

ATTORNEY FOR PETITIONERS:
FRANK D. OTTE
CLARK, QUINN, MOSES, SCOTT
& GRAHN, LLP
Indianapolis, IN

ATTORNEYS FOR RESPONDENTS:
STEVE CARTER
ATTORNEY GENERAL OF INDIANA
AMBER MERLAU ST.AMOUR
DEPUTY ATTORNEY GENERAL
Indianapolis, IN

**IN THE
INDIANA TAX COURT**

ARCADIA COURT APARTMENTS OF)
BLOOMINGTON (1), (2), (3) and BRANDON)
COURT APARTMENTS OF BLOOMINGTON,¹)
)
Petitioners,)
)
v.)
)
STATE BOARD OF TAX COMMISSIONERS,)
BETSY J. BRAND, MEMBER,)
TERRY G. DUGA, MEMBER,)
)
Respondents.)

Cause Nos. 49T10-0501-TA-2;
49T10-0501-TA-3;
49T10-0501-TA-4;
49T10-0501-TA-5

ORDER ON INDIANA BOARD OF TAX REVIEW'S MOTION TO DISMISS AND
PETITIONERS' MOTION TO FILE AN AMENDED PETITION

NOT FOR PUBLICATION

June 6, 2005

FISHER, J.

Arcadia Court Apartments of Bloomington (1), (2), (3) and Brandon Court
Apartments of Bloomington (collectively, the Apartments) appeal the final

¹ Arcadia Court Apartments of Bloomington and Brandon Court Apartments of
Bloomington initiated four original tax appeals concerning four separate parcels.
Because the issues raised in each of the four appeals are identical, the Court
consolidates the appeals. Therefore, while the Apartments have filed four of each
document (i.e., four petitions, four motions, etc.), the Court will refer to and cite to all in
the singular.

determinations of the Indiana Board of Tax Review (Indiana Board) valuing their real property for the 2002 tax year. The matter is currently before the Court on the Indiana Board's motion to dismiss and the Apartments' motion to file amended petitions. For the following reasons, the Court GRANTS the Indiana Board's motion and DENIES the Apartments' motion.

FACTS AND PROCEDURAL HISTORY

The Apartments are located in Monroe County, Indiana. Believing their 2002 property assessments to be improper, the Apartments appealed to the Monroe County Property Tax Assessment Board of Appeals (PTABOA). The PTABOA denied the appeals; therefore, the Apartments subsequently appealed to the Indiana Board. The Indiana Board issued its final determinations on November 30, 2004, denying the Apartments' request for relief.

On January 13, 2005, the Apartments initiated four original tax appeals. On March 7, 2005, the Indiana Board filed a motion to dismiss the appeals, claiming that because the Indiana Board was an improper party,² the Court lacked subject matter jurisdiction. In response, the Apartments filed a motion to file an amended petition on March 25, 2005. On May 9, 2005, the Court conducted a hearing on the motions. Additional facts will be supplied as necessary.

² The Apartments named the State Board of Tax Commissioners (State Board) and members Betsy J. Brand and Terry G. Duga as the respondents in both the captions and opening paragraphs of their petition; yet the Apartments referred to the Indiana Board as the respondent in the second numbered paragraph. (See Pet'rs Pet. at 1.) Because the State Board was abolished effective December 31, 2002, and Betsy Brand and Terry Duga are actually members of the Indiana Board (the State Board's successor), the Court therefore construes the Apartments' naming of the State Board as respondent as naming the Indiana Board. See 2001 Ind. Acts 198 § 119(b)(2). (See *a/so* Hr'g Tr. at 4.)

ANALYSIS

The Indiana Board's Motion to Dismiss

The first issue before the Court is whether it has jurisdiction over the Apartments' appeal. "Every action has three jurisdictional elements: (1) jurisdiction of the subject matter; (2) jurisdiction of the person; and (3) jurisdiction of the particular case." *Carroll County Rural Elec. Membership Corp. v. Indiana Dep't of State Revenue*, 733 N.E.2d 44, 47 (Ind. Tax Ct. 2000) (citation omitted). The Indiana Board's motion claims that the Court lacks subject matter jurisdiction over the Apartments' appeal. (See Resp't Mot. to Dismiss at 1-2.) The Court disagrees.

"Subject matter jurisdiction is the power of a court to hear and determine the general class of cases to which the proceedings before it belong." *Musgrave v. State Bd. of Tax Comm'rs*, 658 N.E.2d 135, 138 (Ind. Tax Ct. 1995) (citation omitted). A determination as to whether subject matter jurisdiction exists "depends on whether the type of claim advanced by the petitioner falls within the general scope of authority conferred upon the court by constitution or statute." *Id.* (citation omitted).

The general scope of authority conferred upon the Tax Court is governed by Indiana Code § 33-26-3-1. This statute provides that the Tax Court has "exclusive jurisdiction over any case that arises under the tax laws of Indiana and that is an initial appeal of a final determination" of the Indiana Board. IND. CODE ANN. § 33-26-3-1 (West 2005). The Apartments' appeal meets both jurisdictional prerequisites: it challenges the assessment of Indiana's property tax and it requests review of a final determination of the Indiana Board. (See Pet'rs Pet. at 1.) Accordingly, the Court has subject matter jurisdiction over the Apartments' appeal.

Nonetheless, the Court notes that the Indiana Board's motion also challenges the Court's jurisdiction over the particular case.³ (See Resp't Mot. to Dismiss at 3.) "Jurisdiction over the particular case refers to the 'right, authority, and power to hear and determine a specific case within the class of cases over which a court has subject matter jurisdiction.'" *Carroll County*, 733 N.E.2d at 50 (quoting *Adler v. Adler*, 713 N.E.2d 348, 352 (Ind. Ct. App. 1999)). The Indiana Board argues that the Court lacks jurisdiction over the particular case because the Apartments' petition improperly named the Indiana Board as the sole respondent. (See Resp't Mot. to Dismiss at 2-3.) The Court agrees.

When this Court has subject matter jurisdiction pursuant to Indiana Code § 33-26-3-1, an appeal is subject to certain provisions and requirements of the Administrative Orders and Procedures Act (AOPA), including Indiana Code § 4-21.5-5-7(b)(4). See IND. CODE ANN. § 6-1.1-15-5(b) (West Supp. 2004-2005). That section provides, among other things, that "[a] petition for review must . . . set forth the . . . [i]dentification of persons who were parties in any proceedings that led to the agency action." IND. CODE ANN. § 4-21.5-5-7(b)(4) (West 2005).

³ While the Indiana Board filed its motion to dismiss pursuant to Indiana Trial Rule 12(B)(1) and raises the defense of lack of subject matter jurisdiction, within the body of the motion it challenges the Court's jurisdiction over the particular case. (See Resp't Mot. to Dismiss at 2-3.) Because the Indiana Board specifically asserted that the Court lacked jurisdiction over the particular case in its motion, the Court will address the issue. See *Harp v. Indiana Dep't of Highways*, 585 N.E.2d 652, 660 (Ind. Ct. App. 1992). Nevertheless, the Court reminds the Indiana Board that the proper way to challenge the Court's jurisdiction over the particular case is a Trial Rule 12(B)(6) motion, not a 12(B)(1) motion. See *Miller Village Props. Co., LLP v. Indiana Bd. of Tax Review*, 779 N.E.2d 986, 990 n.3 (Ind. Tax Ct. 2002) (citing *Carroll County Rural Elec. Membership Corp. v. Indiana Dep't of State Revenue*, 733 N.E.2d 44, 50 (Ind. Tax Ct. 2000)), review denied.

In their petition seeking judicial review of the Indiana Board's final determination, the Apartments named the Indiana Board as the sole respondent. Indiana Code § 6.1-1-15-5(b) specifies, however, that the parties to judicial review of a final determination of the Indiana Board are: “[a] township assessor, county assessor, member of a county property tax assessment board of appeals, or county property tax assessment board of appeals that made the original assessment determination under appeal[.]” A.I.C. § 6.1-1-15-5(b). Similarly, Indiana Tax Court Rule 4(B)(2)(a) states that “[i]n original tax appeals initiated by taxpayers, the *named respondent shall be . . .* the local governmental official or entity that made the original assessment valuation, exemption determination, or other determination under the tax laws that was the subject of the proceedings before the Indiana Board[.]” Ind. Tax Court Rule 4(B)(2)(a) (emphasis added). As such, the Indiana Board is not a proper party to judicial review of its own final determination.⁴ See *Miller Village Props. Co., LLP v. Indiana Bd. of Tax Review*, 779 N.E.2d 986, 989-90 (Ind. Tax Ct. 2002), *review denied* (footnote added).

The Apartments' petition does not comply with the requirements for initiating an original tax appeal. See A.I.C. § 6-1.1-15-5(b); Tax.Ct. R. 4(B). Accordingly, this Court lacks jurisdiction over the particular case. See *Thousand Trails, Inc. v. State Bd. of Tax Comm'rs*, 757 N.E.2d 1072, 1075-76 (Ind. Tax Ct. 2001) (stating that the Tax Court

⁴ The Court notes that the Apartments' petition identified Monroe County Assessor, Judith Sharp, as a “part[y] involved in this proceeding[.]” (See Pet'rs Pet. at 1.) See also IND. CODE ANN. § 4-21.5-5-7(b)(4) (West 2005) (requiring that a petition for review must identify the persons who were parties in any proceedings that led to the agency action). Nevertheless, she was not named as the respondent in the caption or elsewhere, as required by Indiana Code § 6-1.1-15-5(b) or Indiana Tax Court Rule 4(B)(2)(a). (See Pet'rs Pet.) Moreover, the Apartments did not serve Judith Sharp with a summons as required by Tax Court Rule 4(B)(4). See Ind. Tax Court Rule 4(B)(4) (requiring service of summons upon the respondent and any other person to be joined as a party). (See also Hr'g Tr. at 8.)

does not have jurisdiction to hear an appeal where the taxpayer does not comply with any statutory requirement for the initiation of the appeal).

The Apartments' Motion to Amend

The Apartments have since filed a motion seeking to amend their original petition so as to add the Monroe County Assessor as a respondent, arguing that the amendment would relate back to the original petition under Trial Rule 15(C). (See *generally* Pet'r Mot. to File Am. Verified Pet.) (See *also* Hr'g Tr. at 7-8.) The Court must, however, deny the motion.

The Apartments were required to initiate an original tax appeal sufficient to invoke the Court's jurisdiction within 45 days after the Indiana Board gave notice of its final determination. See A.I.C § 6.1-1-15-5(c)(1) (West Supp. 2004-2005). The Indiana Board issued its final determination on November 30, 2004; therefore the Apartments were required to invoke this Court's jurisdiction by January 14, 2005. While the Apartments filed their original petitions on January 13, 2005, the petitions did not invoke jurisdiction. "[An] untimely amended petition cannot [now] relate back to a timely-filed original petition that was insufficient to invoke the . . . [C]ourt's jurisdiction." *Miller Village*, 779 N.E.2d at 990 (citing *Indiana Dep't of Env'tl. Mgmt. v. Jennings Northwest Regional Utilities*, 760 N.E.2d 184, 187 (Ind. Ct. App. 2001)). As a result, the Apartments' motion to amend is denied.

CONCLUSION

As the Court does not have jurisdiction over this particular case, the Indiana Board's motion to dismiss is GRANTED. The Apartments' motion to file an amended petition is DENIED.

SO ORDERED this 6th day of June, 2005.

Thomas G. Fisher, Judge
Indiana Tax Court

Distribution:

Frank D. Otte
Attorney at Law
Clark, Quinn, Moses, Scott & Grahn, LLP
One Indianapolis Square, Suite 2200
Indianapolis, IN 46204-2011

Steve Carter
Attorney General of Indiana
By: Amber Merlau St. Amour
Deputy Attorney General
Indiana Government Center South, Fifth Floor
302 West Washington Street
Indianapolis, IN 46204