

REPRESENTATIVE FOR PETITIONER:

Stephen H. Downs, Attorney

REPRESENTATIVE FOR RESPONDENTS:

Richard A. Wilson, pro se

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

MIAMI COUNTY ASSESSOR,)	Petition Nos.: 52-023-15-1-5-00926-18
)	52-023-16-1-5-00927-18
Petitioner,)	
)	Parcel No.: 52-08-35-301-246.000-023
v.)	
)	County: Miami
RICHARD and CAROL WILSON,)	
)	Assessment Years: 2015 and 2016
Respondents.)	

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

February 28, 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 the Wilson’s homestead deduction¹ for 2015 and

¹ The parties used the terms “homestead exemption,” “homestead credit,” and “homestead tax” interchangeably 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.”

2016. She argued that the Wilsons were not eligible for the deduction on their Miami County property because they were receiving a homestead deduction on another property in Fulton County during those years. Because the Assessor's appeals to us were untimely, however, we cannot address the merits. We therefore dismiss the Assessor's case.

PROCEDURAL HISTORY

2. The Wilsons filed Form 130 petitions challenging the Miami County Auditor's removal of the homestead deduction from their property located at 6 Parkway Terrace in Peru for the 2015 and 2016 assessment years. On June 18, 2018, the PTABOA issued determinations reinstating the homestead deduction for both years. On August 14, 2018, the Miami County Assessor filed Form 131 petitions contesting the reinstatements with us.²
3. On December 11, 2018, our designated administrative law judge, Joseph Stanford ("ALJ"), held a consolidated hearing on the petitions. Mary Betzner, Settlement Deputy for the Miami County Auditor, and Richard Wilson were sworn and testified. Neither the Board nor the ALJ inspected the Wilson's property.
4. The Assessor offered the following exhibits:

Petitioner Exhibit 1:	Sales disclosure form, dated June 20, 2013
Petitioner Exhibit 2:	2016 and 2017 "property tax master" from Fulton County; sales disclosure form, dated November 17, 2017; Letter from Fulton County Auditor's Office, dated November 17, 2018
Petitioner Exhibit 3:	Sales disclosure form, dated May 12, 2015
Petitioner Exhibit 4:	Letter from the Miami County Auditor's Office to the Wilsons, dated November 13, 2017
Petitioner Exhibit 5:	Letter from the Miami County Auditor's Office to the Wilsons, dated January 2, 2018
Petitioner Exhibit 6:	Letter from the Miami County Auditor's Office to the Wilsons, dated February 21, 2018

² 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).

5. The Wilsons offered the following exhibits:
 - Respondent Exhibit 1: Authorizations for automatic payments; voided check; bank statements (with confidential information redacted)
 - Respondent Exhibit 2: Calculation of tax payments; Treasurer Form TS-1A
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.

OBJECTIONS

7. The Assessor objected to both of the exhibits offered by the Wilsons on relevancy grounds. The Assessor argued that we should exclude Exhibit 1 because demonstrating that the Wilson's daughter and son-in-law were living in and making payments on the Fulton County property is immaterial to the issue of whether the Wilsons improperly claimed two homestead deductions for the years in question. Our ALJ took the objection under advisement. Because we find the exhibit to be at least marginally relevant to the issue before us, we overrule the objection.
8. The Wilsons offered Exhibit 2 in an effort to argue that they are entitled to a refund because the county incorrectly calculated their 2015 and 2016 tax bills after removing the homestead deduction. The Assessor objected, claiming that whether the tax bill is correctly calculated is irrelevant to the issue before us. Our ALJ sustained the objection because we lack jurisdiction to review tax bills. While we agree that the legislature has not empowered us to review appeals involving contested tax bills, the second page of the exhibit does demonstrate that the Wilsons received the homestead deduction for their Miami County property in 2015 and 2016. We therefore overrule the objection.

SUMMARY OF THE ASSESSOR'S CASE

9. The Wilson's are not entitled to receive a homestead deduction for their Miami County property for 2015 or 2016 assessment years because they received a homestead deduction on a property they owned in Fulton County during those years. Taxpayers cannot have homestead deductions on two different properties in the same year. *Betzner testimony; Downs argument.*
10. The Auditor contracted with a company to audit taxpayers who were receiving homestead deductions in Miami County. The audit revealed that in 2015 and 2016, the Wilsons had a homestead deduction in their name on a property located at 6238 State Road 14 East, Athens (Fulton County, Indiana). *Betzner testimony; Pet'r Exs. 1, 2.*
11. According to Fulton County documents and a sales disclosure form, the Wilsons owned the Fulton County property during 2015 and 2016. On November 16, 2017, they sold the property to family members on contract. *Betzner testimony; Pet'r Exs. 1, 3.*
12. On April 25, 2015, the Wilsons took title to their property in Miami County. On the sales disclosure form completed for that transaction, the Wilsons indicated that (1) the property would be their primary residence; (2) they had no homestead in Indiana to be vacated; and (3) they were applying for a homestead deduction for the property. *Betzner testimony; Pet'r Ex. 3.*
13. Based on the evidence collected by the audit, the Miami County Auditor removed the Wilson's homestead deduction from their Miami County property for 2015 and 2016. The Fulton County Auditor removed the homestead deduction and the mortgage deduction for the Wilson's Fulton County property "then after." *Betzner testimony; Pet'r Ex. 4.*

SUMMARY OF THE WILSON'S CASE

14. The Wilsons moved out of the Fulton County property in April 2014. On May 1, 2015, the Wilson's daughter and son-in-law began making payments on the property, but the contract to sell the property to them was not officially recorded until November of 2017. *Wilson testimony; Resp't Ex. 1.*

15. The Wilson's son-in-law was supposed to get the homestead deduction in Fulton County changed into his name. While he may not have done that, the Wilsons received no benefit from that homestead deduction. Their daughter and son-in-law were making the mortgage payments and paying the property taxes through their mortgage escrow. *Wilson testimony.*

ANALYSIS

16. 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 the Wilson's principal place of residence during the years at issue. The Assessor simply claims that the Wilsons improperly received two homestead deductions at the same time—one for their Miami County property and another for the property they owned in Fulton County. We do not reach the merits, however, because we conclude that the Assessor's Form 131 petitions for 2015 and 2016 were both untimely.

17. 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 determinations reinstating the Wilson's homestead deduction for 2015 and 2016 on June 18, 2018. Thus, in order for the Assessor's Form 131 petitions to have been timely, she needed to file them with us on or before August 2, 2018. However,

the Assessor filed her Form 131 petitions on August 14, 2018, more than a week after the deadline. We therefore conclude that the Assessor failed to file her Form 131 petitions within the forty-five day time limitation set forth in Indiana Code § 6-1.1-15-3(d).

18. Because the Assessor failed to timely file her Form 131 petitions, 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 both of the Assessor's Form 131 petitions.

SUMMARY OF FINAL DETERMINATION

19. The Assessor failed to timely appeal the PTABOA's decisions 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.

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>>.