

REPRESENTATIVE FOR PETITIONERS:

Paul M. Jones, Jr., Attorney

REPRESENTATIVES FOR RESPONDENT:

John H. Brooke, Attorney¹

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Lin Xiangyang & Yunjie X.)	Petition Nos.: 18-038-11-3-5-01530-16
)	18-038-12-3-5-01529-16
Petitioners,)	18-038-13-3-5-01528-16
)	18-038-14-3-5-01527-16
)	18-038-14-1-5-10215-15
v.)	
)	Parcel No.: 18-11-07-104-008.000-038
)	
Delaware County Assessor,)	County: Delaware
)	
Respondent.)	Assessment Years: 2011, 2012, 2013, and 2014

February 9, 2018

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:

¹ In his Notice of Appearance Brooke identified himself as the attorney for the Delaware County Auditor and Treasurer, who are not parties to this appeal. At the hearing, Brooke stated that he was also the attorney for the Delaware County Assessor.

PROCEDURAL HISTORY

1. The Petitioners initiated appeals of the retroactive removal (2011-2013) and denial (2014) of their homestead standard deductions by filing a Petition for Correction of an Error (Form 133 petitions) with the Delaware County Auditor, on May 18, 2015. The Delaware County Property Tax Assessment Board of Appeals (PTABOA) did not issue determinations within 180 days of the Petitioners' filings. *See* Ind. Code § 6-1.1-15-12(e) (requiring a PTABOA to issue a determination within 180 days of a taxpayer filing a petition to correct errors). Consequently, on July 26, 2016, the Petitioners exercised their statutory right to file their Form 133 petitions to the Board.
2. Additionally, for the 2014 assessment year, the Petitioners filed a Form 130 petition with the Delaware County Auditor on February 17, 2015. On April 9, 2015, the PTABOA issued a determination denying the Petitioners relief. Thus, on May 15, 2015, the Petitioners filed a Petition for Review of Assessment (Form 131 petition) with the Board.
3. The Petitioners did not intend to appeal their assessment by filing Form 130 and 131 petitions. Instead, the Petitioners "wanted to ensure the claims for the homestead for all four years were properly before the Board in one form or another." The only issue before the Board is the homestead deduction for each assessment year.
4. On March 9, 2017, the Board's administrative law judge (ALJ), Joseph Stanford, held a consolidated hearing on the petitions. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

5. Lin Xiangyang ("Dr. Lin") appeared as a witness for the Petitioners. Delaware County Auditor Steve Craycraft and Auditor's employee Cheryl Batt appeared as witnesses for the Respondent.

6. The Petitioners offered the following exhibits²:

Petitioners' Ex. A:	2011-2014 original Form 133 petitions,
Petitioners' Ex. B:	2011-2014 Form 133 petitions filed with the Board, with attachments,
Petitioners' Ex. C:	2014 Form 131 petition with PTABOA determination attached,
Petitioners' Ex. D:	Beacon property record card for the subject property,
Petitioners' Ex. E:	Tax bill from Marion County Auditor's Office; cancelled check,
Petitioners' Ex. F:	Homestead Standard Deduction Notice of Change; computer "screen shots" from Delaware County Auditor; Petitioners' 2014 Indiana Income Tax Return,
Petitioners' Ex. G:	Copies of Dr. Lin's driver's licenses; bank statements; letters from schools and academies,
Petitioners' Ex. H:	Petitioners' 2011-2014 Federal Income Tax Returns and 2011-2014 Indiana Income Tax Returns with accompanying letter from Ming Yu, CPA,
Petitioners' Ex. I:	Informational page from the Petitioners' 2010-pay-2011 property tax bill,
Petitioners' Ex. J:	Photographs of the subject property and the property located at 611 Cahill Lane, Indianapolis,
Petitioners' Ex. K:	Petitioners' 2013 Indiana Income Tax Return with accompanying letter from Ming Yu, CPA.

7. The Respondent offered the following exhibits³:

Respondent's Ex. 1:	2014 Form 131 petition,
Respondent's Ex. 2:	PTABOA determination regarding 2014 Form 131 petition,
Respondent's Ex. 3:	2014 Form 115,
Respondent's Ex. 4:	2011 Form 133 petition,
Respondent's Ex. 5:	2012 Form 133 petition,
Respondent's Ex. 6:	2013 Form 133 petition,
Respondent's Ex. 7:	2014 Form 133 petition,
Respondent's Ex. 8:	2003-pay-2004 "Tax Bill Detail" for the property at 611 Cahill Lane, Indianapolis,
Respondent's Ex. 9:	Petitioners' 2006 Delaware County claim for a homestead deduction,
Respondent's Ex. 10:	Homestead deduction audit questionnaire,
Respondent's Ex. 11:	2011-pay-2012 "Tax Bill Detail" for the property at 611 Cahill Lane,
Respondent's Ex. 12:	2012-pay-2013 "Tax Bill Detail" for the property at 611 Cahill Lane,

² Petitioners' Exs. E, F, G, H, and K contain confidential information.

³ Respondent's Ex. 14 contains confidential information.

- Respondent's Ex. 13: 2013-pay-2014 "Tax Bill Detail" for the property at 611 Cahill Lane,
Respondent's Ex. 14: "Schedule 2: Deductions" portion of the Petitioners' 2013 Indiana Income Tax Return,
Respondent's Ex. 15: Homestead Standard Deduction Notice of Change,
Respondent's Ex. 16: Letter from Stephanie Miller, Marion County Homestead Verification Specialist, to Dr. Lin, dated February 3, 2015,
Respondent's Ex. 17: Petitioners' 2016 Delaware County claim for a homestead deduction.

8. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeals; (2) all orders and notices issued by the Board or our administrative law judge; and (3) a digital recording of the hearing.
9. The subject property is a residential property located at 1508 North Regency Parkway in Muncie, Indiana.

OBJECTIONS

10. The Petitioners objected to the Respondent's exhibits. According to the Petitioners' attorney, the Respondent mailed its witness and exhibit list on February 22, which was 11 business days before the hearing rather than the required 15 days. The Respondent's attorney did not dispute that, but argued that the exhibits had already been exchanged in discovery. The Petitioners attorney agreed that he "didn't see anything in there that [he] hadn't seen before." The ALJ took the objection under advisement.
11. Our procedural rules require each party to give all other parties a list of its witnesses and exhibits at least 15 business days before a hearing. 52 IAC 2-7-1(b)(2). The procedures are designed to avoid unfair surprise and to promote organized, efficient, and fair consideration of appeals. We may exclude evidence based on a party's failure to comply with the exchange rule where it appears that admitting the exhibits would prejudice the opposing party. *See* 52 IAC 2-7-1(f). Because the exhibits were exchanged in discovery before the exchange deadline, we find the Petitioners were not prejudiced and we decline to exclude the exhibits.

12. The Respondent objected to Petitioners' Ex. K, an amended version of the Petitioners' 2013 Indiana Income Tax Return on the grounds that the Petitioners failed to establish that the amended return was actually filed with the Indiana Department of Revenue. The Petitioners responded that the exhibit and Dr. Lin's testimony regarding that exhibit should speak for itself, and it is up to the Board to decide the weight. The ALJ took the objection under advisement.
13. The Respondent has not pointed to any evidentiary rule that requires an amended return be filed with the Indiana Department of Revenue in order to be admissible. We find the objection goes to the weight of the exhibit rather than its admissibility. Thus, we overrule the Respondent's objection and admit Petitioners' Ex. K.

FINDINGS OF FACT

14. The relevant facts are largely undisputed. In 1999, Dr. Lin, who was living in Michigan at the time, accepted a position as a primary care physician in Indianapolis, at both Indiana University Hospital and the V.A. Hospital. He did not originally plan to buy property in Indiana. Instead, he intended to sleep at the hospital and go home to Michigan on Wednesdays and weekends. Dr. Lin quickly abandoned that plan and instead purchased a house at 611 Cahill Lane in Marion County so that he could sleep there "once or twice" per week. Dr. Lin maintains that his family never lived at this property, and he considered it "work-related." Dr. Lin received a homestead deduction on the property. *Lin testimony.*
15. The Petitioners bought the subject property in July of 2005. Dr. Lin testified that from that time forward the subject property has served as the Petitioners' principal residence. The Petitioners claimed and received a homestead deduction on the subject property. Dr. Lin kept the Marion County property and continued to sleep there when necessary. *Lin testimony; Resp't Ex. 9.*

16. In approximately 2014, the Delaware County Auditor hired an outside contractor to perform an audit of homestead deductions. As part of that audit, the Petitioners received a questionnaire that Dr. Lin answered and returned. On the questionnaire, Dr. Lin answered “no” to a question asking whether he owned any other residential property. Dr. Lin testified that it was his understanding that residential property meant “family residential.” He did not believe the Marion County property fit that definition because he was only sleeping there occasionally for work. *Craycraft testimony; Lin testimony; Resp’t Ex. 10.*
17. Based on the results of the audit, the Delaware County Auditor concluded that the Petitioners were ineligible for homestead deduction for the 2011 to 2014 assessment years because they were also receiving a deduction in Marion County. In January of 2015, the Auditor notified the Petitioners that he was retroactively removing the homestead deductions on the subject property for the 2011-2013 assessment years. *Craycraft testimony; Resp’t Ex. 8, 11, 12, 13.*
18. After receiving this notice, Dr. Lin had the homestead deductions removed from the Marion County property for the years in question. He also paid Marion County the taxes and penalties owed. The Delaware County Auditor refused to reinstate the deduction on the subject property because Dr. Lin did not remove the Marion County homestead deductions until “after we did the audit and we notified him.” *Lin, Craycraft testimony; Pet’rs Ex. E; Resp’t Ex. 15, 16.*

THE PARTIES’ CONTENTIONS

a. The Petitioners

19. The Petitioners contend that their 2011, 2012, 2013, and 2014 homestead deductions for the subject property in Delaware County should be reinstated because: (1) the subject property was their principal place of residence, and (2) they removed the homestead deductions from the Marion County property and paid the appropriate taxes and penalties.

20. The Petitioners offered evidence in the form of testimony and documentation supporting the contention that the subject property was their principal place of residence during the years at issue. This included Dr. Lin's testimony that his family primarily lived at the subject property, as well as bank statements, driver's licenses, tax returns, and other documents that show the subject property as the Petitioners' address. *Lin testimony; Pet'r Exs. G, H, K.*
21. Dr. Lin testified that he paid all of the taxes due from the improper Marion County homestead deduction. In addition, the Petitioners provided a letter from an employee of the Marion County Auditor's office which supported this testimony. *Lin testimony; Pet'r Ex. E.*
22. The Petitioners admit that they were originally improperly receiving two homestead deductions. However, they argue that once the Marion County deduction was removed, the Delaware County Auditor should have reinstated the homestead deduction for the subject property because it was their principal place of residence. In support of this, they pointed to *Kellam v. Fountain Co. Ass'r*, 999 N.E.2d 120 (Ind. Tax Ct. 2013), a case in which the Tax Court ordered the reinstatement of a homestead deduction when the taxpayer demonstrated he had not received a tax benefit for a second homestead deduction.

b. The Respondent

23. The Respondent argues that the removal of the Petitioners' homestead deduction was appropriate and the facts here are distinguishable from *Kellam*. In that case, the taxpayers received two homestead deductions because the auditor erroneously instructed the taxpayers not to complete the portion of the questionnaire that asked about other property owned by the couple. The Respondent argued that it was crucial that in *Kellam* the auditor, not the taxpayers, caused the error. Here, the Respondent argues that the Petitioners caused the error because they supplied incorrect information to the counties.

24. In addition, the Respondent also argued that the Petitioners should be precluded from receiving the benefit of the homestead deduction on the subject property because they failed to notify the Delaware County Auditor of the Marion County property when they applied for their homestead deduction, and because they failed to cancel the Marion County homestead at that time.

25. The Respondent also argues that the only provision in I.C. § 6-1.1-12-37 allowing reinstatement of a homestead deduction does not apply in this situation because it is limited to business entities.

26. Finally, the Respondent argues that even if the Petitioners were legally entitled to have their homestead deduction reinstated, their Form 133 petition for 2011-pay-2012 was untimely because it was not filed “within three years after the taxes were first due.”

ANALYSIS

27. Indiana Code § 6-1.1-12-37 provides a standard deduction for homesteads. That statute provides, in relevant part:
 - (a) The following definitions apply throughout this section:
 - ...
 - (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 the dwelling.
 - ...
 - (b) Each year a homestead is eligible for a standard deduction from the assessed value of the homestead for an assessment date. The deduction provided by this section applies to property taxes first due and payable for an assessment date only if an individual has an interest in the homestead described in subsection (a)(2)(B) on:
 - (1) the assessment date; or

(2) any date in the same year after an assessment date that a statement is filed...

28. As discussed above, in *Kellam*, the Fountain County Auditor retroactively removed the taxpayer's homestead deduction because the auditor discovered the taxpayer was already receiving a homestead deduction on another property in Wells County. The taxpayer subsequently had the homestead deduction in Wells County removed. The Tax Court held that the homestead deduction on the Fountain County property must be reinstated.
29. The Respondent argues that the outcome in *Kellam* hinged on the fact that it was the Auditor's error that originally caused the taxpayers to receive two homestead deductions. We find nothing in *Kellam* to support this conclusion.
30. Here, the Petitioners removed the Marion County homestead deduction for the years at issue and paid the resulting taxes and penalties. The Petitioners also provided sufficient proof that the subject property was their principal place of residence for the years at issue.⁴
31. The Respondent made two arguments that the removal of the homestead deduction was essentially un-appealable because (1) the initial grant of the deduction was "void" and (2) because I.C. § 6-1.1-12-37(f)(2) references business entities. This argument ignores the presumption in *Kellam* that the retroactive removal of a homestead deduction is an appealable action. In addition, we note that the Auditor's own letter to the Petitioners informing them that their homestead deduction was being retroactively removed also stated that this action was appealable.⁵

⁴ Some evidence was submitted showing that the Petitioners may have received a renter's deduction for an apartment during certain months at issue. Dr. Lin testified that his daughter lived at the apartment and he submitted an amended income tax return, that did not include the renter's deduction. We find the evidence shows the subject property was their principal place of residence.

⁵ The Respondent also makes some argument that the Petitioners failure to follow certain statutory reporting requirements should preclude the reinstatement of the deduction even after the Petitioners paid the taxes and penalties on the Marion County property. The Respondent points to no legal authority for this argument and we find it unpersuasive.

32. Finally, the Respondent contends that the Petitioners' Form 133 related to the 2011 appeal is untimely because it was not filed within three years of when the taxes were first due. However, the Petitioners did not appeal their original tax bill, they appealed the Auditors retroactive removal of the homestead deduction. Thus, their appeal was timely.

SUMMARY OF FINAL DETERMINATION

33. We find that the Petitioners are entitled to the standard homestead deduction and tax cap credit for the 2011-2014 assessment years.

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 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>>.