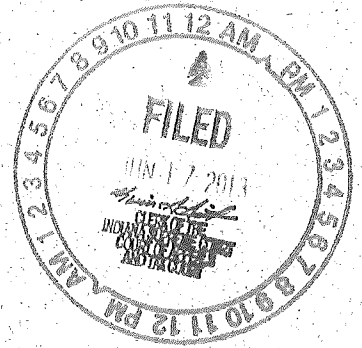


IN THE
INDIANA TAX COURT
CASE NO. 71T10-1301-TA-2



UNION TOWNSHIP,
ST. JOSEPH COUNTY,

Appellant / Petitioner,

v.

STATE OF INDIANA,
DEPARTMENT OF LOCAL
GOVERNMENT FINANCE,

Appellee / Respondent.

) On Appeal from the
) Department of Local
) Government Finance

) No. A12-012-ERROR
) No. A12-012-SHORTFALL

REPLY BRIEF OF APPELLANT / PETITIONER
UNION TOWNSHIP, ST. JOSEPH COUNTY

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)	No. A12-012- SHORTFALL
STATE OF INDIANA, DEPARTMENT)	
OF LOCAL GOVERNMENT FINANCE,)	
)	
Appellee / Respondent.)	

REPLY BRIEF OF PETITIONER

In Reply to the Department of Local Government Finance (“DLGF”) Response Brief, Union Township, respectfully, states the following:

SUMMARY OF ARGUMENT

The DLGF’s final determinations should not be affirmed because the DLGF’s determinations were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. First, the DLGF’s relies on I.C. § 6-1.1-17-1(a)(6) as an excuse not to investigate potential assessed value errors. It also misinterprets I.C. § 6-1.1-18.5-14 by putting all of the onus on Union to verify whether an error exists. The statute does not read this way. Second, the DLGF provides no sound legal conclusion for Union to accept that I.C. § 6-1.1-18.5-12 appeal procedures apply to I.C. § 6-1.1-18.5-14. Finally, Union provided official St. Joseph County documents to the DLGF so that it could make a determination of whether a shortfall appeal existed under I.C. § 6-1.1-18.5-16, which allows for shortfall appeals due to erroneous assessed valuation.

ARGUMENT

I. Indiana Code 6-1.1-17-1(a)(6) does not provide the DLGF with an excuse to ignore whether an assessed value error existed affecting Union Township's property tax limitations.

Respondent simply argues it did not need to consider Union Township's ("Union") Error Petition under I.C. § 6-1.1-18.5-14 ("Section 14") because it certified assessed values ("AV") based on the most recent current abstract of property in accordance with I.C. § 6-1.1-17-1(a)(6) ("Section 17"). The DLGF misses the point of Union's petition, it misinterprets Section 14, and it mistakenly relies on Section 17 as an escape hatch.

Union petitioned the DLGF for correction of an error because this is all it could do when it found out that the DLGF certified AV was \$39.4 million higher than the AV used by St. Joseph County to calculate property tax bills and it could get no answer from St. Joseph County regarding why there was a difference. (Pet. Brief, p. 2-3). Union could only believe some error did occur on the local level since the 2010 and 2011 AV's the DLGF used were fairly consistent. (Pet. Brief, p. 3). So, Union looked to the DLGF to make a determination of whether there was an error in AV by way of submitting its Error Petition. (Pet. Brief, p. 3). However, the DLGF believes it had no reason to investigate whether in fact there was an error because it had the authority to rely on the abstract AV's. (Resp. Brief, p. 5-8). Section 17 does not provide an escape hatch to ignore potential errors for which the DLGF has the authority to correct under Section 14.

The DLGF maintains that Union should have provided the DLGF with documentation that an error, in fact, existed. (Resp. Brief, p. 4). The DLGF misinterprets Section 14. Section 14 allows the DLGF to correct any advertising, mathematical, or data error on the local level "*if the department finds that the error affects*" the property tax limitations. I.C. § 6-1.1-18.5-14(a)

(Westlaw through June 29, 2013, excluding 205-2013) (emphasis added). Section 14 specifically provides that the DLGF “may order a correction” or the DLGF may seek “on its own” a correction if the error affects property tax limitations. *Id.* There is no language in Section 14 that requires Union to provide the correct AV number. Union has no control over the AV process. Section 14 puts some responsibility on the DLGF to investigate whether an error does, in fact, exist. Union realizes that the DLGF has limited resources and cannot go on wild goose chases. However, Union’s AV history should have alerted the DLGF that something could be wrong. Had the DLGF investigated, it could have simply responded to the Error Petition that either the AV’s on the local level were correct or not. If the AV’s were incorrect on the local level, this would have affected the property tax limitation calculation, which would have required a correction. (Pet. Brief, p. 2, 10).

Section 17 does not absolve the DLGF from making any corrections after the budgets are certified simply because it had authority to certify a budget on abstract AV. Union agrees that Section 17 provides a mechanism for timely certifying budgets. (Pet. Brief, p. 13). It does not provide a mechanism for the DLGF to ignore its statutory authority under Section 14. (Pet. Brief, p. 13-15). Under Section 14, the DLGF had statutory authority to determine whether there was an error in data on the local level and it chose not to exercise that authority. This potentially harmed Union. Therefore, the DLGF’s denial was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

II. The DLGF provides no sound legal conclusion for applying I.C. § 6-1.1-18.5-12 appeal procedures to I.C. § 6-1.1-18.5-14.

The DLGF also denies Union’s Error Petition because it believed Union did not comply with I.C. § 6-1.1-18.5-12 (“Section 12”) appeal procedures. (Resp. Brief, p.8-10). Union agrees that “[t]wo statutes dealing with the same subject matter should be read together and construed

so as to harmonize and give effect to each. (Resp. Brief, p. 9 (quoting *Barr v. Sun Exploration Co., Inc.*, 436 N.E.2s 821, 825 (Ind. App. 1982))). However, this does not give the DLGF authority to read into the law what is not there. The DLGF provides no further basis for why we should believe Section 14 corrections must follow Section 12 appeal procedures. As Petitioner has already stated, other section of chapter 18.5 refer specifically to section 12 appeal procedures. (Pet. Brief, p. 10-12). Section 14 makes no reference to Section 12 whatsoever nor does Section 12 make reference to Section 14.

Therefore, the DLGF's denial that Union did not follow Section 12 appeal procedures is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

III. Union did submit official county reports to the DLGF to enable them to evaluate Union's shortfall appeal.

The DLGF argues that the spreadsheets provided to them "did *not appear* to be official county reports" nor were they in a "format" the DLGF was "familiar" with. The DLGF states it only relies on actual county reports when reviewing appeals. (Resp. Brief, p. 12) (emphasis added). This is understandable. What is not understandable is why the DLGF did not accept that the reports were provided by St. Joseph County. (Cert. Rec. 99-101). They must have believed Umbaugh was lying. There is no support for this belief because the requested reports submitted by Umbaugh did not contain any headings or reference documenting that Umbaugh prepared the reports. (Cert. Rec. 99-101). In fact, the email specifically referenced that the reports were provided by the St. Joseph County Auditor's office. *Id.*

Also, the DLGF footnotes that a shortfall appeal due to erroneous assessed based on Union's situation is not appealable under I.C. § 6-1.1-18.5-16 ("Section 16") because it states that this code section only deals with errors and refunds. (Resp. Brief, p. 12, fn. 3). Union does not understand this argument. Section 16 provides that a civil taxing unit may request an

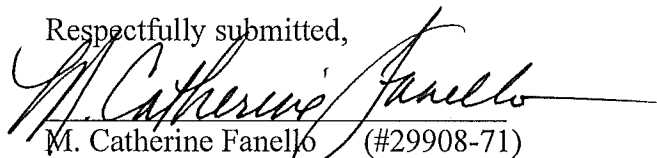
increase in the property tax limitation if, “ (1) the civil taxing unit experienced a property tax revenue shortfall *that resulted from erroneous assessed valuation figures being provided to the civil taxing unit*; (2) the *erroneous assessed valuation figures* were used by the civil taxing unit in determining its total property tax rate; and (3) the *error in the assessed valuation figures* was found after the civil taxing unit’s property tax levy resulting from that total rate was finally approved by the department of local government finance.” I.C. § 6-1.1-18.5-16 (Westlaw through June 29, 2013, excluding P.L. 205-2013). Clearly, Section 16 provides for a shortfall appeal due to erroneous assessed values.

Whether Union is, in fact, due a shortfall appeal based on these circumstances was never determined because the DLGF incorrectly believed that reports provided by Umbaugh were not those of St. Joseph County. Therefore, the DLGF’s denial of the shortfall appeal was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

CONCLUSION

Based on the foregoing, Union requests this Court to remand Union’s Error Petition and Shortfall Appeal back to the DLGF for further determination because the DLGF’s final determinations were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

Respectfully submitted,



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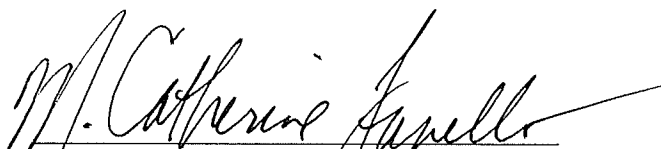
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WORD COUNT VERIFICATION

The undersigned, counsel of record for the Appellant/Petitioner, in compliance with Rule 44 F, hereby certifies, the Reply Brief in its entirety (including the table of contents, table of authorities, and certificate of service) consists of 1, 607 words.

Dated: June 17, 2013

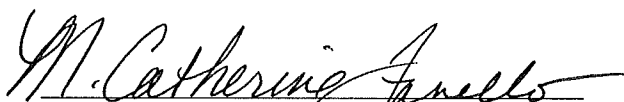

M. Catherine Fanello

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that the original and eight (8) copies of the Reply to Respondent's Brief was forwarded to the Clerk of the Indiana Tax Court via Federal Express, and a copy of each to the following attorney of record:

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Deputy Attorney General
Office of the Indiana Attorney General
302 W. Washington St.
IGCS 5th Floor
Indianapolis, IN 46204

By United States First Class Mail, postage pre-paid, this 17th day of June, 2013


M. Catherine Fanello