

ATTORNEYS FOR PETITIONER:  
**STEPHEN R. BUSCHMANN**  
**JEFFREY M. BELLAMY**  
THRASHER BUSCHMANN  
GRIFFITH & VOELKEL, P.C.  
Indianapolis, IN

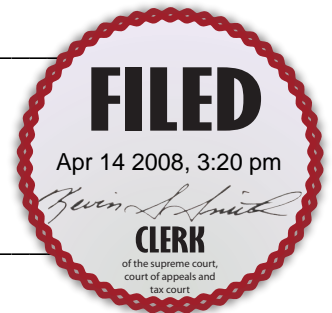
ATTORNEYS FOR RESPONDENTS:  
**STEVE CARTER**  
ATTORNEY GENERAL OF INDIANA  
**JOHN D. SNETHEN**  
DEPUTY ATTORNEY GENERAL  
Indianapolis, IN

**BRETT DVORAK**  
ASSISTANT CORPORATION COUNSEL  
CITY OF INDIANAPOLIS  
Indianapolis, IN

---

**IN THE  
INDIANA TAX COURT**

---



WAYNE TOWNSHIP,  
MARION COUNTY, INDIANA,

Petitioner,

v.

INDIANA DEPARTMENT OF LOCAL  
GOVERNMENT FINANCE, and  
BILLIE J. BREAU, in her official  
capacity as the Marion County Auditor,<sup>1</sup>

Respondents.

Cause No. 49T10-0711-TA-66

---

ORDER ON THE DEPARTMENT OF LOCAL GOVERNMENT FINANCE'S  
MOTION TO DISMISS

---

**NOT FOR PUBLICATION**  
**April 14, 2008**

---

FISHER, J.

Wayne Township, Marion County, Indiana (Wayne Township) challenges the

---

<sup>1</sup> Initially, the caption named Martha Womacks as the Marion County Auditor (Auditor). Billie J. Breau, however, is now the Auditor; the Court therefore substitutes her for Ms. Womacks in the caption. See Ind. Trial Rule 25(F).

Department of Local Government Finance's (DLGF) certification of, and the Marion County Auditor's (Auditor) distribution of, Marion County's county option income tax (COIT) for the 2005-2007 tax years (years at issue). The matter is currently before the Court on the DLGF's motion to dismiss pursuant to Indiana Trial Rules 12(B)(1) for lack of subject matter jurisdiction and 12(B)(6) for failure to name the real party in interest. For the reasons stated below, the Court GRANTS the DLGF's 12(B)(1) motion to dismiss.<sup>2</sup>

### **FACTS AND PROCEDURAL HISTORY**

Prior to 2000, Wayne Township maintained one of the state's largest volunteer fire departments. Wayne Township funded the fire department with revenues received from property taxes,<sup>3</sup> the COIT, and Indiana's financial institutions tax. In 2000, however, Wayne Township converted its fire department into a combination paid-volunteer fire department. As a result, Wayne Township's fire protection costs increased. In 2004, Wayne Township obtained a \$5 million emergency loan to cover those costs, as the property tax levy limits then in place precluded its ability to raise additional property tax revenues.

Faced with the prospect of increased costs and its desire not to incur additional debt, Wayne Township formed a fire protection territory with the Town of Clermont in March 2004. On September 20, 2004, Wayne Township met with the Commissioner of the DLGF to discuss the fiscal impact of this formation. According to Wayne Township,

---

<sup>2</sup> As a result, the Court need not reach the issue of whether Wayne Township was the real party in interest.

<sup>3</sup> As a civil taxing unit, Wayne Township had "the power to impose *ad valorem* property taxes." See IND. CODE. ANN. § 6-3.5-6-1 (West 2005) (emphasis added).

the Commissioner indicated that it could immediately roll the \$5 million emergency loan into its property tax levy and thereby receive a substantial increase in its COIT distribution for the 2005 tax year. (See Hr'g Tr. at 23.) In 2005, however, Wayne Township's increased COIT distribution did not come to fruition.

Wayne Township concluded that it did not receive additional COIT revenues because the DLGF erred in applying the statutory formula used to determine Wayne Township's distributive share of the COIT. Specifically, Wayne Township believed the DLGF "erroneously excluded [its] fire [protection] levy" from its "maximum permissible [*ad valorem* property tax] levy." (See Hr'g Tr. at 23-24.) On August 12, 2005, Wayne Township met with the DLGF and the Auditor to discuss this alleged error. According to Wayne Township, the DLGF acknowledged that Wayne Township's fire protection levy had been excluded from its maximum permissible *ad valorem* property tax levy, but claimed that the exclusion was proper, as it resulted from Wayne Township's formation of the fire protection territory. Thus, the Auditor was unable to distribute additional COIT revenues to Wayne Township.

Wayne Township subsequently requested an administrative hearing with the DLGF. On August 30, 2005, the DLGF telephoned Wayne Township's counsel and indicated that it would not hold an administrative hearing on the matter because there was no appeal procedure in place with respect to the DLGF's certification of the COIT.

On September 15, 2005, Wayne Township initiated an appeal with this Court. The parties requested that the case be transferred to a court of general jurisdiction, and the case was ultimately transferred to Hamilton County's Superior Court No. 3 ("trial court"). On October 24, 2006, after holding a hearing on the parties' cross-motions for

summary judgment, the trial court found in favor of the DLGF and the Auditor. Wayne Township appealed the trial court's decision to the Indiana Court of Appeals. Upon review, the Court of Appeals determined that "the trial court's entry of summary judgment in th[e] case [was] void for lack of subject matter jurisdiction" and ordered the trial court to dismiss the case. *See Wayne Twp. v. Indiana Dep't of Local Gov't Fin.*, 869 N.E.2d 531, 534 (Ind. Ct. App. 2007), *trans. denied*.

On November 21, 2007, Wayne Township initiated the present appeal. On December 21, 2007, the DLGF filed a motion to dismiss. On February 29, 2008, the Court held a hearing on the DLGF's motion to dismiss. Additional facts will be supplied as necessary.

### **ANALYSIS & DISCUSSION**

Subject matter jurisdiction is the power of a court to hear and determine a particular class of cases. *K.S. v. State*, 849 N.E.2d 538, 540 (Ind. 2006). Subject matter jurisdiction is not conferred upon a court by consent or agreement of the parties to litigation; rather, it can only be conferred upon a court by the Indiana Constitution or by statute. *See State v. Sproles*, 672 N.E.2d 1353, 1356 (Ind. 1996). "If a court does not have subject matter jurisdiction, any judgment that it renders is void." *State Bd. of Tax Comm'rs v. Ispat Inland, Inc.*, 784 N.E.2d 477, 481 (Ind. 2003) (citation omitted).

This Court has subject matter jurisdiction over all "original tax appeals." IND. CODE ANN. § 33-26-3-3 (West 2008). An original tax appeal is one that arises under Indiana's tax laws and is an initial appeal of a final determination made by either the Indiana Department of State Revenue (DOR), the Indiana Board of Tax Review (IBTR), or, in limited instances, the DLGF. *See* IND. CODE ANN. §§ 33-26-3-1, -2 (West 2008).

See also, e.g., IND. CODE ANN. §§ 6-1.1-17-16(g), -18.5-8(f) (West 2008).

The DLGF maintains that this Court lacks subject matter jurisdiction over Wayne Township's appeal because it does not challenge a final determination of the DOR, the IBTR, or the DLGF. (See DLGF Mem. of Law on its Mot. to Dismiss (hereinafter, Resp't Br.) at 4, 9-13.) More specifically, the DLGF claims that its order certifying Wayne Township's distributive share of the COIT (COIT Order) does not constitute a final determination, and the Court, therefore, does not have jurisdiction over this appeal.<sup>4</sup> (See Resp't Br. at 4, 9-14 (footnote added).) In response, Wayne Township contends that the DLGF's COIT Order constitutes a final determination because the DLGF stated that its decision "was final, that no appeal would be granted, that there was no appeal procedure, and that it refused to reduce its determination to writing." (See Pet'r Resp. to DLGF's Mot. to Dismiss (hereinafter, Pet'r Br.) at 4, 9.) Wayne Township, however, is incorrect.

A final determination is an order that "determines the rights of, or imposes obligations on, the parties as a consummation of the administrative process." *BP Prods. N. Amer., Inc. v. Dep't of Local Gov't Fin.*, 774 N.E.2d 122, 126 (Ind. Tax Ct. 2002) (citation omitted), *review denied*. In general, a DLGF final determination subject to direct review in this Court results from an adjudicatory administrative proceeding. See *generally* IND. CODE ANN § 6-1.1-14-8 (West 2005) (review of DLGF final determinations regarding equalization orders); A.I.C. § 6-1.1-17-16 (review of DLGF

---

<sup>4</sup> The DLGF also claims that Wayne Township's appeal should be dismissed because Wayne Township has failed to identify a "statute specifically assigning this Court [with] subject matter jurisdiction over COIT certifications." (See DLGF Mem. of Law on its Mot. to Dismiss (hereinafter, Resp't Br.) at 4.) For the reasons discussed herein, however, the Court need not reach this issue.

final determinations regarding a political subdivision's budget, tax rate, or tax levy); A.I.C. § 6-1.1-18.5-8 (review of DLGF final determinations regarding a civil taxing unit's petition to incur bond indebtedness or execute certain leases).<sup>5</sup>

When certifying a township's distributive share of the COIT, the DLGF is not performing an adjudicatory act; rather, it is performing a ministerial act as it merely applies the statutory formula for determining the township's distributive share of the tax. *Cf. IND. CODE ANN. § 6-3.5-6-18.5* (West 2005), and *Montgomery v. State Bd. of Tax Comm'rs*, 708 N.E.2d 936, 940 n.7 (Ind. Tax Ct. 1999) (stating that the State Board was not operating in an adjudicatory manner when it certified the Lake County HCI property tax levy rate), *rev'd on other grounds by* 730 N.E.2d 680 (Ind. 2000), with *Ennis v. Dep't of Local Gov't Fin.*, 835 N.E.2d 1119, 1122 (Ind. Tax Ct. 2005) (stating "[w]hen an agency acts in a quasi-judicial capacity, it must accord due process to those parties whose rights will be affected by its actions. Due process generally requires notice and an opportunity to be heard") (citations omitted). (See also Resp't Br. at 14 (stating "the DLGF simply is in charge of certifying the math according to the COIT formula provided by the General Assembly) (footnote omitted).) Thus, in order to challenge the DLGF's COIT Order, Wayne Township was required to pursue its challenge through an administrative process that would require the DLGF to conduct an adjudicatory proceeding.

On their face, the COIT statutes do not seem to provide a means for such a process. See IND. CODE ANN. §§ 6-3.5-6-1 to -28 (West 2005). That silence, however,

---

<sup>5</sup> See also generally IND. CODE ANN. §§ 6-1.1-18.5-15, -19-7, -20-6, -41-9 (West 2005) (each providing direct review of DLGF final determinations in the Tax Court subsequent to adjudicatory proceedings).

is deceiving as Wayne Township had the option of initiating either the emergency loan process or the process for raising its property tax levies.<sup>6</sup> See IND. CODE ANN. § 36-6-6-14 (West 2005) (footnote added). See *a/so* IND. CODE ANN. §§ 6-1.1-18.5-12, -13 (West 2005). Both of those administrative processes would have funneled Wayne Township's challenge into an adjudicatory proceeding, which would have then produced a DLGF final determination subject to this Court's review.<sup>7</sup> See IND. CODE ANN. §§ 36-6-6-14.5; 6-1.1-18.5-15 (West 2005) (footnote added). Therefore, the Court concludes it does not have subject matter jurisdiction over Wayne Township's appeal because Wayne Township has not challenged a final determination of the DLGF subject to this Court's review.<sup>8</sup>

---

<sup>6</sup> Indeed, throughout the majority of these proceedings the DLGF maintained that its certification of a township's distributive share of the COIT was not subject to administrative review. (Resp't Br. at 14 (stating "[t]he General Assembly has not provided townships with the right to petition for an administrative hearing on COIT certifications. *The General Assembly has not provided any administrative remedy to townships that are dissatisfied with their share of COIT*) (emphasis added and footnote omitted).) Near the conclusion of the hearing on its motion to dismiss, however, the DLGF acknowledged that its certification of a township's distributive share of the COIT was subject to administrative review. (See Hr'g Tr. at 45.)

<sup>7</sup> In other words, Wayne Township could have challenged the DLGF'S COIT Order by initiating either of those processes, claiming that it required additional revenues because the DLGF incorrectly applied the statutory formula for determining its distributive share of the tax.

<sup>8</sup> The Court notes that Wayne Township has argued that if this Court does not assume jurisdiction over this appeal, "[i]t would be a denial of the Township's constitutional rights [by] prevent[ing] it from presenting in a court of law its bona fide dispute with the DLGF over its application and administration of a state statute." (Pet'r Resp. to DLGF's Mot. to Dismiss (hereinafter, Pet'r Br.) at 12-14 (citation omitted).) The Court disagrees. This Court's holding conforms to a standard tenet of administrative law, in that it merely requires Wayne Township to exhaust its administrative remedies *before* seeking review of its grievances in this Court. See *State Bd. of Tax Comm'rs v. Ispat Inland, Inc.*, 784 N.E.2d 477, 481-83 (Ind. 2003).

## **CONCLUSION**

For the foregoing reasons, the DLGF's motion to dismiss for lack of subject matter jurisdiction is GRANTED.<sup>9</sup>

SO ORDERED this 14th day of April, 2008.

---

Thomas G. Fisher, Judge  
Indiana Tax Court

### **DISTRIBUTION:**

Stephen R. Buschmann  
Jeffrey R. Bellamy  
THRASHER BUSCHMANN GRIFFITH & VOELKEL, P.C.  
151 N. Delaware Street, Suite 1900  
Indianapolis, IN 46204

Steve Carter  
Attorney General of Indiana  
By: John D. Snethen, Deputy Attorney General  
Indiana Government Center South, Fifth Floor  
302 West Washington Street  
Indianapolis, IN 46204

Brett Dvorak  
Office of Corporation Counsel, City of Indianapolis  
Assistant Corporation Counsel  
200 East Washington Street, Suite 1601  
Indianapolis, IN 46204

---

<sup>9</sup> This matter is dismissed with respect to all parties, as Wayne Township's cause of action against the Auditor was premised on its cause of action against the DLGF.