

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 82-027-10-1-5-08249
82-027-11-1-5-08250
82-027-12-1-5-08249
Petitioners: Donald and Marlys Goodrich
Respondent: Vanderburgh County Assessor
Parcel: 82-06-26-013-107.009-027
Assessment Years: 2010, 2011, 2012

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. Donald and Marlys Goodrich (“Petitioners”) initiated their appeals with the Vanderburgh County Assessor (“Respondent”) on October 9, 2013.
2. On December 17, 2013, the Vanderburgh County Property Tax Assessment Board of Appeals (“PTABOA”) issued its final determinations denying Petitioners the relief they requested.
3. Petitioners timely filed their Petitions for Review of Assessment (“Forms 131”) for the 2010, 2011, and 2012 tax years with the Board, challenging the decision of the Vanderburgh County Auditor to terminate the homestead deduction for the subject property. Petitioners elected the Board’s small claims procedures.¹
4. The Board issued a Notice of Hearing on May 7, 2015.
5. On July 1, 2015, the Board’s Administrative Law Judge (“ALJ”), Gary Ricks, held a hearing on the petitions. Neither the Board nor the ALJ inspected the subject property.
6. Attorney Yvette LaPlante represented Petitioners. Marlys Goodrich was sworn as a witness. Attorney Nick Cirignano represented Respondent. Charlene Decker, PTABOA First Deputy, and Joe Gries, Vanderburgh County Auditor, appeared for Respondent and were sworn as witnesses.

Facts

¹ Petitioners do not contest the assessed values for any of the years at issue.

7. The property under appeal is a single-family residence located at 861 Blue Ridge Road in Evansville.

Record

8. Petitioner presented the following exhibits::

Petitioner Exhibit 1:	Jacobs assignment memorandum
Petitioner Exhibit 2:	Technip assignment memorandum
Petitioner Exhibit 2A ² :	Goodrich BMV record certification
Petitioner Exhibit 3:	Photocopy of Goodrich operator license
Petitioner Exhibit 4:	Letter from Vanderburgh County Auditor
Petitioner Exhibit 5:	Letter from Utah County Tax Administration

9. Respondent presented the following exhibits:

Respondent Exhibit A:	Petitioners' 2010 tax information
Respondent Exhibit B:	Petitioners' 2011 tax information
Respondent Exhibit C:	Petitioners' 2012 tax information
Respondent Exhibit D:	Vanderburgh County voter search
Respondent Exhibit E;	Summary payments –City of Evansville

10. The following items are also recognized as part of the record:

Board Exhibit A:	Form 131 petitions with attachments
Board Exhibit B:	Notice of Hearing dated May 7, 2015
Board Exhibit C:	Hearing sign-in sheet
Board Exhibit D:	Appearance for Yvette LaPlante
Board Exhibit E:	Appearance for Nick Cirignano

Contentions

11. Summary of the Petitioners' case:

- a) Petitioners purchased the subject property in 1994 and have been the continuous owners of record since. They plan to return to the subject property when they retire. They contend it is their primary residence and should receive a homestead standard deduction for the years under appeal. *Pet'r testimony.*
- b) Petitioners have paid off the mortgage and continue to pay property taxes and insurance on the subject property. They also continue to regularly list it as their home

² Petitioners inadvertently marked two different exhibits as "Exhibit 2." To avoid confusing the exhibits, the Board identifies one as Petitioner Exhibit 2 and the other as Petitioner Exhibit 2A.

mailing address. *Pet'r testimony.*

- c) Two of Petitioners' vehicles are registered in Indiana and Mr. Goodrich's operator's license, which was issued by Indiana, continues to show the subject property as his home address. Mr. Goodrich is also registered to vote in Indiana.³ *Pet'r testimony; Pet'r Ex.3.*
- d) Petitioners' employment arrangements take them outside of Indiana for extended periods. Mr. Goodrich identified the subject property as his "home base" to his previous employer, which meant that all of his work-related correspondence was sent there. His current employer does not require him to identify a home base, but his work-related mail is sent to the subject property nonetheless. *Pet'r testimony.*
- e) Initially, Ms. Goodrich resided at the subject property while her husband traveled. However, in 2001, when Petitioners' children were grown, Ms. Goodrich began accompanying Mr. Goodrich to his various job sites where they lived in motels and rental apartments. Nonetheless, many familial ties remained in Evansville. *Pet'r testimony.*
- f) Mr. Goodrich's employers have provided funds for them to travel home regularly. During those times Petitioners typically return to the subject property where they sleep in their bed located in their bedroom. *Pet'r testimony*
- g) Petitioners have temporarily resided in approximately ten states since 2001. They have neither purchased nor built any property to serve as their permanent residence in any of those states. *Pet'r testimony.*
- h) When they began to travel together in 2001, Petitioners brought only their clothes with them. They left all of their marital furnishings at the subject property where they currently remain. *Pet'r testimony.*
- i) Petitioners purchased a one-bedroom condominium in Utah in 2006 for their daughter and her husband to live while they attended college. In 2010, Mrs. Goodrich moved to Utah to care for the property while her daughter and her husband moved away for graduate school. Ms. Goodrich moved none of the Evansville furniture to the Utah condominium. *Pet'r test.*
- j) The Board's decision in *Eloise Hahn v. Porter County Assessor*, pet. No. 64-010-09-1-5-00003 (IBTR March 17, 2015) suggests that relocating furniture to a different location is evidence of establishing a primary residence. Petitioners did not move any of their furniture out of the subject property into the Utah property or any other of the

³ While Petitioners' evidence indicated Mr. Goodrich is registered to vote in Indiana, it is unclear when he last actually voted.

properties at which they lived over the past several years. *LaPlante argument; Pet'r testimony.*

- k) When the daughter and her husband finished graduate school, they moved back to the Utah property and Ms. Goodrich returned to the subject property. She had no plans to live in the Utah condominium once her daughter returned and has no plans to live there in the future.⁴ *Pet'r testimony.*
- l) At some time, one of Petitioners' sons moved into the subject property to take care of it because they wanted to maintain the property and return to it permanently someday. When the son is present, Petitioners continue to pay for maintenance and the son performs routine chores. In the alternative, Petitioners would have had to hire someone to care for the home in their absence. *Pet'r testimony.*
- m) Petitioners' Utah accountant did not prepare Indiana resident returns for the years at issue nor were Petitioners advised to file such returns since they had no income in Indiana. *Pet'r testimony.*

12. Summary of Respondent's Case:

- a) Petitioners are not currently residing at the subject property and they haven't lived there for many years. The auditor was correct in terminating their homestead deduction. *Cirignano argument.*
- b) Petitioners did not file Indiana income tax returns for the years at issue. This fact suggests they were not Indiana residents during those years. *Pet'r cross-examination; Resp't. Exs. A-C.*
- c) During the years at issue, Petitioners owned a condominium and periodically worked and lived in Utah. *Pet'r cross-examination; Resp. Ex. C.*
- d) During the years at issue, some of Petitioners' adult children lived at and/or paid certain utilities at the subject property. *Pet'r testimony; Pet'r cross-examination; Resp't Ex. E*
- e) Respondent's office often sees taxpayers leave a homestead for some period of time, however, it is atypical for a taxpayer to leave a homestead for over a decade while another family lives in the residence. Trying to account for such long absences in relation to the application of the homestead credit presents a practical problem for the auditor's office. *Resp.t testimony.*

⁴ To remain in the Utah home permanently, Petitioners would have to either evict the daughter and her husband from the only bedroom or renovate the structure to add additional rooms.

- f) The homestead deduction is intended to benefit individuals who live in the community and participate in the community where the subject property is located. *Resp't. testimony.*
- g) The Board's decision in *Kenneth Herbert Connon v. St. Joseph County Assessor*, petition number 71-023-08-3-5-00001 (Ind. Bd. Tax Rev. December 2, 2014) supports a finding by the Board that the subject property is not eligible for a homestead deduction. *Cirignano argument.*

Analysis

13. Petitioners appeal the denial of the homestead standard deduction provided by Ind. Code § 6-1.1-12-37. That statute provides a deduction in specified amounts for homesteads, which it defines 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. . .
 - (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 the dwelling.

(b) Each year a homestead is eligible for a standard deduction from the assessed value of the homestead for an assessment date. The deduction provided by this section applies to property taxes first due and payable for an assessment date only if an individual has an interest in the homestead described in subsection (a)(2)(B) on:

- (1) the assessment date; or
- any date in the same year after an assessment date that a statement is filed under subsection (e) or section 44 of this chapter, if the property consists of real property.

14. It is undisputed that the Petitioners own the subject property and are not receiving a homestead standard deduction with regard to any other property. Thus, the sole issue is whether or not the subject property is Petitioners' principle place of residence.

15. Although the statute does not define “principle place of residence,” the Department of Local Government Finance defines that term as “an individual’s true, fixed, permanent home to which the individual has the intention of returning after an absence.” 50 IAC 24-2-5. Petitioners offered evidence and testimony to show that they treated the subject property as their fixed, permanent home to which they intended to return. They credibly testified that they bought the subject property in 1994 and were its continuous owners since that time.
16. In finding a principal place of residence for standard homestead deduction purposes, the Board has previously considered various indices including state income tax returns, valid driver’s licenses, voter registrations, bank statements, and current mailing addresses, among others. See *Kellam v. Fountain Co. Ass’r* (999 N.E. 2d 120 (Ind. Tax Ct. 2013)); *Hahn Living Trust v. Porter Co. Ass’r* (Pet. No. 64-010-09-1-5-0003 IBTR May 17, 2015); *Connon v. St. Joseph Co. Ass’r* (Pet. No. 71-023-08-3-5-00001 IBTR December 2, 2014); *Davis v. Tippecanoe Co. Ass’r* (Pet. No. 79-004-09-3-4-00009 IBTR May 14, 2014).
17. In this case, Petitioners testified that they frequently and regularly return to the subject property while Mr. Goodrich continues to work remotely. It is also their intent to return to the subject property permanently upon completion of Mr. Goodrich’s remote job assignments.
18. In support of their position, Petitioners pointed to several factors.
 - a. They have maintained no other permanent address since 2001.
 - b. They have taken no substantive steps to establish a primary residence anywhere but the subject property.
 - c. The subject property is the only place to which they have consistently returned.
 - d. They consistently list the subject property as their “home base” with regard to Mr. Goodrich’s employment.
 - e. Mr. Goodrich maintains an active Indiana driver’s license showing the subject property has his home address.
 - f. They maintain bank accounts and an insurance agent in Indiana.
 - g. They maintain the subject property as their mailing address.
 - h. Mr. Goodrich is registered to vote in Indiana.
 - i. They maintain a bedroom and furniture at the subject property.
 - j. They pay maintenance and property taxes on the subject property.
 - k. They have made all of the mortgage payments on the subject property.
 - l. They continue to return to Evansville and stay at the subject property when there.
 - m. They intend to retire at the subject property.
 - n. They maintain familial ties to the Evansville community.
19. Respondent seems to rely on the idea, among others, that Petitioners should not be allowed homestead deductions for the years at issue because they did not file Indiana

income tax returns. Respondent offers no specific authority in support of that notion. In *Hahn*, the assessor claimed the taxpayer offered only irrelevant items when given the opportunity to show she owned the property. A county auditor may require an individual to provide evidence to show that the property for which she claims a homestead deduction is her principal place of residence. *See* I.C. § 6-1.1-12-37(j). The auditor may limit the required evidence 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. *See Kellam* at 124. But the statute does not prohibit the auditor or the Board from considering other evidence in determining an individual’s place of residence.

20. In this case, no evidence indicates Petitioners were required to file Indiana returns. To the contrary, there is testimony that they were not required to file such returns, that they were not advised to file such returns by their accountant, and that they had no Indiana income. Despite the absence of any Indiana tax returns for the years at issue, Mr. Goodrich did offer a copy of his valid Indiana driver’s license as contemplated by the statute above and also cited several of the other determining factors discussed herein.
21. Respondent also relies on the idea that Petitioners should not be entitled to a standard homestead deduction because, for various periods of time, certain of Petitioners’ children may have lived at the subject property while Petitioners were claiming the deduction. But the record does not establish that Petitioners vacated and leased the property to one of their children.
22. Respondent argues that it is unusual for a homeowner to leave their primary residence for such a long time and still claim a homestead deduction and that it becomes an excessive burden for the auditor to track those deductions over time. While the Board is sympathetic to the administrative burdens encountered under such circumstances, there is no statutory time limit with regard to a principal place of residence. The “legal standard for determining an individual’s principal place of residence, however, depends on the ‘*intention to return to the property after an absence, not continuous physical presence at the property.*’” *Kellam* at 124 (*emphasis added*).
23. Based on the foregoing, the Board finds that the subject property qualified as Petitioners’ principal place of residence for the years at issue and that Petitioners were entitled to received homestead deductions for the years 2010, 2011, and 2012.

Conclusion

In accordance with the above findings and conclusions, the Board finds in favor of Petitioners..

Issued: November 30, 2015

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 within forty-five (45) days of 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>.