

REPRESENTATIVE FOR PETITIONER:

Evelyn L. Metz, Owner

REPRESENTATIVES FOR RESPONDENT:

Madison County:  
Annamarie Ryan, Deputy Auditor  
Patricia Dillon, County Auditor  
Cheryl Heath, Deputy Assessor  
Dave Simmons, County Board of Review Advisor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

EVELYN L. METZ	)	
	)	Petition for Review of Assessment,
Petitioner	)	Form 131
	)	
	)	Petition No: 48-003-97-1-5-00004
v.	)	
	)	County: Madison
	)	
MADISON COUNTY BOARD OF	)	Township: Anderson
REVIEW	)	
	)	Parcel No: (18) 368B-14Z
Respondent	)	
	)	Assessment Year: 1997

Appeal from the Final Determination of the  
Madison County Board of Review

**October 20, 2003**

## **FINAL DETERMINATION**

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the “Board”.

The 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. The issue presented for consideration by the Board was:

*Issue – Whether the Petitioner is entitled to the mortgage deduction, age (over 65) deduction, and homestead credit for the assessment date of March 1, 1997.*

#### **Procedural History**

2. Pursuant to Ind. Code § 6-1.1-15-3, Stephen E. Williams, Attorney at Law, filed a Form 131 on behalf of Evelyn L. Metz (Petitioner) petitioning the Board to conduct an administrative review of the above petition. The determination of the Madison County Board of Review (BOR) was issued on July 15, 1999. The Form 131 was filed on August 6, 1999.

### **Hearing Facts and Other Matters of Record**

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was conducted on September 25, 2003, in Anderson, Indiana before Dalene McMillen, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

4. The following persons were present at the hearing:

For the Petitioner:

Evelyn L. Metz, property owner.

For the Respondent:

Annamarie Ryan, Deputy Auditor.

Patricia Dillon, County Auditor.

Cheryl Heath, Deputy Assessor.

Dave Simmons, BOR Advisor.

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Evelyn L. Metz

For the Respondent:

Annamarie Ryan

Patricia Dillon

Cheryl Heath

Dave Simmons

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 – An Explanation of Error (2 pages); a copy of the Affidavit of Survivorship, dated June 12, 1996; Certificate of Death for Robert L. Metz, dated July 24, 1995; a copy of Ind. Code § 6-1.1-12-17.8; and a copy of Ind. Code § 6-1.1-20.9-3.

For the Respondent:

Respondent's Exhibit 1 - Copies of the following: Evelyn Metz's 1997 property record card; Warranty Deed from Thurl and Almeda Smith to Robert and Evelyn Metz, dated June 21, 1972; Affidavit of Survivorship executed by Evelyn Metz, dated June 14, 1996; Certificate of Death for Robert L. Metz, dated July 24, 1995; Quit-Claim Deed from Evelyn Metz, Trustee, to Evelyn Metz Revocable Trust of 1995, dated November 4, 1998; Quit-Claim Deed dated July 17, 1997 from Evelyn Metz to Evelyn Metz, Trustee of the Evelyn Metz Revocable Trust of 1995; and Survivorship Affidavit executed by Evelyn Metz, dated July 17, 1997.

7. The following additional items are officially recognized as part of the record of proceedings:

Board Exhibit A – Form 131 petition with the following attachments: an Explanation of Error (3 pages) filed by Mr. Williams; Form 130 R/A Petition to the County Board of Review for Review of Assessment; and Form 115, Notification of Final Assessment Determination.

Board Exhibit B – Notice of Hearing on Petition, dated July 29, 2003.

Board Exhibit C – A letter from the Board to Evelyn Metz and Stephen Williams, dated September 30, 2003.

8. The subject property is a residence located at 1428 Sherwood Dive, Anderson, Indiana. The Administrative Law Judge did not inspect the property.
  
9. The assessed values subject to deduction and credit for 1997, as listed on the Form 131, are:  
Land: \$1270                      Improvements: \$14,600                      Total: \$15,870
  
10. On September 29, 2003, the Board telephonically requested from the Madison County Assessor's office a copy of the original Warranty Deed executed to Robert and Evelyn Metz. By fax on September 29, 2003, Cheryl Heath submitted the following documents: a copy of Evelyn Metz's 1997 property record card; Warranty Deed from Thurl and Almeda Smith to Robert and Evelyn Metz, dated June 21, 1972; Affidavit of Survivorship executed by Evelyn Metz, dated June 14, 1996; Certificate of Death for Robert L. Metz, dated July 24, 1995; Quit-Claim Deed from Evelyn Metz, Trustee, to Evelyn Metz Revocable Trust of 1995, dated November 4, 1998; Quit-Claim Deed from Evelyn Metz to Evelyn Metz, Trustee of the Evelyn Metz Revocable Trust of 1995, dated July 17, 1997; and Survivorship Affidavit executed by Evelyn Metz, dated July 17, 1997. The documents faxed by Cheryl Heath have been entered into the record and labeled Respondent's Exhibit 1.
  
11. By letter dated September 30, 2003, the Board provided a copy of the documents faxed by Cheryl Heath (as stated in Finding #10) to Evelyn Metz and Stephen Williams. The Petitioner did not offer any comments concerning this exhibit. The Board's letter to the Petitioner has been entered into the record and labeled as Board Exhibit C.

### **Jurisdictional Framework**

12. The matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
13. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.5-4-1.

### **State Review and Petitioner's Burden**

14. The Board does not undertake to reassess property, or to make the case for the Petitioner. The Board decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
15. The Petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact].
16. The Petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Board of Tax Commissioners*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount].
17. The Petitioner must sufficiently explain the connection between the evidence and Petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City*

*Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329 (Ind. Tax 1999).

[‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence].

18. The Board will not change the determination of the County Board of Review unless the Petitioner has established a ‘prima facie case’ and, by a ‘preponderance of the evidence’, proven both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinema, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765 (Ind. Tax 1997). [A ‘prima facie case’ is established when the Petitioner has presented enough probative and material (i.e. relevant) evidence for the Board (as the fact-finder) to conclude that the Petitioner’s position is correct. The Petitioner has proven his position by a ‘preponderance of the evidence’ when the Petitioner’s evidence is sufficiently persuasive to convince the Board that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the Petitioner’s position].

### **Discussion of the Issue**

*Whether the Petitioner is entitled to the mortgage deduction, age (over 65) deduction, and homestead credit for the assessment date of March 1, 1997*

19. The Petitioner contends the County incorrectly removed the mortgage deduction, age (over 65) deduction, and homestead credit for the assessment date of March 1, 1997. The use of the property never changed.
20. The Respondent contends that it is the County’s policy to remove the mortgage deduction, age (over 65) deduction, and homestead credit applications when a new deed is filed or there is a change in how the property is titled.

21. The applicable rules governing the issue are:

**Ind. Code § 6-1.1-1-9**

Defines the term “owner” with regards to tangible property.

**Ind. Code § 6-1.1-1-15**

Defines “deduction” as a situation where a taxpayer is permitted to subtract a fixed dollar amount from the assessed value of his property.

**Ind. Code § 6-1.1-12-1**

Details the requirements for persons to obtain the mortgage deduction from the assessed valuation of the individual’s real property.

**Ind. Code § 6-1.1-12-9**

Details the requirements for persons over 65 years of age to obtain a deduction from the assessed value of the individual’s real property, or manufactured home.

**Ind. Code § 6-1.1-12-10.1**

Details the procedure for filing a claim for the age (over 65) deduction.

**Ind. Code § 6-1.1-12-17.8**

An individual who receives an age (over 65) deduction and who remains eligible is not required to file a statement to apply for the deduction in the following year.

**Ind. Code § 6-1.1-20.9**

Details the requirements for persons to obtain a homestead credit.

22. Evidence and testimony considered particularly relevant to this determination include the following:

- a. Robert L. and Evelyn Louise Metz, Husband and Wife, obtained the subject property by Warranty Deed, June 21, 1972. *Respondent’s Exhibit 1 and Metz Testimony.*
- b. As a result of the death of Robert L. Metz, Evelyn Metz filed an Affidavit of Survivorship on June 14, 1996. At the time the Affidavit of Survivorship was filed, the subject property was receiving the mortgage deduction, age (over 65) deduction, and the homestead credit. *Respondent’s Exhibit 1, Petitioner’s Ex. 1 and Metz Testimony.*



- c. Evelyn Metz was an original applicant, has retained ownership since 1972, is responsible for taxes and her use of the property has not changed. *Metz Testimony.*
- d. The Madison County Board of Review removed the mortgage deduction, age (over 65) deduction, and homestead credit because Evelyn Metz filed an Affidavit of Survivorship removing Robert Metz's name from the property. *Board Exhibit A and Ryan & Dillon Testimony.*
- e. The only change to the property is how ownership was titled. The subject property went from multiple ownership (Robert L. and Evelyn Louise Metz, Husband and Wife) to single ownership (Evelyn L. Metz).

#### Analysis of the Issue

- 23. The relevant facts in this appeal are undisputed.
- 24. On the date the deductions and credit were requested, the residence was titled in the name of Robert L. and Evelyn Louise Metz, Husband and Wife. Evelyn Metz became the sole owner at the time of her husband's passing. The Madison County Board of Review removed the mortgage deduction, age (over 65) deduction, and homestead credit because the property was originally held in two names and, due to the Affidavit of Survivorship, the title changed to one name. *Ryan and Dillon Testimony.*
- 25. The only issue in dispute is whether the Madison County Board of Review properly concluded that the Petitioner was not entitled to the deductions and credit because of the filing of an Affidavit of Survivorship. This conclusion is the only reason offered by the Respondent's for the denial of the deductions and credit.
- 26. An 'owner' of real property includes: the holder of the legal title of real property; the person who obtains title to property on the assessment date; the mortgagee of real

property who is in possession of the mortgaged premises; and a life tenant of real property who is in possession of the property. Ind. Code § 6-1.1-1-9.

27. Undisputed testimony indicated that the Petitioner was an owner of the property at the time the deductions and credit were first granted, has remained an owner, and has been in continuous possession of the property. The use of the property has not changed.
28. In plain language, an affidavit is merely a written statement by a person swearing that the statement is the truth. As a matter of law, Evelyn Metz became the sole owner of the property at the time of Robert Metz's passing in 1995. The Petitioner's interest in the property was not contingent on, or altered by, the preparation or recording of the Affidavit of Survivorship. Instead, the Affidavit of Survivorship merely informs the public that Evelyn Metz has sole ownership of the subject property; it is not a conveyance of title.
29. There was a change in the statutes after the assessment date in question that seemed to clarify the right of such joint owners. The statute now states that an individual who receives the deduction and credit for property that is jointly held in a particular year, remains eligible in the following year and is not required to reapply following the removal of the joint owner. IC 6-1.1-12-17.8.
30. The Respondent's sole objection to the deductions and credit is not supported by law. The local officials therefore failed to justify the removal of the Petitioner's mortgage deduction, age (over 65) deduction, and homestead credit.
31. For all reasons set forth above, the Petitioner is entitled to the mortgage deduction, age (over 65) deduction, and homestead credit.

## Summary of Final Determination

Determination of the issue: Whether the Petitioner is entitled to the mortgage deduction, age (over 65) deduction, and homestead credit for the assessment date of March 1, 1997

32. The Petitioner has met her burden in this appeal and is entitled to the mortgage deduction, age (over 65) deduction, and homestead credit for March 1, 1997.

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

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Chairman, Indiana Board of Tax Review

## **IMPORTANT NOTICE**

### **- APPEAL RIGHTS -**

**You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.**