

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. The Petitioners, James and Donna Wampler, filed a Form 133 Petition for Correction of Error with the Boone County Auditor on December 14, 2005. The Boone County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination on May 17, 2007. The Petitioners sought the Board's administrative review by refiling the Form 133 on May 22, 2007.

HEARING FACTS AND OTHER MATTERS OF RECORD

2. Dalene McMillen, the Board's duly designated Administrative Law Judge (ALJ), held the hearing in Lebanon on July 25, 2007.
3. Donna Wampler, the Petitioner, and Deana Polgar, Boone County Deputy Auditor, were sworn as witnesses at the hearing.
4. The Petitioners and Respondents presented no exhibits.
5. The following items are officially recognized as part of the record of proceedings:
 - Board Exhibit A – Form 133 petition,
 - Board Exhibit B – Notice of Hearing on Petition,
 - Board Exhibit C – Hearing sign-in sheet.
6. The subject property is a single-family residential dwelling located at 508 Pheasant Run, Zionsville.
7. The ALJ did not conduct an on-site inspection of the property.

8. The PTABOA determined the assessed value is \$22,000 for the land and \$111,100 for the improvements, for a total assessed value of \$133,300 (assessment year not specified).
9. The Petitioners did not request any specific or different assessed values for the years of 1991 through 2001.

CONTENTIONS

10. The Petitioners filed the required “Claim for Homestead Property Tax Credit/Standard Deduction” form on May 4, 1990. Through an omission by the county auditor’s office, they never received the credit/deduction on their tax statements. *Board Exhibit A; Id.* Because the homestead credit/deduction was not applied by local officials from 1991 through 2001, the Petitioners contend they are entitled to a refund, regardless of the statutory time limit for making such a claim. *Wampler testimony.*
11. The Respondents contend that Indiana Code § 6-1.1-26-1 limits the time for a taxpayer to seek a refund to three years. *Sims argument.*
12. The Respondents presented several facts that the Petitioners did not dispute.
 - a) James and Donna Wampler own the subject property at 508 Pheasant Run, Zionsville, Eagle Township, in Boone County.
 - b) The Petitioners filed the “Claim for Homestead Property Tax Credit/Standard Deduction” form on May 4, 1990.
 - c) The credit was figured and approved by the county assessor on January 23, 1991.

- d) Boone County freely admits that the auditor's office failed to post the Petitioners' homestead credit/deduction in 1991.
- e) The Petitioners' assessment and tax information was sent to their mortgage company.
- f) In 2005, the Petitioners discovered they were not receiving the homestead credit/deduction.
- g) The Petitioner filed the Form 133 petition on December 15, 2005. Boone County already issued a refund for the years of 2002, 2003 and 2004.
- h) The refund for 1991 through 2001 was not approved because the PTABOA interprets Indiana Code § 6-1.1-26-1 to only allow a refund for three years.

ANALYSIS

- 13. The Board determines appeals concerning assessed value of tangible property, deductions, and exemptions. Ind. Code § 6-1.5-4-1 (a). This statute does not give the Board the power to determine appeals concerning property tax credits. Notably, the 2003 amendment omitted what had been subsection (a)(4) (referring to property tax credits). *See* P.L. 256-2003, SEC 31.
- 14. Indiana Code § 6-1.1-20.9-2 states in relevant part: “[A]n individual . . . is entitled each calendar year to a credit against the property taxes which the individual pays on the individuals homestead.” This statute uses the term “credit.” The specific language in the statute cannot be ignored.

15. The Board is a creation of the legislature and, therefore, has only those powers conferred by statute. *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999). “All doubts regarding a claim to power of a governmental agency are resolved against the agency.” *State ex rel. ANR Pipeline Co. v. Indiana Dep't of State Revenue*, 672 N.E.2d 91, 94 (Ind. Tax Ct. 1996).
16. Accordingly, the Board lacks jurisdiction to hear this case to the extent it involves a property tax credit.²
17. To the extent the Board has jurisdiction, it cannot grant the relief the Petitioners seek. Indiana Code § 6-1.1-15-12 is silent as to the time limit for filing a Form 133, but Indiana Code § 6-1.1-26-1 bars their claim for a refund:
- A person, or his heirs, personal representative, or successors, may file a claim for the refund of all or a portion of a tax installment which he has paid. However, the claim must be: (1) filed with the auditor of the county in which the taxes were originally paid; (2) filed within three (3) years after the taxes were first due; (3) filed on the form prescribed by the state board of accounts and approved by the department of local government finance”
18. In *Will's Far-Go Coach Sales v. Nusbaum*, 847 N.E.2d 1074, 1077 (Ind. Tax Ct. 2006), the Petitioner argued that no time limit exists for filing a Form 133. The Court, however, disagreed:
- The practical effect of Will's Far-Go's argument produces an unjust and absurd result. Indeed, a taxpayer who actually paid his assessed taxes would be limited to three years within which to challenge the

² The parties made inconsistent references to the subject of this appeal, using the terms homestead “credit,” “deduction,” and “exemption” at various times. Reference to any specific statute is lacking. While there appears to be no statute that creates a homestead exemption, it should be noted that Ind. Code § 6-1.1-12-37 provides for a standard deduction when one is entitled to the homestead credit. The pertinent part of this statute states “Each year a person who is entitled to receive the homestead credit provided under IC 6-1.1-20.9 for property taxes payable in the following year is entitled to a standard deduction from the assessed value of the real property ... that qualifies for the homestead credit. The auditor of the county shall record and make the deduction ...” The Petitioners’ claim may also involve this deduction.

assessment and receive a refund. To allow a taxpayer, such as Will's Far-Go, who did not pay its taxes, an infinite amount of time to file a Form 133 and receive relief would, in effect, penalize taxpayers for paying their taxes. The Court will not presume that the legislature or administrative agency intended for such a result.

Id. The Tax Court, therefore, held that the time a taxpayer has to appeal an assessment through a Form 133 petition begins to run at the time the taxes are due. *Id.* at 1078.

19. Property taxes are due on May 10th and November 10th of the year following the year of assessment. Thus, the Petitioners could have filed a timely Form 133 for the 1991 taxes until May 10, 1995. A Form 133 for the 2001 taxes could have been filed until May 10, 2005. *See Will's Far-Go*, 847 N.E.2d at 1078. The Petitioners' claim for refund regarding years 1991 through 2001 cannot be allowed because there is no evidence that they filed any claim within the time specified by the legislature in Ind. Code § 6-1.1-26-1.
20. The Petitioners contend that the Board should waive the statutory requirements of Indiana Code § 6-1.1-26-1 in this case because the error was caused by an omission of the Boone County auditor's office and not through any fault of their own. The Petitioners, however, provide no statute or any other authority for such a waiver. The statutory time limit on refunds is clear on its face and controls, regardless of who was responsible for any mistake about the Petitioners' claim.

SUMMARY OF FINAL DETERMINATION

21. The Board is not authorized to determine appeals concerning the homestead credit. In addition, the Petitioners' relief is limited to three years by Indiana Code § 6-1.1-26-1. The Petitioners failed to prove their refund claim for 1991 through 2001 is timely. Consequently, they will receive no relief from this appeal.

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

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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>