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IN THE
INDIANA TAX COURT

COMMONWEALTH EDISON COMPANY OF INDIANA, INC.,	)	
Petitioner,	)	
v.	)	Cause Nos. 49T10-9907-TA-171
	)	49T10-0007-TA-83
DEPARTMENT OF LOCAL GOVERNMENT FINANCE,[1]	)	49T10-0107-TA-70
Respondent.	)	

ON APPEAL FROM THREE FINAL DETERMINATIONS OF
THE STATE BOARD OF TAX COMMISSIONERS

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[1] The State Board of Tax Commissioners (State Board) was originally the Respondent in this appeal. However, the legislature abolished the State Board as of December 31, 2001. 2001 Ind. Acts 198 § 119(b)(2). Effective January 1, 2002, the legislature created the Department of Local Government Finance (DLGF), *see* Indiana Code § 6-1.1-30-1.1 (West 2006)(eff. 1-1-02); 2001 Ind. Acts 198 § 66, and the Indiana Board of Tax Review (Indiana Board). IND. CODE ANN. § 6-1.5-1-3 (West 2006)(eff. 1-1-02); 2001 Ind. Acts 198 § 95. Pursuant to Indiana Code § 6-1.5-5-8, the DLGF is substituted for the State Board in appeals from final determinations of the State Board that were issued before January 1, 2002. IND. CODE ANN. § 6-1.5-5-8 (West 2006)(eff. 1-1-02); 2001 Ind. Acts 198 § 95. Nevertheless, the law in effect prior to January 1, 2002 applies to these appeals. A.I.C. § 6-1.5-5-8*. See also* 2001 Ind. Acts 198 § 117. Although the DLGF has been substituted as the Respondent, this Court will still reference the State Board throughout this opinion.

NOT FOR PUBLICATION
March 17, 2006

FISHER, J.

Commonwealth Edison Company of Indiana, Inc. (Commonwealth), a public utility company that owns an electric generating station in Lake County, Indiana, appeals three final determinations of the State Board of Tax Commissioners (State Board) valuing its distributable property for the 1999, 2000, and 2001 tax years (the years at issue). On appeal, the Court must decide whether Commonwealth has demonstrated that its distributable property is entitled to an equalization adjustment of greater than 10.33% for each of the years at issue.[2]

RELEVANT FACTS AND PROCEDURAL HISTORY

For each of the years at issue, Commonwealth filed an annual statement of value with the State Board pursuant to Indiana Code § 6-1.1-8-19. With each statement, Commonwealth requested that the State Board apply an equalization adjustment to its assessment to account for disparate levels of assessment in Lake County.

[2] In its initial complaints, Commonwealth also alleged that: 1) capping agricultural land assessments at $495 an acre unfairly discriminates against taxpayers such as Commonwealth and violates Article X, § 1 of the Indiana Constitution; 2) numerous exemptions and deductions within Indiana's property tax scheme are not provided for in the Indiana Constitution and have the effect of favoring certain types of taxpayers over others, in violation of Article X, § 1 of the Indiana Constitution; and 3) in denying it greater equalization adjustments, the State Board violated both Commonwealth's equal protection rights under the Fourteenth Amendment to the U.S. Constitution and its state equal privileges rights under Article I, § 23 of the Indiana Constitution, thereby entitling it to relief under 42 U.S.C. §§ 1983 and 1988. (*See generally* Pet'r Pets.) Because this Court has previously rejected analogous arguments, it will not analyze Commonwealth's state and federal constitutional claims in this opinion. *See Commonwealth Edison Co. of Indiana v. Dep't of Local Gov't Fin.,* 780 N.E.2d 885, 887 n.2 (Ind. Tax Ct. 2002), *rev'd in part on other grounds by* 820 N.E.2d 1222 (Ind. 2005).

The State Board subsequently issued tentative assessments of Commonwealth's distributable property for each of the years at issue, applying equalization adjustments of 10.33%. Believing the adjustments to be inadequate, Commonwealth objected. The State Board held three separate administrative hearings and then issued orders making the tentative assessments final. In those orders, the State Board determined that Commonwealth had failed to show that its property was entitled to equalization adjustments of greater than 10.33% for the years at issue.

Commonwealth filed three original tax appeals. The Court heard the parties' oral arguments on January 20, 2006. Additional facts will be supplied as necessary.

OPINION AND ANALYSIS

Standard of Review

When this Court reviews a State Board assessment of public utility property, its standard of review is set by statute:

> When a public utility company initiates an appeal under section 30 [of Indiana Code 6-1.1-8], the tax court may set aside the state board of tax commissioners' final assessment and refer the matter to the board with instructions to make another assessment if:
>
> > (1) the company shows that the board's final assessment, or the board's apportionment and distribution of the final assessment, is clearly incorrect because the board violated the law or committed fraud; or
> >
> > (2) the company shows that the board's final assessment is not supported by substantial evidence.

IND. CODE § 6-1.1-8-32 (West 1999) (amended 2001). "Substantial evidence 'means such relevant evidence as a reasonable mind might accept as adequate to support a

conclusion.'" *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs,* 568 N.E.2d 1116, 1122 (Ind. Tax Ct. 1991) (quoting *State Bd. of Tax Comm'rs v. South Shore Marina,* 422 N.E.2d 723, 731 (Ind. Ct. App. 1981).

Discussion

"Equalization is a process applied to certain taxpayers and their property by which the assessed value of a taxpayer's property is adjusted so that it bears the same relationship of assessment value to . . . true tax value [TTV][3] as other properties within the same taxing jurisdiction."[4] *GTE N. Inc. v. State Bd. of Tax Comm'rs,* 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994) (internal quotation and punctuation omitted) (footnotes added). In order to establish its claim for equalization adjustments for the years at issue, Commonwealth must have submitted, during the administrative hearings, "evidence that the assessed values in Lake County were not uniform and equal *with respect to the TTV* of the classes of property in question." *Dep't of Local Gov't Fin. v. Commonwealth Edison Co. of Indiana,* 820 N.E.2d 1222, 1230 (Ind. 2005) (hereinafter, "*ComEd*") (emphasis in original), *reh'g denied*.

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[3] Prior to 2002, property in Indiana was assessed on the basis of its "true tax value" (TTV), which was the value as determined by an application of the State Board's own regulations. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co. of Indiana,* 820 N.E.2d 1222, 1224, 1229 (Ind. 2005) (hereinafter, "*ComEd*"), *reh'g denied*.

[4] In other words, "the equalization process provide[d] the State Board with a method to cure assessment problems and bring all assessments into compliance with Article X, § 1" of Indiana's Constitution, which states that

> The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property, both real and personal.

GTE N. Inc. v. State Bd. of Tax Comm'rs, 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994). *See also* IND. CONST. Art. X, § 1; IND. CODE ANN. § 6-1.1-2-2 (West 1999).

Commonwealth alleges that it produced evidence at its administrative hearings that the assessed values in Lake County were not uniform and equal with respect to the TTV of the classes of property in question. (*See* Pet'r May 27, 2005 Br. at 2.) More specifically, Commonwealth explains that it submitted a copy of the State Board's March 31, 1998 report entitled "An Analysis of Assessment Practices In Lake County, Indiana" (Analysis) as well as testimonial evidence thereon. (*See* Pet'r May 27, 2005 Br. at 2 n.2; Pet'r App. of Pet., Attach. 4.) This Analysis, as Commonwealth further explains, summarizes the results of the State Board's 1997 assessment/assessment ratio study – a study that compared the assessments, as determined by the local township assessors, of randomly selected residential, commercial, and industrial real properties within the various townships of Lake County with the assessments of those same properties as determined by the employees of the State Board, Indiana's "expert assessors." Indeed,

> [a]n assessment ratio study was conducted by the [State Board] to measure the level of assessment and level of uniformity within each township in Lake County. With this approach, approximately 1,200 parcels [of real property] were assessed by state expert assessors from August 1997 through March 1998 throughout Lake County.
>
> Assessment ratios, which measure the level of assessment, were calculated for each parcel and property class, using the following equation: Local Assessment [divided by] State Assessment [equals] Assessment Ratio. An assessment ratio above one (1) indicates that the sample parcel was over-assessed, while a ratio below one (1) indicates that the sample parcel was under-assessed. An assessment ratio equaling one (1) indicates that the local and state assessors agreed on the value of the property.

* * * * *

> Based on these assessment ratios, the level of uniformity was calculated for each township and property class.[5]

(Pet'r App. of Pet., Attach. 4 at 4-5 (footnote added).)

In turn, the Analysis reveals that in North Township, where approximately 93% of Commonwealth's distributable property is located, residential real property was under-assessed by 38%, commercial real property was under-assessed by 11%, and industrial real property was under-assessed by 8%. (Pet'r App. of Pet., Attach. 4 at 30.) (*See also* Cert. Admin. R. (Case No. 49T10-0107-TA-70) at 87.) Commonwealth alleges that this evidence of underassessment in North Township, in conjunction with the parties' stipulation that Commonwealth's property was accurately assessed at 100% of its TTV, clearly demonstrates that Commonwealth "is . . . entitled to a 38[]% equalization reduction to bring its assessment in line with that of the residential property assessments in North Township, Lake County for the [] assessment year[s.]" (*See* Pet'r May 27, 2005 Br. at 20.) The Court, however, disagrees.

In Indiana, all tangible property is subject to assessment and taxation. *See* IND. CODE ANN. § 6-1.1-2-1 (West 1999). Because not all property is alike, however, it is necessary "to adopt different methods for assessment of different classes of property in order to achieve a just and uniform valuation [of all property]." *State Bd. of Tax Comm'rs v. Lyon & Greenleaf Co.,* 359 N.E.2d 931, 934 (Ind. Ct. App. 1977) (citation omitted). Consequently, "the constitutional requirement of uniform and equal taxation

[5] As the Analysis explicitly notes, however, "assessment ratios were only calculated for improved, real property. Land values were assumed to be accurate, as was personal property." (Pet'r App. of Pet., Attach. 4 at 9 n.1.)

[as set forth in Article X, § 1 of the Indiana Constitution (*see* fn. 4, *supra*)] requires that assessments be consistent *with similar property of the same classification.*" *Harrington v. State Bd. of Tax Comm'rs,* 525 N.E.2d 360, 361 (Ind. Tax Ct. 1988) (emphasis added). *See also Lyon & Greenleaf Co.,* 359 N.E.2d at 935 ("[u]niformity and equality in tax burden do not occur unless identical property is assessed at the same [] value"). In turn, Indiana's Supreme Court recently recognized that a taxpayer's entitlement to an equalization adjustment is predicated on how other property within the same classification is assessed:

> [w]e acknowledge that the TTV system is subject to the criticism that, because the regulations for assessing different classes of property operated differently from one another, there was no common standard for measuring uniformity. . . . *But so long as TTV was set differently for different classes of property, uniformity . . . consisted of the assessed valuations (as determined by the appropriate assessing authorities) of each class of property in question being in proportion to the TTV of each respective class.*

ComEd, 820 N.E.2d at 1230-31 (emphasis added).

In general, Indiana's legislature has divided tangible property into two basic classes: "personal property" and "real property." *See* IND. CODE ANN. § 6-1.1-1-11 (West 1999); IND. CODE ANN. § 6-1.1-1-15 (West 1999) (amended 2002). The legislature then delegated to the State Board the duty to adopt rules concerning the assessment of these two types of property. IND. CODE ANN. § 6-1.1-31-1 (West 1999) (amended 2001). Consequently, the State Board promulgated two independent sets of regulations regarding the methodologies by which TTV is ascertained for these two different classes of property. *See generally* IND. ADMIN. CODE tit. 50, r. 4.2-1-1 through

4.2-16-1 (1996) (assessment of personal property); IND. ADMIN. CODE tit. 50, r. 2.2-1-1 through 2.2-16-6 (1996) (assessment of real property).

Public utility companies, however, are not subject to these statutory and regulatory provisions regarding property assessment and taxation. Instead, they are subject to an entirely separate section of the property tax code in which the Indiana legislature has classified their property as either "fixed" or "distributable." *See generally* IND. CODE ANN. § 6-1.1-8 (West 1999). *See also* A.I.C. § 6-1.1-8-5. What constitutes fixed and distributable property differs from utility company to utility company because the Indiana legislature has also, by statute, classified public utility companies based on the type of business they conduct.[6] *See* A.I.C. § 6-1.1-8-2, -5 (footnote added). *See also* A.I.C. § 6-1.1-8-6 through -18.

During the years at issue, the Indiana legislature delegated the duty of assessing a public utility company's distributable property to the State Board.[7] A.I.C. § 6-1.1-8-25 (footnote added). While the legislature provided the State Board with a general formula for calculating the value of distributable property,[8] it authorized the State Board to "adopt rules and regulations to carry out the intent and provisions of [Indiana Code § 6-

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[6] Generally, fixed property consists of the tangible and real property that is not used to generate the utility's power or service. IND. CODE ANN. § 6-1.1-8-9(a) (West 1999). Distributable property, on the other hand, consists of the equipment used to manufacture and deliver the power or service. A.I.C. § 6-1.1-8-9(b).

[7] A public utility company's fixed property, however, was assessed by the local (township) assessor. IND. CODE ANN. § 6-1.1-8-24 (West 1999) (amended 2002).

[8] "The value of the distributable property of a public utility company . . . equals . . . the unit value of the company[] minus [] the value of the company's fixed property." IND. CODE ANN. § 6-1.1-8-26(a) (West 1999) (amended 2002). "The term 'unit value' means the total value of all the property owned or used by a public utility company." IND. CODE ANN. § 6-1.1-8-2(16) (West 1999).

1.1-8]." A.I.C. § 6-1.1-8-42(b). *See also* IND. ADMIN. CODE tit. 50, rr. 5.1-1-1 through 5.1-13-1 (1996) (State Board's regulations regarding public utility assessment). In that broad grant of authority, however, the legislature indicated that any rules or regulations promulgated by the State Board must "provide [for the] equal treatment for the public utility companies *within each classification*."[9] A.I.C. § 6-1.1-8-42(a) (amended 2002) (emphasis and footnote added).

It is apparent from these statutory and regulatory schemes that public utility companies are entitled to equalization adjustments when they can show that their assessments are not uniform *with other public utility companies within the same classification*. *See also Harrington,* 525 N.E.2d at 361; *Lyon & Greenleaf Co.,* 359 N.E.2d at 935; *ComEd,* 820 N.E.2d at 1230-31. In this case, however, Commonwealth has not shown how its assessments compare with the assessments of other public utility companies within the same classification; rather, it bases its claim entirely on how *residential real* property in North Township was assessed. Accordingly, Commonwealth

[9] Pursuant to that authority, the State Board promulgated rule 5.1-5-2:

> The [S]tate [B]oard, on its own motion or on petition of a public utility company, may, in determining the just value of a public utility company, authorize or require the use of factors other than those normally used in determining a unit value of a company as a going concern. . . . The use of other factors is permitted only in situations where the use of other factors is necessary to . . . ensure equal and nondiscriminatory treatment of all public utility companies *within the same classification*.

IND. ADMIN. CODE tit. 50, r. 5.1-5-2 (1996) (emphasis added).

has not made a prima facie showing that its distributable property is entitled to an equalization adjustment of greater than 10.33%.[10,11]

CONCLUSION

For the aforementioned reasons, the Court AFFIRMS the final determinations of the State Board.

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[10] Commonwealth makes much of the fact that the Supreme Court used the plural form of the word "class" when it stated that in order to state a claim for an equalization adjustment, a taxpayer must "produce evidence that the assessed values in [its c]ounty were not uniform and equal *with respect to the TTV* of the *classes* of property in question." (*See* Pet'r Sept. 7, 2005 Reply Br. at 10 (*citing ComEd,* 820 N.E.2d at 1230 (emphasis in original and added).) Indeed, Commonwealth argues that the use of the plural "classes" indicates that multiple classes of property (i.e., real, personal, fixed, and distributable property) may all be involved in one equalization analysis. (*See* Pet'r Sept. 7, 2005 Reply Br. at 9-11.) (*See also* Pet'r May 27, 2005 Br. at 17-18.) Accordingly, Commonwealth claims that to the extent the Supreme Court used the singular form of the term "class" when it stated later in *ComEd* that "*so long as TTV was set differently for different classes of property, uniformity . . . consisted of the assessed valuations (as determined by the appropriate assessing authorities) of each class of property in question being in proportion to the TTV of each respective class,*" it contradicted itself and the later statement carries no weight. (*See* Oral Argument Tr. at 50-51.)

"Uniformity and equality in tax burden do not occur unless *identical* property is assessed at the same tax value." *State Bd. of Tax Comm'rs v. Lyon & Greenleaf Co.,* 359 N.E.2d 931, 935 (Ind. Ct. App. 1977) (emphasis added). Thus, the Court is not persuaded by Commonwealth's argument that the Supreme Court intended that evidence of residential real property assessments could be used to challenge the assessments of a public utility company's distributable property. Furthermore, the Court notes that while the aforementioned "contradictory" statement was dicta as it related to the decision in *ComEd,* the Court finds the statement instructional as it relates to *this* case. *See* BLACK'S LAW DICTIONARY 1102 (8th ed. 2004) (defining obiter dictum as "[a] judicial comment made while delivering a judicial opinion . . . that is unnecessary to the decision in the case . . . although it may be considered persuasive").)

[11] Commonwealth maintains that for purposes of this litigation, the parties have, for various reasons, agreed that Commonwealth's distributable property was accurately assessed at 100% of its TTV. (*See* Pet'r May 27, 2005 Br. at 5.) The DLGF maintains that the State Board never made such an agreement. (Resp't Aug. 8, 2005 Br. at 8-9.) Given the Court's holding, however, it need not address this issue.