

REPRESENTATIVES FOR PETITIONER:

Eric Derheimer, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Heather Scheel, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Eric Derheimer	)	Petition No.:	29-018-16-3-5-00748-17
)		
Petitioner,	)	Parcel No.	16-10-30-05-05-018.000
)		
v.	)	County:	Hamilton
)		
Hamilton County Assessor,	)	Township:	Clay
)		
Respondent.	)	Assessment Year:	2016

Appeal from the Final Determination of the
Hamilton 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. Petitioner claims that he was improperly denied a homestead deduction¹ for 2016. The case turns on one dispositive question: Did Petitioner actually timely file a claim for the deduction for the year at issue?

HEARING FACTS AND OTHER MATTERS OF RECORD

2. Petitioner initiated his appeal with the Hamilton County Auditor. On May 11, 2017, the Hamilton County Property Tax Assessment Board of Appeals held a hearing and issued a determination denying Petitioner his requested relief. Petitioner then filed the Form 133 petition with the Board, alleging through error or omission, he was denied a homestead deduction for 2016.
3. Dalene McMillen, the Board's designated administrative law judge, held a hearing on November 8, 2017. Neither she nor the Board inspected the property.
4. The following people were sworn and testified:
Eric Derheimer, Petitioner
Sadie M. Eldridge, Hamilton County Deputy Auditor.²
5. Petitioner offered the following exhibits:
Petitioner Exhibit 1 – May 18, 2015, letter from Lisa Scherer, Hamilton County Auditor's Office, to Petitioner,
Petitioner Exhibit 2 – May 8, 2015, sales disclosure form for subject property,
6. Respondent offered the following exhibits:
Respondent Exhibit A – Form 133 petition and attachments,

¹ The parties used the terms "homestead deduction" and "homestead exemption" interchangeably throughout their presentations. There is no statute that exempts homesteads from taxation. The Board infers they are referring to the standard deduction for homesteads provided for under Ind. Code § 6-1.1-12-37, and will use the term "homestead deduction" hereinafter.

² Robin Ward, Hamilton County Assessor, was sworn but did not testify. Lisa L. Scherer and Jennifer Dougherty of the Hamilton County Auditor's Office were present to observe the hearing.

- Respondent Exhibit B – 2016 property record card for the subject property,
- Respondent Exhibit C – May 15, 2015, corporate warranty deed for the subject property,
- Respondent Exhibit D – May 8, 2015, sales disclosure form for subject property,
- Respondent Exhibit E – May 18, 2015, letter from Lisa Scherer, Hamilton County Auditor’s office to Petitioner,
- Respondent Exhibit F – May 4, 2017, Claim for Homestead Property Tax Standard / Supplemental Deduction – Form HC10,
- Respondent Exhibit G – May 2, 2017, Address Change Form for subject property,
- Respondent Exhibit H – May 5, 2017, Statement of Mortgage or Contract Indebtedness for Deduction from Assessed Valuation – Form 43709,

7. The following additional items are part of the record:

- Board Exhibit A – Form 133 petition and attachments,
- Board Exhibit B – Hearing notice,
- Board Exhibit C – Hearing sign-in sheet.

PETITIONER’S CONTENTIONS

- 8. On May 8, 2015, Petitioner purchased the subject property at 629 3rd Avenue N.E. in Carmel with the intent of building a home there. He built the home and eventually moved in in February of 2016 and has lived there since. *Derheimer testimony; Pet’r Ex. 2.*
- 9. Petitioner claims his sales disclosure form was prepared for a construction loan by Enterprise Title. He claims that the “no” boxes for indicating primary residence and claiming the homestead deduction were checked in error. He admits he signed the form but regrets doing it. He believes everyone at the closing meeting knew the form was filled out incorrectly and attributes signing it to the fact that there were multiple documents to be completed and that he did it in “rapid fashion.” *Derheimer testimony; Pet’r Ex. 2.*
- 10. Petitioner received a letter dated May 18, 2015, from the Auditor’s office concerning the filing of the homestead deduction. When he called the Auditor’s office, he learned that

he could not file for the deduction until he occupied the home. He believed he would receive another letter from the Auditor's office the next year to remind him to file for the deduction then. Because he never received a letter from the Auditor in 2016, he failed to file for the homestead deduction until 2017. *Derheimer testimony; Pet'r Ex. 1.*

RESPONDENT'S CONTENTIONS

11. Respondent acknowledges that Petitioner may have been eligible for a homestead deduction on the subject property for 2016. However, the Auditor has no record of him applying for the deduction until May 2, 2017. *Eldridge testimony; Scheel argument; Resp't Ex. F.*
12. The Auditor's office sent a courtesy letter to Petitioner on May 18, 2015, because the sales disclosure form indicated that the subject property was a vacant lot. The letter generally informs taxpayers that if they intend to build a home and occupy it as their principal place of residence, they are entitled to file for a homestead deduction. *Eldridge testimony; Resp't Exs. D & E.*
13. According to Ms. Eldridge, had Petitioner appeared in the Auditor's office between May 18, 2015, and January 5, 2017, he would have been allowed to file for the homestead deduction. The Auditor's office, however, would not have applied the deduction to the property until Petitioner was actually living there. *Eldridge testimony.*
14. Respondent contends that Petitioner actually filed for the homestead deduction using Form HC10 on May 2, 2017. *Eldridge testimony; Resp't Ex. F.*

Analysis

15. 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. Ind. Code § 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.³ 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.*; Ind. Code § 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.*; Ind. Code § 6-1.1-12-44.

16. The subject property qualified as a “homestead” under Ind. Code § 6-1.1-12-37(a)(2). Petitioner bought the lot on May 8, 2015, built a home, and used it as his principal place of residence beginning in February of 2016. However, he did not actually claim the deduction for 2016.
17. The Auditor’s records show that Petitioner claimed a homestead deduction for the first time on May 2, 2017, when he filed his Form HC10 for that year. Petitioner does not dispute this fact. As a result, because Petitioner did not timely file his claim, he is not entitled to a homestead deduction for 2016.

SUMMARY OF FINAL DETERMINATION

18. As discussed above, because he failed to timely file his claim, Petitioner is not entitled to a homestead deduction for 2016.

³ 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.

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>>.