

REPRESENTATIVES FOR PETITIONER:

Roderick Kellam, Pro Se

REPRESENTATIVE FOR RESPONDENT:

Sandra Whitaker, Fountain County Assessor's Office

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

RODERICK KELLAM,	)	Petition No.:	23-016-10-3-5-00001
	)		
Petitioner,	)	Parcel No.:	23-06-26-421-001.000-016
	)		
v.	)	County:	Fountain
	)		
FOUNTAIN COUNTY ASSESSOR,	)	Township:	Troy
	)		
Respondent.	)	Assessment Years:	2010

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Appeal from the Final Determination of the  
Fountain Property Tax Assessment Board of Appeals

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**October 9, 2012**

**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:

**ISSUE**

1. Did the Petitioner prove the homestead standard deduction on his residence should be given for the taxes on the 2010 assessment?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
**HEARING FACTS AND OTHER MATTERS OF RECORD**

2. The subject property is a single family residence located at 901 Second Street in Covington.
3. The Petitioner filed a Form 133 Petition for Correction of an Error with the Fountain County Assessor and Auditor, who disapproved it on June 6, 2011. Also on June 6, 2011, the Fountain County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying Petitioner the homestead deduction for the 2010 assessment.
4. On July 6, 2011, the Board received Petitioner’s Form 133 Petition seeking correction regarding the 2010-pay-2011 tax bill. Petitioner requested a change because “through error or omission by any state or county officer the taxpayer was not given credit for an exemption or deduction permitted by law.”
5. A hearing was held on August 14, 2012, before Jaime S. Harris, the designated Administrative Law Judge (“ALJ”) authorized by the Board to conduct the hearing. Neither the Board nor the ALJ inspected the subject property.
6. Roderick E. Kellam, Carol Myers, Sandra Whitaker, Collen Chambers, and Kala Chambliss were sworn as witnesses.
7. The Petitioner submitted the following exhibits:

Petitioner Exhibit 1:	Corrected Wells County Tax Statement
Petitioner Exhibit 2:	Instructions from Department of Local Government (DLGF) website regarding Homestead Standard Deduction
Petitioner Exhibit 3:	Questions and Answers on DLGF website
Petitioner Exhibit 4:	Statement of Mortgage or Contract Indebtedness for Deduction from Assessed Valuation
Petitioner Exhibit 5:	Question and Answer 23 on DLGF website from November 19, 2009 conference
Petitioner Exhibit 6:	Claim for Homestead Property Tax Standard / Supplemental Deduction (Form HC10 – December 2009)
Petitioner Exhibit 7:	Document from Beacon website regarding Petitioner’s other property in Wells County (Petitioner received from Assessor)
Petitioner Exhibit 8:	Claim for Homestead Property Tax Standard / Supplemental Deduction (Form HC10 – June 2009)

Petitioner Exhibit 9: Copy of page 4 from Form 133  
Petitioner Exhibit 10: 2011 Questions and Answers 3-5 from DLGF website  
Petitioner Exhibit 11: "Homesteads and Notice of Ineligibility Requirement"  
Petitioner Exhibit 12: Receipt for Application of Homestead Credit

8. The Respondent submitted the following exhibits:

Respondent Exhibit 1: Claim for Homestead Property Tax Standard / Supplemental Deduction for subject property (Form HC10 – December 2008)  
Respondent Exhibit 2: Claim for Homestead Property Tax Standard / Supplemental Deduction for Petitioner's other property located in Wells County  
Respondent Exhibit 3: 2010-pay-2011 Tax Bill for Petitioner's Wells County property  
Respondent Exhibit 4: 2009-pay-2010 Tax Bill for Petitioner's Wells County property  
Respondent Exhibit 5: 2008-pay-2009 Tax Bill for Petitioner's Wells County property

9. The Board recognizes the following additional items as part of the record of proceedings:

Board Exhibit A: Form 133 petition and attachments  
Board Exhibit B: Notice of Hearing

### **SUMMARY OF THE PETITIONER'S CASE**

10. After purchasing the subject property in July 2009, Petitioner and Carol Myers filed an application for the Homestead Standard Deduction. The form was filled out according to the instructions given from an employee in the Assessor's office and included both owners' names and signatures. The owners' intentions, however, were to file the homestead deduction for only Petitioner and not for Myers. Petitioner and Myers were told only to print and sign their names. The assessor employee volunteered to complete the rest of the application. *Kellam testimony.*

11. In March 2011, Petitioner received a property tax statement that included the homestead standard deduction. Thereafter, Petitioner received a corrected property tax statement that did not include the homestead standard deduction and cited a correction of error from the assessor. Petitioner was given a series of different reasons for the denial of the deduction.

Petitioner explained how each reason should not prevent his eligibility for the deduction.

The following are the respondent's reasons and Petitioner's explanations:

- a. First, the assessor stated that Petitioner was denied the deduction because there was no utility usage at the subject property and therefore Petitioner must not live there. Petitioner explained to the assessor that the house was being renovated and while he worked on it, Petitioner stayed next door with Myers' parents. Also, there is a list on the DLGF website that states what documents can be shown to the auditor in order to prove the property is the applicant's principal place of residence. Utility usage bills are not on the list of documents.
- b. The next reason given for the denial was that Myers had another homestead deduction in Grant County. Petitioner and Myers explained that the subject property was Petitioner's homestead, not that of Myers.
- c. The third reason given for the denial was that Petitioner had another homestead in Wells County. Petitioner explained that he believed the Wells County homestead deduction had previously been removed. Assessor Whitaker informed Petitioner that if he corrected this problem for the 2010-pay-2011 tax period, she would reinstate the homestead for the subject property. Petitioner had the Wells County homestead removed, paid the corrected taxes, and faxed this information to Whitaker.
- d. Whitaker then informed Petitioner that he would need to talk to the auditor, Colleen Chambers. Chambers said she would check with the state to clarify how to handle homesteads with unmarried people who jointly own property in Indiana. She recommended the Petitioner pay the total tax amount without the deduction because it could take awhile to get a response to her inquiry. Later the same day, Chambers informed Petitioner that the homestead deduction was denied. The final reason given to Petitioner was because Myers had signed the application along with Petitioner.

*Kellam testimony; Pet'r Ex. 1; Pet'r Ex. 10.*

12. Although no changes were made in the subject property's ownership, Petitioner received the homestead standard deduction the following year. When he applied for the homestead

supplemental deduction for the 2011-pay-2012 tax period, Petitioner was once again instructed by an employee at the assessor's office, Terry Allen, to have both owners sign the form.<sup>1</sup> Because the application for the homestead deduction was previously denied for 2010-pay-2011, Petitioner and Myers researched the DLGF website in order to find out more information concerning the application when two unmarried individuals own a homestead. They offered two documents that they obtained from the website in order to demonstrate why they decided not to take the advice from the assessor's office regarding the need for both signatures. Petitioner filled out the subsequent application form with his name and signature only. He received the homestead standard deduction for 2011-pay-2012. *Kellam testimony; Pet'r Ex. 2; Pet'r Ex. 3.*

13. Respondent Assessor and Auditor were aware of the Petitioner's and Myers' other homesteads in other counties the day the homestead application was completed. Petitioner offered a copy of the mortgage deduction application form that was completed at the same time and place as the homestead deduction application form that was subsequently denied. Petitioner contends that unlike the homestead application, he was instructed to complete the mortgage application in its entirety, which included listing other properties besides the subject property that are owned by Petitioner and Myers. Therefore, Petitioner included the properties in Wells and Grant Counties on the mortgage deduction application. *Kellam testimony; Pet'r Ex. 4.*

14. The auditor should have asked whether or not Petitioner and Myers were married when they applied for the homestead standard deduction. Myers offered a Question and Answer from the DLGF website that states, "Since the Homestead Standard Deduction eligibility requirements limit a married couple to one, as part of determining eligibility," the auditor should confirm whether a man and woman are a married couple. Had Petitioner and Myers been asked, it would have prevented Myers from putting her name on the application form because only one individual or married couple may receive the deduction. *Myers testimony; Pet'r Ex. 5.*

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<sup>1</sup> Respondent Assessor objected to Petitioner's testimony that the assessor's office told Petitioner to have both owners sign the application for homestead deduction the following year. While the assessor is free to disagree with Petitioner's testimony, this is not a valid objection, and is therefore overruled.

15. Myers presented two blank Homestead Standard Deduction application forms. One form had a revision date of December 2009. The other form was dated June 2009. Unlike the application form the Petitioner and Myers had completed in July 2009, the later versions of the form had a section labeled “Claimant’s Information.” The section asks for the name of the claimant and the claimant’s spouse, and only requests the signature of the claimant. As Petitioner and Myers are not married and their plan was for the homestead to only be Petitioner’s, Myers argued that she would not have signed the application if the form had been clear on the matter of whose names and signatures were required. *Myers testimony; Pet’r Ex. 6; Pet’r Ex. 8.*
  
16. Petitioner presented a document that he received from the auditor’s office regarding the Wells County residence. This document proves that Petitioner had the homestead deduction removed for the 2010-pay-2011 tax period. In that period, Petitioner was charged \$477.08 in property taxes. Petitioner had paid approximately \$70 in property taxes for the prior two years. While the document does state that Petitioner received the homestead deduction in 2010-pay-2011, the fact that Petitioner’s tax bill increased substantially demonstrates that he got the Wells County homestead deduction removed after the assessor informed him the Fountain County homestead deduction would be reinstated if he did so. *Kellam testimony; Pet’r Ex. 7.*
  
17. Errors are easy to make when filling out forms or applications. The auditor was allowed to correct mistakes she had made, but Petitioner was not allowed to correct his mistake when he had Myers sign the homestead application form. Auditor Chambers assisted Petitioner and Myers when completing the Form 133 Petition. When they asked Chambers how to complete “Section II: Description of Error,” Chambers instructed Petitioner to write \$23,000 for the subject property’s land value. Chambers then realized this was a mistake and had the Petitioner draw a line through this number and write \$31,000 instead. Chambers also told Petitioner to sign his name in Section VII. The parties later realized that Petitioner should not have signed Section VII until after the PTABOA decision had been made. This is why two dates are seen next to Petitioner’s signature in that section. Chambers helped Petitioner and Myers complete the form but denied the deduction because it was filled out improperly. *Myers testimony; Bd. Exhibit A; Pet’r Ex. 9.*

18. According to a Questions and Answer bulletin on the DLGF website, “Per I.C. 6-1.1-12-37(o), if the county auditor determines that an applicant is not eligible for the homestead standard deduction, the county auditor shall inform the property owner of the county auditor’s determination in writing.” The auditor did not inform Petitioner in writing that he was no longer eligible for the homestead standard deduction on the subject property. *Myers testimony; Pet’r Ex. 10; Pet’r Ex. 11.*

### **SUMMARY OF THE RESPONDENT’S CASE**

19. Petitioner and Myers came into Auditor Chambers’ office and asked for her assistance to fill out the application for the homestead standard deduction. Chambers warned Petitioner and Myers that she was not very familiar with the form before she helped them complete it. *Chambers testimony.*
20. Neither Respondent Assessor nor Auditor instructed Petitioner and Myers that both their signatures were required on the homestead deduction application. The auditor’s office is not in the practice of asking couples whether or not they are married or unmarried. That is a personal question. The auditor’s office has had a policy of telling older residents in Fountain County to both sign the homestead applications, so if something should happen to one of them, they will not have to re-file. *Chambers testimony.*
21. A claimant has to be a physical resident of the property in order to receive the homestead deduction. No one was living in the subject property when the Petitioner applied for the homestead deduction. Petitioner admitted he was living next door. *Chambers testimony.*
22. Petitioner did not complete the form in its entirety before signing the application. There is a section on the form that specifically asks if the claimant owns property in other Indiana counties. This section was left blank. Petitioner failed to inform the county of his other homestead in Wells County as well as Myers’ property in Grant County. It was only after conducting research in this matter that Respondent realized that both Petitioner and Myers were receiving homestead deductions in other counties. *Chambers testimony; Resp’t Ex. 1.*

23. The form that Petitioner presented to demonstrate that only one individual or married couple should sign the application was not revised until December 2009, which was after Petitioner completed the application.<sup>2</sup> *Chambers testimony; Pet'r Ex. 6.*
24. Petitioner received a homestead standard deduction on his property in Wells County until he sold the property in 2011. Respondent presented information that was obtained from the DLGF website in reference to Petitioner's taxes and payments. After discovering that Petitioner was still receiving a homestead standard deduction for the 2010-pay-2011 tax period, Respondent removed the deduction on the subject property. *Chambers testimony; Resp't Ex. 2; Resp't Ex. 3.*
25. While the assessor did tell Petitioner that she would reinstate the homestead deduction if Petitioner had the Wells County homestead removed, the auditor has the sole authority to grant or deny deductions. Auditor Chambers denied the application because it was filled out incorrectly. *Whitaker testimony.*
26. Respondent Assessor and Auditor have been unable get a clear answer from the DLGF as to whether non-married couples who are co-owners of a homestead have to both sign the application. It is the assessor's belief that both owners do not have to sign in this situation. *Chambers testimony; Whitaker testimony.*
27. Regardless of whether Petitioner was notified in writing of the denial, Myers has been in the auditor's office several times and was fully aware of it. *Chambers testimony; Whitaker testimony; Pet'r Ex. 10; Pet'r Ex. 11.*

## ANALYSIS

28. The Board is a creation of the legislature and it has only those powers conferred by statute. *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999). The relevant statute is Ind. Code § 6-1.5-4-1, which provides as follows:

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<sup>2</sup> Assessor Whitaker objected to Petitioner Exhibit 8, because the information on the form has to be reviewed by the Legislature. Therefore, it takes time for the county to get the forms. If a form is revised in June, the county officials will likely not receive it until August of the same year. While Respondent is free to argue that the form was not available to Petitioner when he applied for the deduction, this is not a valid objection. The objection is denied.



(a) The Indiana board shall conduct an impartial review of all appeals concerning:

- (1) the assessed valuation of tangible property;
- (2) property tax deductions;
- (3) property tax exemptions; or
- (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 Indiana board....

(b) Appeals described in this section shall be conducted under IC 6-1.1-15.  
*As added by P.L.198-2001, SEC.95. Amended by P.L.256-2003, SEC.31; P.L.172-2011, SEC.49.*

29. Petitioner's claim regarding the homestead standard deduction comes within the scope of appeals the Board is authorized to hear and determine. The homestead standard deduction is provided by Ind. Code § 6-1.1-12-37:

**Standard deduction for homesteads; ...statement to apply for deduction; notice to county auditor of ineligibility for deduction; limitations on deduction;...Note: This version of section effective 7-1-2009.**

(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 that 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

(2) 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.

...

(e) ... an individual who desires to claim the deduction provided by this section must file a certified statement in duplicate, on forms prescribed by the department of local government finance, with the auditor of the county in which the homestead is located. The statement must include:

(1) the parcel number or key number of the property and the name of the city, town, or township in which the property is located;

(2) the name of any other location in which the applicant or the applicant's spouse owns, is buying, or has a beneficial interest in residential real property;

(3) the names of:

(A) the applicant and the applicant's spouse (if any)...if the applicant is an individual...; and

(4) either:

(A) the last five (5) digits of the applicant's Social Security number and the last five (5) digits of the Social Security number of the applicant's spouse (if any)....

(f) If an individual who is receiving the deduction provided by this section or who otherwise qualifies property for a deduction under this section:

(1) changes the use of the individual's property so that part or all of the property no longer qualifies for the deduction under this section; or

(2) is no longer eligible for a deduction under this section on another parcel of property because:

(A) the individual would otherwise receive the benefit of more than one (1) deduction under this chapter; or

(B) the individual maintains the individual's principal place of residence with another individual who receives a deduction...

the individual must file a certified statement with the auditor of the county, notifying the auditor of the change of use, not more than sixty (60) days after the date of that change....

I C. § 6-1.1-12-37.

30. Unfortunately, most of the arguments from both parties were misdirected. The fact that Petitioner mistakenly relied on the purported errors of local government officials in having Myers sign the application, while unfortunate, does not alter the statutory requirements for the homestead standard deduction. As the Indiana Supreme Court has explained, “When the legislature enacts procedures and timetables which act as a precedent to the exercise of some right or remedy, those procedures cannot be circumvented by the unauthorized acts and statements of officers, agents or staff of the various departments of our state government. All persons are charged with the knowledge of the rights and remedies prescribed by statute.” *Middleton Motors, Inc. v. Indiana Dep’t of State Revenue*, 269 Ind. 282, 285, 380 N.E.2d 79, 81 (1978).

31. In *Middleton Motors*, the Indiana Supreme Court held that the trial court had properly dismissed a complaint for a tax refund where the taxpayer filed the complaint after the three-month filing period had expired. *Middleton Motors*, 380 N.E. 2d at 284. The deputy director for the Department of State Revenue told the taxpayer that he had two years from the payment of a final installment to file an action to reclaim any excessive tax. *Id.* at 283. Even though the taxpayer relied on the deputy's incorrect statement, he was held to be responsible for knowing there was only a three-month filing period. While not directly on point, *Middleton Motors* involved an affirmative misrepresentation by an official, and is therefore, applicable to this case.
32. Here, in order for Petitioner to receive the homestead standard deduction on the subject property, he was required to complete the application and acknowledge with his signature that his statements on the application were true, correct and complete before turning it in to the auditor. Petitioner failed to include his other homestead in Wells County as well as Myers' homestead in Grant County. Even if the auditor "helped" Petitioner fill out the application form, the petitioner is ultimately responsible for the information contained on the form being correct. The most important reason the deduction should have been denied is that the Petitioner and co-owner Myers both had homesteads in other Indiana counties when the application was filed. Therefore, neither one was eligible for the homestead standard deduction on the subject property. Contrary to what the Respondent said during the hearing, an individual may have only one homestead standard deduction per year. The subject property needed to be Petitioner's principal residence, as a person cannot have more than one principle residence. Furthermore, the fact the auditor allowed Petitioner to have the deduction the following year does not make him eligible for the year at issue.
33. When a taxpayer fails to provide probative evidence supporting the position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. See *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).
34. Petitioner failed to prove that he was entitled to a homestead standard deduction for the March 1, 2010 assessment date. The Board therefore finds for the Respondent.

## SUMMARY OF FINAL DETERMINATION

35. The Board finds in favor of the Respondent. The deduction was properly denied.

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

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Commissioner, Indiana Board of Tax Review

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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, as amended effective July 1, 2007, by P.L. 219-2007, 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 Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.