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IN THE INDIANA TAX COURT

ERIC S. MORRIS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cause No. 20T-TA-00019
	)	
HAMILTON COUNTY ASSESSOR,	)	
	)	
Respondent.	)	

ON APPEAL FROM A FINAL DETERMINATION OF
THE INDIANA BOARD OF TAX REVIEW

FOR PUBLICATION
July 30, 2021

WENTWORTH, J.

Eric S. Morris challenges the Indiana Board of Tax Review's final determination that dismissed his case for lack of subject matter jurisdiction. Upon review, the Court affirms the Indiana Board's final determination.

FACTS AND PROCEDURAL HISTORY

In 2012, Morris purchased a property located in an unincorporated area of Clay Township, Hamilton County, Indiana. (Cert. Admin. R. at 769-70.) The unincorporated

area, commonly known as Home Place, is adjacent to the City of Carmel bound by "99th Street to the south, Pennsylvania Street to the west, 111th Street to the north, and Westfield Boulevard to the east." (See Cert. Admin. R. at 737, 769-70, 787.) See also Certain Home Place Annexation Territory Landowners v. City of Carmel, 85 N.E.3d 926, 928 (Ind. Ct. App. 2017).

Over the course of the next seven years, Carmel provided fire protection services, including 911 emergency services, to the residents of Home Place under a series of annual "Contracts for Fire Protection" with Clay Township. (See Cert. Admin. R. at 347-495, 663-90, 776-77 (citing Certain Home Place Annexation Territory Landowners, 85 N.E.3d at 933).) The terms of those contracts required Clay Township to pay its proportionate share of Carmel's fire department budget based on the ratio of total assessed valuation of unincorporated property compared to the total assessed valuation of the property within Carmel. (See, e.g., Cert. Admin. R. at 347-50, 363-67, 817.) The contracts further provided that Clay Township would agree to seek Department of Local Government Finance ("DLGF") approval for an appropriation from its Fire Fighting Fund, i.e., Fire Fund 1111, to pay Carmel. (See, e.g., Cert. Admin. R. at 70, 349.)

In the meantime, Clay Township and Carmel determined that "two additional fire station projects (the renovation or replacement of Station #43 and the replacement of Station #44) as well as the construction of a Fire Training, Repair Shop and Emergency Operations Command Center" (collectively, the "Facilities") were needed to serve the fire protection and emergency response needs of their residents. (See Cert. Admin. R. at 496.) As a result, they entered into a written Interlocal Agreement in July of 2014, in which they agreed, among other things, that Clay Township would establish and impose

> a uniform tax rate upon all of the taxable property throughout the Township, including those areas both within and outside of the City [e.g., Home Place], for the purpose of funding . . . the acquisition of the Facility Sites and the design and construction of the Facilities, and all costs, fees and expenses related in any way thereto or to the creation and retirement of indebtedness therefore, including all costs of issuance of the foregoing indebtedness.

(Cert. Admin. R. at 496, 500-05.) Clay Township subsequently used monies from its Fire Building Debt Fund (i.e., Debt Fund 1181) to pay for bonds related to the Interlocal Agreement. (See, e.g., Cert. Admin. R. at 75-76, 96, 98, 100, 798.)

In November of 2018, Morris filed a small claims complaint against Clay Township in Hamilton County Superior Court No. 4, alleging that

> Clay Township entered into an Interlocal [Agreement] with [Carmel] to build [the Facilities]. [Clay Township] violated Article III, Section 3.1 [of the Interlocal Agreement] by imposing costs for those facilities solely (not 'uniform[ily]') on areas outside [Carmel]. In addition, [Clay Township] has imposed taxes on unincorporated area[s] in violation of its annual fire contract with [Carmel].

(See, e.g., Cert. Admin. R. at 500-01, 647.) In addition, Morris's complaint stated that his claims were based upon "Incorrect Taxation." (Cert. Admin. R. at 647.)

In December of 2018, Clay Township moved to dismiss Morris's complaint for lack of subject matter jurisdiction, asserting that the Tax Court had exclusive jurisdiction over the case, not Hamilton Superior Court No. 4. (See Cert. Admin. R. at 647-49.) In so moving, Clay Township argued that Hamilton Superior Court No. 4 did not have the authority to hear the issues raised in Morris's complaint because it was "directly based upon an allegation of 'incorrect taxation[,]' and therefore, "'principally involve[d] the collection of a tax[,]'" a subject within the exclusive jurisdiction of the Tax Court. (See Cert. Admin. R. at 648.) Hamilton Superior Court No. 4 dismissed Morris's case on December 26, 2018. (Cert. Admin. R. at 650.) Hamilton Superior Court No. 4 then denied

Morris's subsequent motions for leave to file an amended complaint and to reconsider the order of dismissal. (See Cert. Admin. R. at 651-62.)

On February 14, 2019, Morris filed three "Notice[s] to Initiate an Appeal" with the Hamilton County Assessor for the 2016 to 2018 tax years. (See Cert. Admin. R. at 6-7, 13-14, 20-21.) Each of the Notices stated

> I am seeking relief under the Indiana Uniform Declaratory Judgments Act, IC 34-14-1, so [I] believe the six[-]year contract statute of limitations appl[ies], rather than the more restrictive three year[statute of limitations referred to] above. [The Judge of Hamilton Superior Court No. 4] has ruled that even for a claim like this[,] not questioning the property tax rate or assessed value [of my property,] is properly within your purview.

(See, e.g., Cert. Admin. R. at 13-14.)[1] On April 25, 2019, the Hamilton County Property Tax Assessment Board of Appeals (the "PTABOA") denied all of the Notices. (See, e.g., Cert. Admin. R. at 3-5.) Consequently, on May 3, 2019, Morris filed three petitions for review with the Indiana Board, each stating

> I am not appealing assessed value. I am seeking relief under the Indiana Uniform Declaratory Judgments Act, IC 34-14-1, that Clay Township has incorrectly and illegally made appropriations and failed to account for revenues correctly in Fire Fund 1111 for residents of the unincorporated portion of Clay Township pursuant to Interlocal Agreements between [Carmel] and [Clay Township.] Hamilton County [Superior Court No. 4] and now the PTABOA have claimed neither has jurisdiction, so at this point this is a jurisdictional appeal.

(See, e.g., Cert. Admin. R. at 2.)

On January 16, 2020, the Assessor moved to dismiss Morris's appeals, claiming the Indiana Board did not have the authority to hear the appeals because they were not

[1] All the Notices provided that Morris had attached a "separate sheet" to explain his position in further detail. (See, e.g., Cert. Admin. R. at 6-7.) The certified administrative record, however, does not contain the referenced sheet. (See, e.g., Cert. Admin. R. at 1-21.)

property tax appeals given that they "dispute[d] local budgetary appropriations for, and accounting, of firefighting funds." (See Cert. Admin. R. at 27-32.) Approximately two weeks later, Clay Township moved to intervene because it believed that Morris's appeals had challenged the legality of its actions with respect to the utilization of Fire Fund 1111. (See Cert. Admin. R. at 36-38.) On May 5, 2020, the Indiana Board denied both motions and set Morris's appeals for hearing on June 17, 2020. (See Cert. Admin. R. at 39-40.)

On November 19, 2020, after conducting its administrative hearing, the Indiana Board issued a final determination in the matter. In that final determination, the Indiana Board concluded that it lacked the authority to hear Morris's appeals because Morris stated that he brought his claims under the Uniform Declaratory Judgments Act (the "UDJA"), and he did not seek "any specific individual relief" from the Indiana Board. (See Cert. Admin. R. at 759 ¶¶ 22-23.) As a result, the Indiana Board dismissed Morris's appeals. (See Cert. Admin. R. at 759.)

On December 21, 2020, Morris initiated this appeal as a small tax case, claiming the Indiana Board (as well as this Court) has subject matter jurisdiction over his appeals because they seek a "declaration that Clay Township violated the constitution, statutes, fire contracts, and interlocal agreements in appropriating, accounting for, and spending money, which increased [his] taxes." (See Pet'r Pet. Jud. Rev. Final Determination Ind. Bd. Tax Rev., Small Tax Case ("Pet'r Pet.") at 6 ¶ 17.) Morris further explained that the relief he sought entitled him to a refund of property taxes because Clay Township would be required to lower "the amount it [had] charged [him for property taxes] and rais[e] the tax rate in [certain] areas outside" of Home Place. (See Pet'r Pet. at 1 ¶ 2.)

On July 29, 2021, the Court heard the parties' oral arguments. Additional facts will

be supplied if necessary.

STANDARD OF REVIEW

The party seeking to reverse an Indiana Board final determination bears the burden of demonstrating its invalidity. Lowe's Home Ctrs., Inc. v. Monroe Cnty. Assessor, 160 N.E.3d 263, 268 (Ind. Tax Ct. 2020). Consequently, Morris must demonstrate to the Court that the Indiana Board's final determination in this matter is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of or short of statutory jurisdiction, authority, or limitations; without observance of the procedure required by law; or unsupported by substantial or reliable evidence. IND. CODE § 33-26-6-6(e)(1)-(5) (2021).

LAW AND ANALYSIS

On appeal, Morris claims that the Indiana Board's final determination must be reversed because it effectively and erroneously reconsidered and reversed its May 2020 decision that his appeals were "ripe for it to hear factually" given that there had been no change in the controlling law. (See, e.g., Pet'r Br. at 1-3; Cert. Admin. R. at 39-40.) (See also Pet'r Pet. at 1 ¶ 5 (asserting that the threshold issue in this case is whether the Indiana Board has jurisdiction to hear his claims).) Alternatively, Morris requests that this Court assume jurisdiction over his appeals pursuant to the UDJA. (See, e.g., Pet'r Br. at 3-6; Pet'r Reply Br. at 1.)

I. Jurisdiction of the Indiana Board

In its final determination, the Indiana Board identified the statutory authority that enables it to address appeals, Indiana Code § 6-1.5-4-1, which enumerated only four types of appeals it may address. (See Cert. Admin. R. at 758 ¶ 20.) The Indiana Board

found it had no authority to address Morris's appeals brought under the UDJA because that Act did not apply to administrative agencies. (See Cert. Admin. R. at 759 ¶¶ 22-23.) Now, on appeal, Morris claims that by holding its administrative hearing and reviewing the parties' evidence, the Indiana Board demonstrated that it actually did have the authority to address the issues raised in his appeals. (See Pet'r Br. at 1-2.)

As an initial matter, "[i]t is black-letter law that generally, administrative agencies are creatures of statute, and only the legislature has the broad power to provide for their creation." Vehslage v. Rose Acre Farms, Inc., 474 N.E.2d 1029, 1033 (Ind. Ct. App. 1985). "Administrative boards, agencies, and officers have no common law or inherent powers, but only such authority as is conferred upon them by statutory enactment." Id. (citation omitted). To that end, the legislature conferred the following authority on the Indiana Board:

> [it] shall conduct an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; (3) property tax exemptions; or (4) property tax credits[] that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana [B]oard under any law.

IND. CODE § 6-1.5-4-1(a) (2019) (emphasis added).

Morris's appeals to the Indiana Board did not concern any of these four types of claims, but instead, concerned Clay Township's acts of appropriating, accounting for, and spending monies with respect to Fire Fund 1111 and the Interlocal Agreement. (See, e.g., Pet'r Pet. at 5-6 ¶¶ 10, 17; Pet'r Br. at 3, 5-6.) Indeed, Morris admits that he is "not disputing anything covered in" Indiana Code § 6-1.5-4-1. (Pet'r Pet. at 1 ¶ 5.) Consequently, the Court holds that the Indiana Board did not err in concluding that it lacked the statutory authority to address Morris's claims.

Furthermore, the UDJA, codified at Indiana Code §§ 34-14-1-1 to -16, did not authorize the Indiana Board to exercise jurisdiction over Morris's appeals. By its plain terms, the UDJA authorizes only courts of record to issue declaratory judgments, not administrative agencies. See IND. CODE § 34-14-1-1 (2019). Indeed, the UDJA provides that

> [c]ourts of record within their respective jurisdictions have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding is open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. The declaration has the force and effect of a final judgment or decree.

I.C. § 34-14-1-1. Morris acknowledges that the Indiana Board is an administrative agency and not a court of record. (See, e.g., Pet'r Pet. at 1 ¶ 5; Pet'r Br. at 2.) Given this backdrop, the Court will not read the UDJA as somehow extending to the Indiana Board. See, e.g., Jefferson Smurfit Corp. v. Indiana Dep't of State Revenue, 681 N.E.2d 806, 811 (Ind. Tax Ct. 1997) (providing that "[a] clear and unambiguous statute must be read to 'mean what it plainly expresses, and its plain and obvious meaning may not be enlarged or restricted'") (citation omitted). Accordingly, Morris has not shown that the Indiana Board erred in dismissing his appeals on this basis either.

II. Jurisdiction of the Tax Court

In the alternative, Morris contends that the Tax Court should assume jurisdiction in this matter under the UDJA because "it would be more proper in the name of judicial economy . . . for the factual and legal issues . . . to be heard" in the Tax Court. (See Pet'r Pet. at 1 ¶ 5.) (See also Pet'r Reply Br. at 1.) Morris argues that the Court has the authority to hear this case under the UDJA because it is a court of record, the UDJA is to

be liberally construed and administered, and Indiana Trial Rule 57 allows declaratory relief even if another remedy is available. (See Pet'r Pet. at 5 ¶ 10; Pet'r Reply Br. at 1.)

The UDJA provides statutory authority to Indiana's courts of record to enter declaratory judgments. See I.C. § 34-14-1-1. Nonetheless, the Tax Court cannot hear claims for declaratory judgment or any other claims unless it has subject matter jurisdiction over the case. See, e.g., D.P. v. State, 151 N.E.3d 1210, 1210 (Ind. 2020) (providing that subject matter jurisdiction refers to a court's constitutional or statutory power to hear and determine a particular type of case); State Bd. of Tax Comm'rs v. Ispat Inland, Inc., 784 N.E.2d 477, 481 (Ind. 2003) (explaining that when a court does not have subject matter jurisdiction, any judgment that it renders is void).

The Tax Court is a court of limited jurisdiction that has subject matter jurisdiction over two types of cases: 1) original tax appeals and 2) actions for which jurisdiction has been otherwise specifically conferred upon it by statute. See, e.g., IND. CODE § 33-26-3-1 (2020); Ind. Tax Court Rule 2; Diocese of Newton for the Melkites in the USA, Inc. v. Katona, 149 N.E.3d 1252, 1254-55 (Ind. Tax Ct. 2020). Morris contends that this Court has subject matter jurisdiction over his appeal, not under the specific mandates of the UDJA, but because it is an original tax appeal. (See Pet'r Reply Br. at 1.)

The Tax Court has exclusive jurisdiction over original tax appeals, i.e., any case that arises under the tax laws of Indiana and is an initial appeal of a final determination made by the Indiana Board. I.C. § 33-26-3-1; Tax Ct. R. 2(A). First, a case "arises under" the tax laws if an Indiana tax statute creates the right of action or the case principally involves the collection of a tax or defenses to that collection. Fresenius USA Mktg., Inc. v. Indiana Dep't of State Revenue, 970 N.E.2d 801, 803 (Ind. Tax Ct. 2012), review

denied. See also State ex rel. Zoeller v. Aisin USA Mfg., Inc., 946 N.E.2d 1148, 1155 (Ind. 2011) (stating that "[e]very case that [the Indiana Supreme] Court has held arises under Indiana tax law has involved a dispute as to the interpretation or application of a tax law"). Second, an original tax appeal must be an initial appeal of the Indiana Board's final determination, a requirement that satisfies the principle basic to all administrative law that the party seeking judicial relief from an agency must first exhaust all administrative remedies. See Ispat Inland, 784 N.E.2d at 482.

Here, Morris has satisfied the second requirement because his appeal is from the Indiana Board's final determination that dismissed his case. (See Pet'r Pet. at 1 ¶ 4.) Morris claims his appeal also satisfies the "arising under" requirement because it "'clearly revolves around an earlier step in the taxation or assessment process'" given that "Clay Township invalidly assessed taxes by incorrectly implementing the Interlocal Agreements and Fire Contracts (and violating state statutes) that it entered into with [Carmel.]"[2] (See Pet'r Br. at 3 (quoting Robinson v. Indiana Dep't of Local Gov't Fin., 99 N.E.3d 684, 690 (Ind. Ct. App. 2018), trans. denied); Pet'r Reply Br. at 1 (citing, e.g., Aisin USA Mfg., 946 N.E.2d at 1152-53).)

Morris's appeal does not principally challenge the collection of a tax or a defense to the collection of a tax. Indeed, Morris states that 1) he is challenging Clay Township's actual expenditures, not hypotheticals such as its budget; 2) he does not intend to litigate his tax rates even if they were implicated under his appeal; and 3) he is not appealing the assessed values assigned to his property during the 2016 through 2018 tax years. (See

[2] The Court notes that for purposes of this Court's jurisdiction, Morris has not alleged that his case arises under Indiana tax laws by virtue of an Indiana tax statute. (See, e.g., Pet'r Pet. at 1-6; Pet'r Br. at 1-6.)

Pet'r Br. at 5; Cert. Admin. R. at 2, 720-21.) Furthermore, Morris explains that the Court will not need to interpret or apply any tax statutes to resolve his claims because they implicate matters of contract interpretation. (See Pet'r Pet. at 3 ¶ 9.) At its heart, Morris's appeal is that Clay Township violated its Interlocal Agreements with Carmel, Fire Fund 1111, and various statutory and constitutional provisions by failing to account for certain expenditures. (See Pet'r Pet. at 6 ¶ 17; Pet'r Br. at 3-5; Cert. Admin. R. at 733-34.) Morris's appeal therefore does not arise under the tax laws of Indiana and is not an original tax appeal. See, e.g., Aisin USA Mfg., 946 N.E.2d at 1154 (stating that the legislature did not intend "for every case in which a taxpayer and a tax-collecting agency are parties to be one that arises under the tax laws"). Consequently, the Court cannot assume jurisdiction over his appeal under the UDJA.[3] See I.C. § 33-26-3-1; I.C. § 34-14-1-1; Diocese of Newton for the Melkites in the USA, 149 N.E.3d at 1256.

CONCLUSION

Morris has not demonstrated to the Court that the Indiana Board's dismissal of his administrative appeals is arbitrary, capricious, an abuse of its discretion, or contrary to law. Moreover, Morris has not demonstrated that the Court has subject matter jurisdiction over his appeals. Accordingly, the Indiana Board's final determination in this matter is AFFIRMED.

[3] Morris has attempted to have his day in court first with Hamilton County Superior Court No. 4 and then with the Tax Court. In each instance, however, his appeals were dismissed for lack of subject matter jurisdiction. Although this Court is sympathetic to Morris's predicament, it cannot decide the merits of his case because it is a contract case, not a property tax case. Consequently, Morris's remedy lies in the plenary courts.