

REPRESENTATIVES FOR PETITIONERS:
Thomas A. Aycock, Aycock Law Office, P.C.

REPRESENTATIVE FOR RESPONDENT:
Marilyn S. Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Joseph S. & Jeanne K.L. Hutcherson,)	Petition Nos.: 29-008-04-3-5-00044
)	29-008-05-3-5-00029
Petitioners)	29-008-06-3-5-00049
)	29-008-07-3-5-00013
)	
v.)	Parcel No.: 03-02-23-00-00-001.006
)	
Hamilton County Assessor,)	County: Hamilton
)	
Respondent.)	Township: Jackson
)	
)	Assessment Years: 2004, 2005, 2006 & 2007

On Remand from the Indiana Tax Court
Cause No. 49T10-1302-TA-10

FINAL DETERMINATION ON REMAND FROM TAX COURT

The Indiana Board of Tax Review (the Board) has reviewed the Indiana Tax Court's December 27, 2013, decision, a copy of which is attached to this determination. The Board now reviews the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. The Petitioners filed four (4) Form 133 Petitions for Correction of an Error (“Form 133”) for the 2004, 2005, 2006, and 2007 assessments on November 13, 2012. On November 15, 2012, the Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying the Petitioners homestead deductions because the county is “only able to go back six installments.”
2. On November 30, 2012, the Board received the Petitioners’ Form 133s seeking their Claim for Homestead Property Tax Credit/Standard Deduction (“Homestead Deduction”) for the assessment years of 2004, 2005, 2006, and 2007. The Board issued its Order of Dismissal on all four Form 133 appeals on December 21, 2012, denying the Petitioners’ Homestead Deduction request as being untimely.
3. On February 4, 2013, the Petitioners filed a tax appeal with Indiana Tax Court. In its Petition, the Petitioners appealed the Indiana Board of Tax Review’s final determination denying the Homestead Deduction for the tax years 2004 through 2007.
4. The Tax Court heard the parties’ arguments on June 14, 2013, and issued an order on December 27, 2013. Judge Wentworth also reversed the Board’s final determination “that the Hutchersons’ petitions to correct error for 2004 through 2007 were untimely, and REMANDS for action consistent with this opinion.” *Hutcherson v. Ward*, 2 N.E.3d 138, 144 (Ind. Tax Ct. 2013).
5. Pursuant to the remand order, the Board conducted a hearing in this matter. The remand hearing was conducted on April 8, 2014, in Noblesville, Indiana before Dalene McMillen, the Board’s administrative law judge (“ALJ”). Neither the Board nor the ALJ inspected the subject property.

6. Mrs. Jeanne Hutcherson and County Assessor Robin Ward were present but neither was sworn in to present testimony. The attorneys for the parties, Mr. Aycock and Ms. Meighen elected to present only argument.

7. The Petitioners offered the following exhibits:

- Petitioner Exhibit 1 – Claim for Homestead Property Tax Credit/Standard Deduction,
- Petitioner Exhibit 2 – Petition for Correction of an Error – Form 133 for assessment year 2004, Claim for Homestead Property Tax Credit/Standard Deduction, three pages showing deductions, assessed values, tax calculations and notes,
- Petitioner Exhibit 3 – Petition for Correction of an Error – Form 133 for assessment year 2005, Claim for Homestead Property Tax Credit/Standard Deduction, two pages showing deductions, assessed values and tax calculations,
- Petitioner Exhibit 4 – Petition for Correction of an Error – Form 133 for assessment year 2006, Claim for Homestead Property Tax Credit/Standard Deduction, two pages showing deductions, assessed values and tax calculations,
- Petitioner Exhibit 5 – Petition for Correction of an Error – Form 133 for assessment year 2007, Claim for Homestead Property Tax Credit/Standard Deduction, two pages showing deductions, assessed values and tax calculations,
- Petitioner Exhibit 6 – Form 17T – Tax Refund for November 10, 2009 through May 10, 2012,
- Petitioner Exhibit 7 – Treasurer Form TS-1A – Summary of Your Taxes.

8. The Assessor did not present any exhibits.

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

- Board Exhibit A – Remand Order from the Tax Court,
- Board Exhibit B – Form 133 petitions,
- Board Exhibit C – Notices of Hearing, dated February 21, 2014,
- Board Exhibit D – Hearing sign-in sheet.

10. The subject property is a single-family residential property located at 26099 Schulley Road in Arcadia.

11. The Petitioners did not dispute the assessed values established for the years of 2004 through 2007.
12. Neither party submitted a brief on the legal issues before the Board.

Contentions

A. Summary of the Hutchersons' arguments

13. The Petitioners filed the required “Claim for Homestead Property Tax Credit/Standard Deduction” form on May 12, 2003. Through an omission by the county auditor’s office, they never received the credit/deduction on their tax statements for 2004, 2005, 2006 and 2007. Because the homestead credit/deduction was not applied by local officials from 2004 through 2007, the Hutchersons filed Form 133s, which were denied by the county assessor, county auditor, and PTABOA. The Tax Court ruled the Form 133s were timely filed and remanded the matter to the Board. On remand, the Petitioners argue that because the Form 133s were timely filed, they are entitled to have the homestead claims applied to those years. *Board Exhibits A & B; Petitioner Exhibits 1-5; Aycock argument.*
14. Mr. Aycock argues that because the homestead credit/deduction was not applied for 2004 through 2007, the Petitioners believe a refund of overpayment or a credit of future tax obligations should be granted. The Petitioners believe they are entitled to a refund or credit toward future taxes on the grounds of (1) equity, (2) constructive trust (3), unjust enrichment, (4) unconscionable conduct, (5) abuse of process, (6) constructive or actual fraud, (7) and “good conscience.”
15. Mr. Aycock stated that any overpayments made by the Petitioners, due to the local officials’ errors, were never intended to be a gift or donation to Hamilton County, the State of Indiana or federal government. *Aycock argument.*

B. Summary of the Assessor's arguments

16. Ms. Meighen stated that when the Petitioners filed their Form 133s on November 13, 2012, for the years of 2004 through 2007, they were denied a refund. According to Ms. Meighen, the local officials applied Indiana Codes § 6-1.1-15-12 and § 6-1.1-26-1, the statutes governing Form 133s and tax refunds together. The local officials believed the Form 133s were required to be filed within three years after the taxes were first due. In addition, I.C. § 6-1.1-26-1, imposed a three year limitation for filing a claim for refund. *Board Exhibit A; Meighen argument.*
17. However, on December 27, 2013, the Tax Court ruled in *Hutcherson v. Ward*, that the I.C. § 6-1.1-15-12 (“133 statute”) and I.C. § 6-1.1-26-1 (“refund statute”) are completely separate and stand independently from each other. The Tax Court found there was no time limit for filing the 133 petitions after April 1, 2000, so the Petitioners 133 petitions for 2004 through 2007 were deemed timely filed. But the Tax Court did find that to receive a refund the claim has to be filed within three years after the taxes were first due. The Tax Court also ruled that the Petitioners claim of an error of omission by a county official is not a permissible ground for which a refund can be sought under the refund statute. *Board Exhibit A; Meighen argument.*
18. Ms. Meighen argued that the Petitioners are not challenging the assessment of their property, therefore two additional statutes would not be applicable in obtaining a refund on their 133 petitions for 2004 through 2007. The first is I.C. § 6-1.1-1-5, which states a deduction is a situation where a taxpayer is permitted to subtract a fixed dollar amount from the assessed value of the property. The Petitioners’ assessments are not in question, but rather how much assessed value is subject to tax. *Meighen argument.*
19. Next, Ms. Meighen stated that under I.C. § 6-1.1-15-11 an authorized appeal results in a reduction of an amount of an assessment and the taxpayer is entitled to a credit on that reduction in assessment. If the credit is not enough they get a refund. Ms. Meighen argues

this statute does not apply in this case because there has been no reduction in the Petitioners' assessments. *Meighen argument.*

Analysis

20. The Tax Court reversed the Board's decision that the Petitioners' Form 133 petitions to correct error were untimely. On remand, the initial question is whether the Petitioners' Form 133 petitions to correct error should be granted. The subsequent question is what relief may be granted through a correction of error.
21. The Board notes that the Petitioners did not present any testimony, and while the Petitioners' homestead application was admitted into evidence, the Petitioners did not present evidence that the Petitioners met the requirements for the homestead deduction in each of the years at issue. Similarly, the Respondent did not dispute that the Petitioners were eligible for the homestead deduction in the years at issue. As both parties seemed to assume the eligibility for the homestead deduction, the arguments were directed at the relief available to the Petitioners. As the Respondent has arguably conceded the issue by failing to dispute the Petitioners' eligibility for the exemption, the Board finds that the failure to apply the homestead deduction in the years at issue was an error of omission by an assessing official.
22. The Board finds that the Petitioners' petitions to correct error should be granted. The Respondent is ordered to correct the records for the subject property and apply the homestead deduction for the years at issue. This correction, however, does not necessarily entitle the Petitioners to a refund or credit.
23. The Petitioners raise several grounds for the Board to grant a refund or credit for the tax years at issue: (1) equity, (2) constructive trust, (3) unjust enrichment, (4) unconscionable conduct, (5) abuse of process, (6) constructive or actual fraud, and (7) "good conscience." Petitioners fail to direct the Board to any case law or statutory authority to support the proposition that those grounds can be invoked in the context of a claim for a tax refund.

Accordingly, the Board finds the Petitioners have waived those arguments. The only issue before the Board is the application of I.C. § 6-1.1-15-12.

24. It is not disputed that the Petitioners have not filed for a refund under I.C. § 6-1.1-26-1. The language of I.C. § 6-1.1-15-12 does not expressly grant the Petitioners the right to a refund. The Petitioners fail to direct the Board to any case law for the proposition that granting a correction of error under I.C. § 6-1.1-15-12 effects a refund without complying with the provisions of I.C. § 6-1.1-26-1.

25. The Department of Local Government Finance has issued a “Fact Sheet” dated March 2013 that indicates that if a petition to correct error appeal (Form 133) “is successful and a refund is due, the taxpayer must file a ‘Claim for Refund’ Form 17T with the county auditor.”¹ While a “Fact Sheet” does not have precedential standing, it persuades the Board that this is the current practice among assessing officials. Moreover, this general process has also been outlined by the Indiana Supreme Court:

If the Tax Court had decided a challenge on Form 130 to “a procedure or method used in determining [an] assessment . . . in favor of [the] taxpayer,” that would have constituted a declaration that the taxes were illegal as a matter of law, and then the challenging taxpayer . . . would have been entitled to *use Form 133 to have their assessments corrected and Form 17T to obtain refunds.*

Lake County Property Assessment Bd. v. BP Amoco Corp., 820 N.E.2d 1231, 1233 (Ind. 2005)(emphasis added).² The Petitioners did not brief this matter and fail to direct the Board to any case law whatsoever in their arguments at the hearing. The Board will not develop the Petitioners’ case for them. Thus, it would appear that the Petitioners are not entitled to a

¹ <http://www.in.gov/dlgr/files/Petition-for-Correction-of-an-ErrorFactSheet.pdf>

² Both *BP Amoco* and its companion case, *Lake County Property Tax Assessment Bd. of Appeals v. U.S. Steel*, 820 N.E.2d 1237, 1239 (Ind. 2005), rely heavily on repealed Indiana Administrative Code provisions, though the provisions were still effective during the tax years at issue in those cases. The Supreme Court acknowledged the same, and opined that “we do not discern anything in current law that is inconsistent [with the repealed provisions] or the interpretation we give it today.” *BP Amoco*, 820 N.E.2d at 1234.

refund solely on the grounds of a successful correction of error through a Form 133 appeal, and a refund must be sought through the Refund Statute.³

26. The only issue left before the Board is whether the Tax Court's analysis in *Hutcherson*, 2 N.E.3d at 138, compels a different result. The *Hutcherson* decision simply holds that I.C. § 6-1.1-15-12 (the "Petition to Correct Error Statute"⁴) does not contain a statute of limitations, and to graft the statute of limitations from another statute would be improper. *Id.* at 143-44. However, the *Hutcherson* decision also acknowledges the Respondent's argument that "because the petition to correct error assumes the remedy would be a refund [or credit], the limitation period from the Refund Statute must be incorporated into the Petition to Correct Error Statute." *Id.* at 143. But the Tax Court finds such "reasoning is incorrect." *Id.* The rationale in finding that reasoning incorrect might call into question the tandem requirements of filing for both correction of error and a refund.⁵ However, any observation in *Hutcherson* beyond its holding as to the statute of limitations is dicta. Rather, *Hutcherson* compels the Board to find that, if the statute of limitations provisions of the Refund Statute cannot be grafted onto the Petition to Correct Error Statute, then surely the refund provision of the Refund Statute cannot be grafted onto the Petition to Correct Error Statute.

³ As noted by the Respondent, an appeal under I.C. § 6-1.1-15 (Form 130/131) also has a specific provision for a refund or tax credit. See I.C. § 6-1.1-15-11(a)(2) (stating that if a taxpayer successfully appeals an assessment, a credit should be applied to the next tax bill and the remainder, if any, be paid to the taxpayer "without a claim or an appropriation being required").

⁴ The statute does not actually contain any reference to a petition, nor even to the right of the taxpayer to petition for a correction of an error. The DLGF promulgated Form 133 "Petition for Correction of an Error" in State Form 12483. The right of the taxpayer to petition to correct an error, rather than await action by the assessing official, was established in *Hatcher v. Indiana State Bd. of Tax Comm'rs*, 561 N.E.2d 852, 858 (Ind. Tax Ct. 1990).

⁵ The *Hutcherson* decision notes that "an error of omission by a county officer, as is Hutchersons' claim, is not an enumerated ground for which a refund can be sought under the Refund Statute; but is a proper ground for filing a petition to correct error." Taken at face value, it could suggest that a taxpayer whose alleged error is an "error of omission" is not entitled to a refund even when properly corrected via a Form 133. Conversely, it could suggest that a properly corrected "error of omission" via a Form 133 is entitled to a refund under the Petition to Correct Error Statute as implicit to a correction. Because neither interpretation is articulated by the Petitioners, the Board declines to address the merits of either interpretation.

SUMMARY OF FINAL DETERMINATION

27. The Board finds the Petitioners' Form 133 petitions filed for 2004, 2005, 2006 and 2007 were timely filed and they fit the definition of a correctable error by the Form 133 petition. The records must be corrected to indicate there was a "homestead deduction" on the subject property for assessment years 2004 through 2007. This determination, however, does not require the Respondent to issue the Petitioners a refund.

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>>.