

Indiana Tax Court Permits Limited Use of Form 133 Petition in HOA Case

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In a recent decision, the Indiana Tax Court has kept alive a limited portion of a Homeowners' Association's (HOA) claims using what was historically known as Indiana's Form 133 Petition for Correction of Error (Form 133). In *Muir Woods Section One Assn., Inc., et al v. Marion County Assessor, Joseph P. O'Connor, 19T-TA-00025 (Ind. Tax Ct. Aug. 31, 2020)* an HOA had brought several claims via the Form 133's "the taxes, as a matter of law, are illegal" statutory claim. The meaning of this statutory claim has been the subject of similar claims in other HOA Tax Court cases in the past, all of which had been unsuccessful using a Form 133 because of the long-standing requirement that Form 133 claims be limited to those issues that can be resolved objectively (such as math errors and mismeasurements, for example) as opposed to requiring subjective or professional valuation judgment. The reason such cases had been attempted using a Form 133 is that historically there has been no express deadline to file these petitions; the time to file the Form 133 was practically limited only by the separate deadline for claiming a tax refund.

Muir Woods claimed, *inter alia*, that its common area property had no separate market value of its own, because it was encumbered by legal restrictions on its use and sale, and that any taxation of its common area would be double taxation since the lots in the neighborhood were already valued by the market as including their

pro rata share of the value of the common area properties reserved for their benefit. The Indiana Board of Tax Review (IBTR) granted the Assessor's motion to dismiss without holding any evidentiary hearing, finding that Muir Woods' claims would require subjective judgment to resolve, and thus relief could not be granted via a Form 133. Muir Woods appealed to the Indiana Tax Court.

The Court affirmed the IBTR on all issues except for double taxation. The Court noted that this double taxation claim did not raise a subjective question such as property valuation. The Court found that this question **might** be determinable with objective evidence (emphasis added). Since no hearing was conducted by the IBTR on this question, the Court reversed and remanded the case to the IBTR for further proceedings below on the narrow question of double taxation.

While this may seem to be only a small victory for Muir Woods, it represents the first time after several similar Form 133 cases in which the Court has recognized any use of the Form 133 for any of the similar claims raised by any HOAs concerning their common areas. What had seemed like a statutory claim that was difficult to prove based on past decisions over time by both the IBTR and the Indiana Tax Court has now been kept alive for another "day in court", albeit for further consideration of what seems to be a narrow issue for Muir Woods.

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