REPRESENTATIVE FOR THE PETITIONER: Melissa Michie, Attorney

REPRESENTATIVE FOR THE RESPONDENT: Zachary Price, Attorney
Marilyn Meighen, Attorney

BEFORE THE INDIANA BOARD OF TAX REVIEW

Mac's Convenience Stores LLC,	)	Petition No.:	57-010-21-1-4-00063-22
	)		
Petitioner,	)	Parcel No.:	57-04-28-200-005.000-010
	)		
v.	)	County:	Noble
	)		
Noble County Assessor,	)	Township:	Orange
	)		
Respondent.	)	Assessment Year:	2021

April 17, 2023

FINAL DETERMINATION

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

INTRODUCTION

1. Mac's Convenience Stores LLC ("Mac's") argues that, under a repealed burden of proof statute (Ind. Code § 6-1.1-15-17.2), the Noble County Assessor had the burden of proving that Mac's assessment was correct. But we must apply the law as it existed when we held our evidentiary hearing. Because the law was repealed prior to the hearing, Mac's, as the party challenging the assessment, had the burden of proving that the assessment is incorrect and what the correct assessment should be. Because Mac's failed

to provide any reliable evidence showing the assessment was incorrect, we find for the Assessor and order no change to the subject property's 2021 assessment.

PROCEDURAL HISTORY

2. Mac's appealed the 2021 assessment of its property located at 2733 East U.S. 6 in Kendallville, Indiana.

3. On December 21, 2021, the Noble County Property Tax Assessment Board of Appeals ("PTABOA") sustained the assessment at $246,700 for land and $436,500 for improvements for a total of $683,200. Mac's timely appealed to the Board.

4. On January 17, 2023, Dalene McMillen, the Board's Administrative Law Judge ("ALJ"), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.

5. David Hall, appraiser for the Assessor, testified under oath. Ben Castle, the Noble County Assessor, was also on the call but did not testify.

6. The Petitioner offered the following exhibits:

Petitioner Exhibit 1:	2021 subject property record card ("PRC"),
Petitioner Exhibit 2:	2020 subject PRC,
Petitioner Exhibit 3:	List of properties in the same neighborhood or property class,
Petitioner Exhibit 4:	List of properties in the same neighborhood and property record cards,
Petitioner Exhibit 5:	List of properties in the same property class and property record cards,
Petitioner Exhibit 6:	Subject property's sales disclosure form,
Petitioner Exhibit 7:	Three pages from Mac's asset purchase agreement **(Confidential)**,
Petitioner Exhibit 8:	Internal Revenue Service – Instructions for Form 8594.

7. The Respondent offered the following exhibits:

Respondent Exhibit A:	Part one of appraisal report of the subject property prepared by David Hall,

Respondent Exhibit B:	Part two of appraisal report of the subject property prepared by David Hall,
Respondent Exhibit C:	Subject property's sales disclosure form dated November 10, 2020,
Respondent Exhibit D:	Subject property's sales disclosure form dated December 13, 2017,
Respondent Exhibit E:	2021 subject PRC,
Respondent Exhibit F:	Sales disclosure form for 571 North Line Street in Columbia City,
Respondent Exhibit G:	Sales disclosure form for 2001 West McGalliard Road in Muncie,
Respondent Exhibit H:	Sales disclosure form for 2299 Greenfield Avenue in Noblesville,
Respondent Exhibit I:	Sales disclosure form for 3000 South U.S. Highway 41 in Terre Haute,
Respondent Exhibit J:	Sales disclosure form for 9950 South U.S. Highway 41 in Terre Haute.

8. 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) the digital recording of the hearing.

FINDINGS OF FACT

9. The subject property is a "Circle-K" gas station and convenience store with 3,128 square feet, and canopy with 3,200 square feet located on 0.57 acres of land in Kendallville. Mac's purchased the subject property as part of a portfolio transaction on November 10, 2020. The sales disclosure form listed a selling price of $815,000. *Pet'r Exs. 1, 2 & 6; Hall testimony; Resp't Exs. A, B, C & E.*

10. The Assessor engaged David Hall of Integra Realty Resources to appraise the fee simple interest of the subject property as of January 1, 2021. Hall is an Indiana Certified General Real Estate Appraiser with 18 years of experience and holds the MAI and AICP designations. Hall certified that he appraised the subject property and prepared his report in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). He considered developing all three generally accepted appraisal approaches but decided only to develop the cost and sales-comparison approaches. He concluded to values of

$680,000 under the cost approach and $720,000 under the sales-comparison approach. He concluded these represented a reliable range of values for the subject property. He also noted the subject property's 2021 assessment fell within that range. *Hall testimony; Resp't Exs. A & B*

PETITIONERS' CONTENTIONS

11. Mac's argued that the Assessor should have the burden of proof because the 2021 assessment increased 16% over the 2020 assessment 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 argued that it would be "illogical and absurd" to find that no burden-shifting statute applied to this appeal. *Michie argument; Pet'r Exs. 1 & 2.*

12. In addition, Mac's argued the Assessor engaged in sales chasing by increasing the subject property's assessment after it sold. In support of this, Mac's presented evidence that the subject property's market factor was increased in 2021, while the market factors of other properties in the same neighborhood and property class did not. *Michie argument; Pet'r Exs. 1-6.*

RESPONDENT'S CONTENTIONS

13. The Assessor argued that Mac's should have the burden of proof because Indiana Code § 6-1.1-15-17.2, the burden of proof statute, was no longer applicable because it was repealed on March 21, 2022. In addition, the Assessor pointed out that the new burden-shifting statute, Indiana Code § 6-1.1-15-20, only applies to appeals filed after its passage, which was also March 21, 2022. *Price argument.*

14. In the alternative, the Assessor argued that even if we found he bore the burden of proof, Hall's appraisal was sufficient to meet that burden because the assessment fell within Hall's range of values. *Price argument.*

ANALYSIS

15. 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).

16. Mac's argues that the burden should be on the Assessor because the assessment increased 16% over the prior year. But as the Assessor points out, the Legislature repealed the burden-shifting statute on March 21, 2022. P.L. 174-2022 § 32 (repealed effective on passage). That statute required an assessor to prove that a challenged assessment was "correct" where, among other things, the assessment represented an increase of more than 5% over the prior year's assessment, as last corrected by an assessing official, stipulated to or settled by the taxpayer and the assessing official, or determined by the reviewing authority. I.C. § 6-1.1-15- 17.2(a)-(b) (repealed by 2022 Ind. Acts 174, § 32 effective on passage). Where an assessor had the burden, her evidence needed to "exactly and precisely conclude" to the challenged assessment. *Southlake Ind. LLC v. Lake Cty. Ass'r* ("*Southlake II*"), 181 N.E.3d 484, 489 (Ind. Tax Ct. 2021). If the assessor failed to meet her burden, the taxpayer could prove that its proffered assessment value was correct. 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 Cty. Ass'r* ("*Southlake I*"), 174 N.E.3d 177, 179-80 (Ind. 2021).

17. 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.

18. We conclude that Mac's has the burden of proof because the old 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 apply prospectively only, unless the Legislature "unequivocally and unambiguously" intended retroactive application, 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. Indeed, 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 still 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'r 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.").

19. 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.

20. 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).

21. 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.*

22. The burden-shifting statute addresses the burden of proof in assessment appeals. So does its repeal, the effect of which is to return cases that the statute had carved out for special treatment back to the default rule governing the burden of proof in assessment appeals generally, at least until the new burden-shifting statute (I.C. § 6-1.1-15-20) kicks in. The operative event is when a hearing on the merits convenes, not, as Mac's seems to believe, when an appeal is filed. The burden-shifting statute had already been repealed when the hearing on Mac's appeal convened, and we must apply the law as it existed at the time of the evidentiary hearing. In addition, Mac's has provided no support for its assertion that interpreting the appeal in this manner would be "illogical and absurd." The mere fact that one property's value is adjusted, and not others, does not prove sales chasing. For these reasons, we find the burden of proof is on the Petitioner.

23. 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.

24. Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local 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 2021 assessment, the valuation date was January 1, 2021. *See* Ind. Code § 6-1.1-2-1.5.

25. Mac's primarily argued that the Assessor engaged in impermissible sales-chasing. "Sales chasing" or "selective reappraisal" is the "practice of using the sale of a property to trigger a reappraisal of that property at or near the selling price." 50 IAC 27-2-11. Here, the assessment at issue is $683,200, or approximately $129,000 below the $815,000 price listed on the sales disclosure form for the November 2020 sale. We cannot find that $683,200 is "at or near" $815,000. For that reason, we find that Mac's has failed to show the Assessor engaged in sales-chasing.

26. Finally, it appears Mac's may have been arguing that it was not receiving a uniform and equal assessment as compared to the other properties in the neighborhood or same property class code. As the Tax Court has explained, "when a taxpayer challenges the uniformity and equality of his or her assessment one approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf Practice Center v. Washington Twp. Assessor,* 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) (emphasis in original). Such studies, however, should be prepared according to professionally acceptable standards. *Kemp v. State Bd. of Tax Comm'rs,* 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). They should also be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm'rs,* 743 N.E.2d 810, 813 (Ind. Tax Cty. 2001) (*citing Southern Bell Tel. and Tel. Co. v. Markham,* 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)).

27. When a ratio study shows that a given property is assessed above the common level of assessment, the property's owner may be entitled to an equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co.,* 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed). The equalization process adjusts the property assessments so "they bear the same relationship of assessed value to market value as other properties

within that jurisdiction." *Thorsness v. Porter County Assessor,* 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014) (citing *GTE N. Inc. v. State Bd. of Tax Comm'rs,* 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994)). Article 10, Section 1(a) of Indiana's Constitution, however, does not guarantee "absolute and precise exactitude as to the uniformity and equality of each individual assessment." *State Bd. of Tax Comm'rs v. Town of St. John,* 702 N.E.2d 1034, 1040 (Ind. 1998).

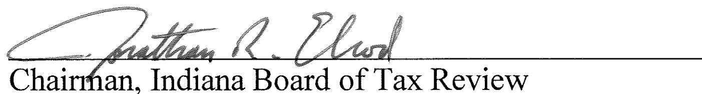
28. As discussed above, one of the requirements for a reliable ratio study is a comparison between the assessments used and objectively verifiable market data such as sale prices or appraisals. Mac's did not provide any market data for any of the other properties it presented. For this reason, it failed to make a prima facie case showing a lack of uniformity and equality in the assessment.

29. Because Mac's did not provide any market-based evidence supporting a different value for the subject property, we find it has failed to make a case for any reduction in the assessment. Because 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).

SUMMARY OF FINAL DETERMINATION

30. The Board orders no change to the 2021 assessment.

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


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>.