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IN THE  
COURT OF APPEALS OF INDIANA

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Muir Woods Section One  
Association, Inc., and Nantucket  
Bay Homeowners Association,  
Inc.,

*Appellants-Plaintiffs,*

v.

Claudia O. Fuentes, Marion  
County Treasurer; Julie  
Voorhies, Marion County  
Auditor; and Joseph P.  
O'Connor, Marion County  
Assessor,

*Appellees-Defendants.*

February 16, 2021

Court of Appeals Case No.  
20A-CC-1144

Appeal from the Marion Superior  
Court

The Honorable James B. Osborn,  
Judge

Trial Court Cause No.  
49D14-1802-CC-6237

**Friedlander, Senior Judge.**

[1] This is an appeal from the trial court's dismissal of the amended complaint and petition for mandate of Muir Woods Section One Association, Inc. and

Nantucket Bay Homeowners Association, Inc. (collectively, Homeowners Associations). We reverse the dismissal and remand to the trial court for a determination on the Homeowners Associations' mandamus action to compel the Marion County Treasurer, Marion County Auditor, and Marion County Assessor (collectively, Taxing Authorities) to act.

[2] Muir Woods filed petitions challenging the real estate tax assessment of certain parcels for tax year 2006. The Marion County Property Tax Assessment Board of Appeals (PTABOA) issued determinations that the parcels had assessed values of zero. Muir Woods then filed for a refund to recover the amount it overpaid, and the Treasurer issued a check in the amount of \$11,481.42. Muir Woods believes this amount to be deficient.

[3] Likewise, Nantucket Bay filed petitions challenging the assessed values of certain parcels for tax year 2006. Nantucket Bay and the Assessor agreed that the parcels had assessed values of zero. Nantucket Bay filed its claims for refund, and the Treasurer issued checks in the aggregate amount of \$11,290.29. Nantucket Bay believes this amount to be deficient.

[4] In February 2018, Muir Woods and Nantucket Bay each filed a "Complaint to Collect Determined Overpaid Real Estate Taxes." The Taxing Authorities filed motions to dismiss the complaints, alleging that the trial court lacked subject matter jurisdiction and that exclusive jurisdiction rested with the Tax Court. The trial court issued an order consolidating the cases and, following a hearing, granted the motions to dismiss.

- [5] The Homeowners Associations appealed. In a published opinion, a panel of this Court affirmed the trial court’s dismissal of the complaints, holding that the superior court lacked subject matter jurisdiction to order the Treasurer to issue refunds for overpayment of taxes to the Homeowners Associations. *Muir Woods Section One Ass’n, Inc. v. Fuentes*, 136 N.E.3d 647 (Ind. Ct. App. 2019).
- [6] In January 2020, the Homeowners Associations filed their “Verified Amended Complaint and Petition in Action for Mandate.” The complaint alleged the Taxing Authorities had failed to fulfill their statutory duty of issuing rulings upon the Homeowners Associations’ claims for refund and requested a mandate to compel the Taxing Authorities to act. The Taxing Authorities filed a motion to dismiss the amended complaint, again asserting the trial court’s lack of subject matter jurisdiction. After hearing arguments by counsel, the court granted the dismissal without explanation. The Homeowners Associations now appeal.
- [7] The Homeowners Associations argue the dismissal was error because a court of general jurisdiction may entertain a mandamus action by a taxpayer to compel county officials to act according to their statutory duties. For their part, the Taxing Authorities maintain that these disputes arose under tax laws such that jurisdiction rests with the Tax Court.
- [8] Subject matter jurisdiction is an issue of law to which we apply a de novo standard of review. *Jackson v. Holiness*, 961 N.E.2d 48 (Ind. Ct. App. 2012). “Subject matter jurisdiction is the power of the court to hear and decide a

particular class of cases.” *State Bd. of Tax Comm’rs v. Ispat Inland, Inc.*, 784 N.E.2d 477, 480-81 (Ind. 2003). The Marion Superior Court has subject matter jurisdiction over all civil and criminal cases, Indiana Code section 33-29-1.5-2 (2019), “except where exclusive jurisdiction has been conferred by law upon a different court.” *D.A.Y. Invs. LLC v. Lake Cty.*, 106 N.E.3d 500, 505 (Ind. Ct. App. 2018), *trans. denied*. If the Tax Court has subject matter jurisdiction over a case, a trial court does not. *State ex rel. Zoeller v. Aisin USA Mfg., Inc.*, 946 N.E.2d 1148 (Ind. 2011). Therefore, we begin with a discussion of the Tax Court’s jurisdiction.

- [9] As a court of limited jurisdiction, the Tax Court has exclusive jurisdiction over a case if it (1) arises under the tax laws of Indiana and (2) is an initial appeal of a final determination made by a relevant agency. Ind. Code § 33-26-3-1 (2004). A case “arises under” the tax laws if an Indiana tax statute creates a right of action or the case principally involves collection of a tax or defenses to that collection. *Marion Cty. Auditor v. Revival Temple Apostolic Church*, 898 N.E.2d 437 (Ind. Ct. App. 2008), *trans. denied* (2009). The “arises under” language has been interpreted broadly to include any case challenging the collection of a tax or assessment, whether the challenge is premised on constitutional, statutory, or other grounds. *DSG Lake, LLC v. Petalas*, 156 N.E.3d 677 (Ind. Ct. App. 2020). Here, the Homeowners Associations’ case is based on the theory that they overpaid property taxes and are owed refunds. Thus, we readily conclude that this case arises under Indiana’s tax laws.

[10] Yet, a dispute over tax law does not alone grant jurisdiction to the Tax Court. Tax Court jurisdiction also requires a “final determination”— an order that determines the rights of, or imposes obligations on, the parties as a consummation of the administrative process. *Wayne Twp. v. Ind. Dep’t of Local Gov’t Fin.*, 865 N.E.2d 625 (Ind. Ct. App. 2007), *reaff’d on reh’g*, 869 N.E.2d 531, *trans. denied*. This requirement embodies the basic principle of administrative law that a party seeking judicial review of an agency action must first exhaust all its administrative remedies. *Revival Temple Apostolic Church*, 898 N.E.2d 437. Thus, the lack of a final determination from a tax-related agency is equivalent to a failure to exhaust administrative remedies and deprives the Tax Court of subject matter jurisdiction. *Wayne Twp.*, 865 N.E.2d 625.

[11] The relevant agencies named in Section 33-26-3-1, whose “final determinations” must be reviewed initially by the Tax Court and no other court, are the Department of State Revenue, with respect to certain listed taxes not relevant here, and the Indiana Board of Tax Review. A discussion of a final determination in this case necessarily requires us to examine the statutory scheme for property tax refund claims.

[12] Indiana Code chapter 6-1.1-26 provides that a party may request a refund of a property tax that has already been paid. This framework required that a party seeking a refund must first file a claim with the county auditor. Ind. Code § 6-

1.1-26-1(1) (2002).<sup>1</sup> In certain situations including those we have before us, the claim for refund then was to be either approved or disapproved by the county auditor, the county treasurer, and the county assessor. Ind. Code § 6-1.1-26-3(a) (2007).<sup>2</sup> If the claim for refund was disapproved by any of the county officers, the claimant could appeal to the Indiana Board of Tax Review. Ind. Code § 6-1.1-26-3(b). Once the claimant received a final determination from the Board of Tax Review, the claimant could seek judicial review of the final determination in the Tax Court. Ind. Code § 6-1.1-26-3(c). In this case, however, there is no evidence before us of a final determination of the Board of Tax Review. Thus, the lack of a final determination by the Board of Tax Review is equivalent to a failure to exhaust administrative remedies and therefore jurisdiction could not lie with the Tax Court.

[13] This brings us to the heart of this appeal. The Homeowners Associations recognize that the statutorily prescribed mechanism for refund claims is through administrative proceedings that lead to a final determination by the Board of Tax Review and ultimately end with judicial review by the Tax Court. They maintain, however, they lack the means to obtain a final determination and thus exhaust all their administrative remedies. Specifically, the Homeowners Associations contend that, due to the Taxing Authorities' failure to comply

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<sup>1</sup> This section was repealed by P.L. 232-2017, SEC. 26, effective July 1, 2017 and replaced by Indiana Code section 6-1.1-26-1.1.

<sup>2</sup> This section was repealed by P.L. 232-2017, SEC. 30, effective July 1, 2017 and replaced by Indiana Code section 6-1.1-26-2.1.

with their statutory duty to issue a ruling on the claims for refund, they could not take the next step and appeal to the Board of Tax Review to obtain a final determination. Thus, the Homeowners Associations sought from the trial court a mandate ordering the Taxing Authorities to act according to their statutory duties.<sup>3</sup>

[14] The Homeowners Associations' argument derives from Indiana Code section 6-1.1-26-3(a) which provided:

**A refund claim** which is filed under section 1 of this chapter and which is not subject to review by the department of local government finance under section 2 of this chapter **shall be either approved or disapproved by the county auditor, the county treasurer, and the county assessor.**

(emphasis added). The Homeowners Associations claim the Taxing Authorities are duty-bound to enter rulings or orders declaring approval or disapproval of their claims for refund but that, thus far, the Taxing Authorities have failed or refused to do so. The Homeowners Associations assert that, as it stands now, they lack effective recourse to address the alleged errors concerning their refunds and to pursue any administrative remedies because they have no ruling from which to appeal to the Board of Tax Review to obtain a final determination.

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<sup>3</sup> An action for mandate may be prosecuted against any inferior tribunal, corporation, public or corporate officer, or person to compel the performance of any act that the law specifically requires or duty resulting from any office, trust, or station. Ind. Code § 34-27-3-1 (1998).

[15] The Taxing Authorities contend there is no “room for any further notification” because “the checks are notification.” Tr. Vol. II, p. 18. While refund checks are an indication that a claim for refund has, at least partially, been approved, they are merely a result of such decision and not the decision itself. Stated another way, the refund checks are not a ruling determining the rights of the parties that could serve as a basis for review by the Board of Tax Review or as a final determination for judicial review in the Tax Court.

[16] Utilizing the compulsory term “shall,” Section 6-1.1-26-3(a) clearly requires the Taxing Authorities to issue some type of ruling on a refund claim. *See Breitweiser v. Ind. Office of Envtl. Adjudication*, 810 N.E.2d 699 (Ind. 2004) (stating that our courts have customarily regarded “shall” as imposing mandatory obligation). Though Section 6-1.1-26-3(a) imposes this duty, the statutory scheme does not provide a method for taxpayers to obtain a ruling if the Taxing Authorities fail to act. Their failure to act here deprives the Homeowners Associations of their right to review of the Taxing Authorities’ administrative determination by the Board of Tax Review. Such a result frustrates the exhaustion of remedies requirement and leads to both the elimination of an agency’s opportunity and autonomy to correct errors and the initiation of inefficient and premature litigation.<sup>4</sup>

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<sup>4</sup> The General Assembly has since addressed the issue presented here when it repealed Section 6-1.1-26-3 on July 1, 2017 and added Section 6-1.1-26-2.1 which provides, in part, that if the county auditor approves a claim for refund, the county treasurer and county assessor must then each certify their approval or denial of the refund. Ind. Code § 6-1.1-26-2.1(b). In addition, if a refund is not paid within 120 days from the date the



[17] The Homeowners Associations allege that their remedy from this legal quagmire lies in mandamus, and they sought from the trial court a mandate ordering the Taxing Authorities to act according to their statutory duties. In the companion cases of *State Board of Tax Commissioners v. Mixmill Manufacturing Co.*, 702 N.E.2d 701 (Ind. 1998) and *State Board of Tax Commissioners v. L.H. Carbide Corp.*, 702 N.E.2d 706 (Ind. 1998), our Supreme Court directed the taxpayers to bring mandamus actions in a court of general jurisdiction naming the county officials as the defendants where the Tax Court lacked jurisdiction to decide the cases because there was no final determination by the appropriate state agency. The court thus stated, “failure of an administrative agency to act can confer jurisdiction on the trial court to order the agency to act, but not to direct any portended result of that action.” *Mixmill Mfg. Co.*, 702 N.E.2d at 704.

[18] Here, although the Taxing Authorities’ duty to act arises under and is imposed by the tax laws of this state, any suit to enforce that duty must nonetheless be brought in a court of general jurisdiction because the “final determination” jurisdictional requirement has not been met in order for the Tax Court to properly assume jurisdiction of the matter. *See id.* at 704. Accordingly, we reverse and remand to the trial court for consideration of the Homeowners Associations’ mandamus action.

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claim was filed, a claimant may file an original action claiming a refund in a court of competent jurisdiction in the county where the property is located. Ind. Code § 6-1.1-26-2.1(e).

[19] Judgment reversed and cause remanded to the trial court.

Robb, J., and Weissmann, J., concur.