

REPRESENTATIVE FOR PETITIONER:

Georgettea Marzolf, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Tammy L. Smith, Wayne Township (Allen County) Deputy Assessor<sup>1</sup>

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Georgettea Marzolf, <sup>2</sup>	)	Petition No.:	02-074-09-3-5-01307
	)		
Petitioner	)	Parcel No.:	02-12-12-234-004.000-074
	)		
v.	)	County:	Allen
	)		
Allen County Assessor,	)	Township:	Wayne
	)		
Respondent.	)	Assessment Year:	2009

Appeal from the Final Determination of the  
Allen County Property Tax Assessment Board of Appeals

**June 26, 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:

<sup>1</sup> While Ms. Smith is apparently employed by the Wayne Township Assessor’s Office, it is unclear whether she appeared at the hearing as a representative of the Wayne Township Assessor or the Allen County Assessor. On her exhibit coversheet, Ms. Smith listed the Respondent as “Wayne Township Assessor,” but on the hearing sign-in sheet, she signed as “representing the County.” See *Bd. Ex. 3*. Even though her duties have not been statutorily transferred to the Allen County Assessor, the Wayne Township Assessor is not a party to this appeal. The Allen County Assessor is the statutorily designated Respondent. Ind. Code § 6-1.1-15-3(b)(2007); P.L. 219-2007 §§ 39, 156(c). Since the Board mailed its hearing notice to the Allen County Assessor, it is certainly possible that the County Assessor authorized Ms. Smith to represent her, as 52 IAC 2-2-4(2) provides. While Ms. Smith provided no evidence to that effect, Ms. Marzolf did not object to Ms. Smith’s appearance.

<sup>2</sup> The Form 133 petition is ambiguous about whether Georgettea Marzolf is the sole petitioner or whether she and Richard Marzolf are joint petitioners. On the petition’s first page, Georgettea is listed as the sole petitioner, but both she and Richard originally signed the petition as “equitable owners.” In the part of the petition addressed to the Board, however, only Georgettea signed. The Board therefore captions Ms. Marzolf as the sole petitioner.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **Introduction**

1. Georgettea and Richard Marzolf bought the subject property, which had a house containing four apartments, and used the house as their primary residence while they began the process of converting it into a single-family home. Under those circumstances, the Marzolfs were entitled to have the standard deduction for homesteads applied to the property's entire assessment rather than to only 25% of that assessment.

### **Procedural History**

2. On April 19, 2010, the Marzolfs filed a Form 133 Petition for Correction of an Error with the Allen County Auditor. The Auditor disapproved the petition and forwarded it to the Allen County Property Tax Assessment Board of Appeals ("PTABOA"). On April 28, 2011, the PTABOA notified the Marzolfs that it denied their Form 133 petition, and Ms. Marzolf sought review by timely filing that petition with the Board.

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

3. On March 29, 2012, the Board's designated administrative law judge, Jennifer Bippus ("ALJ"), held a hearing on Ms. Marzolf's petition. Ms. Marzolf and Tammy Smith, a Wayne Township deputy assessor, testified under oath.
4. The Marzolfs offered the following exhibits, all of which were admitted into evidence:
  - Petitioner's Exhibit 1: Subject property's "circuit breaker allocations" for 2009
  - Petitioner's Exhibit 2: Subject property's "circuit breaker allocations" for 2010
  - Petitioner's Exhibit 3: Subject property's "circuit breaker allocations" for 2011
5. The Assessor offered the following exhibits, all of which were admitted into evidence:
  - Respondent's Exhibit 1: Subject property record card
  - Respondent's Exhibit 2: Eleven photographs of the subject property
  - Respondent's Exhibit 3: March 1, 2009 Form 130 petition filed by the Marzolfs

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

- Board Exhibit A: Form 133 petition
- Board Exhibit B: Hearing notice
- Board Exhibit C: Hearing sign-in sheet

7. The subject property is located at 3104 Thompson Avenue in Fort Wayne, Indiana. Neither the Board nor the ALJ inspected the subject property.

### **Findings of Fact**

8. In 2009, Marzolfs bought the subject property on contract to use as their primary residence. *Marzolf testimony*. When they bought the property, the house was configured as four apartments and was assessed as a converted multi-family dwelling. It had a March 1, 2009 assessment of \$95,400. *See Resp't Ex. 1*. The subject property's record card shows that the property was assessed according to the mass-appraisal cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A. *See Resp't Ex. 1; see also, REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A*. As part of that valuation, the Wayne Township Assessor added \$16,800 to the house's replacement cost new to reflect “3 Ext. Living Units” and then subtracted \$1,400 because the house had a total of only 18 plumbing fixtures as opposed to 20. *See Resp't Ex. 1; See also, GUIDELINES, ch. 2 at appendix C, schedule D*.

9. When the Marzolfs moved into the house in 2009, they began the process of converting it into a single-family home. The Marzolfs have lived at the property since they bought it, and they have never rented any portion of it to anyone else. The Marzolfs used the portion of the property that was under construction as storage for their personal tools. *Marzolf testimony*.

10. The Marzolfs appealed the property's March 1, 2009 assessment. As a result of that appeal, the Marzolfs and the Wayne Township Assessor entered a written agreement to reduce the property's assessment to the following amounts: \$5,800 for the land and

\$36,900 for the improvements. *Marzolf testimony; Smith testimony; Resp't Ex. 3.* The body of that agreement provides the following:

02-074-09-005-00412	Original Value:	\$95,400
02-12-15-15-234-004.000-074	Settled Value:	\$42,500
3104 THOMPSON AV		

Put in P condition, 70% complete. Repriced as multifamily unit  
In the middle of conversion process to single family unit. (RAW).

*Resp't Ex. 3.* According to Ms. Smith, the new value was calculated by removing the unusable rental units from the property's assessment, changing the house's condition to "poor," reclassifying the upper floor to a finished attic, recalculating the basement area, and assessing the house as 70% complete. *Smith testimony.*

11. But while the Wayne Township Assessor noted ongoing construction and recognized that the Marzolfs were converting the house to a single-family home, she did not change the property's classification from multi-family to single-family because she did not believe that the Marzolfs were actually using the entire property. *See Smith testimony.*
12. In addition to their assessment appeal, the Marzolfs applied for what the parties alternately called a "homestead deduction" or "homestead exemption" for the March 1, 2009 assessment year. *Marzolf testimony; Smith testimony; Board Ex. A.* The Board assumes that they were referring to the standard deduction provided by Ind. Code § 6-1.1-12-37.<sup>3</sup> Because the property was classified as multi-family, and because the Marzolfs were only using a portion of the house while it was being converted to a single-family home, a deduction was granted for only 25% of the property's assessment. *See Smith testimony.*
13. Similarly, only 25% of the property was treated as a homestead for purposes of "circuit breaker allocations" for tax years 2009 payable 2010 and 2010 payable 2011. *Marzolf*

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<sup>3</sup> There is no exemption for homesteads, and the Indiana Code does not refer to a homestead deduction. Homesteads, however, are eligible for a standard deduction under Ind. Code § 6-1.1-12-37. Ms. Marzolf's Form 133 petition references Ind. Code § 6-1.1-12-37. Neither party offered a copy of the Marzolf's application.

*testimony; Pet'r Exs. 1-2.* The rest of the property was treated as non-homestead residential property. *See id.* Although the parties did not explain what they meant by “circuit breaker allocations,” the Board assumes that they were referring to tax credits under Ind. Code § 6-1.1-20.6-7.5, which are also sometimes referred to as “tax caps.” That statute gives a taxpayer a credit equal to the amount by which his taxes exceed specified percentages of his property’s gross assessed value. That applicable percentage depends on the type of property: 1% for homesteads and higher percentages for other types of property. *See I.C. § 6-1.1-20.6-7.5(a).* Thus, the statute effectively “caps” a taxpayer’s property taxes, although the cap is different for different property types. The statute applies to taxes first due and payable after 2009. *Id.*

### **Conclusions of Law and Discussion**

**A. The Board has the authority to address Ms. Marzolf’s claim that the standard deduction should have been applied to the property’s entire assessment, but not her claim that the Marzolfs were denied an appropriate credit under Ind. Code. 6-1.1-20.6-7.5.**

14. Ms. Marzolf brought her appeal on a Form 133 petition—the petition that the Department of Local Government Finance has prescribed for correcting errors under Ind. Code § 6-1.1-15.12. In that petition, she claimed that the standard deduction should have been applied to the subject property’s full assessment rather than to only 25% of that assessment. At the Board’s hearing, Ms. Marzolf also claimed that the Marzolfs were not given the appropriate credit under Ind. Code § 6-1.1-20.6-7.5 for taxes that were based on the 2009 assessment and payable in 2010.
15. The Board has the authority to address Ms. Marzolf’s claim that the subject property was improperly denied the full standard deduction. The Board, however, lacks authority to hear her other claim. Ms. Marzolf brought her appeal on a Form 133 petition—the form that the Department of Local Government Finance has prescribed for correcting errors under Ind. Code § 6-1.1-15-12. The Correction of error statute provides, in relevant part
  - (a) Subject to the limitations contained in subsections (c) and (d) [inapplicable in this case], a county auditor shall correct errors which

are discovered in the tax duplicate for any one (1) or more of the following reasons:

...

(8) Through an error of omission by any state or county officer, the taxpayer was not given:

(A) *the proper credit under IC 6-1.1-20.6-7.5 for property taxes imposed for an assessment date after January 15, 2011;*

(B) any other credit permitted by law;

(C) an exemption permitted by law; or

(D) a deduction permitted by law.

I.C. 6.1-1-15-12(a) (emphasis added). The provisions concerning credits were added effective July 1, 2011. 2011 Ind. Acts 172 § 31. Before then, the Board lacked the authority to hear appeals from the denial of a credit.

16. Thus, while the Board has the authority to address a Form 133 appeal in which a taxpayer claims that she has been denied the proper credit under Ind. Code § 6-1.1-20.6-7.5, that authority is limited to claims regarding credits for taxes based on assessments from 2011 forward. Because Ms. Marzolf's appeal relates to the March 1, 2009 assessment date, the Board lacks authority to address her claim about the subject property's "circuit breaker allocation," even if one assumes that she could raise such a claim for the first time at the Board's hearing."<sup>4</sup>

**B. The merits of Ms. Marzolf's standard deduction claim.**

17. Ind. Code § 6-1.1-12-37 provides for a standard deduction from a homestead's assessed value. That statute provides, in relevant part:

(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;

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<sup>4</sup> To the extent that Ms. Marzolf was claiming a credit other than what is provided by Ind. Code § 6-1.1-20.6-7.5, she has waived that claim by failing to specifically identify that credit.

- (B) that:
  - (i) the individual owns;
  - (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
  - (2) any date in the same year after an assessment date that a statement is filed...

I.C. 6-1.1-12-37.

18. Ms. Marzolf testified without contradiction that the Marzolfs bought the subject property on contract sometime in 2009, used the subject property for their primary residence in 2009, and timely applied for the standard deduction for the March 1, 2009 assessment year. Any doubt as to the accuracy of Ms. Marzolf's testimony is removed by the fact that local officials accepted the Marzolfs' application and applied the standard deduction to 25% of the subject property's assessment. Thus, the only question is whether the entire property, rather than 25% of it, qualified for the standard deduction.
19. The entire property qualified. There is no dispute that the Marzolfs used the subject property as their primary residence and that they did not use any part of the property for anything else. The Assessor, however, reads the standard deduction statute as requiring the Marzolfs to have physically used the entire house as their residence during 2009. In the Assessor's view, the parts of the house that remained unused during the conversion were not entitled to the standard deduction.

20. The Board disagrees. By taking affirmative steps to convert the house into a single-family residence while they lived in it, the Marzolfs constructively, if not actively, used the entire property as their primary residence. At first blush, the fact that the Marzolfs and the Wayne Township Assessor agreed to continue classifying the house as a multi-family dwelling for valuation purposes might seem inconsistent with their claim that the standard deduction should be applied to the entire assessment. But the Marzolfs and assessor also recognized that the house was in the process of being converted to a single-family home and subtracted the costs of the additional apartments. So, this not a case where the Marzolfs appear to have gained any advantage by agreeing to have the house valued according to one use and claiming a different use for purposes of applying for the homestead deduction.

21. Because the Marzolfs used the entire home as their primary residence in 2009 and otherwise met the requirements for receiving the standard deduction, that deduction should be applied to the subject property's March 1, 2009 assessment in its entirety. Also, while the parties did not explicitly reference it, Ind. Code § 6-1.1-12-37.5 provides a supplemental deduction for homesteads that is tied to the standard deduction:

(a) A person who is entitled to a standard deduction from the assessed value of property under section 37 of this chapter is also entitled to receive a supplemental deduction from the assessed value of the homestead to which the standard deduction applies after the application of the standard deduction but before the application of any other deduction, exemption, or credit for which the person is eligible.

...

(c) The auditor of the county shall record and make the deduction for the person qualifying for the deduction. . . .

I.C. § 6-1.1-12-37.5. The Marzolfs are therefore entitled to have the supplemental deduction applied to the entire property's assessment after the standard deduction is applied.



## SUMMARY OF FINAL DETERMINATION

22. The Board finds for Ms. Marzolf and determines the standard and supplemental deductions provided in Ind. Code §§ 6-1.1-12-37 and -37.5 should be applied to the subject property's March 1, 2009 assessment in its entirety. To the extent that Ms. Marzolf claimed that the Marzolfs had been denied the appropriate "circuit breaker" credit under Ind. Code § 6-1.1-20.6-7.5, however, the Board lacks the authority to address that claim.

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

## **IMPORTANT NOTICE**

### **- 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>.