

REPRESENTATIVE FOR PETITIONERS:
Steven K. Jones and Cheryl R. Kuhn, *Pro se*

REPRESENTATIVES FOR RESPONDENTS:
David J. Marusuarz, Attorney at Law
Emily L. Crisler, Attorney at Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

STEVEN K. JONES and ,)	Petition No.
CHERYL R. KUHN,)	02-042-20-9-5-00884-21
)	02-042-20-9-5-00112-22
Petitioners,)	
)	
)	
v.)	Parcel No.
)	02-03-27-126-004.000-042
DEPARTMENT OF LOCAL)	
GOVERNMENT FINANCE,)	
)	
)	
Respondent.)	2020 Assessment

Appeal from the Final Determination of the
Department of Local Government Finance

FINAL DETERMINATION

The Indiana Board of Tax Review (the "Board") has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. The Petitioners, Steven K. Jones and Cheryl R. Kuhn (“Jones”), appeal the actions of the Department of Local Government Finance (“DLGF”) relating to the approval of an establishment of the Equipment Replacement Fund (the “Fund”) and imposition of the Fund’s levy for the Northeast Allen County Fire Protection District (“Fire District”). Because the Indiana Board of Tax Review (the “Board”) lacks statutory authority to review these approvals by DLGF, this matter must be dismissed.

HEARING FACTS AND OTHER MATTERS OF RECORD

2. In June of 2020, the elected officials of Cedar Creek Township, Springfield Township, and the Town of Grabill, as participating units in the Fire District, established the Fund by resolution or ordinance. On July 14, 2020, at least ten verified taxpayers objected to the Fund by a petition filed with DLGF. On August 25, 2020, DLGF held a hearing on the objections. On September 24, 2020, DLGF issued its final determination approving the Fire District.¹ The participating units also entered into an interlocal cooperation agreement as part of the Fire District, and two versions were recorded on January 5, 2021. The first made the agreement effective on the July 1st after the date the agreement is recorded; the second made the agreement effective on the July 1st after the latter of the date the agreement is adopted or executed.
3. On January 31, 2022, more than a year after the DLGF final determinations, Jones filed his Form 139 with the Board, seeking a refund of the property tax assessed for the Fund for the 2021 tax year on the grounds that the interlocal agreement relating to the Fund was not recorded until January 5, 2021. In response to a defect notice from the Board,

¹ DLGF also issued a Final Determination approving the levy on July 30, 2020. The Final Determination was not introduced as an exhibit in this matter. The Board takes judicial notice of the Final Determination as part of the record of the companion case to this matter, Douglas R. Samuels v. Department of Local Government Finance, 02-042-20-9-5-00881-21, also heard on August 29, 2022.

Jones filed a duplicate Form 139 on January 31, 2022. Both petitions raise the same issues.

4. This matter was heard on August 29, 2022, in Indianapolis with Commissioner Jonathan Elrod designated as the Administrative Law Judge (the “ALJ”).
5. Present were David J. Marusuarz, Emily L. Crisler, Douglas R. Samuels, Dennis A. Dewitt, Lori Dewitt, Stacey O’Day, and Nick Jordan. Jones and David J. Marusuarz, testified under oath.
6. The Petitioner introduced the following exhibits:
 - Petitioner Exhibit 1: Forms 139 and attachments thereto, including Form 115, Letter of J. Brian Tracey, title page and page 12 of the Interlocal Cooperation Agreement, title page and page 14 of the Interlocal Cooperation Agreement Letter of Allen County Recorder Anita Mather, and E-mail from “Bill” to Steve Herman.
7. The Respondent did not introduce any exhibits.
8. The Board also recognizes as part of the record of proceedings the Forms 139, Notices of Hearing, hearing sign-in sheet, the digital recordings of the hearing, and all Board orders, motions, and responses filed with the Board.

PETITIONER’S CONTENTIONS

9. Jones contended that the Fire District was improperly established, and the DLGF did not sufficiently investigate whether the tax was properly levied for the 2020 tax year. Jones argued that the Fire District tax should not be applied until the following year because the interlocal agreement was recorded in 2021. Accordingly, he seeks a refund of the taxes paid toward the Fire District for the 2020 tax year.

RESPONDENT’S CONTENTIONS

10. DLGF argued that Jones’s Form 139 was untimely, as it was not filed within forty-five days of the DLGF’s final determination.

ANALYSIS

11. The Board has limited jurisdiction to hear disputes regarding property taxes. *See Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904 (Ind. Tax Ct. 2002) (holding that the Board's predecessor agency "was a creation of the Legislature and therefore only had those powers conferred by statute"); *see also Morris v. Hamilton Cty. Assessor*, 175 N.E.3d 875, (Ind. Tax Ct. 2021). The Board has authority to hear challenges to the actions of assessing officials in regard to the assessed valuation of tangible property, property tax deductions, property tax exemptions, and property tax credits. I.C. § 6-1.5-4-1. Additionally, the Board has authority to hear challenges to actions of DLGF in regard to public utility companies under I.C. § 6-1.1-8, equalization orders under I.C. § 6-1.1-14-11, personal property assessments under IC 6-1.1-16, and enterprise zones under I.C. § 6-1.1-45-11. *See* I.C. § 6-1.5-5-1.
12. In contrast, decisions by DLGF relating to the establishment of a fund or imposition of a levy are appealed to the Indiana Tax Court. I.C. § 6-1.1-41-9(c).
13. The claims stated in Jones's petition do not fall into any of the categories under which the Board has authority to review DLGF's actions. To the extent Jones has raised a challenge to a DLGF final determination regarding the establishment of a fund or the imposition of a levy, an appeal must be brought before the Indiana Tax Court. More broadly, no statute grants the Board the authority to review the actions of DLGF generally, and the Board has no jurisdiction to consider whether DLGF should have inquired into the terms of the interlocal agreement. Accordingly, the Board must dismiss this appeal.²

² Because the Board lacks jurisdiction, the question of the timeliness of the appeal is moot.

CONCLUSION

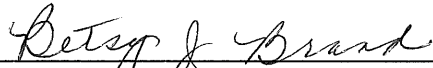
14. The Board has no authority to review DLGF's actions regarding the establishment of the Fire District or the imposition of the levy.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now dismisses for lack of jurisdiction.

ISSUED: 11/28/2022


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>.