

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

**Petitions:** 82-027-11-1-5-08339A  
82-027-12-1-5-08339  
82-027-13-1-5-08339B  
**Petitioners:** Edward G. & Ethel J. Carmines  
**Respondent:** Vanderburgh County Assessor  
**Parcel:** 82-06-25-013-188.001-027  
**Assessment Years:** 2011, 2012, 2013

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

**Procedural History**

1. Edward G. & Ethel J. Carmines (“Petitioners”) initiated their assessment appeals with the Vanderburgh County Assessor (“Respondent”) on July 8, 2014.
2. On August 18, 2014, the Vanderburgh County Property Tax Assessment Board of Appeals (“PTABOA”) issued its final determination denying Petitioners the relief they requested.
3. Petitioners timely filed their Petitions for Review of Assessment (“Forms 131”) for the 2011, 2012, and 2013 tax years with the Board, challenging Respondent’s decision to terminate the homestead deduction for the subject property. Petitioners elected the Board’s small claims procedures.
4. The Board issued a Notice of Hearing on May 7, 2015.
5. On June 30, 2015, the Board’s Administrative Law Judge (“ALJ”), Gary Ricks, held a hearing on the petitions. Neither the Board nor the ALJ inspected the subject property.
6. Ethel J. Carmines appeared *pro se* for Petitioners and was sworn as a witness. Attorney Nick Cirignano represented Respondent. Charlene Decker, PTABOA First Deputy, was sworn as a witness for Respondent. Joe Gries, Vanderburgh County Auditor, attended the hearing but was not sworn and did not testify.

**Facts**

7. The property under appeal is a condominium located at 5001 Hampton Drive in Evansville.

## Record

8. Petitioners submitted no exhibits.

9. Respondent presented the following exhibits:

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|-----------------------|--|
| Respondent Exhibit A: | Screen shot from the Department of Local Government Finance database related to two properties owned by Petitioners            |
| Respondent Exhibit B: | Form signed by Ethel J. Carmines to claim homestead standard deduction on property located at 2010 Exeter Lane in Bloomington  |
| Respondent Exhibit C: | “Important Notice to Homestead Property Owners” related to Bloomington property  |
| Respondent Exhibit D: | Form signed by Ethel J. Carmines to claim homestead standard deduction on property located at 5001 Hampton Drive in Evansville |
| Respondent Exhibit E: | “Important Notice to Homestead Property Owners” related to Evansville property   |
| Respondent Exhibit F: | Notice of returned mail sent to Petitioners by Respondent  |

10. The following items are also recognized as part of the record:

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|------------------|---|
| Board Exhibit A: | Form 131 petitions with attachments     |
| Board Exhibit B: | Notice of hearing dated May 7, 2015     |
| Board Exhibit C: | Hearing sign-in sheet                   |
| Board Exhibit D: | Notice of appearance for Nick Cirignano |

## Contentions

11. Summary of Petitioners’ case:

- a) Petitioners are married and jointly own three properties: the subject property, a property in Bloomington, and a vacation home in Massachusetts. *Carmines testimony.*

- b) Ms. Carmines moved to the subject property in 2006 to live with her daughter who has special needs. The subject property is the primary residence of Ms. Carmines and her daughter. *Carmines testimony.*
- c) The Bloomington property is the primary residence of Mr. Carmines. *Carmines testimony.*
- d) Petitioners were unaware of the law limiting homestead standard deductions to one per married couple and received no such notification from Respondent. *Carmines testimony.*

12. Summary of Respondent's case:

- a) Pursuant to 50 IAC 24-3-5, homestead standard deductions are limited to one per married couple. *Cirignano argument; Deckard testimony; Resp't Exs. C, E.*
- b) Petitioners are joint owners of the property in Bloomington. *Carmines response to cross-examination.*
- c) Petitioners applied for a homestead standard deduction on the subject property on June 2, 2006. *Deckard testimony; Resp't Ex. D.*
- d) Ms. Carmines' signature is on the application for Petitioners' property in Bloomington as well as on the application for the subject property. *Petitioners' response to cross-examination, Cirignano argument; Resp't Exs. B, D.*
- e) It is unfair for other Vanderburgh County taxpayers to bear a tax burden that Petitioners created when Petitioners received a tax deduction which they should not have received. *Cirignano argument.*
- f) It is reasonable for Petitioners to pay the taxes rightfully owed on the subject property for those years in which they claimed a homestead deduction to which they were not entitled. *Cirignano argument.*

**Analysis**

13. The Board is a creation of the legislature and it has only those powers conferred by statute. *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999). The relevant statute is Ind. Code § 6-1.5-4-1, which provides as follows:

- (a) The Indiana board shall conduct an impartial review of all appeals concerning:
  - (1) The assessed valuation of tangible property;
  - (2) property tax deductions;
  - (3) property tax exemptions;

- (4) property tax credits;  
that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board...
- (b) Appeals described in this section shall be conducted under IC 6-1.1-15. *As added by P.L. 198-2001, SEC.95. Amended by P.L. 256-2003, SEC.31; P.O. 172-2011, SEC. 49.*

14. Petitioners' claims regarding the homestead standard deductions fall within the scope of appeals the Board is authorized to hear and determine. The homestead standard deduction is found Ind. Code § 6-1.1-12-37, and provides, in relevant part:

- (a) The following definitions apply throughout this section;
  - (1) "Dwelling" means any of the following:
    - (A) Residential real property improvements that an individual uses as the individual's residence, including a house or garage. . . .
  - (2) "Homestead" means an individual's principal place of residence:
    - (A) that is located in Indiana;
    - (B) that:
      - (i) the individual owns...
    - (C) that consists of a dwelling and the real estate, not exceeding one (1) acre that immediately surrounds that dwelling. . . .
- (b) Each year a homestead is eligible for a standard deduction from the assessed value of the homestead for an assessment date...

Ind. Code § 6-1.1-12-37.

15. Petitioners filed a claim for a homestead deduction for their Bloomington property with the Monroe County Auditor on May 22, 2006. Petitioners also filed a claim for a homestead deduction for the subject property with the Vanderburgh County Auditor on June 2, 2006. As a result, Petitioners received homestead deductions on both properties starting in 2007.

16. While Petitioners may have been eligible at the time of the initial applications, they did not prove that they remained eligible for both deductions during the years under appeal.

17. In 2009, the Indiana Legislature amended Ind. Code § 6-1.1-12-37 to specifically limit individuals and married couples to one homestead deduction.<sup>1</sup> Version B of the amended statute went into effect on July 1, 2009 and provides, in relevant part:

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<sup>1</sup> There are two exceptions to this general rule. First, Indiana Code § 6-1.1-12-37 allows an individual or a married couple to receive a homestead deduction on two properties during the same year when they are moving from one homestead to another. *See* Ind. Code § 6-1.1-12-37 (h) (2009). Second, Ind. Code § 6-1.1-12-37 allows a married individual to receive a homestead deduction regardless of whether their spouse also claims a deduction when the spouse's property is located outside of Indiana, and the individual files an affidavit with the county auditor verifying certain information related thereto. *See* Ind. Code 6-1.1-12-37(n) (2011).

(f) If an individual who is receiving the deduction provided by this section or who otherwise qualifies property for a deduction under this section:

...

(2) is no longer eligible for a deduction under this section on another parcel of property because:

(A) the individual would otherwise receive the benefit of more than one (1) deduction under this chapter...

(B) the individual maintains the individual's principal place of residence with another individual who receives a deduction under this section...

(h) ...the county auditor may not grant an individual or a married couple a deduction under this section if:

(1) the individual or married couple, for the same year, claims the deduction on two (2) or more different applications for the deduction; and

(2) the applications claim the deduction for different property.

Ind. Code § 6-1.1-12-37 (2009). *See also* Ind. Admin. Code tit. 50, r. 24-3-5(a) (2009).

18. Thereafter, Petitioners were ineligible to receive a homestead deduction on both of their Indiana properties at the same time. Although Ms. Carmines argued that the subject property is her primary residence and that her husband's primary residence is the property in Monroe County, under the amended statute, Petitioners were only entitled to receive one homestead deduction for property located in Indiana regardless of whether each spouse maintained a separate "principal place of residence."

19. Upon becoming ineligible for two deductions, Petitioners had the opportunity to choose which property they wished to continue to receive the deduction on going forward. Pursuant to Indiana Code § 6-1.1-12-17.8, Petitioners should have notified the appropriate county auditor of their ineligibility and had one of the deductions removed. The statute provides, in relevant part:

(b)...An individual who becomes ineligible for a deduction under section 37 of this chapter shall notify the county auditor of the county in which the property is located in conformity with section 37 of this chapter.

Ind. Code § 6-1.1-12-17.8(b) (2009).

20. Petitioners received notice of the change in the law. Respondent offered copies of state form 53569 entitled "Important Notice to Homestead Property Owners." The forms were mailed to Petitioners by the auditors of both Monroe and Vanderburgh counties and each form specifically states "Individuals and married couples are limited to one homestead standard deduction." Despite the forms' explanation of the law, purpose, and the potential consequences for claiming more than one deduction, Petitioners signed the forms and certified that they were eligible to receive homestead deductions on both properties.

21. Based on the foregoing, the Board finds that Petitioners were ineligible to receive homestead deductions on both of their Indiana properties simultaneously during any of the years under appeal. Because Petitioners failed to present any evidence indicating that they had the homestead deduction removed from their Monroe County property during any of the years at issue, the Board concludes that Petitioners were not entitled to receive the homestead deduction on the subject property for the 2011, 2012, or 2013 assessment years.

### **Final Determination**

In accordance with the above findings and conclusions, the Board finds in favor of Respondent.

ISSUED: October 27, 2015

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

### **-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 within forty-five (45) days of 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>.