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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

John and Donna Bland,	)	Petition No. 41-030-10-3-5-02342
	)	
Petitioners,	)	Parcel No. 41-05-10-034-009.000-030
	)	
v.	)	
	)	
Johnson County Assessor,	)	Johnson County
	)	Pleasant Township
	)	Assessment year 2010
Respondent.	)	

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

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**Date April 23, 2014**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

**ISSUE**

The Petitioners filed a Petition for Correction of an Error (Form 133) requesting the homestead deduction for the March 1, 2010 assessment date. The issue before the Board is whether the Petitioners are entitled to the homestead deduction even though the subject dwelling was not 100% complete on the assessment date.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

1. The subject property is a single family residential home located at 2431 Night Hawk Road, Greenwood, Indiana.
2. The Petitioners initiated the appeal with the Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 133 Petition for March 1, 2010.
3. On October 27, 2011, the PTABOA issued its determination denying the homestead deduction due to the fact the subject dwelling was not 100% complete and could not be occupied on the March 1, 2010 assessment date.
4. On November 4, 2011, the Petitioners filed the Form 133 Petition seeking the Board's review. The Petitioners contend the dwelling does not have to be 100% complete to be eligible for the homestead deduction.
5. Administrative Law Judge Paul Stultz held the hearing on February 6, 2014. He did not conduct an on-site inspection of the property.
6. The PTABOA determined the total assessed value of the property is \$169,900 for 2010.<sup>1</sup>
7. John Bland and County Appraiser Michael Watkins were sworn as witnesses and testified at the hearing.
8. The Petitioners presented the following exhibits:
  - Exhibit 1 – Letter from the County Auditor to the Petitioners dated August 23, 2011,
  - Exhibit 2 – Petitioners' 2011 tax bill,
  - Exhibit 3 – Copy of page 2 of 2 of the Board's hearing instructions.

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<sup>1</sup> The parties agreed on the 2010 PTABOA assessed value.

9. The Respondent presented the following exhibits:  
Exhibit 1 – Copy of Indiana Code 6-1.1-12-37 Version a.
10. The following additional items are recognized as part of the record:  
Board Exhibit A – The 133 Petition with attachments,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing Sign in Sheet.

#### **SUMMARY OF THE PETITIONERS' CASE**

11. The Petitioners received a letter and a corrected tax bill from the County Auditor. The letter states that the Petitioners had been given the homestead credit in error. The letter explains that Petitioners' home was only partially complete as of March 1, 2010, and was not eligible for the homestead exemption.<sup>2</sup> The letter states that the homestead was removed for 2010; but, it was put back on for 2011 when the home was 100% complete. After receiving the letter, Mr. Bland spoke with the County Assessor, Mark Alexander. He testified that he and Mr. Alexander discussed the new legislation, its interpretation, and the intent of the law. They also discussed Mr. Alexander's conversation with Representative Woody Burton regarding the legislation. *Bland testimony; Pet'rs Ex. 1.*
12. Petitioners' Exhibit 2 is the tax bill for 2010 pay 2011. Mr. Bland pointed out that the taxes doubled for the fall installment after the homestead deduction was removed. *Bland testimony; Pet'rs Ex. 2.*
13. Mr. Bland contacted the auditor's office on February 3<sup>rd</sup> and spoke to a representative of the office. He was informed of new legislation this year that changes the date to January 1, and that if you own a plot of land on that date you can get the homestead. Mr. Bland pointed to Petitioners' Exhibit 3, under Valuation Date, and said that you can see that the valuation date has been moved around since 1999 trying to get it right. *Bland testimony; Pet'rs Ex.3.*

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<sup>2</sup> In Petitioners' Exhibit 1, the County Auditor refers to the homestead as both a credit and an exemption. For March 1, 2010, the homestead was a deduction. See Ind. Code § 6-1.1-12-37.

14. Mr. Bland sees no reason why the homestead should not be allowed. The statute does not say whether or not it is retroactive. Mr. Bland testified that he was told by Representative Woody Burton that he would put forth legislation that would prove the intent and allow Mr. Bland to receive a refund. *Bland testimony.*

#### SUMMARY OF THE RESPONDENT'S CASE

15. The assessed value is not being disputed. The dwelling was not 100% complete on the March 1, 2010 assessment date. The question is whether a homestead deduction can be applied to a home that does not have a certificate of occupancy. *Watkins testimony.*
16. An amendment to Ind. Code § 6-1.1-12-37 was put in place in 2013. This amendment states in part that an individual is entitled to a homestead deduction for a particular assessment date, if on the assessment date the construction of the dwelling that constitutes the homestead was not completed. This amendment does not state, however, that it is retroactive to the March 1, 2010 assessment date. *Watkins testimony: Resp't Ex.1.*
17. Mr. Watkins believes the amendment became effective in 2013. He sees nothing that indicates or outright states that this amendment applies prior to 2013. *Watkins testimony.*

#### ANALYSIS

18. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001) (citing *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). By statute, the Board conducts an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, property tax exemptions, and property tax credits that are made from a determination by an assessing official or county property assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1.

19. The parties agree that the dwelling was not complete on March 1, 2010. They also agree that an amendment added in 2013 entitles an individual to the homestead deduction if construction of the dwelling that constitutes the homestead was not completed on the assessment date. The dispute is whether or not the amendment applies to the March 1, 2010 assessment date.
20. Pub. L. 288-2013 amended Ind. Code § 6-1.1-12-37 to include, among other things, a deduction for a homestead if on the assessment date the construction of the dwelling that constitutes the homestead was not completed. Ind. Code § 6-1.1-12-17 (2013). This provision became effective March 1, 2013. The Petitioners contend that there is nothing stating that the amendment is not retroactive to March 1, 2010. The Respondent contends that the amendment became effective in 2013 and there is nothing that indicates that it should be applied prior to 2013.
21. Despite the change in statute, there can be no question that the statutory framework in place in 2010 governs the 2010 assessment. *See, e.g., Methodist Hospitals, Inc. v. Lake County Property Tax Assessment Board of Appeals*, Cause No. 45T10-0411-TA-50 (Ind. Tax Ct. 2007) (for publication January 10, 2007) (Amendment provided that property owned by an Indiana nonprofit corporation that is used in the operation of a hospital is exempt from property taxation as of January 1, 2001 but the petitioner’s medical offices were found to be not exempt in 2000 because the statutory provision in place at the time of assessment only allowed exemption of property “substantially related to or supportive of the inpatient facility of the hospital.”)
22. Therefore, the Board looks to the statute as written in 2010. Ind. Code § 6-1.1-12-37(b) states:

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.

Subject to subsection (c), the auditor of the county shall record and make a deduction for the individual or entity qualifying for the deduction.

23. In this case, the Petitioners purchased the property and filed the sales disclosure form on April 29, 2010. Pursuant to Ind. Code § 6-1.1-12-44, the sales disclosure form serves as an application for deductions. The Petitioners applied for the homestead deduction on the sales disclosure form. *Board Exhibit A - Sales Disclosure Form attached to Form 133 petition*. Because the County Auditor originally allowed the homestead deduction, the Board assumes there is no dispute with the Petitioners' interest in the homestead or the filing for the homestead deduction. The letter from the County Auditor states that the homestead deduction was removed because the home was not 100% complete as of March 1, 2010. Neither the letter nor Mr. Watkins cited to any statutory authority requiring that the dwelling be 100% complete on the assessment date.
24. A homestead is defined as an individual's principal place of residence that (1) is located in Indiana, (2) the individual owns, and (3) consists of a dwelling and the real estate. Ind. Code § 6-1.1-12-37(a)(2) (2010). Nothing in Ind. Code § 6-1.1-12-37 requires the dwelling to be 100% complete on the assessment date.
25. Because the statute does not limit the homestead deduction to dwellings that are 100% complete on the assessment date, neither the County nor the Board have 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).
26. To be eligible for the homestead deduction for the March 1, 2010 assessment date, the statute required the Petitioners to show that they had an interest in the homestead and filed for the deduction on any date in 2010. The record shows that the Petitioners purchased the property and filed for the homestead deduction on April 29, 2010.

27. Neither party addressed the other decisive issues in this case. First, did the Petitioners claim the homestead deduction anywhere else? And second, is the subject property the Petitioners' principal place of residence? Again, because the County Auditor originally allowed homestead deduction, the Board assumes these issues are not in dispute.

#### **SUMMARY OF FINAL DETERMINATION**

28. The Board finds in favor of the Petitioners. The Petitioners are entitled to the homestead deduction for the March 1, 2010 assessment date.

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

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Commissioner, 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 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>>.