

REPRESENTATIVES FOR PETITIONERS:

Sheri L. & Peter V. Colan, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Landon K. Richmond, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Sheri L. & Peter V. Colan)	Petition Nos.: 20-001-12-3-5-01248-16
)	20-001-13-3-5-01249-16
Petitioners,)	20-001-14-3-5-01250-16
)	
)	Parcel No. 20-05-02-476-007.000-001
v.)	
)	County: Elkhart
)	
Elkhart County Assessor,)	Township: Baugo
)	
Respondent.)	Assessment Years: 2012, 2013, & 2014

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

Issued: February 1, 2018

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

ISSUE

1. Petitioners claim that they were wrongfully denied a homestead deduction that was retroactively removed for the years at issue.¹

PROCEDURAL HISTORY

2. Petitioners initiated the appeals with the Elkhart County Assessor on May 3, 2016. On May 26, 2016, the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying Petitioners relief. On June 2, 2016, Petitioners filed Form 133 petitions with the Board.
3. Dalene McMillen, the Board’s designated administrative law judge (“ALJ”), held a hearing on September 7, 2017. Neither she nor the Board inspected the property.
4. Attorney Landon K. Richmond represented Respondent. The following witnesses were sworn:
 - Peter V. Colan, owner
 - Sheri L. Colan, owner
 - Kris Jensen, Elkhart County Auditor Property Compliance Manager
 - Cathy Searcy, Elkhart County Assessor.²
5. Petitioners offered the following exhibits:
 - Petitioners’ written summary of their case,
 - Petitioner Exhibit 1 – Sales disclosure form for subject property,
 - Petitioner Exhibit 2 – Warranty deed for subject property, dated November 6, 2009,
 - Petitioner Exhibit 3 – Letter from Auditor’s office, dated September 21, 2015,
 - Petitioner Exhibit 4 – Auditor’s documentation submitted at PTABOA hearing,
 - Petitioner Exhibit 5 – Letter from Mr. Colan, dated October 13, 2015,

¹ The parties use the terms “homestead deduction” and “homestead exemption” interchangeably referring to the standard deduction for homesteads provided for by Ind. Code § 6-1.1-12-37.

² Sheri Colan and Cathy Searcy did not testify.

- Petitioner Exhibit 6 – Quit Claim deed for subject property, dated July 28, 2010,
- Petitioner Exhibit 7 – Notice of Removal of Homestead Deduction, dated August 3, 2015,
- Petitioner Exhibit 8 – Notice of Lien for subject property, dated August 3, 2015,
- Petitioner Exhibit 9 – 2016 and 2017 tax installments for subject property,
- Petitioner Exhibit 10 – Seven letters between Petitioners and Auditor’s office,
- Petitioner Exhibit 11 – Petitioners’ brief dated February 25, 2016,
- Petitioner Exhibit 12 – Petitioners’ response to PTABOA’s request for evidence, dated March 4, 2016, *Indiana Dept. of Revenue v. Miller Brewing Company*, No. 49S10-1203-TA-136 (Ind. 2012), *Helen M. Poehlman v. Martin E. Fererman, M.D.*, 717 N.E.2d 578 (Ind. 1999), *Robert K. Benham v. State of Indiana*, 637 N.E.2d 133 (Ind. 1994), *Estate of Andrea B. Eberbach v. State of Indiana*, 512 N.E. 2d 902 (Ind. 1987), and *People ex rel. Mutual Trust Co. v. Nathan L. Miller*, 177 N.Y. 51 (N.Y. 1903),
- Petitioner Exhibit 13 – Auditor’s letter, dated September 9, 2015,
- Petitioner Exhibit 14 – *Joyce M. Weidner v. Madison County*, Pet. Nos. 48-003-97-1-5-00001 & 48-003-98-1-5-00002 (April 10, 2003),
- Petitioner Exhibit 15 – Email correspondence between Michael E. Duffy, General Counsel, Department of Local Government Finance (“DLGF”) and Petitioners, dated October 7 & 8, 2015,
- Petitioner Exhibit 16 – Blank copy of State Form 53559 (“Pink Form”) prescribed under HEA 1344-1008,
- Petitioner Exhibit 17 – Form 133 petition,
- Petitioner Exhibit 18 – Email correspondence between Michael E. Duffy, and Petitioners, dated October 11 & 13, 2015,
- Petitioner Exhibit 19 – *Christopher M.W. Jordan v. Hamilton County Assessor*, Pet. No. 29-020-13-1-5-01448 (March 21, 2016),
- Petitioner Exhibit 20 – Indiana Property Tax Benefits – Form 51781,
- Petitioner Exhibit 21 – Email correspondence between Kris Jensen, Elkhart County and Patricia Henry, St. Joseph County, dated September 14 & 15, 2015 and October 7, 2015,
- Petitioner Exhibit 22 – *Kevin Weldon v. Monroe County Assessor*, Pet. No. 53-009-13-3-5-00001 (September 6, 2016),
- Petitioner Exhibit 23 – *Murali M.R. & Neeraja Y. Krishna v. Allen County Assessor*, Pet. No. 02-038-14-3-5-10275-15 (February 2, 2016),
- Petitioner Exhibit 24 – St. Joseph County parcel information for 10125 Raindrop Circle in Granger,
- Petitioner Exhibit 25 – Sales disclosure form for 10125 Raindrop Circle in Granger,

- Petitioner Exhibit 26 – 2010, 2011 and 2012 real property tax summaries for Parcel No. 71-05-16-430-006.000-011,
- Petitioner Exhibit 27 – Two letters between Petitioners and Larry Ernest, Elkhart County Treasurer’s office, dated November 9 & 16, 2016,
- Petitioner Exhibit 28 – Two notarized statements on Elkhart home occupancy from Michael & Sara Morgan and John Ohrazda, dated May 11 & 12, 2017,
- Petitioner Exhibit 29 – Advance person search on Petitioners for 10125 Raindrop Circle in Granger,³
- Petitioner Exhibit 30 – Page 3 of Form 133 petition and letter from Petitioners to Cathy Searcy, Elkhart County Assessor, dated February 6, 2016,
- Petitioner Exhibit 31 – DLGF memorandum “Appeals Procedures,” dated June 10, 2016,
- Petitioner Exhibit 32 – Newspaper article from the *Elkhart Truth*, dated December 12, 2016,

6. Respondent offered the following exhibits:

- Respondent Exhibit A – Warranty deed for subject property, dated November 6, 2009,
- Respondent Exhibit B – Sales disclosure form for subject property, dated November 2, 2009,
- Respondent Exhibit C – Quit Claim deed for subject property, dated July 28, 2010,
- Respondent Exhibit D – Claim for Homestead Property Tax Standard / Supplemental Deduction for subject property, dated September 9, 2015,
- Respondent Exhibit E – Letter from Petitioners to PTABOA, dated September 9, 2015,
- Respondent Exhibit F – Letter from Petitioners to Elkhart County Auditor’s office, dated September 21, 2015; letter from Richard G. Lugar, United States Senator, to Peter Colan, dated July 14, 2011; 2015 real property summary for Parcel No. 71-05-16-430-006.000-011; 2010, 2011, 2012, 2013 and 2014 U.S. Individual Income Tax Returns – Form 1040s (Confidential); and letter from Elkhart County Auditor’s office to Petitioners, dated September 22, 2015,
- Respondent Exhibit G – Notice of Removal of Homestead Deduction, dated August 3, 2015,⁴

³ Petitioners submitted Petitioner Exhibits 15 and 29, but did not request they be admitted into evidence.

⁴ Mr. Richmond submitted Respondent Exhibit G, but did not request it be admitted into evidence.

Respondent Exhibit H – Notice of Lien on subject property and Peter Colan’s Voter Registration Acknowledgement Notice, dated August 4, 2010,

7. The following additional items are part of the record:
 - Board Exhibit A – Form 133 petitions and attachments,
 - Board Exhibit B – Hearing notices,
 - Board Exhibit C – Hearing sign-in sheets.
8. The property under appeal is a single-family residential property located at 55922 Channel View in Elkhart.

OBJECTIONS

9. Mr. Richmond objected to Petitioner Exhibits 18 and 28 as hearsay. The ALJ took the objections under advisement. These exhibits are hearsay because the authors of the exhibits were not present to be cross-examined. “Hearsay” is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. (Ind. R. Evid. 801 (c)). The Board’s procedural rules specifically address hearsay evidence:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 3-1-5 (b). The word “may” is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered into the record, but is not required to allow it.

10. Petitioners did not argue that Petitioner Exhibits 18 and 28 fall within any recognized exception to the hearsay rule. As such, Petitioner Exhibits 18 and 28 are admitted to the record, but, in accordance with the Board’s procedural rules, the Board’s determination may not be based solely on those exhibits.

11. Mr. Richmond objected to Petitioner Exhibit 32 on the grounds that the newspaper article is irrelevant. The ALJ took the objection under advisement. The objection goes to the weight of the evidence rather than its admissibility. Thus, this objection is overruled and the exhibit is admitted.

PETITIONERS' CONTENTIONS

12. On November 6, 2009, Petitioners, along with their daughter Sarah Colan ("Sarah"), purchased the subject property. The deed conveyed it to "Peter V. Colan and Sheri L. Colan, Husband and Wife, as to an Undivided 90% Interest and Sarah A. Colan, as to an Undivided 10% Interest . . .". Petitioners contend the subject property was Sarah's principal place of residence in 2009. By completing the appropriate field on the sales disclosure form, Sarah applied for and received the homestead deduction. *Colan testimony; Pet'r Exs. 1-2.*
13. In mid-2010, Petitioners sold their home in Granger and moved to the subject property. On July 28, 2010, Sarah transferred her interest in the subject property to Petitioners via quit claim deed. *Colan testimony; Pet'r Ex. 6, 21 & 24-26.*
14. Petitioners did not apply for a homestead deduction on the subject property in 2010 because, they claim, they spoke with an employee in the Elkhart County Auditor's ("Auditor") office, who advised them that because the property was originally titled in all three names, the homestead deduction status would be maintained with the filing of the quit claim deed removing Sarah's name. Petitioners also claim that the Auditor's employee further indicated that no other documents were needed unless the house was vacated or sold. *Colan testimony; Pet'r Exs. 3, 5 & 10.*
15. Petitioners contend the Auditor has stated that any questions regarding deductions should be directed to her office, and therefore, they argue, she accepts responsibility for any advice offered on her behalf. Petitioners argue that since the employee in the Auditor's

office is an official representative of the Auditor, the advice they received from her was essential to their compliance with the homestead deduction filing requirements. Further, Petitioners contend that taxpayers acting on such advice in good faith should not have to fear retaliation from the Auditor at a later date in the form of fines, liens, or the levying of back taxes. *Colan testimony; Pet'r Exs. 3 & 10.*

16. Petitioners testified that on August 3, 2015, they received notice of the removal of the homestead deduction for 2012 pay 2013, 2013 pay 2014 and 2014 pay 2015, as well as a notice of lien. They subsequently received a 2016 tax statement for \$5,609.55 which increased in 2017 to \$8,952.25 due to penalties and interest. *Colan testimony; Pet'r Exs. 7-9 & 27.*
17. According to Petitioners, the Auditor's only justification for the retroactive taxes and penalties is derived from Ind. Code §6-1.1-12-37, which the Auditor quoted in a letter to Petitioners stating "An individual who changes the use of this homestead property and fails to file a certified statement to the auditor of the county notifying the county of the change of use within 60 days after the date of change is liable for the amount of the deduction he was allowed for that real property, plus a civil penalty equal to 10% of the additional taxes." Petitioners claim that this, coupled with the notice of removal, indicates that the Auditor believes a failure to file Form HC10 ("Claim for Homestead Property Tax Standard/Supplemental Deduction") constitutes a change of use. *Colan testimony; Pet'r Exs. 10 & 20.*
18. Petitioners could not find a specific definition for the term "change of use" in the Indiana Code. They contend that several cases stand for the idea that "[w]hen a statute is clear and unambiguous, there is no need to apply any rules of construction other than that requiring words and phrases to be taken in their plain, ordinary, and usual sense." See *Robert K. Benham v. State of Indiana*, 637 N.E.2d 133 (Ind. 1994). Consequently, Petitioners believe the term "change of use" would "in a common sense mean an individual who would have converted a property previously qualified as a homestead to a purpose other than a homestead such as commercial, industrial, rental, or if the home

were left vacant with the owners claiming a principle place of residence elsewhere.” They further contend that “simply maintaining the same unaltered home continuously as a principal place of residence for any or all owners and taxpayers of the property would not commonly be considered a change of use.” Consequently, Petitioners contend that their failure to file Form HC10 does not constitute a change of use in the subject property as contemplated on Form 51781 (“Indiana Property Tax Benefits”). *Colan testimony; Pet’r Ex. 4, 12 & 20.*

19. Petitioners also cited *Joyce M. Weidner v. Madison County*, Pet. Nos. 48-003-97-1-5-00001 & 48-003-98-1-5-00002 (IBTR April 10, 2003), which they contend indicates no new homestead application is required for a change in deed without a change in use. They claim this case is similar to their situation whereby one of the original owners of the property transferred their interest by quit claim deed to the remaining owner without any homestead application being filed and the county removed the deduction. In that case, the Board ruled there was no statutory support for the county requiring a new homestead deduction form if an original owner retained ownership and the use of the property did not change. *Colan testimony; Pet’r Exs. 14 & 22; (also citing Kevin Weldon v. Monroe County Assessor*, Pet. No. 53-009-13-3-5-00001 (IBTR September 6, 2016).
20. Petitioners contend a new statewide database was being launched in 2010 to track homestead deductions and prevent fraud. Before that database became fully operational however, counties were required to mail a homestead certification, referred to as the “pink form,” with property tax bills in 2010, 2011 and 2012. Taxpayers had to complete and return the pink form to the county auditor. *See Ind. Code §6-1.1-22-8.1(a). Colan testimony; Pet’r Exs. 10, 16 & 18.*
21. Petitioners claim the Auditor admitted the pink form was not mailed to them or Sarah. Instead, the Auditor chose to verify the homestead deduction information from the subject property’s 2009 sales disclosure form and no further action was taken. According to Petitioners, the DLGF issued an unrelated memorandum concerning appeals by which they indicated the word “shall” in a statute means the requirement of that statute is “not

optional.” Thus, Petitioners argue, the Auditor failed to comply with the law by not mailing the pink form in 2010, 2011 or 2012. *Colan testimony; Pet’r Exs. 18 & 31.*

22. Petitioners argue that if the pink form had been mailed, and if the statewide database had been fully operational, the Auditor would have discovered that Sarah had filed a new homestead deduction in St. Joseph County. In addition, the sales disclosure form showed the billing address for the subject property taxes was Petitioners’ address in Granger. Therefore, the tax bill and the pink form should have been mailed to Petitioners in Granger, which at the very least would have sparked communication with the Auditor. The issue would have been discovered and remedied by the Auditor and no further consequences would have arisen in the form of back taxes, penalties, and interest. *Colan testimony; Pet’r Ex. 1.*
23. Further, Petitioners contend that the Auditor acknowledged that Petitioners were residing at the subject property and that it was their principal place of residence during the years under appeal. Petitioners argue despite the pink form not being filed, the homestead deduction should be reinstated. *Colan testimony; Pet’r Ex. 19 (citing Christopher M.W. Jordan v. Hamilton County Assessor, Pet. No. 29-020-13-1-5-01448 (IBTR 3-21-2016)).*
24. Petitioners claim Respondent attempted to violate their due process by mailing them a PTABOA final determination without holding a preliminary informal meeting or PTABOA hearing. Petitioners contend that the Auditor attempted to convince the PTABOA that they had no authority to rule on the homestead deduction matter. *Colan testimony; Pet’r Ex. 30.*
25. Finally, Petitioners request that the Board order the Auditor to send a letter to all credit reporting agencies notifying them of the county’s error, the reason for the error, the immediate correction of the error, and also request that any record of late tax payments be completely removed from their credit history. *Colan testimony.*

RESPONDENT'S CONTENTIONS

26. Respondent contends that while Petitioners may have been eligible for a homestead deduction on the subject property during certain years, the Auditor has no record of them applying for the homestead deduction until September 9, 2015. *Richmond argument; Jensen testimony; Resp't Ex. D.*
27. The November 6, 2009, warranty deed shows the subject property was purchased by Petitioners and Sarah. Petitioners owned 90% of the subject property and Sarah owned 10%. The sales disclosure form Petitioners and Sarah completed when they bought the subject property includes a section used to apply for certain deductions. The form asks the buyers to check all the deductions that apply. Sarah checked the "Homestead" deduction box and also indicated that the subject property would be her primary residence. Petitioners on the other hand did not check any boxes and the form shows their address as 10125 Raindrop Circle in Granger. The Auditor granted the homestead deduction to Sarah on the subject property. *Jensen testimony; Resp't Exs. A & B.*
28. According to Respondent's records, Sarah transferred her 10% interest in the subject property to Petitioners by quit claim deed on July 28, 2010. Respondent contends the first time Petitioners appeared in the Auditor's office was September 9, 2015, when they completed Form HC10 for the 2015 assessment year. The Auditor subsequently removed the homestead deduction and adjusted the property taxes for 2012, 2013 and 2014. Petitioners filed an appeal to recover the deduction for 2012, 2013 and 2014. The PTABOA denied their homestead deduction claim for those years on May 26, 2016. *Jensen testimony; Resp't Exs. C-E & H.*
29. Respondent argues it was Sarah's responsibility to notify the county she was no longer eligible for the homestead deduction. The Auditor had no duty to make Petitioners aware they were eligible for a homestead deduction. *Richmond argument; (citing; Ind. Codes § 6-1.1-12-17.8 (a) and Ind. Code § 6-1.1-12-37 (b) & (e)).*

30. Respondent claims Petitioners “appear to be raising some sort of estoppel claim” when they complain of receiving incorrect advice from an Elkhart County Auditor employee as the reason they failed to file for the homestead deduction. These types of claims are generally barred against governmental entities. According to Mr. Richmond, courts are reluctant to allow estoppel in cases where the party claiming to have been ignorant of the facts had access to the correct information. *Richmond argument; (citing Outdoor Advertising Company Inc. v. Indiana Department of Transportation, 714 N.E.2d 1244 (1999))*.

Analysis

31. Indiana Code § 6-1.1-12-37 provides a standard deduction from the assessed value for homesteads, which the statute defines as a dwelling that an individual owns and uses as his place of residence and up to one acre of surrounding land. I.C. § 6-1.1-12-37(a)-(c). At all times relevant to this appeal, the taxpayer had to apply for the deduction in one of two ways.⁵ First, he could file a certified statement with the county auditor on forms prescribed by the DLGF. I.C. § 6-1.1-12-37(e). The DLGF prescribed Form HC10 for that purpose. 50 IAC 24-4-2. A taxpayer had to complete Form HC10 within the calendar year for which the deduction was sought and file that form on or before January 5 of the immediately succeeding year. *Id.*; I.C. § 6-1.1-12-37(e). Alternatively, a taxpayer could use the sales disclosure form at the time of purchase to claim the deduction. *See Id.*; I.C. § 6-1.1-12-44.
32. The subject property initially qualified as a “homestead” under Ind. Code § 6-1.1-12-37(a)(2). Petitioners and Sarah bought it at the end of 2009 and Sarah began using it as her principal place of residence. Sarah then transferred her interest in the property by quit claim deed on July 28, 2010, at which time Petitioners moved into the subject property and began using it as their principal place of residence. In 2015, Petitioners received notice that the homestead deduction had been removed for the years at issue.

⁵ Once the auditor grants the deduction, it carries forward and taxpayers need not reapply. *See* I.C. § 6-1.1-12-37(e); I.C. § 6-1.1-12-17.8.

They subsequently received a significant 2016 tax statement which increased in 2017 due to penalties and interest.

33. In challenging the removal of the deduction, Petitioners claim that in 2010 they relied on advice given to them by an employee at the Auditor's office who allegedly indicated that they need not take any action to preserve the homestead deduction after Sarah transferred her interest.
34. Petitioners also claim that the Auditor failed to mail them a "pink form" as was required by law for 2010, 2011, and 2012. During those years, county treasurers were required to mail taxpayers receiving certain homestead credits or any deduction a notice, which the taxpayer had to complete and return to the county auditor. I.C. § 6-1.1-22-8.1 (b) (9) (2013) ("Verification Statute").⁶ The notice had to inform taxpayers that the failure to complete and return it could lead to disqualification. *Id.* In completing the notice, taxpayers had to indicate, under penalties of perjury, whether their property was eligible for the credits or deductions. They also had to supply certain information, including their names, the names of their spouses, and the last four digits of their social security numbers. The Auditor does not dispute that it failed to mail the pink form to Sarah or to the subject property address in 2010, 2011, and 2012. However, the statute is silent about the consequences of that failure.
35. While Petitioners placed significant emphasis on what advice they may or may not have received from the Auditor's office, as well as on the consequences of the Auditor not mailing the pink form, the contemplation of those two issues need not be the basis of the decision in this case.
36. Instead, the Board turns its attention to Respondent's implication that, because only Sarah completed the homestead deduction field on the sales disclosure form in 2009, the deduction was personal to her. However, Respondent does not point to any authority to

⁶ The Verification Statute expired on January 1, 2013. *See* I.C. § 6-1.1-22.8-9 (b) (2013); *see also*, I.C. § 6-1.1-12-17.8 (a).

suggest that when the deduction was originally granted it did not benefit both Sarah and Petitioners. It also seems to be Respondent's position that when Sarah transferred her interest to Petitioners via quit claim deed, the deduction terminated. However, this is not a case where Sarah transferred her interest to a third party. Nor is it a case where a new owner failed to apply for the deduction. The transfer simply amounted to one original owner dropping out of the arrangement and two original owners remaining. As a result, the Board is not persuaded that the deduction did not originally benefit all of the owners or that it terminated at the time of the quit claim deed.

37. Respondent also suggested in a letter to Petitioners that Sarah's quit claim deed constituted a change in use of the property. Indiana Code § 6-1.1-12-37 (f)(2) states in pertinent part that if an individual who is receiving a deduction is no longer eligible, the individual must file a certified statement with the auditor not more than 60 days after the date of change. 50 IAC 24-3-7 previously mirrored 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 60 days after the date of the change. 50 IAC 24-3-7 was enacted in May of 2009 and repealed in 2016.
38. The Board does not agree that Sarah's action constituted a change of use of the property. This is not a situation where a property that previously qualified as a homestead was converted to a purpose other than a homestead. Rather, the property was at all times maintained as an owner-occupied principal place of residence. It was never converted to any other purpose such as commercial or industrial. It was not converted to a rental property. At the time the homestead application was filed, there were three owners, and at all times since, at least one of those same owners remained eligible. Because the quit claim deed did not constitute a change of use, and because the original deduction benefitted both Petitioners and Sarah, there was no duty to file a certified statement with the Auditor within 60 days or file a new application.

39. This is not a case where a taxpayer was attempting to improperly claim the homestead deduction. There is no factual dispute that Petitioners met the requirements to claim the deduction at all times during the years at issue. The deduction originally benefitted both Sarah and Petitioners and did not terminate at the time of Sarah's transfer, nor did the transfer constitute a change in use. In light of these considerations, the Board finds that the homestead deduction for 2012, 2013, and 2014 should be reinstated.
40. With regard to Petitioners' request that the Board order the Auditor to send a letter to all credit reporting agencies explaining the nature of the county's error and requesting that any record of late tax payments be completely removed from their credit history, the Board lacks the authority to address Petitioners' claim. The Board is a creation of the legislature, and it has only those powers conferred by statute. *Whetzel v. Department of Local Government Finance*, 761 N.E.2d 904 (Ind. Tax Ct. 2002) citing *Matonovich v. State Board of Tax Commissioners*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999). The relevant statute reads:

- (a) The Indiana board shall conduct an impartial review of all appeals concerning:
- (1) the assessed valuation of tangible property;
 - (2) property tax deductions;
 - (3) property tax exemptions;
 - (4) property tax credits;
- that are made from a determination by an assessing official or county property tax assessment board of appeals to the Indiana board under any law.
- (b) Appeals described in this section shall be conducted under I.C. § 6-1.1-15.

Ind. Code § 6-1.5-4-1.

SUMMARY OF FINAL DETERMINATION

41. For the reasons discussed herein, the Board finds for Petitioner. The homestead deduction was not granted in error for 2012, 2013, and 2014 and should be reinstated for those years.⁷

⁷ Because the denial of the homestead deduction was the cause of the penalties being imposed, the reinstatement of the deduction should obviously result in those penalties being removed.

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

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>>.