

REPRESENTATIVE FOR PETITIONER:  
Stephen H. Downs, Attorney

REPRESENTATIVE FOR RESPONDENT:  
Michael L. Friedman, pro se

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

MIAMI COUNTY ASSESSOR,	)	Petition No.:	52-002-16-1-5-00928-18
	)		
Petitioner,	)	Parcel No.:	52-02-18-301-062.000-002
	)		
v.	)	County:	Miami
	)		
MICHAEL L. FRIEDMAN,	)	Assessment Year:	2016
	)		
Respondent.	)		

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

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**May 13, 2019**

**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:

**INTRODUCTION**

1. The Assessor contested the Miami County Property Tax Assessment Board of Appeals’ (“PTABOA”) decision to reinstate Friedman’s homestead deduction<sup>1</sup> for 2016, arguing that Friedman had simultaneously received a similar deduction on another property in

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<sup>1</sup> The parties used multiple terms when referring to the standard deduction for homesteads provided for by Ind. Code § 6-1.1-12-37. We will use the term “homestead deduction.”

Georgia. Because the Assessor's appeal to us was untimely, we cannot address the merits. We therefore dismiss the Assessor's case.

### **PROCEDURAL HISTORY**

2. Friedman filed a Form 130 petition challenging the Miami County Auditor's removal of the homestead deduction from his property located at 190 South McKee Street in Macy for the 2016 assessment year. On June 18, 2018, the PTABOA issued a determination reinstating the homestead deduction for 2016. On August 14, 2018, the Miami County Assessor filed a Form 131 petition contesting the reinstatement with us.<sup>2</sup>
  
3. On February 13, 2019, our designated administrative law judge, Joseph Stanford ("ALJ"), held a hearing on the petition. Friedman and Mary Betzner, an employee of the Auditor's office, were sworn and testified. Miami County Auditor Mary Brown was sworn, but did not testify. Miami County Assessor Karen LeMaster was present, but she was not sworn and did not testify. Neither the Board nor the ALJ inspected Friedman's property.
  
4. The Assessor offered the following exhibits:
  - Petitioner Exhibit 1: Claim for homestead deduction
  - Petitioner Exhibit 2: Audit questionnaire
  - Petitioner Exhibit 3: Property tax statements and correspondence from Douglas County, Georgia
  - Petitioner Exhibit 4: Letter from the Miami County Auditor's Office to Friedman, dated November 13, 2017
  - Petitioner Exhibit 5: Letter from the Miami County Auditor's Office to Friedman, dated January 8, 2018
  
5. Friedman offered the following exhibits:
  - Respondent Exhibit A: Letter from the Miami County Auditor's Office to Friedman, dated November 13, 2017

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<sup>2</sup> While the Auditor is the official charged with approving or denying homestead deductions, the Assessor is the party to the review before the Board. Ind. Code § 6-1.1-15-3(b).

- Respondent Exhibit B: Letter from Friedman to Miami County Auditor, dated November 24, 2017
- Respondent Exhibit C: Form 130 Petition
- Respondent Exhibit D: Letter from Friedman to Miami County Assessor, dated December 26, 2018
- Respondent Exhibit E: Tape of PTABOA hearing
- Respondent Exhibit F: 2018 property record card from Douglas County, Georgia
- Respondent Exhibit G: 2017 property record card from Douglas County, Georgia
- Respondent Exhibit H: 2016 property record card from Douglas County, Georgia

6. The record also includes the following: (1) all pleadings, motions, briefs, and documents filed in these appeals; (2) all orders and notices issued by the Board or our ALJ; and (3) an audio recording of the hearing.

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

7. Friedman's homestead deduction, which was reinstated by the PTABOA, should be removed, because Friedman benefitted from a second homestead deduction on a property in Douglas County, Georgia. A taxpayer cannot have homestead deductions on two different properties in the same year. *Downs argument; Betzner testimony.*
8. The Auditor contracted with a company to audit taxpayers who were receiving homestead deductions in Miami County. The audit revealed that Friedman had a homestead deduction on a property at 5361 South Lake Drive in Douglasville, Georgia, for 2016, 2017, and 2018. Friedman did not disclose that on his homestead deduction application to Miami County. *Betzner testimony; Pet'r Exs. 2, 3.*
9. Because of the evidence collected by the audit, the Auditor removed the homestead deduction on the subject property for 2016, 2017, and 2018. After Friedman removed his homestead deductions in Georgia for 2017 and 2018, the Auditor reinstated it for those two years in Miami County. While the Assessor does not dispute that Friedman was an Indiana resident in 2016, he failed to remove the 2016 homestead deduction from his Georgia property until early 2018, well after the audit was completed. Therefore, he is

ineligible for a homestead deduction on the subject property. *Downs argument; Betzner testimony; Pet'r Exs. 3, 4, 5.*

#### SUMMARY OF FRIEDMAN'S CASE

10. First, the years under appeal should be both 2016 and 2017. Friedman's Form 130 initiating the original appeal did not indicate the assessment years he intended to appeal. The Auditor removed the homestead deduction for both 2016 and 2017, and Friedman argued at the PTABOA hearing that his appeal should apply to both 2016 and 2017. Therefore, both of those years should be considered. *Friedman testimony; Resp't Exs. C, E.*
11. While Friedman lived in Georgia for a while, he moved to the subject property in August 2015. He changed his driver's license, vehicle registration, voter registration, and changed the billing address for the utilities for his property in Georgia to the subject property's address. He went to the tax assessor's office in Georgia, told them he was moving to Indiana, and asked them to remove the homestead deduction from his Georgia property. *Freidman testimony.*
12. However, after receiving a notice from the Miami County Auditor in November 2017, he found that his Georgia homestead deduction had not been removed for 2016. He returned to Georgia and again requested that it be removed. Finally, it was removed in early 2018. Friedman has paid all of the taxes owed in Georgia for 2016, 2017, 2018 that were calculated after the removal of the homestead deduction for those years. *Friedman testimony; Pet'r Exs. A, B, D, F, G, H.*
13. Friedman acknowledged that he once had dual homestead deductions for 2016 and 2017, but he has taken all the actions he could possibly take to correct that. Therefore, he should be entitled to a homestead deduction in Indiana for those years. *Friedman argument.*

## ANALYSIS

14. Indiana Code § 6-1.1-12-37 provides a standard deduction from the assessed value for homesteads, which the statute defines as a dwelling that an individual owns and uses as his principal place of residence and up to one acre of surrounding land. Ind. Code § 6-1.1-12-37(a)-(c). Here, there is no dispute that the Miami County property was Friedman’s principal place of residence during 2016. The Assessor simply claims that he improperly received two homestead deductions at the same time—one for his Miami County property and another for the property he owned in Georgia. We do not reach the merits, however, because we conclude that the Assessor’s Form 131 petition was untimely.
15. An assessor may obtain review of a PTABOA’s action by filing a petition for review with us “not later than forty-five (45) days after the date of the notice given to the party or parties of the determination of the county board.” Ind. Code § 6-1.1-15-3(d). Here, the PTABOA issued its determination reinstating Friedman’s homestead deduction for 2016 on June 18, 2018. Thus, in order for the Assessor’s Form 131 petition to have been timely, she needed to file it with us on or before August 2, 2018. Here, the Assessor filed her Form 131 petition on August 14, 2018, more than a week after the deadline. We therefore conclude that the Assessor failed to file her Form 131 petition within the forty-five day time limitation set forth in Indiana Code § 6-1.1-15-3(d).
16. Because the Assessor failed to timely file her Form 131 petition, we cannot address the merits of her appeal. *See Williams Indus. v. State Bd. of Tax Comm’rs*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995) (stating that because the legislature has created specific appeal procedures by which to challenge a county board’s action, parties must comply with the statutory requirements of filing the proper petitions within a timely manner). We therefore dismiss the Assessor’s Form 131 petition.<sup>3</sup>

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<sup>3</sup> Friedman argued that this appeal should also apply to the 2017 assessment year. Because the Assessor conceded that the homestead deduction should be, and already has been, reinstated for 2017, that argument is moot.

## SUMMARY OF FINAL DETERMINATION

17. The Assessor failed to timely appeal the PTABOA's decision to us. We therefore dismiss her case.

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 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>>.