REPRESENTATIVE FOR THE PETITIONER:
Julie K. LaBere, *pro se*

REPRESENTATIVE FOR THE RESPONDENT:
Frank J. Agostino, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Julie K. LaBere,	)	Petition Nos.: 71-014-08-3-5-00001
	)	71-014-09-3-5-00001
	)	71-014-10-3-5-00001
Petitioner,	)	
	)	Parcel No.: 71-16-36-400-011.000-014
v.	)	
	)	St. Joseph County
St. Joseph County Assessor,	)	
	)	Lincoln Township
	)	
Respondent.	)	Assessment Years: 2008, 2009, and 2010

Appeal from the Final Determination of the
St. Joseph County Property Tax Assessment Board of Appeals

September 12, 2014

FINAL DETERMINATION

The Indiana Board of Tax Review (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

INTRODUCTION

1. Did the Petitioner prove she was entitled to a homestead deduction and a tax credit on the subject property for 2008, 2009, and 2010?

PROCEDURAL HISTORY

2. The Petitioner initiated her appeal with the St. Joseph County Auditor, on February 6, 2012. On June 6, 2012, the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the petition. On July 20, 2012, the Petitioner timely filed her Form 133 petitions with the Board.

3. On May 1, 2014, Administrative Law Judge (ALJ) Patti Kindler held the hearing on the petitions. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Ms. LaBere, Pam Lagenour, employee of the County Auditor Patricia Henry, and County Assessor Rosemary Mandrici were sworn and testified.

5. The Petitioner submitted the following exhibits:

    Petitioner Exhibit 1: Screenshot of the corrected homestead allocations, dated February 6, 2012,
    Petitioner Exhibit 2: Subject property record card,
    Petitioner Exhibit 3: 2013 and 2014 tax and property information form (TS-1A),
    Petitioner Exhibit 4: 2011 and 2012 TS-1A,
    Petitioner Exhibit 5: 2007, 2008, and 2009 TS-1A,
    Petitioner Exhibit 6: 2010 and 2011 TS-1A.

6. The Respondent did not offer any exhibits.

7. The following additional items are recognized as part of the record:

    Board Exhibit A: The Form 133 petitions with attachments,
    Board Exhibit B: Notices of hearing, dated March 13, 2014,
    Board Exhibit C: Hearing sign-in sheet,
    Board Exhibit D: Notice of Appearance for Frank Agostino.

8. The subject property is a four-acre parcel improved with three structures: a newly constructed house, an old house that the Petitioner vacated, and another structure that appears to be a detached garage. The property is located at 31095 Watson Road, in Walkerton, Indiana.

9. The Petitioner is not challenging the assessed value of the subject property.

PETITIONER'S CONTENTIONS

10. Prior to 2006, the Petitioner had been receiving a homestead deduction on the subject parcel. The deduction was specifically applied to the residential portion of her property: her house, garage, and one-acre home site. *LaBere testimony; Lagenour testimony.*

11. In 2006, the Petitioner built a new home on the same parcel. In October of that year, she vacated her old house and moved into the new one. While the Petitioner "intends" to tear the old house down, she has not yet done so, and instead uses it for storage. According to the Petitioner, there is "nothing hooked up to" the old house. *LaBere testimony; Pet'r Ex 2*.

12. In 2008, 2009, and 2010 the homestead deduction was incorrectly applied to the old house, rather than the new one. In fact, this error was not corrected until 2012, when the Petitioner pointed it out to the Respondent. Ms. LaBere argues that because she did not fill out a new homestead deduction form in 2012 when the error was corrected, she should not have had to in these years either. *LaBere argument; Pet'r Ex. 1, 5.*

13. Ms. Lagenour is a certified Level II Assessor/Appraiser. According to her, it is a general assessment practice that assessors allocate a homestead to the higher valued structure on a site. For instance, if someone builds a new detached garage and their old detached garage is still on site, the assessor will reallocate the homestead to the new detached garage without requiring that the taxpayer file a new homestead deduction form. Ms. Lagenour testified that she is not aware of any statute that requires a taxpayer to re-file a homestead deduction form when they build a new structure on a parcel that already has a homestead deduction applied to it. *Lagenour testimony.*

14. As a result of this error, the "property tax caps" were incorrectly applied on the subject property.[1] Specifically, the new house, as part of the residential homestead, should be capped at its appropriate value. *Lagenour testimony.*

RESPONDENT'S CONTENTIONS

15. Although it is the Respondent's duty to apply the allocation of homesteads and property tax caps, the Respondent was unaware that the Petitioner had moved into the new house. Given the assessment "field person" who inspected the property did not make a notation to change the homestead allocation from one house to the other, and the Petitioner did not file a new homestead deduction form, there was no way of knowing that the allocation should be changed. When the Petitioner brought it to the Respondent's attention in 2012, she corrected the allocations going forward. *Mandrici testimony.*

16. According to Ms. Henry, an employee of the St. Joseph County Auditor's Office for 14 years, the Petitioner did not file a new homestead deduction form in 2008, 2009, or 2010. Ms. Henry went on to state that if someone builds a new home or adds an apartment to a commercial building, the Auditor notes that addition in the legal description portion of the existing homestead application. According to Ms. Henry, it is the Assessor's duty to allocate the garage, house, and up to an acre of land for homestead deductions. The Auditor's Office enters newly filed homestead deductions into their database and uploads the assessed values from the Assessor's Office as they have been allocated. *Henry testimony.*

17. The Petitioner did not show that an error was made. She did not allege that the taxes were illegal as a matter of law. There has been no allegation of a math error. Finally, the Petitioner did not contend that she was not given credit for an error or omission of a homestead deduction. *Agostino argument.*

[1] The Board assumes that Ms. Lagenour was referring to tax credits under Ind. § Code 6-1.1-20.6-7, these are sometimes referred to as "tax caps."

ANALYSIS

18. As an initial matter, the Board has jurisdiction to hear the Petitioner'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). Subsection four, giving the Board authority to review appeals concerning credits, was added effective July 1, 2011. Ind. Acts 172 § 49. Therefore, the Board's jurisdiction covers claims related to both deductions and credits.

A. The Board has the authority to address the Petitioner's claim that the homestead deduction was not properly allocated to her new house, AND her claim that the "tax caps" were improperly applied under Ind. Code § 6-1.1-20.6-7.

19. The Petitioner brought her appeal on Form 133 petitions, the petition that the Department of Local Government Finance (DLGF) has prescribed for correcting errors under Ind. Code 6-1.1-15-12. In her petitions, Ms. LaBere claimed that the standard deduction should have been applied to the new house that she built on the subject property, rather than to the old house that she no longer resides in. At the Board's hearing, the Petitioner claimed because of that alleged error, she was not given the appropriate credit, or "tax cap," under Ind. Code § 6-1.1-20.6-7, which required the taxes to be capped at 1.5% of the property's gross assessed value beginning with the 2008 assessment payable in 2009.[2]

[2] For taxes payable after 2009, Ind. Code § 6-1.1-20.6-7.5 replaced Ind. Code § 6-1.1-20.6-7.

20. The Board has the authority to address the Petitioner's claim that the homestead deduction was improperly allocated, because it involves "a deduction permitted by law." Ind. Code § 6-1.1-15-12(a)(8)(D); *see also* Ind. Code § 6-1.5-4-1(a)(2). The Board also, has the authority to hear her claim regarding "tax caps." Regarding the review of credit, the correction of error statute provides, in relevant part:

> (a) Subject to the limitations contained in subsections (c) and (d) [inapplicable in this case], 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). The provisions concerning credits were added effective July 1, 2011. 2011 Ind. Acts 172 § 49.

21. Indiana Code § 6-1.1-20.6-7 and Ind. Code § 6-1.1-20.6-7.5 both involve tax credits. Therefore, the Board has the authority to address the Petitioner's claims generally. Her claim also meets the "any other credit permitted by law" clause of the correction of error statute; so it is cognizable on a Form 133 petition. Accordingly, the Board turns to the merits of the Petitioner's claims.

B. The merits of the Petitioner's claims.

22. The Petitioner appeals the allocation of her homestead deduction provided by Ind. Code § 6-1.1-12-37. That statute provides a deduction in specified amounts for homesteads, which it defines as follows:

> (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; [or] (ii) the individual is buying under a contract, recorded in the county recorder's office, that provides that the individual is to pay the property taxes on the residence…; and

(C) 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 (emphasis added).[3]

23. Here, there is no dispute that the Petitioner uses the subject property as her residence, and therefore at least a portion of it qualifies for the homestead deduction. Further, there is no dispute that since 2006 the Petitioner has been living in a new house she constructed on the parcel, but an old house she no longer lives in received the homestead deduction. The problem in this appeal is that the Petitioner did not immediately apply for the standard deduction on the new home. Thus, the dispute is whether the Petitioner was required to officially notify the Respondent that she was living in the new house by, for example, filing a new homestead deduction form, to have her homestead deduction changed to that house.

24. The Respondent did not cite to any statutory authority, and the Board is not aware of any that existed in 2008, requiring a taxpayer to file a new homestead deduction form when a new structure is built on a property that already benefits from a homestead deduction. Further, for 2008 assessments a homestead under the tax cap statute is simply a homestead that is "eligible" for the standard deduction. The fact that the Petitioner did

[3] For purposes of the tax caps, a "homestead" "refers to a homestead that is *eligible* for a standard deduction under Ind. Code § 6-1.1-12-37 (emphasis added).

not file a new application is beside the point, as is the fact that the deduction was not recorded on the new home.

25. The Board sympathizes with the Respondent's position to an extent. Not all residential properties are entitled to the homestead tax cap, only those used as a taxpayer's principle residence. Further, a county auditor has no way of knowing whether a taxpayer uses a given property for his or her principle residence unless the taxpayer affirmatively shows that fact, such as when the taxpayer applies for a standard deduction. Thus, a homeowner's failure to apply for a standard deduction, or in this instance the failure to immediately notify the auditor, can lead to the auditor erroneously failing to apply the homestead tax cap to the correct property. But, when a taxpayer brings that error to the auditor's attention, the auditor can and must correct that error.

26. Further, the relevant statute, as it existed in 2008, does not require taxpayers to file for a new homestead deduction when building a new improvement on a property already benefiting from a homestead. Neither the local officials nor the Board has the authority to impose that limitation. Where a statute's language is clear, the Board lacks the authority to construe it for purposes of limiting or extending its operation. *See Joyce Sportswear Co. v. State Bd. Of Tax Comm'rs,* 684 N.E.2d 1189, 1192 (Ind. Tax Ct. 1997).

27. Because the Petitioner was entitled to her homestead deduction to be allocated on her new home for the March 1, 2008, assessment date, it is only reasonable that she should be entitled to that deduction going forward. Thus, the Board finds the Petitioner is entitled to have the homestead deduction allocated on the new home for all three years under appeal.

28. Regarding the Petitioner's second claim, for the March 1, 2008, assessment date, Ind. Code § 6-1.1-20.6-7 provides the following credits, which are commonly referred to as "tax caps" and which vary in amount based on the class of property at issue:

> (a) This subsection applies to property taxes *first due and payable in 2009*. A person is entitled to a credit against the person's property tax liability for

> property taxes first due and payable in 2009. The amount of the credit is the amount by which the person's property tax liability attributable to the person's:
>
> (1) homestead exceeds … (1.5%);
> (2) residential property exceeds … (2.5%);
> (3) long term care property exceeds … (2.5%);
> (4) agricultural land exceeds … (2.5%);
> (5) nonresidential real property exceeds … (3.5%); or
> (6) personal property exceeds … (3.5%)
>
> of the gross assessed value of the property that is the basis for determination of property taxes for that calendar year.
>
> (b) This subsection applies to property taxes first due and payable in 2009. Property taxes imposed after being approved by the voters in a referendum or local public question shall not be considered for purposes of calculating a person's credit under this section.
>
> (c) This subsection applies to property taxes first due and payable in 2009. As used in this subsection, "eligible county" means only a county for which the general assembly determines in 2008 that limits to property tax liability under this chapter are expected to reduce in 2010 the aggregate property tax revenue that would otherwise be collected by all units of local government and school corporations in the county by at least twenty percent (20%). Property taxes imposed in an eligible county to pay debt service or make lease payments for bonds or leases issued or entered into before July 1, 2008, shall not be considered for purposes of calculating a person's credit under this section.

Ind. Code § 6-1-1-20.6-7 (emphasis added).

29. Because the Petitioner's new house should have received the homestead deduction, Ind. Code § 6-1-1-20.6-7 in turn requires that the taxes on the new house be capped at the appropriate value. Of course, the old house located on the subject property, which should no longer be included in the homestead deduction, should be changed to its appropriate cap rate as well. The Petitioner's property is larger than one acre, which is the maximum lot size for a homestead deduction, and neither party offered any evidence about whether any taxes must be excluded from calculating the Petitioner's credit under Ind. Code § 6-1.1-20.6-7 (b) or (c). Thus, the Board will not attempt to calculate the Petitioner's credit or tax bill.

30. As for the 2009 and 2010 assessment dates, Ind. Code § 6-1-1-20.6-7 was replaced by Ind. Code § 6-1-1-20.6-7.5 which provides as follows:

> (a) A person is entitled to a credit against the person's property tax liability for property taxes *first due and payable after 2009*. The amount of the credit is the amount by which the person's property tax liability attributable to the person's:
>
> (1) homestead exceeds … (1%);
> (2) residential property exceeds … (2%);
> (3) long term care property exceeds … (2%);
> (4) agricultural land exceeds … (2%);
> (5) nonresidential real property exceeds … (3%); or
> (6) personal property exceeds … (3%);
>
> of the gross assessed value of the property that is the basis for determination of property taxes for that calendar year.
>
> (b) This subsection applies to property taxes first due and payable after 2009….

Ind. Code § 6-1-1-20.6-7.5 (emphasis added).

31. Again, because the Petitioner's new home should have received the homestead deduction for both the 2009 and 2010 assessment dates, Ind. Code § 6-1-1-20.6-7.5 in turn requires that the taxes on the new home be capped at the appropriate value. As stated before, the old home should no longer be included in the homestead deduction and changed to its appropriate cap rate as well. Again, the Petitioner's property is larger than one acre and the Board will not attempt to calculate the Petitioner's credit or tax bill.

SUMMARY OF FINAL DETERMINATION

32. The Board finds in favor of the Petitioner. The Petitioner is entitled to a reallocation of both the homestead deduction and tax credit provided in Ind. Code § 6-1.1-20.6-7(a)(1), and that credit must be applied in determining the Petitioner's tax bill for the March 1, 2008, assessment date. For the March 1, 2009, and March 1, 2010, assessment dates, the Petitioner is also entitled to her homestead deduction and tax credit provided in Ind. Code § 6-1-1-20.6-7.5(a)(1), and that credit must be applied in determining the Petitioner's tax bill. For the reasons explained above, however, the Board will not calculate either the amount of that credit or the Petitioner's tax bill.

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

_____
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>.