

REPRESENTATIVE FOR PETITIONER:
David Allen, Attorney

REPRESENTATIVE FOR RESPONDENT:
Robert Metz, Hearing Officer, Lake County

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Minnie Coles, Personal	)	Petition Nos.:	45-023-09-3-5-90065-15
Representative of Della Mae	)		45-023-10-3-5-90064-15
Lynn (deceased)	)		45-023-11-3-5-90063-15
	)		45-023-12-3-5-90062-15
	)		45-023-13-3-5-90061-15
Petitioner,	)	Parcel:	45-07-06-255-002.000-023
v.)		
)		
Lake County Assessor,	)	County:	Lake
)		
Respondent.	)	Assessment Years:	2009-2013

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

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

Minnie Coles, Personal Representative of Della Mae Lynn (deceased)
Findings & Conclusions
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1. The Auditor retroactively removed the homestead deduction from the subject property for the years at issue. We find that Petitioner was entitled to the deduction for all of the years at issue.

PROCEDURAL HISTORY

2. Petitioner initiated its appeals with the Lake County Assessor on December 16, 2014. On September 28, 2015, the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations denying the appeals. On November 17, 2015, Petitioner filed the Form 133 petitions with the Board.
3. On March 6, 2017, the Board’s administrative law judge Ellen Yuhan (“ALJ”), held a hearing on the petitions. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Attorney David Allen represented Petitioner. Ms. Minnie Coles, Personal Representative for Petitioner, was sworn and testified. Mr. Robert Metz and Mr. Joseph James, Lake County hearing officers, were present for Respondent, but were not sworn and did not testify.
5. Petitioner offered the following exhibits:

Petitioner’s Memorandum of Facts and Law	
Petitioner Exhibit 1:	Verified Statement of Minnie Coles,
Petitioner Exhibit 2:	Notification from DSG Lake, LLC (“DSG”),
Petitioner Exhibit 3:	Demand for back taxes from DSG,
Petitioner Exhibit 4:	Death Certificate for Della Mae Lynn,
Petitioner Exhibit 5:	Letters of Testamentary. ¹
6. Respondent presented no exhibits.

¹ Petitioner also listed Petitioner Exhibit 6 on its exhibit coversheet, which was the Form 133 containing the PTABOA denial, but Petitioner did not submit that exhibit.

7. The following additional items are recognized as part of the record:
 - Board Exhibit A: Form 133 Petitions,
 - Board Exhibit B: Notices of Hearing,
 - Board Exhibit C: Hearing Sign-In Sheet.
8. The property under appeal is a residential property located at 5937-39 Wallace Road in Hammond.

PETITIONER'S CONTENTIONS

9. The owner of the property, Della Mae Lynn, passed away on October 31, 2006. Soon thereafter, her daughter and heir, Minnie Coles, delivered Ms. Lynn's death certificate to the Lake County Recorder's office to provide notice of her passing. Following that notice, the property remained vacant and Ms. Coles paid the utility and the tax bills as they came due. The property was also rented for a short period during 2011. *Allen argument; Coles testimony; Pet'r Ex. 1.*
10. The county did not terminate the homestead deduction immediately following the death of Ms. Lynn. Petitioner received a letter dated May 28, 2013, from attorney David Gilyan of DSG Lake, LLC ("DSG"), a contractor for Lake County. In that letter, Mr. Gilyan informed Petitioner that DSG was assisting the county in reviewing the validity of homestead deductions. In a subsequent letter from DSG dated November 21, 2014, Mr. Gilyan informed Petitioner that its homestead deduction had been removed both retroactively and prospectively. Petitioner does not dispute the prospective termination of the deduction for 2014 and forward, but does dispute the retroactive removal of the deduction for the years 2009 through 2013. *Allen argument; Pet'r Exs. 2 & 3.*
11. Petitioner argues there is no legal authority providing for a retroactive termination of the deduction, particularly in a case which involves a notification on the part of an individual owner when a change in the use of the property or other circumstances impacts the eligibility for a deduction. Petitioner contends that Ind. Code § 6-1.1-12-37 and Ind.

Code § 6-1.1-12-17.8 place the duty to report on the individual who receives the deduction. Petitioner further argues that, in the event of a death, these statutes would not be applicable because a person cannot report his or her own death to the auditor. *Allen argument.*

12. Petitioner claims that Respondent based its disallowance of the deduction in part on Ind. Code § 6-1.1-36-17. Petitioner contends that this statute does not support the argument that it authorizes a retrospective disallowance. It does discuss the standard deduction, its termination, and a non-reverting fund for certain tax monies after they are collected. However, the word “terminate” itself suggests that the disallowance is a prospective action. Petitioner contends that something cannot be terminated five years in the past. *Allen argument.*
13. Ind. Code § 6-1.1-12-37, which addresses the homestead deduction, dates back to 1989. Since that time it has evolved and, currently, at least since 2012, it includes the duty of notification to the county auditor on a change in use. Petitioner contends that the expressed statutory duty here to provide entitlement to a homestead deduction on pain of termination does not apply to assessment dates prior to January 15, 2012 and does not authorize retroactivity of disallowance. The notice of proposed termination is dated May 28, 2013, after the 2013 assessment date. *Taxpayer’s Memorandum of Facts and Law; Allen argument.*
14. Petitioner contends that, at the time of Ms. Lynn’s death on October 31, 2006, there was no statutory requirement for an heir or personal representative to report the death of a resident owner of real estate who enjoyed a homestead deduction. A system was in place to give notice to the county. Ind. Code §.6-37-3-3 provided that death certificates be delivered to the local health officer. Petitioner contends that the county could easily cross-reference the names and addresses on a death certificate with its property records. *Taxpayer’s Memorandum of Facts and Law; Allen argument.*

15. Petitioner contends that Ind. Code § 6-1.1-12-17.8 does not include authority for the auditor to disallow the deduction retroactively. The auditor may only terminate the deduction for assessment dates after January 15, 2012. *Allen argument.*
16. 50 IAC 24-3-7, which was in effect when the appeals were filed, mentions the duty of the individual owner to notify the auditor of a change in use within 60 days. This is consistent with the statutory authority. Section (b) of this article created, purportedly, a personal liability against the person who failed to give such notice. Here, in the language of the regulation, it speaks of an individual receiving the deduction, not an heir, not a surviving daughter, and not a personal representative. This article was repealed in 2016. *Allen argument.*
17. Petitioner contends that the fact that the law imposes a penalty in a situation like this in addition to tax and interest suggests that such a penalty is for breach of duty. Petitioner contends that there was no breach of duty by Ms. Coles in that no statutory obligation existed and she fulfilled any non-statutory duty to the best of her ability. *Allen argument.*

RESPONDENT'S CONTENTIONS

18. Respondent offered no testimony or evidence. At the outset of the hearing, however, Mr. Metz asked to read from an email he received that morning from Randy Wiley, an attorney for the Lake County Auditor's office. Mr. Metz claimed that the email stated as follows:

In the last 10 years I have represented the Auditor's office, I have never attended a PTABOA meeting hearing nor a tax review board hearing. This present issue is caused solely by the legal opinion and analysis of DSG Lake/Attorney Gilyan in removing the taxpayer's homestead deduction and DSG's advising taxpayers that the removal can be appealed to the PTABOA etc. As DGS now refuses to defend its legal position, I am certainly not in a position to defend the same. As such, I will not be attending the tax review board hearing.

When asked by the ALJ as to how such revelation would settle anything, Mr. Metz replied that it's not the Assessor's office to determine the legality of the homestead deduction removal. He claimed that they "were hoping for a representative from the Auditor's office to defend their position but, unfortunately due to this statement, I don't believe that's going to happen today. And we have no evidence." *Metz testimony.*

ANALYSIS

19. Ind. 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:

(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) that 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 under subsection (e) or section 44 of this chapter, if the property consists of real property.

.....

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

(1) changes the use of the individual's property so that part or all of the property no longer qualifies for the deduction under this section;

.....

(B) The individual must file a certified statement with the auditor of the county, notifying the auditor of the change in use, not more than sixty (60) days after the date of that change. An individual who fails to file the statement required by this subsection is liable for any additional taxes that would have been due on the property if the individual

had filed the statement as required by this subsection plus a civil penalty equal to ten percent (10%) of the additional taxes due.

20. 50 IAC 24-3-7 mirrors the language in Ind. Code § 6-1.1-12-37 stating that if an individual who is receiving the homestead standard deduction changes the use of the real property, so that all or a part of the real property no longer qualifies for the homestead deduction, the individual must file a certified statement with the auditor of the county notifying the auditor of the change in use within sixty (60) days after the date of the change. An individual who changes the use of the individual's real property and fails to notify the auditor is liable for the amount of homestead standard deduction the individual was allowed. 50 IAC 24-3-7 was enacted in May of 2009 and repealed in 2016.
21. When the owner of the subject property, Ms. Lynn, passed away in 2006, there was no statutory requirement to notify the auditor of a change in use of the property. Ms. Coles, however, did provide the county recorder with a copy of the death certificate. Ms. Coles testified that she continued to pay the tax bills that were issued.
22. As discussed above, Petitioner's Exhibit #2 consists of a letter dated May, 28, 2013, from David Gilyan of DSG. In that letter, Mr. Gilyan requested that Petitioner provide documentation confirming the validity of the homestead deduction. In a subsequent letter dated November 21, 2014, contained in the record as Petitioner's Exhibit #3, Mr. Gilyan, informed Petitioner that the auditor had removed the homestead deduction. He contended that "back taxes" from 2009 through 2013 were due as well as interest and a 10% civil penalty.
23. While the statutes authorize the collection of taxes that were deducted erroneously, none of the statutes authorize the retroactive disallowance of a deduction going back five years. However, Ind. Code § 6-1.1-12-17.8 provides that the county auditor may, under certain circumstances, terminate a homestead deduction for an assessment date after January 15, 2012. Under that statute, before the auditor terminates such a deduction, the auditor must provide notice of the proposed termination to the taxpayer. That requirement consists of mailing such notice of the proposed termination to "(1) the last known address of each person liable for any property taxes or special assessment, as shown on the tax duplicate or special

assessment records; or (2) the last known address of the most recent owner shown in the transfer book.” Ind. Code § 6-1.1-12-17.8(a).

24. Mr. Gilyan’s letter dated May 28, 2013, could be taken to constitute notice of proposed termination of the deduction for assessment years after 2012 as contemplated by Ind. Code § 6-1.1-12-17.8. However, it is important to consider that the letter was offered into evidence by Petitioner, not Respondent. Furthermore, Respondent offered no other evidence or testimony indicating that the specific purpose of that document was to provide the required statutory notice under that section.

SUMMARY OF FINAL DETERMINATION

25. For the reasons stated herein, the Board finds that the homestead deduction should not have been disallowed for 2009, 2010, and 2011. For 2012 and 2013, Respondent neither made any argument nor provided any evidence that the statutory requirements necessary to terminate the deduction had been met for those years. In fact, Respondent offered no argument or evidence at all in this appeal. Consequently, the Board finds Petitioner should receive the homestead deduction for all years at issue. Furthermore, because the Board ultimately finds that the deduction should be allowed for all years, it need not address any interest or penalty issues.

The Final Determination of the above captioned matter is issued on the date first written above.

ISSUED: June 22, 2017

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>>.