

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 47-010-19-1-5-00799-20
Petitioners: John Scott & Stacey E. Callahan
Respondent: Lawrence County Assessor
Parcel No.: 47-06-15-200-151.046-010
Assessment Year: 2019

The Indiana Board of Tax Review (“the Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners appealed the denial of their 2019 homestead deduction for their single-family residence located at 2919 5th Street in Bedford. On December 1, 2020, the Lawrence County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying the Petitioners relief.
2. The Petitioners timely appealed to the Board electing to proceed under the small claims rules. On August 10, 2021, Dalene McMillen, the Board’s administrative law judge (“ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.
3. Attorney Melissa Michie represented the Petitioner. Lawrence County Assessor April Stapp Collins represented herself. Collins and Deputy Assessor Cheryl Blackwell testified under oath.
4. The parties submitted the following exhibits:
 - Petitioner Exhibit 1: Notification of Final Assessment Determination – Form 115,
 - Petitioner Exhibit 2: Classic Title disclaimer,¹
 - Petitioner Exhibit 4: Quit-claim deed,
 - Petitioner Exhibit 5: Owner’s Representations to Classic Title, Inc.
 - Petitioner Exhibit 6: Indiana Property Tax Benefits – Form 51781,
 - Petitioner Exhibit 7: Sales disclosure form for the subject property,
 - Petitioner Exhibit 8: Inspection history of subject property,

¹ The Petitioner submitted Petitioner Exhibits 3, 12 & 14, but did not offer them into evidence, therefore the Board will not consider them.

- Petitioner Exhibit 9: Indiana Code § 6-1.1-5-15 – Assessment registration notices; building permits,
- Petitioner Exhibit 10: 2021 subject property record card,
- Petitioner Exhibit 11: Indiana Code § 6-1.1-12-37 – Standard deduction for homesteads; amount; statement to apply for deduction; notice of ineligibility for deduction; limitations on deduction; homestead property data base,
- Petitioner Exhibit 13: Indiana Code § 6-1.1-5.5-3 – Sales disclosure form filing and review process; forwarding and use of forms; confidential information; conveyance of multiple parcels,
- Petitioner Exhibit 15: Indiana Code § 6-1.1-5.5-9 – Sales disclosure form; attestation,
- Petitioner Exhibit 16: Indiana Code § 6-1.1-12-44 – Sales disclosure form serves as application for certain deductions; limitations,
- Petitioner Exhibit 17: Department of Local Government Finance (“DLGF”) – Frequently Asked Questions from Auditor’s Conference Spring 2018.
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- Respondent Exhibit 1: Taxpayer’s Notice to Initiate an Appeal – Form 130,
- Respondent Exhibit 2: Notification of Final Assessment Determination – Form 115,
- Respondent Exhibit 3: Petition for Review of Assessment Before the Indiana Board of Tax Review – Form 131,
- Respondent Exhibit 4: 2019 subject property record card,
- Respondent Exhibit 5: Sales disclosure form for the subject property,
- Respondent Exhibit 6: Classic Title disclaimer,
- Respondent Exhibit 7: Occupancy and Financial Statement for the subject property,
- Respondent Exhibit 8: Copy of Claim for Homestead Property Tax Standard / Supplemental Deduction – Form HC10,
- Respondent Exhibit 9: Letter from Lawrence County Treasurer Jody Edwards,
- Respondent Exhibit 10: *Simon K. Fox v. Hamilton County Assessor*, Pet. Nos. 29-006-15-1-5-00685-19, 29-006-16-1-5-00686-19, 29-006-17-1-5-00687-19 & 29-006-18-1-5-00688-19 (Ind. Bd. Tax Rev. March 10, 2020),
- Respondent Exhibit 11: *Eric Derheimer v. Hamilton County Assessor*, Pet. No. 29-018-16-3-5-00748-17 (Ind. Bd Tax Rev. February 1, 2018),
- Respondent Exhibit 12: *Todd Gardner v. Marion County Assessor*, Pet. No. 49-800-18-1-5-00446-19 (Ind. Bd. Tax Rev. February 13, 2020).

5. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders, notices, and memorandums issued by the Board or our ALJ; and (3) a digital recording of the hearing.

Summary of the Parties' Contentions

6. Summary of the Petitioners' case:
 - a. On October 13, 2017, the Callahans purchased the subject property's vacant land for \$10,000. The sales disclosure form from this purchase indicated the property would not be their primary residence. Sometime in 2018, a house was built on the property. *Pet'r Exs. 7, 8, 10.*
 - b. The Callahans filed a deed quitclaiming their interest in the property to themselves on October 31, 2017, ostensibly as part of the building process. On the same day, they signed a document titled "Owner's Representations to Classic Title." This document appointed Classic Title as the Callahans "attorney-in-fact" to file a sales disclosure form. It also stated that Classic Title will only file the "Homestead Exemption."² The Callahans argued that while Classic Title was responsible for filing the sales disclosure form and deed, it only filed the deed. *Michie argument; Pet'r Exs. 2, 5.*
 - c. The Callahans argued that Ind. Code § 6-1.1-5.5-3 states that prior to filing a conveyance document with the Auditor, the parties must complete, sign, and submit a sales disclosure form to the Assessor. After the form is reviewed by the Assessor it is filed with the Auditor. They argued that the quit-claim deed filed on October 31, 2017, should have "triggered" the Auditor's office to question why the sales disclosure form was missing. *Michie argument; Pet'r Exs. 4, 13.*
 - d. In addition, the Callahans referenced Ind. Code § 6-1.1-12-37(P), the statute that allows a homestead deduction for a residence under construction. In particular, they argued that the subject property was eligible under this section in years prior to 2019, and that the deduction should have then carried forward to 2019. *Michie argument; Pet'r Ex. 11.*
 - e. Finally, they submitted a Frequently Asked Questions document from a 2018 Department of Local Government Finance ("DLGF") presentation that states that a "pink slip"³ was not intended to be a punitive measure and that the homestead deduction should be reinstated once proof of residency has been provided. They

² The parties used the terms "homestead deduction" and "homestead exemption" interchangeably throughout their respective presentations and arguments. There is no statute that exempts homesteads from taxation. The Board infers that they are referring to the standard deduction for homesteads provided under Ind. Code § 6-1.1-12-37 and will use the term "homestead deduction" hereinafter.

³ In 2010, 2011 and 2012, the county treasurers were required to mail taxpayers receiving certain homestead credits or any deduction a notice, colloquially referred to as the "pink slip", which the taxpayer had to complete and return to the county auditor with information regarding whether they qualified for those credits or deductions. Ind. Code § 6-1.1-22-8.1(b)(9) (2013) This statute expired on January 1, 2013. See Ind. Code § 6-1.1-22-8-9(b) (2013); see also, Ind. Code § 6-1.1-12-17.8 (a).

argued it would be a punitive measure to deny the Callahans the homestead deduction in 2019 once they proved they were entitled to it. *Michie argument; Pet'r Ex. 17.*

7. Summary of the Respondent's case:

- a. The Assessor testified that the October 27, 2017, sales disclosure form that stated the property was not the Callahan's primary residence was the only sales disclosure form filed for the subject property. *Collins testimony; Resp't Ex. 5.*
- b. Ms. Blackwell testified that she met with Mr. Callahan to review his blueprints prior to assessing the subject home for 2019. At this meeting, she reminded Mr. Callahan to file the mortgage and homestead deductions if applicable. *Collins & Blackwell testimony.*
- c. The Assessor testified that the Lawrence County Treasurer, Jody Edwards⁴ confirmed that on June 3, 2020, the Callahans properly filed for a homestead deduction on the Form HC10. As a result, the homestead deduction will be applied for the 2020 assessment year. There was no homestead deduction filed for the taxing year of 2019 pay 2020, the deadline for which was January 5, 2020. *Collins testimony; Resp't Exs. 8, 9.*
- d. Finally, the Assessor pointed to a number of Board determinations that state that a Petitioner must timely file its claim for the homestead deduction on a Form HC10 or sales disclosure form. Because the Callahans did not timely file a claim for a 2019 homestead deduction, the Assessor argued they are not entitled to one. *Collins testimony (citing Simon K. Fox v. Hamilton County Assessor, Pet. Nos. 29-006-15-1-5-00685-19, 29-006-16-1-5-00686-19, 29-006-17-1-5-00687-19 & 29-006-18-1-5-00688-19 (Ind. Bd. Tax Rev. March 10, 2020), Eric Derheimer v. Hamilton County Assessor, Pet. No. 29-018-16-3-5-00748-17 (Ind. Bd Tax Rev. February 1, 2018) and Todd Gardner v. Marion County Assessor, Pet. No. 49-800-18-1-5-00446-19 (Ind. Bd. Tax Rev. February 13, 2020); Resp't Exs. 10, 11, 12.*

Analysis

8. Indiana Code § 6-1.1-12-37 provides a standard deduction from the assessed value for homesteads, which the statute defines as a dwelling that an individual or married couple owns and uses as their principal place of residence and up to one acre of surrounding land. Ind. Code § 6-1.1-12-37(a)-(c). Taxpayers are required to apply for the deduction in one of two ways.⁵ First, they could file a certified statement with the county auditor on forms prescribed by the DLGF. Ind. Code § 6-1.1-12-37(e). The DLGF prescribed Form HC10 for that purpose. 50 IAC 24-4-2. A taxpayer had to complete Form HC10 within the calendar year for which the deduction was sought and file that form on or before

⁴ Ms. Edwards was the County Auditor in 2020.

⁵ Once the auditor grants the deduction, it carries forward and taxpayers need not reapply. See Ind. Code § 6-1.1-27-37(e); Ind. Code § 6-1.1-12-17.8.

January 5 of the immediately succeeding year. *Id.*; Ind. Code § 6-1.1-12-37(e). Alternatively, a taxpayer could use the sales disclosure form at the time of purchase to claim the deduction. *Id.*; Ind. Code § 6-1.1-12-44.

9. There is no dispute as to whether the Callahans met the substantive requirements for a 2019 homestead deduction for the subject property, rather this case centers on whether the Callahans timely applied for the deduction. The evidence shows that the Callahans first filed a claim for homestead deduction on June 3, 2020, when they filed their Form HC10 with the Lawrence County Auditor. The Callahans do not dispute this fact. In addition, the only sales disclosure form filed for the subject property indicated it would not be the Callahans primary residence.
10. Although the Callahans couch their arguments in a number of ways, they are essentially requesting the Board to waive the deadline to apply for a homestead deduction. But the Board is a creation of the legislature, and it has only those powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 1093, 1096 (Ind. Tax Ct. 2002) citing *Matonovich v. State Bd. Of Tax Comm'rs*, 715 N.E.2d 1018, 1021 (Ind. Tax Ct. 1999). The Board has no authority to ignore the law or waive a statutory deadline. To do otherwise would be to rend the statutory deadlines meaningless. While we acknowledge the Callahans claim that they were expecting their title company to file for them, ultimately it is the responsibility of the individual taxpayer to ensure their application for a homestead deduction is timely filed.⁶ Thus, the Callahans are not entitled to a homestead deduction for the 2019 assessment year.⁷

Final Determination

11. In accordance with the above findings and conclusions, the Petitioners failed to timely file their claim and are not entitled to receive a homestead deduction for the 2019 assessment year.

ISSUED: NOVEMBER 5, 2021



Chairman, Indiana Board of Tax Review



Commissioner, Indiana Board of Tax Review



Commissioner, Indiana Board of Tax Review

⁶ In addition, it is not the responsibility of the Assessor to seek out unfiled sales disclosure forms from recorded deeds.

⁷ The Callahans also pointed to the homestead verification statute. Ind. Code § 6-1.1-22-8.1(b)(9) (2013) This statute provides that a previously revoked homestead deduction should be reinstated if proof of eligibility is provided. But under that law, the taxpayers were already receiving a homestead deduction. Here, the Callahans never received a 2019 homestead deduction because they did not apply for one until after the deadline. Thus, the two situations are not comparable.

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>