

REPRESENTATIVES FOR PETITIONERS:

Michael R. & Christine M. Davis, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Gabe Deaton, Director of Assessments for the Marion County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Michael R. & Christine M. Davis,	)	Petition Nos.:	49-407-14-1-5-00791-18
	)		49-407-15-1-5-00792-18
Petitioners,	)		49-407-16-1-5-00793-18
	)		49-407-17-1-5-00794-18
)		
v.	)	Parcel No.	4026740
)		
	)	County:	Marion
Marion County Assessor,)		
	)	Township:	Lawrence
Respondent.)		
	)	Assessment Years:	2014, 2015, 2016, & 2017

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

May 17, 2019

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. Did the Petitioners prove they were entitled to a homestead deduction for the years at issue?¹

PROCEDURAL HISTORY

2. The Petitioners initiated their 2014, 2015, 2016, and 2017 appeals with the Marion County Assessor on April 30, 2018. On May 18, 2018, the Marion County Property Tax Assessment Board of Appeals (PTABOA) issued determinations for each year denying the Petitioners any relief. On July 23, 2018, the Petitioners filed Petitions for Review of Assessment (Form 131s) with the Board for each year.²
3. On February 19, 2019, the Board's administrative law judge (ALJ) Dalene McMillen held a consolidated hearing. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Michael R. Davis and Christine M. Davis appeared *pro se*. Gabe Deaton, Director of Assessments for the Marion County Assessor's Office, appeared for the Respondent. All of them were sworn.
5. The Petitioners offered the following exhibits:³

Petitioners Exhibit 1 – Form 131 (page 1); Taxpayer's Notice to Initiate an Appeal (Form 130) (pages 1 and 2); Notification of Disposition on Petition for Correction of Error; Midland Mortgage annual tax and interest statement; and Form 1098 (**confidential**) all for the 2017 assessment year,
Petitioners Exhibit 2 – Form 131 (page 1); Taxpayer's Notice to Initiate an Appeal (Form 130) (pages 1 and 2); Notification of

¹ The Petitioners used the term "homestead tax" when referring to the standard deduction for homesteads provided for under Ind. Code § 6-1.1-12-37.

² It appears the Form 131s may have been untimely filed with the Board. However, the Respondent did not raise the issue at any time. Therefore the Board will not rule *sua sponte* on the issue.

³ The Board has marked the Petitioners' Mortgage Interest Statements (Form 1098s) for each year as confidential.

- Disposition on Petition for Correction of Error; Midland Mortgage annual tax and interest statement; and Form 1098 (**confidential**) all for the 2016 assessment year,
Petitioners Exhibit 3 – Form 131 (page 1); Taxpayer’s Notice to Initiate an Appeal (Form 130) (pages 1 and 2); Notification of Disposition on Petition for Correction of Error; Midland Mortgage annual tax and interest statement; and Form 1098 (**confidential**) all for the 2015 assessment year,
Petitioners Exhibit 4 – Form 131 (page 1); Taxpayer’s Notice to Initiate an Appeal (Form 130) (pages 1 and 2); Notification of Disposition on Petition for Correction of Error; Midland Mortgage annual tax and interest statement; and Form 1098 (**confidential**) all for the 2014 assessment year,
Petitioners Exhibit 5 – Petitioners’ written testimony.

6. The Respondent did not offer any exhibits.
7. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; (3) a digital recording of the hearing; and (4) these findings and conclusions.

JURISDICTIONAL FRAMEWORK

8. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONERS’ CONTENTIONS

9. The Petitioners purchased the subject property in 1994. At the time of purchase, they applied for and received the homestead deduction. The Petitioners have always used the property as their principal place of residence. In support of this, they offered copies of their annual mortgage tax and interest statements. *C. Davis testimony; Pet’rs Ex. 1, 2, 3, 4, 5.*

10. Sometime in 2018, the Petitioners discovered their homestead deduction had been removed for the assessment years at issue. At this time, the Petitioners went to the auditor's office and re-filed for their homestead deduction. According to the auditor's office, the homestead deduction had been removed because the Petitioners failed to return a notice that was mailed prior to 2014. The Petitioners repeatedly testified they did not receive a notice instructing them to verify their homestead deduction. It is possible they did not receive notices because they have numerous "issues" with their mail. *C. Davis testimony; Pet'rs Ex. 5.*
11. According to the Respondent's testimony, the homestead deduction was reinstated for 2017 assessment year. However, the Petitioners have yet to receive any record or proof from the county indicating the homestead deduction was reinstated. *C. Davis testimony.*

RESPONDENT'S CONTENTIONS

12. The Respondent testified the Assessor's office lacks authority to grant or deny a homestead deduction and should not be a party to an appeal on such issues.⁴ According to the Respondent, homestead deductions are a function of the auditor's office. *Deaton testimony.*
13. In 2010, the legislature required county officials to identify and certify everyone receiving a homestead deduction. Accordingly, in May of 2010 the auditor sent a homestead verification form with property tax statements as required by Ind. Code § 6-1.1-22-8.1. The homestead verification form was again mailed to taxpayers in 2011 and 2012. *Deaton testimony.*
14. According to Ind. Code § 6-1.1-12-17.8(a), a county auditor, at their discretion, may terminate a standard deduction for assessments after January 15, 2012, if the individual

⁴ The Marion County Assessor, not the Marion County Auditor, is the party to defend the PTABOA determinations issued May 18, 2018. *See* Ind. Code § 6-1.1-15-3(b).

does not comply with the homestead verification provisions of Ind. Code § 6-1.1-22-8.1 before January 1, 2013. *Deaton testimony.*

15. Here, the Petitioners failed to verify their homestead after the auditor attempted to obtain verification three times. Accordingly, in December of 2013 the auditor's office sent a letter to the Petitioners stating that unverified homestead deductions would be terminated beginning with the 2013 pay 2014 tax cycle, and if the taxpayer failed to respond prior to January 31, 2014, their homestead deduction would be removed. The Petitioners homestead deduction was removed for assessment years 2014, 2015, 2016, and 2017. *Deaton testimony.*

16. In early 2018 the Petitioners contacted the auditor's office regarding the removal of their homestead deduction and subsequently re-filed for their homestead deduction. The auditor's office reinstated the homestead deduction for "2017 pay 2018." According to the Respondent "the auditor's office feels like they can take it (the homestead deduction) from that day forward for reinstatement" in other words "they didn't feel like they were able to go to the previous years." *Deaton testimony.*

ANALYSIS⁵

17. Indiana Code § 6-1.1-12-37 provides a standard deduction for homesteads. To qualify as a homestead, a property must be the taxpayer's principal place of residence and meet various other criteria, none of which is in dispute here. A taxpayer must file a certified statement, in duplicate, with the county auditor to claim the deduction. Ind. Code § 6-1.1-12-37(e).⁶ Once the auditor grants the deduction, it carries forward and taxpayers need not reapply. *See* Ind. Code § 6-1.1-12-37(e); Ind. Code § 6-1.1-12-17.8.

⁵ Because the Petitioners only challenged the homestead deduction, the burden shifting provision of Ind. Code § 6-1.1-15-17.2 do not apply and the burden rests with the Petitioners.

⁶ The sections of the Indiana Code addressing the standard deduction have been amended frequently. Unless otherwise indicated, citations are to the most recent version.

18. From 2010 through 2012, county treasurers were required to mail taxpayers receiving certain homestead credits or any deductions a notice, which they had to complete and return to the county auditor. Ind. Code § 6-1.1-22-8.1(b)(9) (2013) (Verification Statute).⁷ 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. For purposes of our analysis, we adopt Mr. Deaton’s terminology and refer to the notices as the homestead verification form.
19. A county auditor, at their discretion, may terminate a standard deduction for assessment dates after January 15, 2012, if a taxpayer failed to comply with the Verification Statute’s requirements before January 1, 2013. Ind. Code § 6-1.1-12-17.8(a). Before doing so, the auditor must mail notice of the proposed termination to the last known address of each person liable for any property taxes or special assessment or the last known address of the most recent owners. *Id.* More importantly for this case, the auditor “shall reinstate the deduction if the taxpayer provides proof that the taxpayer is eligible for the deduction and is not claiming the deduction for any other property.” Ind. Code § 6-1.1-12-17.8(h).
20. Here, the Respondent did not dispute the Petitioners used the property as their principal place of residence and otherwise qualified for the standard deduction. In the end, those are the only facts that matter. Whether or not the auditor mailed the homestead verification form or proposed termination notice to the Petitioners and thus properly terminated their deduction, the Petitioners proved they were eligible for the deduction and were not claiming it for any other property. Accordingly, the Petitioners were entitled to have the deduction reinstated.

⁷ The Verification Statute as outlined in Ind. Code § 6-11-22-8.1(b)(9) (2013) expired on January 1, 2015. *See* Ind. Code § 6-1.1-12-17.8(a).

21. The Board is not persuaded by the Respondent’s argument that the reinstatement is strictly “prospective.” The statute does not define “reinstate.” Absent such guidance, we must give the term its ordinary and usual meaning. *See Enhanced Telecommunication Corp. v. Dep’t of State Revenue*, 916 N.E.2d 313, 317 (Ind. Tax Ct. 2009) (explaining that, where terms were not defined by statute, court would give them their “plain, ordinary and usual meaning, as defined in the dictionary.”) Reinstate is commonly defined as “to restore to a previous effective state.” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 983 (10th ed. 1994). Before the auditor terminated the Petitioners’ standard deduction, the Petitioners had a deduction that carried forward uninterrupted from year to year. To restore them to a previous effective state would mean the Respondent must replace the deduction for 2014, 2015, 2016, and 2017.⁸
22. The Board’s reading best implements what we perceive as the legislative intent behind the statute. The point of the statute is not to deny eligible taxpayers deductions, but rather to eliminate fraud by having them verify their eligibility and supply additional information. Those goals were met when the Petitioners provided the required information in early 2018. A taxpayer may timely appeal an auditor’s action in revoking a homestead. The Respondent has not challenged the timeliness of this appeal. It is the taxpayers’ eligibility that controls. Because the Petitioners timely filed, the Respondent’s action cannot stand on appeal when eligibility is conceded. Having proved they are eligible and that the subject property is their principal place of residence, the homestead deduction must be reinstated.

SUMMARY OF FINAL DETERMINATION

23. For the reasons discussed herein, the Board finds for the Petitioners. The homestead deduction must be reinstated for the 2014, 2015, 2016, and 2017 assessment years.

⁸ The Respondent stated the Petitioners’ homestead deduction was reinstated by the auditor for “2017 pay 2018.” However, neither party provided evidence to establish the Petitioners actually received the homestead deduction for the 2017 assessment year.

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>>.