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IN THE INDIANA TAX COURT

CHEVROLET OF COLUMBUS, INC.,)
)
Petitioner,)
)
v.) Case No. 21T-TA-00028
)
BARTHOLOMEW COUNTY ASSESSOR,)
)
Respondent.)

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

FOR PUBLICATION
April 8, 2022

WENTWORTH, J.

Chevrolet of Columbus, Inc. challenges the Indiana Board of Tax Review's final determination that its appeals for a correction of error for the 2016 through 2018 tax years were not timely filed. Upon review, the Court reverses the Indiana Board's final determination.

FACTS AND PROCEDURAL HISTORY

In July of 2015, Chevrolet purchased a 4.050 acre parcel of vacant land in

Columbus, Indiana for $1,763,130.00. (See Cert. Admin. R. at 74-76.) Chevrolet subsequently built an automotive sales and service facility on a portion of the land. (See Cert. Admin. R. at 34-35, 74.)

For purposes of the 2016 through 2018 tax years, the Bartholomew County Assessor classified 115,000 square feet of Chevrolet's land as "primary land," i.e., the land upon which the automotive facility was located, and 61,418 square feet as usable undeveloped land, i.e., vacant land held for future development. (See Cert. Admin. R. at 34, 36, 39.) See also REAL PROPERTY ASSESSMENT GUIDELINES FOR 2011 ("Guidelines") (incorporated by reference at 50 IND. ADMIN. CODE 2.4-1-2(c) (2011) (amended 2020)), Bk. 1, Ch. 2 at 65, 72. Ultimately, the Assessor assigned Chevrolet's property an assessed value of $1,734,600 for the 2016 tax year, $3,257,100 for the 2017 tax year, and $3,417,300 for the 2018 tax year. (See Cert. Admin. R. at 34-41, 144.)

On September 3, 2019, Chevrolet filed three appeals seeking to correct "[a] clerical, mathematical, or typographical" error in its land assessments for the 2016 through 2018 tax years. (See Cert. Admin. R. at 5-6, 11-12, 17-18.) On January 7, 2020, the Bartholomew County Property Tax Assessment Board of Appeals ("PTABOA") conducted a hearing on all three of Chevrolet's appeals. (See, e.g., Cert. Admin. R. at 4.) One week later, the PTABOA notified Chevrolet that each appeal had been denied. (See Cert. Admin. R. at 3-4, 9-10, 15-16.)

On February 18, 2020, Chevrolet sought review with the Indiana Board, electing to have its appeals heard pursuant to the Indiana Board's small claims procedures. (See, e.g., Cert. Admin. R. at 1-2.) On March 25, 2021, the Indiana Board conducted a hearing on the appeals during which Chevrolet claimed (via its tax representative) that for the

2016 through 2018 tax years, the county's land order[1] established that primary land was to be assessed at $10 per square foot and usable undeveloped land at $3 per square foot. (See Cert. Admin. R. at 22-23, 135, 146, 149-51, 154.) Chevrolet maintained that contrary to that clear directive, its primary land was assessed at $13 per square foot in 2016 and 2017 and at $15 per square foot in 2018, while its usable undeveloped land was assessed at $3.90 per square foot in 2016 and 2017 and at $4.50 per square foot in 2018. (See Cert. Admin. R. at 150-51, 158.) To support its claim that its land was incorrectly assessed, Chevrolet presented several documents, including a copy of Bartholomew County's land order for the years at issue along with an email containing an excerpt of that land order. (See Cert. Admin. R. at 30-31, 61-67, 147-49.) Chevrolet explained that to correct the math errors in its land assessments it simply multiplied the square footage of its primary land (i.e., 115,000) and usable undeveloped land (i.e., 61,418) by the correct base rates ($10 and $3, respectively), added the products together, and arrived at land assessments of $1,334,300 for the years at issue. (See Cert. Admin. R. at 154, 169.)

In response, the Assessor asserted that Chevrolet's appeals should be denied because she used the actual base rates to value its land for the years at issue, and Chevrolet's evidence, an alleged copy of the Bartholomew County land order containing proposed base rates, did not show otherwise. (See Cert. Admin. R. at 146, 154-55, 160-65.) The Assessor presented several property record cards to demonstrate that between the 2012 and 2016 tax years she applied a base rate of $13 per square foot to all of the

[1] Land orders provide the base rates that are to be applied to the land in each of the townships throughout a county. See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2011 (incorporated by reference at 50 IND. ADMIN. CODE 2.4-1-2(c) (2011) (2020)), Bk. 1, Ch. 2. See also IND. CODE § 6-1.1-4-13.6 (2016).

primary land in Chevrolet's "neighborhood" and a base rate of $3.90 per square foot to all usable undeveloped land. (See Cert. Admin. R. at 88-107, 160-61.) See also Guidelines, Bk. 2, Glossary at 16 (defining "neighborhood" as "[a] geographical area exhibiting a high degree of homogeneity in residential amenities, land use, economic and social trends, and housing characteristics"). In addition, the Assessor claimed that Chevrolet's correction of error appeals were untimely because they challenged the assessed value of its property, a purely subjective issue that was not proper for the correction of error appeal procedure. (See Cert. Admin. R. at 146-47, 155-57, 169.) The Assessor also requested that Chevrolet's 2016 assessment be increased from $1,734,500 to $1,763,130 to reflect its 2015 purchase price. (See Cert. Admin. R. at 160.)

On June 23, 2021, the Indiana Board issued its final determination finding Chevrolet's appeals for a correction of error were untimely filed. (See Cert. Admin. R. at 142 ¶ 29.) In so doing, the Indiana Board explained that "Chevrolet's request for relief plainly show[ed] that it was disputing [its land's] assessed value[s]" despite the fact that it "checked the box indicating that it was alleging a clerical, mathematical, or typographical mistake[.]" (See Cert. Admin. R. at 139-40 ¶ 17.) As such, the Indiana Board explained that Chevrolet was required to file its appeals within the 45-day statutory deadline for challenging a property's assessed value, not the three-year deadline applicable for challenging objective math errors. (See Cert. Admin. R. at 139-41 ¶¶ 16-25.) Consequently, the Indiana Board ordered the land assessments to remain unchanged, and did not address the merits of either Chevrolet's claims regarding the propriety of its 2016 through 2018 land assessments or the Assessor's claims about the authenticity of the Bartholomew County land order and Chevrolet's 2016 assessment. (See Cert.

Admin. R. at 141-42 ¶¶ 26-29.)

On July 29, 2021, Chevrolet initiated this original tax appeal. After the matter was fully briefed on November 23, 2021, the Court took the case under advisement. Additional facts will be supplied when necessary.

STANDARD OF REVIEW

The party seeking to reverse an Indiana Board final determination bears the burden of demonstrating its invalidity. Hatke v. Potter, 173 N.E.3d 728, 729 (Ind. Tax Ct. 2021). Therefore, Chevrolet must demonstrate to the Court that the Indiana Board's final determination 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. See IND. CODE § 33-26-6-6(e)(1)-(5) (2022).

LAW

When Chevrolet filed its three appeals for a correction of error with the PTABOA in 2019, Indiana Code § 6-1.1-15-1.1(a) authorized taxpayers like Chevrolet to initiate appeals of real property assessments by filing a written notice on a form designated by the Department of Local Government Finance with their township or county assessor. See IND. CODE § 6-1.1-15-1.1(a) (2019). (See also, e.g., Cert. Admin. R. at 5-6 (the "Taxpayer's Notice to Initiate an Appeal" ("Form 130")).) A taxpayer's appeal, with certain exceptions that do not apply in this case, could raise any claim of error related to the following:

> (1) The assessed value of property[;]

(2) The assessment was against the wrong person[;]

(3) The approval, denial, or omission of a deduction, credit, exemption, abatement, or tax cap[;]

(4) A clerical, mathematical, or typographical mistake[;]

(5) The description of the real property[; and]

(6) The legality or constitutionality of a property tax or assessment.

See I.C. § 6-1.1-15-1.1(a), (e), (h).

The statute further provided that if a taxpayer appealed an assessment that occurred before January 1, 2019, on the basis that there was an error in the assessed value of its property, the appeal could be filed any time after the assessing official's action, but not later than the earlier of:

(A) forty-five (45) days after the date on which the notice of assessment is mailed by the county; or

(B) forty-five (45) days after the date on which the tax statement is mailed by the county treasurer, regardless of whether the assessing official changes the taxpayer's assessment.

I.C. § 6-1.1-15-1.1(b)(1). If, however, the taxpayer appealed its assessment based on one or more of the objective errors listed under Indiana Code § 6-1.1-15-1.1(a)(2)-(6), the appeal must be filed not later than three years after the taxes were first due. I.C. § 6-1.1-15-1.1(b). See also Square 74 Assocs. LLC, v. Marion Cnty. Assessor, 138 N.E.3d 336, 340 (Ind. Tax. Ct. 2019) (providing that objective errors are errors capable of correction without resort to subjective judgment); IND. CODE § 6-1.1-22-9(a) (2016) (providing that property taxes assessed for a year generally "are due in two (2) equal installments on May 10 and November 10 of the following year").

ANALYSIS

On appeal, Chevrolet contends that the Indiana Board's final determination that its three correction of error appeals were filed untimely must be reversed given the Indiana Supreme Court's recent decision that the application of a base rate discount in a county land order was an objective error, not a subjective error regarding a property's assessed value. (See Pet'r Br. at 4-6 (citing Muir Woods Section One Ass'n v. O'Connor, 172 N.E.3d 1205 (Ind. 2021)).) Thus, Chevrolet asks the Court to remand this matter to the Indiana Board to correct its land assessments by applying the required $10 and $3.90 base rates from the applicable county land order. (See Pet'r Br. at 6-8.)

The Assessor, on the other hand, claims that Chevrolet's attempt to "piggyback" on Muir Woods must be rejected because that case "does not give taxpayers the opportunity to argue about any wrong perceived to have occurred [in a land assessment] simply because a land order is part of the argument." (See Resp't Br. at 6, 10-11.) The Assessor explains that Muir Woods upholds all the caselaw that required taxpayers, like Chevrolet, to follow the shorter appeal deadline when challenging nothing more than assessment methodology. (See Resp't Br. at 10-13.) (See also Resp't Br. at 5, 8-10 (asserting that Chevrolet has only raised valuation issues by claiming "the land base rate was not the right number").) Moreover, the Assessor claims that even if Chevrolet's appeals were timely filed, Chevrolet is not entitled to the relief it seeks because it simply provided the Indiana Board "with a hotchpotch of documents" rather than the actual Bartholomew County land orders that were to be applied during the years at issue. (See Resp't Br. at 11, 13-14.)

In Muir Woods, the Indiana Supreme Court evaluated whether the claim that an

assessor failed to apply a certain base rate discount when calculating the assessed value of common area land was an objective error that could be raised under the former Form 133 correction of error process. See Muir Woods Section One Ass'n, 172 N.E.3d at 1206. The Indiana Supreme Court explained that when the Form 133 appeal process was in use, it "could only be used to remedy 'errors which can be corrected without resort to subjective judgment and according to objective standards.'" Id. at 1207 (quoting Muir Woods, Inc. v. O'Connor, 36 N.E.3d 1208, 1213 (Ind. Tax Ct. 2015), review denied). The Indiana Supreme Court further explained that while an assessor's initial determination of a base rate was inherently subjective, the application of the discount factor as prescribed in the land order was not. Id. Consequently, the Indiana Supreme Court found that the use of the Form 133 correction of error process was proper because it was used to "challeng[e] the objective application of a prescribed discount rate to an already-determined base rate." Id. at 1208 (emphasis added).

In this case, similar to the appeal in Muir Woods, Chevrolet's three appeals present questions about the objective application of an already-determined base rate prescribed by a land order. Specifically, during the administrative process, Chevrolet claimed each of its land assessments contained a "math error" because the Assessor did not use the established base rates in Bartholomew County's land order when calculating the assessed values of its land. (See, e.g., Cert. Admin. R. at 149-51.) Consequently, the Court finds that the errors raised in Chevrolet's appeals are not inherently subjective, but instead challenge the objective application of a pre-determined base rate: the base rates from Bartholomew County's land order were either applied or they were not.

Whether Chevrolet's correction of error appeals challenge objective errors is

critical due to the differing time limitations for appealing an objective error versus a subjective error. See Square 74 Assocs., 138 N.E.3d at 340-46 (affirming the Indiana Board's dismissal of Form 133 correction of error appeals as untimely because they sought to correct subjective errors); Pulte Homes of Indiana, LLC v. Hendricks Cnty. Assessor, 42 N.E.3d 590, 593-96 (Ind. Tax Ct. 2015) (explaining that the Form 133 correction of error appeal procedure is reserved for the correction of objective errors only), review denied; Hatcher v. State Bd. of Tax Commr's, 561 N.E.2d 852, 853-58 (Ind. Tax Ct. 1990) (explaining that errors susceptible to correction under the Form 133 correction of error appeal procedure are objective errors, not errors that require subjective judgments). Prior to 2017, taxpayers could file a Form 133 correction of error appeal, taking advantage of the extended statute of limitations under Indiana Code § 6-1.1-15-12, to correct the following objective errors in assessments:

> (1) The description of the real property was in error[;]
>
> (2) The assessment was against the wrong person[;]
>
> (3) Taxes on the same property were charged more than one (1) time in the same year[;]
>
> (4) There was a mathematical error in computing the taxes or penalties on the taxes[;]
>
> (5) There was an error in carrying delinquent taxes forward from one (1) tax duplicate to another[;]
>
> (6) The taxes, as a matter of law, were illegal[;]
>
> (7) There was a mathematical error in computing an assessment[; and]
>
> (8) Through an error or omission by any state or county officer, the taxpayer was not given:
>
> (A) the proper credit under IC 6-1.1-20.6-7.5 for property taxes imposed for an assessment date after January 15, 2011;

(B) any other credit permitted by law;

(C) an exemption permitted by law; or

(D) a deduction permitted by law.

IND. CODE § 6-1.1-15-12(a) (2017) (repealed 2017). See also Hutcherson v. Ward, 2 N.E.3d 138, 142 (Ind. Tax Ct. 2013) (explaining that as of 2013, the Form 133 correction of error appeal procedure was not restricted to a three-year time limitation given the repeal of 50 IAC 4.2-3-12).

In 2017, the Legislature passed Senate Enrolled Act No. 386, which revised the property assessment appeal process by (1) repealing Indiana Code § 6-1.1-15-1 that required the use of the former Form 130 to challenge subjective errors in assessments, (2) repealing Indiana Code § 6-1.1-15-12 that required the use of a Form 133 to challenge objective errors in assessments, (3) adopting Indiana Code § 6-1.1-15-1.1 that required the use of a single form to challenge both subjective and objective errors in assessments (i.e., the revised Form 130), and (4) adding a three-year statute of limitations for filing a correction of error appeal. See IND. CODE § 6-1.1-15-1 (2017) (repealed 2017); I.C. § 6-1.1-15-12; IND. CODE § 6-1.1-15-1.1 (2017) (amended 2019); Pub.L. No. 232-2017. In so doing, however, the Legislature did not eliminate the long-standing distinction between objective and subjective errors. Instead, as just mentioned, taxpayers now use just one form, the revised Form 130, to challenge both subjective errors in their assessments (under Section II "Reason for Appeal of Current Year's Assessment") or objective errors in their assessments (under Section III "Correction of Error Per IC 6-1.1-15-1.1(a) and (b)"). (See, e.g., Cert. Admin. R. at 5-6.) For the most part, the objective errors enumerated in Indiana Code § 6-1.1-15-1.1(a)(2)-(6) are the same types of errors as

formerly listed under Indiana Code § 6-1.1-15-12. Compare I.C. § 6-1.1-15-1.1(a)(2)-(6) (describing what errors can be corrected under the revised Form 130 correction of error appeal procedure), with I.C. § 6-1.1-15-12(a) (describing what errors could be corrected under the Form 133 appeal procedure).

There is no dispute that Chevrolet's three appeals were initiated using the revised Form 130 correction of error appeal procedure. (See Cert. Admin. R. at 5-6, 11-12, 17-18.) There is also no dispute that Chevrolet filed its appeals for a correction of error within three years of when the taxes on its 2016 through 2018 assessments were first due. (See Cert. Admin. R. at 5-6, 11-12, 17-18, 139-40 ¶ 17.) Moreover, Chevrolet's appeals raised objective errors concerning whether the Assessor used base rates from the applicable Bartholomew County land order when calculating the assessed values of its land. Accordingly, the Indiana Board erred in finding that Chevrolet's appeals for a correction of error were not timely filed.

CONCLUSION

For the foregoing reasons, the Indiana Board's final determination is REVERSED and REMANDED. On remand, the Indiana Board shall determine whether the Assessor applied the proper base rate to Chevrolet's 2016 through 2018 land assessments and address the alleged 2016 underassessment based exclusively on the evidence already included in the certified administrative record.