail, July 3. Thirty days from July 3 is August 2. Three additional days to allow for the mailing of the notice means the Petitioner has until August 5, 1997 to file its Application. The Application is date stamped as received by the County Auditor on August 5, 1997.
14. Therefore, the Application for ERA abatement is filed timely.

Summary of Final Determination

15. For the reasons set forth, the Petitioner's Application should be considered timely, and the county should process the application accordingly.

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

Chairman, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.