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

Petition No.: **32-003-20-1-4-00487-21**
Petitioner: **Mac's Convenience Stores, LLC**
Respondent: **Hendricks County Assessor**
Parcel: **32-11-11-226-001.000-003**
Assessment Year: **2020**

The Indiana Board of Tax Review ("Board") issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. Mac's Convenience Stores, LLC ("Mac's") appealed the 2020 assessment of its commercial property located at 290 South Road 200 East, Danville, Indiana.

2. On April 7, 2021, the Hendricks County Property Tax Assessment Board of Appeals ("PTABOA") issued a Form 115 determination valuing the subject property at $1,918,300 ($1,200,000 for land and $718,300 for improvements.)

3. Mac's timely appealed to the Board, electing to proceed under the small claims procedures.

4. On January 25, 2023, Natasha Marie Ivancevich, the Board's Administrative Law Judge ("ALJ"), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.

5. Attorney Melissa G. Michie appeared on behalf of Mac's Convenience Store. Attorney Brian Cusimano appeared on behalf of the Assessor.

Record

6. The official record for this matter is made up of the following:

   a) Exhibits:

Petitioner Ex. 1:	Subject Property Record Card,
Petitioner Ex. 2:	*Mac's Convenience Stores v. Hendricks Cnty. Ass'r*, 191 N.E.3d 285 (Ind. Tax Ct. 2022).
Respondent Ex. A:	Subject Property Record Card.

Respondent Ex. B: *Hotka v. Brown County Ass'r.*, 07-003-21-1-5-00874-21
Respondent Ex. C: *Mac's Convenience Stores v. Hendricks Cnty. Ass'r.*, 191 N.E.3d 285 (Ind. Tax Ct. 2022).

b) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders, and notices issued by the Board or ALJ; and (3) a digital recording of the hearing.

Findings of Fact

7. The subject property is located at 290 South County Road 200 East, Danville, Indiana 46122. It consists of a 4,476 square foot convenience store with a gasoline station and car wash situated on 3.2 acres. *Pet'r. Ex. 1.*

Contentions

8. Summary of the Petitioners' case:

a) Mac's argued that the Assessor should have the burden of proof because the 2020 assessment increased more than 5% over the 2019 assessment (as last corrected by the Indiana Tax Court) and the appeal was filed prior to the repeal of Indiana Code § 6-1.1-15-17.2. In support of this, Mac's pointed to *Orange County Assessor v. James E. Stout,* 996 N.E.2d 871 (Ind. Tax Ct. 2013), a case where the Tax Court found statutes related to the same general subject should be construed together to produce a harmonious result. Mac's further argued that it "doesn't make sense" to apply one burden-shifting statute at the PTABOA hearing and a different burden-shifting statute before the Board. *Michie argument.*

9. Summary of the Respondent's case:

a) The Assessor argued the burden of proof is on Mac's because the burden-shifting statute, I.C. § 6-1.1-15-17.2, was repealed prior to the hearing. In addition, the Assessor noted the new burden shifting statute, I.C. § 6-1.1-15-20, only applies to appeals filed after its enactment. *Cusimano argument.*

b) The Assessor further claimed that because neither burden-shifting statute applies, Mac's, as the Petitioner, has the burden of proof. And because Mac's failed to provide any evidence in support of their claim, it failed to meet its burden. *Cusimano argument.*

Analysis

10. Mac's failed to make a prima facie case that the 2020 assessment should be reduced.

a) Generally, an assessment determined by an assessing official is presumed to be correct. 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. The Petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby County Ass'r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).

b) In this case, Petitioner argues the burden should be on the Assessor because the assessment increased by more than 5% over the previous year's last corrected assessment. But, as the Assessor points out, the Legislature repealed the burden-shifting statute on March 21, 2022. P.L. 174-2022 § 32 (repeal effective on passage). The statute created an exception to the general rule and required an assessor to prove a challenged assessment was "correct" where the assessment represented an increase of more than 5% over the prior year's assessment or where it was above the level determined in a taxpayer's successful appeal of the prior year's assessment, regardless of the amount of the increase. I.C. § 6-1.1-15-17.2(a)-(b), (d) (repealed by P.L. 174-2022 § 32, effective on passage). Even where those circumstances existed, the burden remained with the taxpayer if the assessment that was the subject of the appeal was based on "substantial renovations or new improvements," zoning, or uses that were not considered in the prior year's assessment. I.C. § 6-1.1-15-17.2(c). To meet the burden, an assessor's evidence had to "exactly and precisely conclude" the assessment. *Southlake Ind., LLC v. Lake Cnty. Ass'r ("Southlake II")*, 181 N.E.3d 484, 489 (Ind. Tax Ct. 2021). If the assessor had the initial burden and failed to meet it, the burden shifted to the taxpayer to prove the correct value. If neither party met its burden, the assessment reverted to the prior year's level. I.C. § 6-1.1-15-17.2(b); *Southlake Ind., LLC v. Lake Cnty. Ass'r ("Southlake I")*, 174 N.E.3d 177, 179 (Ind. 2021).

c) At the same time the Legislature repealed Ind. Code § 6-1.1-15-17.2, it enacted Ind. Code § 6-1.1-15-20. 2022 Ind Acts 174, § 34. The new statute also assigns the burden of proof to assessors in appeals where the assessment represents an increase of more than 5% over the prior year's assessment. I.C. § 6-1.1-15-20(b). But it no longer requires the evidence to "exactly and precisely conclude" to the assessment, and it allows the Board to determine a value based on the totality of the evidence. Only where the evidence is insufficient to determine a property's true tax value does the assessment revert to the prior year's level. *See* I.C. § 6-1.1-15-20(f). The new statute, however, only applies to appeals filed after its March 21, 2022 effective date. I.C. § 6-1.1-15-20(h). For that reason, it does not apply to this appeal.

d) For the reasons outlined below, we conclude the taxpayer has the burden of proof because the burden shifting statute was repealed before we held our evidentiary hearing. We start with the principle that we must apply the law as it existed at the time of the evidentiary hearing. Statutes must apply prospectively only, unless the Legislature "unequivocally and unambiguously" intended a statute also apply retroactively, or "strong and compelling" reasons dictate retroactive application. *State v. Pelley*, 828 N.E.2d 915, 919 (Ind. 2005). The same is true for acts repealing existing statutes. The Legislature has codified that presumption in the context of repeals, whether explicit or implied:

> [T]he repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing statute shall so expressly provide; and such statute shall be treated as remaining in force for the purposes of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

I.C. § 1-1-5-1; see also *Rouseff v. Dean Witter & Co.*, 453 F. Supp. 774, 779 (N.D. Ind. 1978) (citing *State ex. Rel. Mental Health Comm'rs v. Estate of Lotts*, 332 N.E.2d 234,238 (Ind. Ct. App. 1975) (recognizing that I.C. § 1-1-5-1 codifies the principal that substantive amendatory acts, which by implication repeal prior law to the extent they conflict, are to be construed prospectively unless the Legislature specifically provides otherwise); *but cf, e.g. Ind. State Highway Comm 'n v. Ziliak*, 428 N.E.2d 275, 279 (Ind. Ct. App. 1981) (quoting 26 I.L.E. Statutes § 195 at 380 (1960) ("[T]he repeal of a statute without a saving clause, where no vested right is impaired, completely obliterates it, and renders it as ineffective as if it never existed.").

e) The Legislature did not clearly evince an intent for the repeal of Ind. Code § 6-1.1-15-17.2 to be retroactive; to the contrary, it made the repealing act effective upon passage. Thus, we must determine whether applying the general rule on the burden of proof instead of the burden-shifting and reversion provisions of Ind. Code § 6-1.1-15-17.2 would be a retroactive (and therefore impermissible) application of the repealing act.

f) To answer the question, we must determine whether the "'new provision," i.e. the repeal of Ind. Code § 6-1.1-15-17.2, "attaches new legal consequences to events completed before its enactment.'" *Church v. State*, 189 N.E.3d 580, 587 (Ind. 2022) (quoting *Martin v. Hadix*, 527 U.S. 343, 357-58, 119 S.Ct. 1998, 144 L.E.2d 347 (1999)). That, in turn, requires "'identifying the conduct or event that triggers the statute's application.'" *Id.* (quoting *State v. Beaudoin*, 137 A.3d 717, 722 (R.I. 2016)). Once identified, the triggering, or "operative," event "guides the analysis." *Id.* A statute "operates prospectively when it is applied to the operative event of the statute, and that event occurs after the statute took effect." *Id.* at 587-88. It follows that the repeal of an existing statute likewise operates prospectively when it is applied to the operative event governed by the repeal, and that event occurs after the repeal took effect. A statute (or repeal) operates retroactively only when its "adverse effects" are activated by events that occurred before its effective date. *Id.* at 588 (quoting *R.I. Insurers' Insolvency Fund v. Leviton Mfg. Co.*, 716 A.2d 730, 735 (R.I. 1998).

g) In *Church*, the defendant sought to depose the child victim of a sex offense. After the date of the offense and the defendant was charged, but before he sought to depose the child, the Legislature passed a statute requiring court approval to depose child victims if the prosecutor objects to the deposition. *Church*, 189 N.E.3d at 584-85; I.C. § 35-40-5-11.5. After the defendant was denied authorization to depose the child, he appealed, arguing that the trial court had impermissibly applied the new statute

retroactively. The Court disagreed, holding that the triggering event of the statute was the defendant seeking to depose the child. *Id.* at 588. Because the deposition statute was already in effect when the defendant sought to depose the child, the statute was being applied prospectively. *Id.* Had the defendant sought the deposition in the eight days between being charged and the statute taking effect, applying it would have been retroactive. *Id.*

h) The burden-shifting statute addresses the burden of proof in assessment appeals, as does its repeal. The effect of which is to return cases back to the default rule governing the burden of proof in assessment appeals generally. The operative event is when a hearing on the merits convenes. The burden-shifting statute had already been repealed at the time of this hearing. In addition, Mac's has provided no support for its assertion that interpreting the appeal in this manner "doesn't make sense." For these reasons, we apply the law as it exists at the time of the evidentiary hearing and find the burden of proof is on the Petitioner.

i) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2021 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales-comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

j) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't. of Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006; *see also Long v. Wayne Twp. Ass'r,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2020 assessment, the valuation date was January 1, 2020. *See* I.C. § 6-1.1-2-1.5.

k) Here, Mac's failed to provide any probative, market-based evidence, instead relying entirely on its arguments regarding the burden-shifting statute. Because the burden of proof rests with Mac's, its failure to provide any reliable evidence is fatal to its claim. When the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Final Determination

In accordance with the above findings and conclusions, the Board orders no change to the 2020 assessment.

ISSUED: APRIL 20, 2023

Jonathan R. Lloyd
Chairman, Indiana Board of Tax Review

Betsy J Brand
Commissioner, Indiana Board of Tax Review

Timothy Ecker
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>.