

REPRESENTATIVE FOR PETITIONERS:

Julio Gonzalez and Monica Vega, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Marilyn Meighen, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Julio Gonzalez & Monica Vega,	)	Petition Nos.:	29-018-07-3-5-00028
	)		29-018-08-3-5-00038
Petitioners,	)		
	)	Parcel No.:	17-09-30-00-02-043.000
v.	)		
	)	County:	Hamilton
Hamilton County Assessor,	)		
	)	Township:	Clay
Respondent.	)		
	)	Assessment Years:	2007 & 2008

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Appeal from the Final Determination of the  
Hamilton County Property Tax Assessment Board of Appeals

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**FEBRUARY 3, 2015**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the “Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### PROCEDURAL HISTORY

1. Julio Gonzalez<sup>1</sup> filed two Form 133 Petitions for Correction of Error (“Form 133”) for the 2007 and 2008 assessments on January 2, 2013. On January 11, 2013, the Hamilton County Property Tax Assessment Board of Appeals (the “PTABOA”) issued its determinations denying the petitions.
2. On February 1, 2013, the Board received Mr. Gonzalez’s Forms 133 for 2007 and 2008.
3. On November 5, 2014, the Board’s administrative law judge, Dalene McMillen (the “ALJ”), held a hearing with regard to the petitions. Neither the Board nor the ALJ inspected the subject property.
4. Mr. Gonzalez was sworn in and testified.<sup>2</sup>
5. Neither party presented any exhibits.
6. The following items are part of the record:
  - Board Exhibit A – Form 133 petitions,
  - Board Exhibit B – Notices of Hearing, dated September 12, 2014,
  - Board Exhibit C – Hearing sign-in sheet.
7. The subject property under appeal is a single-family home located at 13168 Haskell Place in Carmel.

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<sup>1</sup> While Ms. Vega’s name appears on both petitions, she was not present at the hearing.

<sup>2</sup> County Assessor Robin Ward was sworn in but she did not present any testimony.

## CONTENTIONS

### **Summary of Mr. Gonzalez's Arguments**

8. Mr. Gonzalez testified that he lived at the subject property for approximately 10 years, including during the years at issue. He sold the property on August 22, 2013 and discovered in December of 2012 that he never filled out his "homestead." *Gonzalez testimony.*
9. In addition, Mr. Gonzalez claims the assessor's office informed him that it could only correct such an error for three years and because more than three years had elapsed, he would need to file Forms 133 with regard to the years at issue. *Gonzalez testimony.*
10. When Mr. Gonzalez filed his Forms 133, he claimed that he "didn't have the homestead Tax Cap [o]n our home, so we have been paying more taxes since 2005." *Gonzalez testimony.*

### **Summary of the Assessor's Arguments**

11. First, Ms. Meighen notes that Mr. Gonzalez claimed on his Form 133 petitions that his 2007 and 2008 tax bills improperly exceeded the tax cap. However, Ms. Meighen argues that Mr. Gonzalez has not proven that his tax bills were excessive with regard to the respective tax caps or that any overpayments were made for the years in question. *Meighen argument.*
12. According to Ms. Meighen, even if Mr. Gonzalez could prove that his tax bills for the years at issue were incorrect, he would not be entitled to a refund or a credit against future taxes. The Hamilton County Auditor would only be able to correct the tax duplicate. To support this argument, Ms. Meighen cited *Hutcherson v. Ward*, 2 N.E.3d 138, 144 (Ind. Tax Ct. 2013), whereby the Tax Court ruled that Ind. Code § 6-1.1-15-12 (the "133 statute") and Ind. Code § 6-1.1-26-1 (the "refund statute") are completely

separate and stand independently from each other. The Tax Court found there was no time limit for filing the Forms 133 after April 1, 2000, so the Petitioners' Forms 133 were deemed timely filed. However, the Tax Court further found that to receive a refund the claim has to be filed within three years after the taxes were first due. The Tax Court also ruled that the Petitioners' claim of an error of omission by a county official is not a permissible ground for which a refund can be sought under the refund statute. *Meighen argument; citing Hutcherson v. Hamilton County Assessor*, Petition Nos. 29-008-04-3-5-00044 et al. (Ind. Bd. of Tax Review).

13. Ms. Meighen stated that the county recognizes it is harsh to deny Mr. Gonzalez a refund. However, the claim for refund was not timely filed. Ms. Meighen cited the Board's decision in *HJM, LLC v. Wells County Assessor*, Petition No. 90-017-12-1-7-00001 (Ind. Bd. of Tax Review, Oct. 22, 2013), whereby the Board was sympathetic with consequences of the taxpayer's failure to file timely for a tax abatement, but the Board had no basis to waive or excuse the untimely filing. Ms. Meighen argues the same would apply here in that the Board has no authority to waive or excuse the untimely filing of Mr. Gonzalez's refund claim. *Meighen argument; citing Augustus v. Hamilton County Assessor*, Petition Nos. 29-020-04-3-5-00210 et al. (Ind. Bd. of Tax Review, Sept. 2, 2014).
14. Ms. Meighen argued that Mr. Gonzalez is not challenging the assessment of the property. Consequently, Ind. Code § 6-1.1-15.11 would not be applicable in obtaining a credit. Under that statute, a successful appeal results in a reduction of an amount of an assessment and the taxpayer is entitled to a credit on that reduction in assessment. If the credit is not sufficient, the taxpayer receives a refund. Ms. Meighen argued that this statute does not apply in this case because there has been no reduction in Mr. Gonzalez's assessments for 2007 and 2008. *Meighen argument.*

## ANALYSIS

### A. The Board's Jurisdiction

15. As an initial matter, the Board has jurisdiction to hear Mr. Gonzalez's appeal. The Board's enabling statute provides, in part:
- (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 county property tax assessment board of appeals to the Indiana board under any law.

Ind. Code § 6-1.5-4-1(a) (emphasis added).

16. The correction of error statute similarly contemplates review of denial of credits:
- (a) Subject to the limitations contained in subsections (c) and (d) [inapplicable in this], a county auditor shall correct errors which are discovered in the tax duplicate for any one (1) or more of the following reasons:
    - ...
    - (8) Through an error of omission by any state or county officer, the taxpayer was not given:
      - (A) the proper credit under IC 6-1.1-20.6-7.5 for property taxes imposed for an assessment date after January 15, 2011;
      - (B) *any other credit permitted by law*;
      - (C) an exemption permitted by law; or
      - (D) a deduction permitted by law.

Ind. Code § 6-1.1-15-12 (a) (emphasis added).

17. Mr. Gonzalez brought his appeals on Form 133, the petition that the Department of Local Government Finance has prescribed for correcting errors under Ind. Code § 6-1.1-15-12, claiming that the wrong credits were applied to his taxes. Indiana Code § 6-1.1-20.6-7 involves tax credits, so the Board has the authority to address Mr. Gonzalez's claims generally. His claim also meets the "any other credit permitted by law" clause of the

correction of error statute, so such claim is cognizable on a Form 133 petition. Accordingly, the Board turns to the merits of Mr. Gonzalez's claim.

**B. The merits of Mr. Gonzalez's claim**

18. As stated previously, Mr. Gonzalez testified that he owned and resided at the subject property for approximately 10 years, including the years of 2007 and 2008.
19. Generally, a homestead is defined as an individual's principal place of residence that the individual owns. Ind. Code § 6-1.1-12-37(a)(2). The subject property was therefore eligible for the standard deduction and application of the "tax caps" as discussed below.
20. When the Petitioner testified that he never filled out his "homestead," the Board assumes that the Petitioner used the term "homestead" in reference to Ind. Code § 6-1.1-12-37. That section generally provides that each year a homestead is eligible for a standard deduction from its assessed value in the amount of the lesser of sixty percent of the assessed value or \$45,000. Ind. Code § 6-1.1-12-37(b)-(c).
21. When the Petitioner claimed on his Forms 133 that he "didn't have the homestead Tax Cap in [his] home" and that he had "been paying more taxes since 2005," the Board assumes that Mr. Gonzalez was arguing that he did not receive the credit under Ind. Code § 6-1.1-20.6-7. Under that section, a person is generally entitled to a credit against that person's property tax liability in the amount by which the person's tax liability attributable to the person's homestead exceeds a certain percentage. These percentages are commonly referred to as "tax caps."<sup>3</sup>

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<sup>3</sup> Ind. Code § 6-1.1-20.6-7 as it existed at the time of the March 1, 2007 assessment provided for a 2% tax cap. While that statute at that time did not provide specifically for a tax cap on a "homestead," but rather on "qualified residential property," Ind. Code § 6-1.1-20.6-4 defined "qualified residential property" as a "homestead." Ind. Code § 6-1.1-20.6-7 as it existed at the time of the March 1, 2008 assessment, and as it exists today, provides for a 1.5% tax cap on homesteads.

22. These two provisions operate differently. Pursuant to Ind. Code § 6-1.1-12-37(e), a taxpayer must file a certified statement to obtain the standard deduction. In contrast, a taxpayer is not required to request application of the appropriate tax caps. Rather, it is the duty of the county auditor to identify properties eligible for the tax caps. Ind. Code § 6-1.1-20.6-8.
23. Mr. Gonzalez had the burden to establish a prima facie case that he overpaid his property taxes for the years at issue. To establish such a prima facie case, Mr. Gonzalez must present probative evidence supporting his position and explain how each piece of that evidence is relevant to his contention. *Lacy Diversified Indus. V. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); see *Indianapolis Racquet Club v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004).
24. In this case, Mr. Gonzalez failed to offer evidence to support his position. He presented no documentary evidence at the hearing and offered approximately 45 seconds of testimony. He failed to provide evidence of the assessments for the years at issue. He failed to show what tax caps should have been applied or the taxes were excessive for the years at issue. He failed to show the amount of tax paid for the years at issue which might prove that he overpaid for those years.
25. While Ms. Meighen raised other issues such as refund eligibility and untimely filings, among others, the Board need not make inquiry into those matters because Mr. Gonzalez failed to establish a prima facie case that he overpaid his taxes for the years in question.

#### **SUMMARY OF FINAL DETERMINATION**

26. Mr. Gonzalez failed to make a prima facie case that he made overpayments of his property taxes with regard to assessment years 2007 and 2008. The Board therefore finds for the Assessor.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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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 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>>.