

Marlene A. Charlesworth, *pro se*

County Assessor Neda K. Duff, *pro se*

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Marlene A. Charlesworth,	)	Petition No. 08-007-11-3-5-00001
	)	
Petitioner,	)	
	)	Parcel No. 08-06-29-024-032.000-007
v.	)	
	)	
Carroll County Assessor,	)	Carroll County
	)	Deer Creek Township
	)	
Respondent.	)	2011 Assessment

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

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**September 9, 2013**

**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:

**ISSUE**

The Petitioner purchased the subject property in 2009. She was allowed the homestead deduction for the 2010 assessment, but for the 2011 assessment the Respondent claims allowing the homestead deduction was a mistake, even though it was allowed again for the 2012 assessment. Does the Petitioner get the homestead deduction for the 2011 assessment?

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

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

1. The subject property is a single-family residential property located at 104 West Front Street in Delphi.
2. The Petitioner filed a Form 133 Petition for Correction of an Error on October 24, 2012. On November 27, 2012, the Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying the Petitioner a homestead deduction for the 2011 assessment because the Petitioner “failed to provide any documentation (copy of Indiana driver’s license, voter registration, etc.) to prove residency.”
3. On December 19, 2012, the Board received Petitioner’s Form 133 seeking correction regarding her 2011 assessment that is payable on her 2012 tax bill. According to the Petitioner, the subject property is her primary residence and it qualifies for the homestead deduction.
4. On May 9, 2013, the Board’s administrative law judge (“ALJ”), Ellen Yuhan, held a hearing on that petition. Neither the Board nor the ALJ inspected the subject property.
5. Marlene A. Charlesworth, County Assessor Neda K. Duff, and Tina Johnson (a clerk for the county auditor) were sworn and testified.
6. The Petitioner submitted the following exhibits:
  - Petitioner Exhibit 1 – Insurance policy declaration,
  - Petitioner Exhibit 2 – Sales disclosure form for the subject property,
  - Petitioner Exhibit 3 – Letter from SRI dated September 18, 2012,
  - Petitioner Exhibit 4 – Notice requesting back taxes,
  - Petitioner Exhibit 5 – Petitioner’s addendum to Form 133, Section II.

7. The Respondent submitted the following exhibits:
  - Respondent Exhibit 1 – Chronological record of the events leading to the filing of the Form 133 petition,
  - Respondent Exhibit 2 – E-mail from Ms. Charlesworth to County Assessor dated November 12, 2012,
  - Respondent Exhibit 3 – Letter from County Auditor to Ms. Charlesworth dated August 8, 2012.
8. The following additional items are officially recognized as part of the record of proceedings:
  - Board Exhibit A – Form 133 petition,
  - Board Exhibit B – Notice of Hearing,
  - Board Exhibit C – Hearing sign-in sheet.

#### **SUMMARY OF THE PETITIONER'S CASE**

9. When the Petitioner purchased the property in 2009, she signed the sales disclosure form stating under penalty of perjury that the property was to be her primary residence and she applied for the homestead deduction by checking 'yes' in the appropriate section. The sales disclosure form shows she did not have a homestead in Indiana that needed to be vacated. In addition, her insurance papers show the property is her primary residence. The Petitioner owns no other real property in any other state. She does maintain an address in California, but it is a mobile home licensed as a motor vehicle. *Charlesworth testimony; Petitioner Exhibits 1, 2.*
10. Before she purchased the subject property, the Petitioner rented an apartment in West Lafayette and had a post office box there. She did not own property in West Lafayette or have a homestead deduction there. The homestead deduction should not be denied based on the post office box in West Lafayette. *Charlesworth testimony.*
11. The Petitioner is a full-time Indiana resident. At all times since she purchased the property she has resided in the state for 183 days a year or more. A resident is any individual who is domiciled in the state during the taxable year and spends at least 183 days of the year in the state. In order to establish the domicile, the person must be

physically present at a place and have the simultaneous intent of establishing a home at that place. According to Information Bulletin 26, if the taxpayer maintains a legal residence in Indiana for the entire year, the taxpayer does not have to be physically present to be considered a full-year resident. The Bulletin does not say anything about a driver's license, taxes, or voting registration. Additionally, FSSA 2406.10 states that a resident of Indiana is one who is living voluntarily in Indiana with the intention of making a home here and not for a temporary purpose. *Charlesworth testimony.*

12. When she is in residence, the Petitioner operates a bed and breakfast at the subject property. The Petitioner uses one bedroom and rents out the other two. The bed and breakfast does not operate when the Petitioner is not in residence. The Petitioner only earned about \$1,000 in 2010, which was her first full-time year of residence in Indiana. Consequently no state income tax return was required. *Charlesworth testimony.*
13. If the Petitioner had been given a list of the items required to establish a new residency, she would have complied. She currently has an Indiana driver's license, voter's registration and her vehicle is titled in Indiana. She did not file income taxes in Indiana because her income did not require it. *Charlesworth testimony.*
14. SRI sent notices filled with errors and incorrect statements.<sup>1</sup> SRI did not inform the Petitioner of her rights or of the appeal process. It is inappropriate for SRI to go back and insist on back taxes and penalties. *Charlesworth testimony; Petitioner Exhibit 5.*

#### **SUMMARY OF THE RESPONDENT'S CASE**

15. When the petition came before the PTABOA, the Petitioner did not supply any of the evidence needed to support the residency requirement. Therefore, the PTABOA denied the homestead deduction. *Duff testimony.*

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<sup>1</sup> SRI, Inc. (Synergistic Resources Integration) is a company that conducts tax sales, deed sales, and foreclosure sales as well as providing consulting services to local government entities. According to Ms. Johnson, Carroll County contracted with SRI to investigate homestead deduction fraud

16. In order to claim the homestead deduction, one must be a permanent resident in the state of Indiana, meaning the Petitioner must live at the subject property for six months and one day of the year. The Petitioner must also be a registered voter in Indiana, have a valid driver's license, and file taxes with Indiana as a permanent residence in order to clarify that she is a permanent resident of Indiana. *Johnson testimony.*
17. The Petitioner maintained an address in California and had a California driver's license. The Petitioner also had a post office box in West Lafayette, although admittedly the Petitioner did not have a homestead deduction in Tippecanoe County. Ms. Johnson informed the Petitioner that she needed a valid Indiana driver's license to prove residency. Indiana law states when you become a resident of Indiana you have 60 days to obtain a driver's license if you have a valid driver's license from another state. *Johnson testimony; Respondent Exhibit 1.*
18. The Petitioner did not file her proof of residency until December 17, 2012. She submitted her voter's registration dated September 25, 2012, her Indiana driver's license dated November 5, 2012, her vehicle registration dated November 5, 2012, and her vehicle title dated November 8, 2012. The Petitioner is receiving the homestead deduction and the age deduction for 2012. *Johnson testimony; Respondent Exhibit 1.*
19. Although the Petitioner received the full deduction for 2012, the Respondent "questions" whether the Petitioner is entitled to a full homestead deduction because she operates the property as a bed and breakfast. *Duff testimony.*

#### ANALYSIS

20. 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. Regarding the standard deduction for homestead, Ind. Code § 6-1.1-12-37(o) states that if “the county auditor has determined that the property is not the property owner's principal place of residence, the property owner may appeal the county auditor's determination ... as provided in IC 6-1.1-15.”

21. In this case the most relevant parts for the standard deduction for homestead are as follows:

(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.

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(2) "Homestead" means an individual's principal place of residence:

(A) that is located in Indiana;

(B) that: (i) the individual owns; [or] (ii) the individual is buying under a contract, recorded in the county recorder's office, that provides that the individual is to pay the property taxes on the residence;

(C) that consists of a dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds that dwelling.

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(j) A county auditor may require an individual to provide evidence proving that the individual's residence is the individual's principal place of residence as claimed in the certified statement filed under subsection (e). The county auditor may limit the evidence that an individual is required to submit to a state income tax return, a valid driver's license, or a valid voter registration card showing that the residence for which the deduction is claimed is the individual's principal place of residence.

Ind. Code § 6-1.1-12-37.

22. The Petitioner applied for the homestead deduction using the sales disclosure form as allowed by 50 IAC 24-4-3. The Petitioner testified that the subject property is her primary residence and she owns no other real property. A homestead deduction may be removed if it is determined the individual is no longer eligible for the deduction because the use of the property changed so that it is no longer the principal place of residence or the individual has the homestead deduction on another parcel. The Respondent, however, offered no substantial evidence that the subject property is not the Petitioner's primary residence or that she owns other real property.
23. The Respondent focused on other things. The Respondent contends the Petitioner should not have received the homestead deduction because when she returned her homestead verification form in 2012, she did not have documents corroborating her residency, such as a valid Indiana driver's license. The lack of documentation triggered a legitimate investigation. The Respondent's current position assumes the lack of an Indiana driver's license, tax return, and voter registration *necessarily* establishes lack of the required residency. But the Respondent cited no applicable authority for that position. For example, holding an Indiana driver's license is not required for the homestead deduction per the Department of Local Government Finance release of November 13, 2012. The fact that the Bureau of Motor Vehicles requires a new resident to obtain an Indiana driver's license within 60 days is not determinative. At most, the lack of this kind of normal documentation is a factor to be considered along with other evidence when determining a residency claim. Lack of that documentation is not conclusive.
24. Other than the lack of documentation (Indiana driver's license, tax return, or voter registration), the Respondent did not submit evidence showing the Petitioner was not entitled to the homestead deduction. The Respondent did not submit probative evidence that any of the Petitioner's testimony about residence is untrue or unreliable. The Respondent failed to prove the Petitioner did not use the property as her primary residence. The Respondent failed to prove the Petitioner had a homestead deduction for another property.

25. The Petitioner testified that the property is now a licensed bed and breakfast and she has two rooms available for rent when she is in residence, but 2012 was the first full-time year for the bed and breakfast. Based on the evidence presented, the Petitioner used the subject property as her primary residence in 2011. Therefore, the Respondent improperly removed the homestead deduction for taxes based on the 2011 assessment. As to the issue of a partial deduction, there is nothing in the record to show exactly when the Petitioner started her business or what specific portion of the property is affected. The Board, therefore, will not address that issue.

**SUMMARY OF FINAL DETERMINATION**

26. The Board finds for the Petitioner. The deduction was improperly removed and must be restored as it relates to the 2011 assessment.

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

ISSUED: September 9, 2013

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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, 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>>