

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

Petition No.: 29-015-18-1-5-00431-19
Petitioner: William Gutrich
Respondent: Hamilton County Assessor
Parcel No.: 29-10-08-001-029.003-015
Assessment Year: 2018

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

Procedural History

1. The Petitioner initiated his appeal with the Hamilton County Auditor on April 15, 2019. On April 26, 2019, the Hamilton County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations denying the Petitioner any relief.
2. The Petitioner timely filed a Petition for Review of Assessment (Form 131) on May 15, 2019, with the Board and elected the Board's small claims procedures.
3. On November 13, 2019, Dalene McMillen, the Board's administrative law judge (ALJ), held a hearing.¹ Neither the Board nor the ALJ inspected the property.
4. William Gutrich appeared *pro se* and was sworn. Attorney Marilyn Meighen appeared for the Respondent. Hamilton County Assessor Robin Ward and county employee Sadie Eldridge were sworn as witnesses for the Respondent.²

Hearing Facts and Other Matters of Record

5. The property under appeal is a single-family residence located at 16121 Haddam Lane in Westfield.
6. The official record for this matter is made up of the following:

¹ During the hearing the Petitioner attempted to introduce issues pertaining to the current assessment of the property. After a brief recess, the Board granted the parties a continuance until December 13, 2019, to address the issues related to the current assessment. On December 20, 2019, the Board was notified via a settlement agreement the Petitioner was withdrawing the assessment issues he raised at the Board's hearing and the parties stipulated to a 2018 total assessed value of \$335,100 (land \$108,200 and improvements \$226,900). For this reason the Board will not address any issues regarding the assessment of the property.

² Lisa Johnson and Lisa Scherer were present but not sworn to testify.

a. A digital recording of the hearing,

b. Exhibits:

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| Petitioner Exhibit 1: | Notice of Hearing dated September 24, 2019, |
| Petitioner Exhibit 2: | “Gutrich Family – Hamilton County Property Tax History – Timeline of Events,” |
| Petitioner Exhibit 3: | “Learning at Hamilton County Tax Office – March 15 th , 2019,” |
| Petitioner Exhibit 4: | “Conclusions and Justification for Appeal to have Homestead Deduction applied for 2018,” |
| Petitioner Exhibit 5: | Hamilton County online payment application, |
| Petitioner Exhibit 6: | Hamilton County Delinquent Taxes Notice dated March 13, 2019, |
| Petitioner Exhibit 7: | 2018 Hamilton County Tax and Assessment Statement, |
| Petitioner Exhibit 8: | 2018 Statement of Mortgage or Contract Indebtedness for Deduction from Assessed Valuation filed January 22, 2018, |
| Petitioner Exhibit 9: | Hamilton County Auditor’s 2018 pay 2019 tax calculation without homestead deduction, |
| Petitioner Exhibit 10: | Hamilton County Auditor’s 2018 pay 2019 tax calculation with homestead deduction, |
| Petitioner Exhibit 11: | Joint Report by Taxpayer / Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134), |
| Petitioner Exhibit 12: | Notification of Final Assessment Determination (Form 115). |
| Respondent Exhibit A: | Sales disclosure form for subject property dated December 4, 2013, |
| Respondent Exhibit B: | Claim for Homestead Property Tax Credits/Standard Deduction (Form HC10) dated April 15, 2019. |

c. 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) these findings and conclusions.

Summary of the Parties’ Contentions

7. Summary of the Petitioner’s case:

a. On December 4, 2013, the Petitioner purchased the subject property. At the time of purchase the lot was vacant and the Petitioner intended on eventually building a home on the lot. The Petitioner resided at 11922 Dubarry Drive in Carmel until he sold this property in July of 2017. After the sale of his Dubarry Drive property, the Petitioner

moved into an apartment located at 720 South Rangeline Road in Carmel. As of December 31, 2017, construction on the subject property was only 35% complete. Construction was fully completed on September 1, 2018, and Mr. Gutrich moved in on that date. In 2018, “two-thirds of the year he was taxed as a lot and one-third of the year with a home on the lot.” *Gutrich testimony; Pet’r Ex. 2, 4.*

- b. According to Mr. Gutrich, he has owned property in Hamilton County since November of 1995. Further, at the closing and refinancing of his two previous homes in Hamilton County the trust company prepared and filed the “homestead exemption” for him each time.³ Mr. Gutrich was under the belief that when his construction loan on the subject property converted to a mortgage in 2018 that the lending agent would file the homestead deduction as they had done in the past. *Gutrich testimony; Pet’r Ex. 4, 8.*
- c. The Petitioner argues that Hamilton County officials “hold the responsibility to communicate to taxpayers property tax assessments in writing well in advance of the arbitrary deadline to file for Homestead exemption.” If the county had issues contacting a taxpayer via U.S. post, there are alternative methods for communication such as email and telephone. According to the Petitioner, he never received correspondence from any Hamilton County office in 2018. Because he never received any correspondence from the county, he did not apply for the homestead deduction. Mr. Gutrich first discovered an issue with his mailing address and taxes when he received a notice from his bank on March 13, 2019, indicating there were delinquent taxes owed on the subject property for 2017. Ultimately the Petitioner filed for a homestead deduction on April 15, 2019. *Gutrich testimony; Pet’r Ex. 4, 5, 6.*

8. Summary of the Respondent’s case:

- a. On December 4, 2013, a sales disclosure form was filed by owners William and Janet Gutrich. The sales disclosure indicated the property was vacant land and not their primary place of residence. No additional sales disclosure forms have been filed on the subject property. *Eldridge testimony; Resp’t Ex. A.*
- b. The Auditor’s office noted that the address listed on the Petitioner’s 2013 deed for the subject property was 11922 Dubarry Drive. The only other known address to the Auditor was the subject property at 16121 Haddam Lane. The Petitioner failed to request or provide a change of address to his apartment location. The Auditor’s office has a no forwarding order in place, so on returned mail the Auditor’s office checks the forwarding label for a different address, and if there is not a forwarding

³ The Petitioner used the term “homestead exemption” throughout his presentation. There is no exemption that exempts homesteads from taxation. The Board infers he is referring to the standard deduction for homesteads provided for under Ind. Code § 6-1.1-12-37, and we will use the term “homestead deduction” hereinafter.

address they will resend the notice to the actual property address.⁴ In this case, the Auditor's office never mailed anything to the Petitioner regarding the homestead deduction, because he never filed for the deduction. *Eldridge testimony*;

- c. On April 15, 2019, the Petitioner properly filed a homestead deduction claim. As a result, the homestead deduction will be applied to the subject property for the 2019 assessment year. This is the only claim filed by the Petitioner for a homestead deduction on the subject property. *Eldridge testimony; Resp't Ex. B.*

Analysis⁵

9. 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 owns and uses as his principle place of residence and up to one acre of surrounding land. Ind. Code § 6-1.1-12-37(a)-(c). At all times relevant to this appeal, the taxpayer was required to apply for the deduction in one of two ways.⁶ First, he could file a certified statement with the county auditor on forms prescribed by the Department of Local Government Finance (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 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.
10. Here, on the relevant valuation date in question, January 1, 2018, there was not a "homestead" in existence. Therefore, the property owner is not eligible for the homestead standard deduction for property taxes due in the following calendar year. For example, if a property is entirely vacant on the relevant valuation date, the property taxes due and payable are calculated based on the assessment of that property as vacant land. According to testimony from the Petitioner, the subject property was purchased on December 4, 2013, and at the time of purchase was a vacant lot. As of December 31, 2017, only 35% of construction was complete on the home. The Petitioner went on to testify that construction was completed and he began using the property as his principal place of residence on September 1, 2018. Therefore, because the home was only 35% complete and uninhabitable it could not be considered the Petitioner's "principal place of residence" on the January 1, 2018, valuation date.
11. In addition, the Auditor has no record of the Petitioner having filed anything to claim a homestead until April 15, 2019, when he filed the Form HC10 for the first time. The

⁴ The Petitioner's mortgage deduction application indicates that on January 22, 2018, the "full resident address" was 16121 Haddam Lane in Westfield. *Eldridge testimony (citing Pet'r Ex. 8)*.

⁵ Because the parties stipulated to the assessed value, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioner.

⁶ 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.

Petitioner does not dispute this fact. As a result, the Petitioner is not entitled to a homestead deduction for 2018.

12. In issuing this decision, the Board recognizes the Petitioner has experienced some issues with his address and receiving mail. However, the Board is an administrative agency, and must issue its determination based on the applicable law. The Board has no inherent power to ignore the law or waive a filing deadline at its discretion. Therefore, as a matter of law, the Board concludes that the Petitioner is not entitled to receive the homestead deduction for the 2018 assessment year.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Board finds the Petitioner failed to file the standard homestead deduction for the 2018 assessment year. As a result the Petitioner is not entitled to receive the homestead deduction for the 2018 assessment year.

ISSUED: March 31, 2020

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>>