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**IN THE
INDIANA TAX COURT**

PORTAGE TOWNSHIP ASSESSOR,)	
)	
Petitioner,)	
)	
v.)	Cause No. 49T10-0211-TA-133
)	
JACK GRAY TRANSPORT, INC.,)	
)	
Respondent.)	

ON APPEAL FROM A FINAL DETERMINATION OF
THE INDIANA BOARD OF TAX REVIEW

NOT FOR PUBLICATION
September 22, 2006

FISHER, J.

The Portage Township Assessor (Assessor) appeals the final determination of the Indiana Board of Tax Review (Indiana Board) exempting Jack Gray Transport, Inc. (JGT) from property tax liability for the 1990 assessment year (the year at issue).¹ The Assessor's appeal presents one issue for this Court's review: whether the Indiana

¹ In Indiana, real property is assessed as of every March 1st. See IND. CODE ANN. § 6-1.1-1-2 (West 2006). Property taxes are paid, however, in arrears; thus, taxes on property assessed as of March 1st are paid in two installments, on May 10th and November 10th of the following year. See IND. CODE ANN. § 6-1.1-22-9(a) (West 2006).

Board erred when it determined that JGT was not liable for property tax on improvements it leased from the Indiana Port Commission (the Commission) during the year at issue.

FACTS AND PROCEDURAL HISTORY

On August 1, 1989, JGT entered into a five-year lease agreement with the Commission. Pursuant to this agreement, JGT leased from the Commission 3.78 acres and a warehouse at the Port of Indiana (in Burns Harbor) for the purpose of operating a dry-bulk storage warehouse facility.

For the March 1, 1990 assessment, the Assessor assigned an assessed value of \$393,870 to the subject property (\$0 for land and \$393,870 for improvements). JGT subsequently filed a Petition for Review of Assessment (Form 130) with the Porter County Board of Review (BOR). JGT's Form 130 was denied by the BOR on September 11, 1992.

On October 19, 1992, JGT filed a Petition for Review of Assessment (Form 131) with the State Board of Tax Commissioners (State Board). In its Form 131, JGT explained that pursuant to its lease agreement with the Commission, it agreed to pay property tax on any improvements it constructed on the property. (See Cert. Admin. R. at 3, 21-23.) Consequently, JGT claimed that it was not liable for the assessment of property tax on the subject improvements because it did not own them.² The State Board conducted a hearing on JGT's Form 131 on January 11, 1993. Nearly ten years

² In fact, JGT argued that because the Commission, a subdivision of the State of Indiana, owned the improvements, not only was JGT not liable for property tax on them, they were exempt from property taxation entirely. (See Cert. Admin. R. at 3-4.) *Cf. with* IND. CODE ANN. §§ 6-1.1-10-2, 6-1.1-10-4 (West 1990) (providing that the property owned by Indiana, its state agencies, and its political subdivisions is exempt from property taxation).

later, on September 30, 2002, the Indiana Board issued a final determination on JGT's Form 131.³

In its final determination, the Indiana Board held that JGT was not liable for property tax on the improvements it leased from the Commission. In arriving at that holding, the Indiana Board explained that under Indiana Code § 8-10-1-27(a) and (b), the Commission's exercise of its powers is for the benefit of the people of Indiana, and therefore any property it owns is exempt from property taxation. (Cert. Admin. R. at 36.) The Indiana Board then went on to explain that in 1990, the Indiana legislature added subsection (c) to that statute, which stated that the exemption was extended to include "a lessee's leasehold estate in *land* that is part of a port and that is owned by the state or the [C]ommission is exempt from property taxation." (See Cert. Admin. R. at 33-35.) The Indiana Board concluded that, in enacting Indiana Code § 8-10-1-27(c), the legislature wanted to encourage the leasing of port property to further the Commission's governmental function and therefore "most likely" intended the exemption to extend not only to the lease of land, but to the lease of improvements thereon. (Cert. Admin. R. at 36.) To support its conclusion, the Indiana Board referred to Black's Law Dictionary, which defined the word "land" as "the earth's surface plus the space above and below the surface, and including everything growing or *constructed on it*." (Cert. Admin. R.

³ In December of 2001, while the matter was pending with the State Board, the legislature abolished the State Board. 2001 Ind. Acts 198 § 119(b)(2). Effective January 1, 2002, the legislature created the Indiana Board of Tax Review (Indiana Board) as "successor" to the State Board. See IND. CODE ANN. §§ 6-1.5-1-3; 6-1.5-4-1 (West 2002); 2001 Ind. Acts 198 § 95. Consequently, when the final determination was finally issued on JGT's appeal in September 2002, it was issued by the Indiana Board.

at 35 (emphasis in original).)⁴

The Assessor initiated an original tax appeal on November 14, 2002. The Court heard the parties' oral arguments on October 17, 2003. Additional facts will be supplied as necessary.

STANDARD OF REVIEW

This Court gives great deference to final determinations of the Indiana Board when it acts within the scope of its authority. *Miller Village Prop. Co. v. Indiana Bd. of Tax Review*, 779 N.E.2d 986, 988 (Ind. Tax Ct. 2002), *review denied*. Nevertheless, the Court will reverse a final determination of the Indiana Board if it is:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial or reliable evidence.

IND. CODE ANN. § 33-26-6-6(e)(1)-(5) (West 2006).

⁴ The Indiana Board merely cites to Black's Law Dictionary as "Black's Law Dictionary at page 360 (1996)[.]" (See Cert. Admin. R. at 35.) The Court is unable to ascertain to which edition of Black's the Indiana Board is referring, as it does not appear that a 1996 edition exists. See, e.g., www.west.thompson.com/store. The Court notes that both the 1999/7th edition and the 2004/8th edition of Black's Law Dictionary define "land" as "[a]n immovable and indestructible three-dimensional area consisting of a portion of the earth's surface, the space above and below the surface, and everything growing on or permanently affixed to it." BLACK'S LAW DICTIONARY 881 (7th ed. 1999); 892 (8th ed. 2004).

DISCUSSION AND ANALYSIS

The parties to this case debate whether the Indiana Board's construction of the word "land," as it is used in Indiana Code § 8-10-1-27(c), is proper. Indeed, the Assessor claims that the word "land" means land *only*, and, as a result, Indiana Code § 8-10-1-27(c) clearly indicates that JGT's lease of improvements from the Commission during the year at issue is not exempt from property taxation. (See Pet'r Br. at 4-8.) JGT, on the other hand, argues that the Indiana Board was correct in determining that the word "land" meant both land and improvements and, as such, Indiana Code § 8-10-1-27(c) clearly indicates that JGT is not only exempt from property taxation on the land it leased from the Commission during the year at issue, but on the improvements as well. (See Resp't Br. at 6-9.) In advocating their respective positions, however, the Assessor and JGT completely missed the fact that the Indiana Board's reliance on Indiana Code § 8-10-1-27(c) was improper in the first instance.

As mentioned *supra*, the Indiana Board explained in its final determination that the Indiana legislature added subsection (c) to Indiana Code § 8-10-1-27(c) in 1990. That, however, is not the case. As of the March 1, 1990 assessment date, Indiana Code § 8-10-1-27 provided:

The exercise of the powers granted by this chapter will be in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of a port project by the [C]ommission will constitute the performance of essential governmental functions, the [C]ommission shall not be required to pay any taxes or assessments upon any port project or any property acquired or used by the [C]ommission under the provisions of this chapter, or upon the income therefrom, and the bonds issued under the provisions of this chapter, the interest thereon, the proceeds

received by a holder from the sale of such bonds to the extent of the holder's cost of acquisition, or proceeds received at maturity, and the receipt of such interest and proceeds shall be exempt from taxation in the state of Indiana for all purposes except the financial institutions tax and the state inheritance tax.

IND. CODE ANN. § 8-10-1-27 (West 1990) (eff. 1-1-1990). See also 1990 Ind. Acts 21, §§ 39, 63. It was not until 1992, however, that the Indiana legislature amended the statute to read:

(a) The exercise of the powers granted by this chapter will be in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions.

(b) As the operation and maintenance of a port project by the [C]ommission will constitute the performance of essential governmental functions, the [C]ommission shall not be required to pay any taxes or assessments upon any port project or any property acquired or used by the [C]ommission under the provisions of this chapter, or upon the income therefrom. The bonds issued by the [C]ommission, the interest thereon, the proceeds received by a holder from the sale of such bonds to the extent of the holder's cost of acquisition, or proceeds received upon redemption prior to maturity or proceeds received at maturity, and the receipt of such interest and proceeds shall be exempt from taxation in the state of Indiana for all purposes except the financial institutions tax and the state inheritance tax.

(c) Notwithstanding any other statute, a lessee's leasehold estate in land that is part of a port and that is owned by the state or the [C]ommission is exempt from property taxation.

IND. CODE ANN. § 8-10-1-27 (West 1992) (eff. 2-28-1991). See also 1992 Ind. Acts 60, §§ 1,3. Thus, the Indiana Board relied on the wrong version of Indiana Code § 8-10-1-27 in its final determination, as Indiana Code § 8-10-1-27(c) was not in effect during the year at issue. Consequently, the Indiana Board's final determination must be reversed

because it is “not in accordance with [the] law[.]” see A.I.C. § 33-26-6-6(e)(1), and the Court must now determine whether JGT is liable for property tax on the value of the improvements it leased from the Commission during the year at issue *in light of the law that existed during the year at issue*.

The Commission was created in 1961 and charged with promoting Indiana’s “agricultural, industrial and commercial development . . . and . . . general welfare [through] the construction and operation . . . of a modern port on Lake Michigan and/or the Ohio River, and/or the Wabash River[.]” IND. CODE ANN. § 8-10-1-1 (West 1990). See *also* IND. CODE ANN. § 8-10-1-3 (West 1990). In other words, the Commission has the general authority “to acquire, lease, construct, maintain, repair, police, and operate a port or port project[.]”⁵ IND. CODE ANN. § 8-10-1-7(5) (West 1990) (amended 1994)

⁵ Indiana Code § 8-10-1-2 defines “port project” as

any facilities, adjuncts and appurtenances necessary to operate a modern port, including the dredging of approaches thereto, and including, among other things, but not limited to breakwaters, inner harbors, outer harbors, channels, canals, turning basins, docks, wharves, piers, quays, slips, loading, unloading, handling and storage equipment, warehouses, refrigerating plants and equipment, elevators for the handling and storage of grain, coal and other bulk commodities, terminal buildings or facilities, railroad equipment and trackage, roadways, airplane landing fields, parking lots, garages, automotive equipment, tugs, ferries, maintenance and construction vessels, communications systems, sewers, drains, works for the treatment of sewage, garbage and wastes, and the furnishing of utility service necessary to serve the property under the jurisdiction or control of the [C]ommission, and other buildings and facilities which the [C]ommission may deem necessary for the operation of the port.

IND. CODE ANN. § 8-10-1-2(c) (West 1990).

(footnote added).

To accomplish its purpose, the Commission is “authorized and empowered to acquire by purchase whenever it shall deem such purchase expedient, any land, property, rights, right-of-ways, franchises, easements and other interests in lands, including lands under water and riparian rights, as it may deem necessary or convenient for the construction and operation of any port or port project[.]” IND. CODE ANN. § 8-10-1-10 (West 1990). The Commission is also “authorized to lease, or grant options to lease, to others for development any portion of the land owned by [it], on such terms as the [C]ommission shall determine to be advantageous.”⁶ *Id.* (footnote added).

Furthermore, the Commission,

whenever it finds that the economic welfare of the state would thereby be benefited, by additional employment opportunities, or by additional diversification of industry within the state, or by increased income or prosperity to the state and its residents, or for any other reason, shall have the power to acquire, construct, maintain, repair, police, and lease to others such facilities for manufacturing, storage, or processing of goods, or for the carrying on of commercial, business, or recreational activities as the [C]ommission further finds will increase the waterborne traffic into or out of the port. *Any such facilities and the site thereof shall not be exempt from property taxation, and the lessee in any lease thereof shall . . . pay all property taxes levied on such facilities and the site thereof.*

IND. CODE ANN. § 8-10-2-2 (West 1990) (emphasis added).

Pursuant to Indiana Code § 8-10-2-2, it is unequivocally clear that JGT is liable for property tax on the improvements it leased from the Commission during the year at

⁶ “Leases of lands under the jurisdiction or control of the [C]ommission shall be made only for such uses and purposes as are calculated to contribute to the growth and development of the port and terminal facilities under the jurisdiction or control of the [C]ommission.” IND. CODE ANN. § 8-10-1-10 (West 1990).

issue. Indeed, the cardinal rule in construing a statute is to ascertain the intent of the legislature, and that can be achieved by giving effect to the plain and ordinary meaning of the language used in the statute itself. See *Johnson County Farm Bureau Coop. Ass'n v. Indiana Dep't of State Revenue*, 568 N.E.2d 578, 580-81 (Ind. Tax Ct. 1991), *aff'd by* 585 N.E.2d 1336 (Ind. 1992). The plain and ordinary meaning of the word "facilities" is "something . . . that is built, constructed, [or] installed[.]" See WEBSTER'S THIRD NEW INT'L DICTIONARY 812 (3d ed. 1981). See also *Indiana Office of Env'tl. Adjudication v. Kunz*, 714 N.E.2d 1190, 1193 (Ind. Ct. App. 1999) (stating that the dictionary definition of a word may be considered when the legislature has not statutorily defined it). Thus, the use of the term "facilities" in this statute is synonymous with "improvements," as the term "improvements," within the context of property taxation in Indiana, is a term of art that refers to buildings, fixtures, or appurtenances located on the land. See IND. CODE ANN. § 6-1.1-1-15(2), (3) (West 1990). Accordingly, the Assessor's assessment of property tax against JGT on the improvements it leased from the Commission during the year at issue was proper.⁷

In response, JGT attempts to convince the Court that Indiana Code § 8-10-2-2 is really intended to tax only those improvements that were made by, and owned by, an

⁷ Interestingly, it appears that pursuant to Indiana Code § 8-10-2-2, JGT was also liable for property tax on the value of the land it leased from the Commission during the year at issue. See IND. CODE ANN. § 8-10-2-2 (West 1990); WEBSTER'S THIRD NEW INT'L DICTIONARY 2128 (3d ed. 1981) (defining the word "site" as "a space of ground occupied or to be occupied by a building . . . land made suitable for building purposes"). *But see* IND. CODE ANN. § 6-1.1-9-1, -4 (West 1990 & 1993) (providing that if property has been omitted from or undervalued on the assessment rolls for any given year, the appropriate assessing official must make the correction within three years or the correction is waived).

entity other than the Commission. Indeed, it asserts that

[Indiana Code § 8-10-2-2] was intended to provide the State of Indiana the ability to tax improvements made to the leased land by entities that owned such improvements at the Indiana Ports. For example if a Steel Service Center built a facility on Port Commission land and owned the facility but leased the land[,] then that entity would be taxed for such improvements. . . . In the case before the court, [JGT] is leasing a facility wholly owned by the State, and the Indiana Port Commission owned all the improvements. . . . [Because t]he facts indicate that [JGT] has made no improvements to the property during the lease periods . . . [JGT] should be exempt from any taxation on improvements that it does not own.

(Resp't Br. at 7.) The Court, however, is not convinced, as the language in Indiana Code § 8-10-2-2 states that

the [C]ommission . . . shall have the power to acquire, construct, maintain, repair, police, *and lease to others* such facilities for manufacturing, storage, or processing of goods, or for the carrying on of commercial, business, or recreational activities as the [C]ommission further finds will increase the waterborne traffic into or out of the port.

A.I.C. § 8-10-2-2 (emphasis added). Thus, Indiana Code § 8-10-2-2 clearly indicates that the Commission may lease to others facilities that it already owns.⁸ *Id.* (footnote added).

CONCLUSION

For the aforementioned reasons, the Indiana Board's final determination is reversed. Consequently, JGT is liable for the assessment of property tax on the

⁸ To that end, any argument that the provisions of JGT's lease agreement with the Commission somehow "trumps" the terms of Indiana Code § 8-10-2-2 also fails.

improvements it leased from the Commission during the year at issue.^{9,10}

⁹ Even if the Indiana Board's reliance on § 8-10-1-27(c) had been proper, its interpretation of the word "land" was in error. For example, a statute cannot be construed in a manner that will render another statute within the same act a nullity. *City Securities Corp. v. Indiana Dep't of State Revenue*, 704 N.E.2d 1122, 1126 (Ind. Tax Ct. 1998) (citation omitted). Nevertheless, in interpreting the word "land" as both land and improvements, the Indiana Board effectively nullified the portion of Indiana Code § 8-10-2-2 stating that when the Commission leases its facilities to others, "such facilities and the site thereof shall not be exempt from property taxation, and the lessee in any lease thereof shall . . . pay all property taxes levied on such facilities and the site thereof." A.I.C. § 8-10-2-2. Consequently, had the legislature intended to exempt a lessee's lease of both land and improvements under Indiana Code § 8-10-1-27(c) when it enacted that provision, it would have simply deleted the aforementioned section of Indiana Code § 8-10-2-2. See *Poehlman v. Feferman*, 717 N.E.2d 578, 582 (Ind. 1999) (citation omitted) (stating that when the legislature enacts a particular piece of legislation, it is presumed that it was aware of existing statutes relating to the same subject).

In addition, the Indiana Board's definition of the word "land" essentially ignores how the word is used in the context of Indiana property taxation in general. See *Adkins v. Indiana Employment Sec. Div.*, 70 N.E.2d 31, 33 (Ind. Ct. App. 1946) (citations omitted) (explaining that when a word is not defined by the legislature, courts may consider the legislature's definition of the same word in another act if it is upon the same, or related, subject). Indeed, statutes *in pari materia* should, if possible, be construed together and harmonized to effectuate the intent of the legislature. *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1048 (Ind. Tax Ct. 2002) (citation omitted).

Under Indiana's Property Tax Act, an annual tax is imposed on all real and personal property within Indiana's jurisdiction. IND. CODE ANN. § 6-1.1-2-1 (West 1990); IND. CODE ANN. § 6-1.1-1-19 (West 1990). Real property is defined as "(1) land located within this state; [and] (2) a building or fixture situated on land located within this state[.]" IND. CODE ANN. § 6-1.1-1-15 (West 1990). Thus, for purposes of Indiana's property tax, the word "land" is not commonly understood to mean both land and improvements. See *id.* See also IND. ADMIN. CODE tit. 50, rr. 2.1-2, -3, -4, -5 (1992) (explaining that the methods for assessing land and improvements in Indiana are not the same). While the statutes pertaining to the Commission (i.e., Indiana Code § 8-10-1) do not define "real property" or "land," they eliminate the Commission's exemption from property tax if it leases the property to another. See A.I.C. §§ 8-10-1-27; 8-10-2-2. Accordingly, the Indiana Board should have construed the word "land" under Indiana Code § 8-10-1-27(c) harmoniously with the word "land" as it is used under Indiana's Property Tax Act because those statutes are *in pari materia*.

¹⁰ On a final note, the Court observes that during its hearing before the State Board, JGT alleged that if it was held taxable on the improvements it leased from the Commission, then its liability should be recalculated to reflect the value of its leasehold

interest, and not the value of the improvements in their entirety. (See Cert. Admin. R. at 57-58.) At another point during the hearing, JGT also alleged that there were “certain other taxpayers” who were leasing improvements from the Commission but were deemed to be exempt from property tax on those improvements. (See Cert. Admin. R. at 58.) Because neither party presented any argument as to these issues, either in their briefs or their oral arguments, the Court takes no position thereon at this time.