

ATTORNEYS FOR PETITIONER:
DAVID M. AUSTGEN
TIMOTHY R. KUIPER
JOSEPH C. SVETANOFF
AUSTGEN KUIPER & ASSOCIATES, PC
Crown Point, IN

ATTORNEYS FOR RESPONDENT:
STEVE CARTER
ATTORNEY GENERAL OF INDIANA
ANDREW W. SWAIN
CHIEF COUNSEL, TAX SECTION
JESSICA E. REAGAN
DEPUTY ATTORNEY GENERAL
Indianapolis, IN

**IN THE
INDIANA TAX COURT**



ST. GEORGE SERBIAN)
ORTHODOX CHURCH,)
)
Petitioner,)
)
v.)
)
LAKE COUNTY PROPERTY TAX)
ASSESSMENT BOARD OF APPEALS,)
)
Respondent.)

Cause No. 45T10-0712-TA-79

ORDER ON RESPONDENT'S MOTION TO DISMISS

NOT FOR PUBLICATION
May 20, 2008

FISHER, J.

St. George Serbian Orthodox Church (St. George) has appealed the final determination of the Indiana Board of Tax Review (Indiana Board) valuing its real property for the 2001 and 2002 tax years (the years at issue). The matter is currently before the Court on the Lake County Property Tax Assessment Board of Appeals' (PTABOA) motion to dismiss. For the reasons stated below, the Court DENIES the PTABOA's motion.

FACTS AND PROCEDURAL HISTORY

St. George sought a religious purposes exemption on its real property in Lake County, Indiana, for the years at issue. The PTABOA denied St. George's requests. St. George subsequently appealed the PTABOA's denials to the Indiana Board. On October 22, 2007, after conducting a hearing on the matter, the Indiana Board issued a final determination affirming the PTABOA's denials.

St. George filed an appeal with this Court on December 5, 2007. On January 17, 2008, the PTABOA moved to dismiss the case. The Court conducted a hearing on the PTABOA's motion on April 25, 2008. Additional facts will be supplied as necessary.

ANALYSIS

The PTABOA asks the Court to dismiss St. George's appeal. It asserts that because St. George failed to timely name the county assessor as the respondent in its appeal as required by Indiana Code § 6-1.1-15-5(b) and (c), St. George's petition is insufficient to invoke the Court's "jurisdiction." (See Resp't Answer at 3 ¶ 2; Resp't Mot. to Dismiss ¶13.) The PTABOA is mistaken.

St. George's failure to timely name the proper party as required by statute is not a jurisdictional issue.¹ Rather, it is the type of procedural error that, if made in the course of initiating an original tax appeal, may prevent this Court from *exercising* its jurisdiction. See *K.S. v. State*, 849 N.E.2d 538, 541-42 (Ind. 2006) (stating that to characterize such procedural defects or errors as "jurisdictional" misapprehends that

¹ Indiana courts possess two kinds of jurisdiction: subject matter jurisdiction and personal jurisdiction. *K.S. v. State*, 849 N.E.2d 538, 540 (Ind. 2006). 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. *Id.* Personal jurisdiction goes to whether appropriate process was effected over the parties. *Id.*

concept) (citation omitted); *Packard v. Shoopman*, 852 N.E.2d 927, 930-32 (Ind. 2006) (stating that a party's challenge to such a procedural error must be timely raised or it is waived). Here, the PTABOA's challenge to St. George's procedural error was timely, as it was raised in its responsive pleading. See *Packard*, 852 N.E.2d at 930-32. Accordingly, the Court will address the merits of the PTABOA's challenge.

Prior to July 1, 2007, Indiana Code § 6-1.1-15-5(b) provided that when a taxpayer initiated an appeal with the Tax Court, "[the] township assessor, county assessor, member of a county property tax assessment board of appeals, or a county property tax assessment board of appeals that made the original assessment determination" was to be named the respondent in the action. IND. CODE ANN. § 6-1.1-15-5(b) (West 2007). Effective July 1, 2007, however, the legislature amended the statute to provide that when taxpayers appealed an Indiana Board final determination made after June 30, 2007 to the Tax Court, the county assessor was to be named the sole respondent. See *id.* (as amended by P.L. 219-2007, § 41 (eff. 7-1-2007)). Thus, contends the PTABOA, because the Indiana Board's final determination on St. George's administrative appeal was issued on October 22, 2007, St. George was required to name the Lake County Assessor as the sole respondent in its petition for review with this Court. Its failure to do so, the PTABOA continues, mandates that the appeal must now be dismissed. The Court must disagree.

Prior to July 1, 2007, Indiana Tax Court Rule 4(B)(2) was consistent with Indiana Code § 6-1.1-15-5(b), as it provided that when a taxpayer challenged an Indiana Board final determination by initiating an original tax appeal, "[e]xcept as otherwise provided herein, 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). Nevertheless, when Indiana Code § 6-1.1-15-5(b) was amended effective July 1, 2007, Tax Court Rule 4(B)(2) remained unchanged.² And herein lies the problem: when, on December 5, 2007, St. George filed its original tax appeal, Indiana Code § 6-1.1-15-5(b) required that the county assessor was to be named as the respondent, but Tax Court Rule 4(B)(2)(a) required that the PTABOA be named as the respondent. See *id.* (stating that the named respondent should be “the local governmental official or entity that made the . . . exemption determination . . . that was the subject of the proceedings before the Indiana Board”); IND. CODE ANN. § 6-1.1-11-7(a) (West 2003) (stating that exemption applications are approved or disapproved by a county’s property tax assessment board of appeals). In other words, when St. George filed its original tax appeal, Indiana Code § 6-1.1-15-5(b) and Tax Court Rule 4(B)(2)(a) conflicted. See *Ziegler v. Indiana Dep’t of Revenue*, 797 N.E.2d 881, 886 (Ind. Tax Ct. 2003) (stating that a statute and a rule of procedure are in conflict when they both cannot not apply in a given situation) (citation omitted).

When a statute and a rule of procedure conflict, the rule will govern. *Id.* (citation omitted). Thus, St. George properly named the PTABOA as the respondent in this

² Indeed, it was not until April 2, 2008, nearly a year after the statute was amended, that Tax Court Rule 4(B)(2)(a) was revised to read consistently with the statute, providing that “[i]n original tax appeals initiated by taxpayers, the named respondent shall be the person or persons designated by statute as parties to judicial review of final determinations of the Indiana Board[.]” Ind. Tax Court Rule 4(B)(2) (as amended 4-2-2008).

action under Indiana Tax Court Rule 4(B)(2)(a).³ The case shall therefore proceed on its merits.

CONCLUSION

For the foregoing reasons, the PTABOA's motion to dismiss is DENIED. The Court will schedule this matter for further proceedings under separate order.

SO ORDERED this 20th day of May, 2008.

Thomas G. Fisher, Judge
Indiana Tax Court

³ Nevertheless, the PTABOA argues that Tax Court Rule 4(B)(2)(a) is inapplicable in this case by way of Tax Court Rule 1. (See Hr'g Tr. at 6-8 (asserting that under Tax Court Rule 1, the Tax Court Rules cannot give jurisdiction where it does not already statutorily exist).) This argument, however, does not apply to procedural errors and was accordingly rejected by the Indiana Supreme Court:

Tax Court Rule 1 [] provides that nothing in the Tax Court or Trial Rules extends the "jurisdiction" of the Tax Court beyond that provided by statute. We think this provision uses "jurisdiction" as subject matter jurisdiction, preventing the rules from conferring jurisdiction over matters outside the tax realm reserved to the Tax Court.

Packard v. Shoopman, 852 N.E.2d 927, 932 n.3 (Ind. 2006).

Distribution:

David M. Austgen
Timothy R. Kuiper
Joseph C. Svetanoff
AUSTGEN KUIPER & ASSOCIATES, PC
130 N. Main Street
Crown Point, IN 46307

Steve Carter
Attorney General of Indiana
By: Andrew W. Swain, Chief Counsel, Tax Section
 Jessica E. Reagan, Deputy Attorney General
Indiana Government Center South, Fifth Floor
302 West Washington Street
Indianapolis, IN 46204