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

Petition: **53-005-18-1-5-00111-20**
Petitioner: **Timothy Waters**
Respondent: **Monroe County Assessor**
Parcel: **53-05-32-403-020.000-005**
Assessment Year: **2018**

The Indiana Board of Tax Review ("Board") issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Timothy Waters contested the revocation of his 2018 homestead deduction for a property located at 309 North Fairview Street in Bloomington. The Monroe County Property Tax Assessment Board of Appeals ("PTABOA") denied his appeal and he timely appealed to the Board, electing to proceed under the Board's small claims procedures.

2. On December 3, 2020, Jennifer Thuma, the Board's designated Administrative Law Judge ("ALJ"), heard the case telephonically. Neither she nor the Board inspected the property.

3. Mr. Waters appeared *pro se.* Monroe County Assessor Judith Sharp represented herself. Monroe County Deputy Auditors Stephanie Carter and Susie Johnson appeared as witnesses for the Assessor. All were sworn as witnesses.

RECORD

4. Mr. Waters submitted the following exhibit:

    Petitioner's Ex. 1: Letter Outlining Petitioner's Argument

5. The official record also contains (1) all pleadings, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing.

BURDEN OF PROOF

6. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the

assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. Ind. Code. § 6-1.1-15-17.2(b) and (d).

7. Mr. Waters argued that the Assessor had the burden of proof because his total tax bill increased over 5% from the prior year when the homestead was removed. His tax bill increased because the Auditor revoked the homestead deduction. Mr. Waters appealed its revocation and did not contest or provide any evidence regarding assessed value. It is well settled that when a taxpayer claims entitlement to a property tax deduction, he must establish that he meets the specific statutory provisions allowing the deduction. *See, e.g., Indiana Department of State Revenue v. Estate of Daugherty,* 938 N.E. 2d 315, 320 (Ind. Tax Ct. 2010). Mr. Waters had the burden of proof.

SUMMARY OF CONTENTIONS

8. **Mr. Waters presented the following case:**

a. Mr. Waters bought a house in 2017 and has used it as his primary residence since then, claiming the homestead deduction. Previously he used a different principal place of residence, which he still owns with his wife, from whom he is separated. She received the homestead deduction on that property for 2018 and she still receives the deduction there for property taxes. The Monroe County Auditor notified Mr. Waters by letter that an audit of homestead deductions in the county identified that he was not eligible to receive another homestead deduction on the property he purchased in 2017 which is the subject of this appeal. The county then revoked the homestead deduction for the subject property. *Waters testimony; Pet'r. Ex. 1.*

b. While Mr. Waters does not want the county to make any exception for him, he contends that married persons should be allowed to claim two homestead deductions when they have separate principal places of residence. He argues that to allow only one homestead deduction when a married couple lives separately at two different principal residences is to encourage divorce, which is against Indiana public policy. *Waters testimony; Pet'r. Ex. 1.*

c. Waters also contends that the way the Assessor and Auditor applied the Indiana homestead statutes violates equal protection laws and creates two classes of married persons who are treated disparately. He claims that Indiana law is clear that if an individual has a principal place of residence and no other, than he or she is entitled to a homestead deduction. He noted that it is regrettable that the burden falls to the Assessor who must apply this unfair law and he is not asking for an exception. He appeals to the Board to apply the law so that married persons living separately may maintain two homestead deductions in Indiana if they own two different properties and use them separately as their respective principal places of residence. *Waters testimony; Pet'r. Ex. 1.*

d. Finally, Mr. Waters also contended that the Auditor's revocation notice was insufficient because it did not adequately lay out his rights to appeal. He argues that this violated his right to due process and the homestead deduction should be reinstated on these grounds. *Waters testimony; Pet'r. Ex. 1.*

9. **The Assessor presented the following case:**

a. The Assessor contends that the Auditor applied the homestead statute as required by law and had no choice as to its application. Indiana law prohibits a married couple from receiving two homestead deductions on more than one property they own in the state. This applies even when they live in separate locations and use the respective dwellings as their principal places of residence. *Sharp testimony; Carter testimony.*

b. Indiana law does specifically allow individuals who are married but live separately in two different states with two different principal places of residence, the ability to receive the homestead deduction on the Indiana property and the residence outside the state if they meet other statutory requirements. Indiana law does not have a similar provision when married couples own two residences and both properties are in Indiana. Only one property may receive the homestead deduction. *Sharp testimony; Carter testimony.*

c. The Assessor contends that local county officials have no flexibility in the application of the law. If Mr. Waters wishes to seek a change or a different application of law, he would need to advocate for change by the legislature. Mr. Waters' answers to an audit questionnaire demonstrated that the subject property was not eligible for the homestead deduction. The Auditor included specific instructions on how to appeal the decision to revoke the homestead, and the timeframe deadline of 45 days. Additionally, the Assessor and Auditor go above and beyond the statutory requirements by responding to calls from taxpayers, and they walk them through the appeal process if they wish to pursue appeals. *Sharp testimony; Carter testimony.*

ANALYSIS

10. Mr. Waters did not meet his burden of proof that the Auditor incorrectly revoked his homestead deduction on the subject property. We reached this decision for the following reasons:

a. The Indiana Constitution directs the legislature to limit property tax liability for certain types of property. For "[t]angible property, including curtilage, used as a principal place of residence…" the Constitution directs the legislature to limit the property tax liability to 1% of gross assessed value. Indiana Constitution, Article 10, Section 1. The legislature has chosen to link this limit on taxes to property that receives the standard homestead deduction. That deduction applies to an owner's principal place of residence consisting of a dwelling and the real estate not exceeding one acre that immediately surrounds that dwelling. Ind. Code § 6-1.1-12-37(a)(1)(A). Property owners then receive a credit under Ind. Code § 6-1.1-20.6-7(a) which is

often referred to as a "tax cap" against taxes exceeding a specified percentage of the homestead's gross assessment.

b. The standard homestead deduction statute (Ind. Code § 6-1.1-12-37) provides limits on the property considered as the homestead. Foremost, the property must be used as a principal place of residence. But even if that requirement is met, a married couple may receive only one homestead deduction for property located in Indiana. Ind. Code § 6-1.1-12-37(h) specifically prohibits county auditors from granting more than one deduction to married couples for properties owned in Indiana. In addition, Ind. Code § 6-1.1-12-37(f) requires taxpayers to notify the county auditor if they erroneously receive two deductions.

c. Here, there is no dispute as to the facts. Waters admits that as of the assessment date at issue he owned another property in Indiana with his wife. He also admits that the property jointly owned with his wife was receiving a homestead deduction. Thus, he is statutorily ineligible to receive a second homestead deduction.

d. Waters claims that he is "substantively complying" with the homestead rules because he is using the subject property as his principal place of residence and not as a vacation home or rental property. But this is insufficient, as one of the substantive requirements for a homestead deduction is that the taxpayer is not receiving a homestead deduction for another property in Indiana. He also argues that it is not good public policy to encourage married couples living separately to divorce. But the Board is a creation of the legislature and has only those powers conveyed by statute. *Whetzel v. Dept. of Local Gov't. Finance,* 761 N.E. 2d 904 (Ind. Tax Ct. 2002). Thus, we are bound to apply the law as written. Should Mr. Waters believe the law should be changed, he must take it up with the legislature.

e. Waters also argues that the homestead statutes are unconstitutional because they create two classes of individuals, which he believes violates equal protection. As discussed above, we are limited to applying the law as written. In addition, the Board does not have the authority to declare a statute unconstitutional. *Bielski v. Zorn*, 627 N.E. 2d 880, 887-888 (Ind. Tax Ct. 1994). Thus, we are unable to offer any relief on these grounds.

f. Finally, Waters argues that the Auditor's revocation notice was insufficient because it did not lay out the grounds for appeal. He argues that this was a violation of substantive due process and that for that reason we should reinstate his homestead deduction. Regardless of whether the Assessor's notice was sufficient, it is difficult to see what harm Waters has suffered. He was able to timely appeal the revocation, and we have heard his appeal on the merits. Thus, Waters is not entitled to any relief on these grounds.

FINAL DETERMINATION

11. Because Waters may not receive a homestead deduction for more than one property in Indiana, we find that the Assessor's revocation of the homestead deduction for the subject property was correct. We order no change to the subject property's 2018 assessment.

ISSUED: February 24, 2021

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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 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>.