

PETITIONERS APPEARING PRO SE:
MIKE T. LAZO
ANGELA LAZO
Hobart, IN

ATTORNEYS FOR RESPONDENT:
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**IN THE
INDIANA TAX COURT**

MIKE T. & ANGELA LAZO, et al.,)	
)	
Petitioners,)	
)	
v.)	Cause No. 45T10-0512-TA-96
)	
DEPARTMENT OF LOCAL GOVERNMENT)	
FINANCE,)	
)	
Respondent.)	

ORDER ON RESPONDENT'S MOTION TO DISMISS

NOT FOR PUBLICATION

May 25, 2006

FISHER, J.

Mike T. and Angela Lazo, et al. (the Lazos) appeal the final determination of the Indiana Board of Tax Review (Indiana Board) that assessed their real property for the March 1, 2002 tax year (year at issue). The matter is currently before the Court on the Department of Local Government Finance's (DLGF) motion to dismiss. In its motion, the DLGF claims this Court lacks jurisdiction over the Lazos's appeal. For the reasons stated below, the Court GRANTS the DLGF's motion.

FACTS AND PROCEDURAL HISTORY

The Lazos own real property in Lake County, Indiana. For the March 1, 2002 assessment date, the DLGF assessed the Lazos's land at \$26,000 and their improvement at \$6,500. The Lazos timely appealed the assessment to the Indiana Board, claiming that the rate at which their property was assessed did not correspond with its classification. The Indiana Board issued a final determination on October 24, 2005, denying the Lazos's request for relief.

On December 2, 2005, the Lazos initiated an original tax appeal. On January 6, 2006, the DLGF filed a motion to dismiss for lack of jurisdiction over the particular case. The Court held a hearing on the DLGF's motion on May 15, 2006. Additional facts will be supplied as necessary.

ANALYSIS AND OPINION

The sole issue before the Court is whether it has jurisdiction over the Lazos's 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 DLGF argues that the Court lacks jurisdiction over the particular case because the Lazos did not verify their petition.¹ (See Resp't Mot. to Dismiss at 2 ¶ 4-6 (citing IND. CODE ANN. § 4-21.5-5-7(b) (West 2006) (footnote added).) The Court agrees.

¹ In its motion, the DLGF asserted several other reasons why this Court lacked jurisdiction over the particular case. (See Resp't Mot. to Dismiss.) The Court finds it necessary to address only one of the issues counsel raised in detail: whether the Lazos properly verified their petition.

“Jurisdiction over the particular case refers to the ‘right, authority, and power to hear and determine a specific case over which a court has subject matter jurisdiction.’” *Id.* at 50 (quoting *Adler v. Adler*, 713 N.E.2d 348, 352 (Ind. Ct. App. 1999) (citation omitted)). Thus, when this Court has subject matter jurisdiction pursuant to Indiana Code § 33-26-3-1, an appeal is subject to the requirements of the Administrative Orders and Procedures Act (AOPA), as well as the Indiana Tax Court Rules. See IND. CODE ANN. § 6-1.1-15-5(b) (West 2006); IND. CODE ANN. § 4-21.5-5 (West 2006); Ind. Tax Court Rule 1.

Pursuant to Indiana Code § 4-21.5-5-7 and Tax Court Rule 3(B), an original tax appeal from a final determination of the Indiana Board is commenced by filing a *verified* petition with the Tax Court within 45 days of notice of the agency action.² See A.I.C. § 4-21.5-5-7(b); Ind. Tax Court Rule 3(B) (footnote added). Because Tax Court Rule 3(B) requires that a petition be verified under Indiana Trial Rule 11(B), the subscriber is required to “affirm[] the truth of the matter to be verified by an affirmation or representation in substantially the following language: ‘I (we) affirm, under the penalties for perjury, that the foregoing representation(s) is (are) true. (Signed) _____[.]’” Ind. Trial Rule 11(B).

While Indiana Trial Rule 11(B) provides guidance as to the contents of a verification statement, this Court has previously held that “[a]ny form of verification is sufficient if it serves the essential purpose of subjecting the affiant to the penalties for perjury.” *Huntington County Cmty. Sch. Corp. v. Indiana State Bd. of Tax Comm’rs*, 757

² “To ‘verify’ a legal document or petition is ‘[t]o confirm or substantiate by oath or affidavit; to swear to the truth of.’” *Huntington County Cmty. Sch. Corp. v. Indiana State Bd. of Tax Comm’rs*, 757 N.E.2d 235, 240 (Ind. Tax Ct. 2001) (quoting BLACK’S LAW DICTIONARY 1556 (7th ed. 1999)).

N.E.2d 235, 240 (Ind. Tax Ct. 2001) (citation omitted). In this case, the Lazos signed their petition, but failed to include any statements verifying the representations made therein. (See Pet'r Pet.) A signature alone does not constitute a proper verification under Trial Rule 11(B). See T.R. 11(B). See also *Kemp v. Family and Soc. Servs.*, 693 N.E.2d 641, 644 (Ind. Ct. App. 1998). As such, the Lazos have not subjected themselves to the penalties for perjury and have, therefore, deprived the Court of jurisdiction over the particular case. See, e.g., *Huntington County*, 757 N.E.2d at 240 (stating that the failure to include a verification statement is fatal to the sufficiency of a petition); *Med. Licensing Bd. v. Provisor*, 678 N.E.2d 814, 817 (Ind. Ct. App. 1997) (stating that failure to follow the requirements of Indiana Code § 4-21.5-5-7 is a jurisdictional defect which deprives the court of jurisdiction over a petition).

CONCLUSION

Given that the Court's jurisdiction was not invoked within the prescribed time period, this case must be DISMISSED.³

SO ORDERED this 25th day of May, 2006.

Thomas G. Fisher, Judge
Indiana Tax Court

³ The Court expresses its concern with the growing number of cases that have been dismissed due to procedural technicalities. Indeed, it has become extremely difficult for a pro se litigant in property tax appeals to have its case heard and/or decided on the merits in the Tax Court. Quite frankly, some attorneys even have difficulty meeting the various procedural requirements. While the Court understands that procedural requirements are intended to facilitate justice, it seems that more often than not they are being used as a bar to justice. As a result, the Court questions the necessity of some of these requirements. That discussion, nonetheless, is one for the legislature, as this Court's obligation is to apply the law and rules as they are written.

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