

REPRESENTATIVES FOR PETITIONER: Paula G. Haynes, Taxpayer Pro se

REPRESENTATIVES FOR RESPONDENT: Judy Lewis, Secretary, Cass County Property Tax Assessment Board of Appeals; Shelby Ridenour, Eel Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

PAULA G. HAYNES,)	Petition No.: 09-010-97-2-8-00086
)	
Petitioner)	County: Cass
)	
v.)	Township: Eel
)	
CASS COUNTY BOARD OF)	Parcel No.: 25-11-141-007
REVIEW,)	
)	
Respondent)	Assessment Year: 1997
)	

Appeal from the Final Determination of
Cass County Board of Review

July 17, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. The issue presented for consideration by the Board was:
ISSUE – Whether the Petitioner’s application for a homestead and a mortgage/contract deduction should have been denied for the 1997 assessment year.

Procedural History

2. On September 20, 1996, Paula G. Haynes (Petitioner) filed Form #43709, titled Statement of Mortgage or Contract Indebtedness for Deduction from Assessed Valuation (mortgage exemption) and Form #5473 titled Claim For Homestead Property Tax Credit (homestead credit) with the Cass County Auditor.
3. Pursuant to Ind. Code § 6-1.1-11-7, Paula G Haynes filed a Form 132 petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on August 25, 1997. The determination of the Cass County Board of Review was issued on July 30, 1997.

Hearing Facts and Other Matters of Record

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on May 14, 2003 in Logansport, Indiana before Patti Kindler, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
5. The following persons were present at the hearing:
For the Petitioner: Paula G. Haynes, Taxpayer

For the Respondent: Judy Lewis, Cass County PTABOA; and,
Shelby Ridenour, Eel Township Assessor

6. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner: Paula G. Haynes

For the Respondent: Judy Lewis

Shelby Ridenour

7. No exhibits were presented at the hearing.

8. The following items are officially recognized as part of the record of proceedings:

Board's Exhibit A – Form 132 with the following attachments: a copy of the County Board of Review's Notice of Disapproval of Exemption; a copy of Form # 43709, titled Statement of Mortgage or Contract Indebtedness for Deduction of Assessed Valuation; a copy of Form #5473, Claim for Homestead Property Tax Credit; a copy of the Real Estate Contract between George Haynes and Paula Haynes; and, a copy of the Installment Contract for Sale of Real Estate between George Haynes and the Secretary of Veterans Affairs.

Board's Exhibit B – Notice of Hearing on Petition

9. The property under review for deduction is located at 1501 Johnson Street, Logansport, (Eel Township, Cass County). The subject property was not inspected.

10. The assessed values subject to deduction for 1997, as listed on the subject Form 132 are:
Land: \$1100 Improvements: \$10,000

Jurisdictional Framework

11. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
12. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.5-4-1.

State Review and Petitioner's Burden

13. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
14. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
15. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
16. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory

statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]

17. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).
18. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case' and, by a 'preponderance of the evidence' proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of the Issue

ISSUE: *Whether the homestead and mortgage/contract deductions should have been denied for the 1997 assessment year*

19. Ms. Haynes timely filed for a mortgage/contract deduction and a homestead credit from assessed valuation for her residence located at 1501 Johnson Street, Logansport, for the 1997 assessment year.

20. The Eel Township Assessor applied a homestead credit to the subject property. However, the Cass County Board of Review removed the homestead credit on July 30, 1997, denied the mortgage/contract deduction, and sent a Notice of Disapproval of Exemption to the Taxpayer.

21. The applicable rules governing the Issue are:

Ind. Code § 6-1.1-1-15

Defines “deduction” as a situation where a taxpayer is permitted to subtract a fixed dollar amount from the assessed value of his property.

Ind. Code § 6-1.1-1-9

Defines the term “owner” with regards to tangible property.

Ind. Code § 6-1.1-12-1

Details mortgage or contract deductions; eligibility; amount deducted.

Ind. Code § 6-1.1-12-2

Details filing requirements for mortgage deductions; deadlines; statement of filing; verification.

Ind. Code § 6-1.1-12-7

Details the granting of mortgage or contract deductions.

Ind. Code § 6-1.1-20.9-1

Defines the terms “dwelling” and “homestead” in reference to homestead credits.

Ind. Code § 6-1.1-20.9-2

Details the credit against property tax on homestead by owner or buyer; amount of homestead; and, eligibility requirements.

Ind. Code § 6-1.1-20.9-3

Details the certified statement to claim homestead credit; filing; notice of change of use of property; and, reapplication procedures.

22. Evidence and testimony considered particularly relevant to this determination include the following:
- a. Ms Haynes owns and resides in the subject property located at 1501 Johnson Street, Logansport, Indiana.
 - b. Ms. Haynes filed applications for both a mortgage/contract deduction and a homestead property tax credit on September 20, 1996 with the Cass County Auditor.
 - c. The Eel Township Assessor applied the homestead credit to Ms. Haynes property for the 1997 assessment year and assumed that the homestead was allowed. *Ridenour Testimony.*
 - d. The Cass County Board of Review denied both the mortgage and homestead deductions and sent proper notice to Ms. Haynes on July 30, 1997. *Board's Exhibit A, Notice of Disapproval of Exemption.*
 - e. The Notice of Disapproval of Exemption states that the application for a homestead and a mortgage/contract deduction were denied because the recorded contract between the Secretary of Veterans Affairs and Mr. George Haynes indicated that the loan could not be assumed without prior approval of VA, its authorized agent, successors or assigns. *Board's Exhibit A, Notice of Disapproval of Exemption.*
 - f. Ms. Haynes's father, George Haynes, purchased the subject home in 1995 with the intention of selling it to his daughter when she graduated from college. The property was initially recorded with the Cass County Recorder as a contract sale on July 7, 1995 between George Haynes and the Secretary of Veterans Affairs of the United States of America. *Haynes Testimony; Attachment to Board's Exhibit A, Installment Contract for Sale of Real Estate.*
 - g. Ms. Haynes purchased the property from her father on contract through Countrywide Funding Corporation. *Haynes Testimony.* The contract was recorded on September 20, 1996 with the Cass County Recorder. *Attachment to Board's Exhibit A, Real Estate Contract.*
 - h. The contract specifies that Ms. Haynes is responsible for all taxes and assessments levied against the property for 1995 payable, 1996 and thereafter. *Id.*

- i. The Respondents assert that they believe the homestead credit and the mortgage/contract deduction should have been applied to Ms. Haynes assessment for 1997. *Lewis and Ridenour Testimony.*

Analysis of the Issue

23. The Cass County Board of Review denied the Petitioner's applications for the mortgage/contract deduction and homestead credit deduction for the 1997 assessment year.
24. The Board of Review's disapproval notice indicates that the subject contract loan could not be assumed by the Petitioner without prior approval of the Secretary of Veteran's Affairs, and therefore the mortgage/contract deduction, as well as, the homestead credit filed in the Petitioner's name were denied.
25. The Petitioner claims the subject Real Estate Contract conveying the property from her father to her, deemed her responsible for all the taxes, mortgage payments, and upkeep of the subject property and was properly recorded in 1996. The Petitioner thereby asserts that both the homestead and mortgage/contract deductions were warranted for 1997. The Board will examine each of these two deductions separately.

Whether the homestead credit should have been denied for 1997

26. No members of the former Board of Review were present to explain the details of the homestead credit denial. The Eel Township Assessor contended, as part of her assessing duties, she had allowed the homestead for the subject property in 1997 and was not aware that the Board of Review had removed it until receipt of the Notice of Hearing on Petition in April of 2003.
27. The Respondents agreed with the Petitioner's claim that the homestead credit should not have been denied for the 1997 assessment year. Therefore, because there is no dispute between the parties regarding the application of the homestead credit, the Board must

simply ascertain that the agreement between the parties complies with the precise meaning of the statutes.

28. Ind. Code § 6-1.1-20.9-2 defines “Homestead” as an individual’s principle place of residence which: (A) is located in Indiana; (B) the individual either owns or is buying under a contract, recorded in the county recorder’s office, that provides that he is to pay the property taxes on the residence; and, (C) consists of a dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds that dwelling.
29. Ind. Code § 6-1.1-20.9-2(a) states that except as otherwise provided in section 5 of this chapter, an individual who on March 1 of a particular year either owns or is buying a homestead under contract that provides the individual is to pay the property taxes on the homestead is entitled each calendar year to a credit against the property taxes, which the individual pays on the individual’s homestead. However, only one (1) individual may receive a credit under this chapter for a particular homestead in a particular year.
30. Ind. Code § 6-1.1-20.9-3 further states that an individual who desires to claim the homestead credit must file a certified statement in duplicate with the auditor of the county in which the homestead is located. The statements shall include the parcel number, and the city, town, or township in which the real estate is located. The statement must be filed during the twelve months prior to May 11 to receive the credit the following year. In addition the claim for homestead credit must disclose if the individual owns or is buying real property in any other county or township, if the individual has made changes to the use of the subject property, and if the property is jointly held with another owner in a particular year.
31. The record shows that the requirements listed in the statutes above do not preclude the Petitioner from being eligible for the homestead credit deduction. The Petitioner was purchasing the property located in Cass County Indiana on contract. The contract was recorded and dated by the Cass County Auditor on September 20,1996. The contract required that the contract buyer, Ms. Haynes, pay the property taxes. Finally, the

homestead credit application was timely filed prior to the May 11th, 1997 deadline. *See*, Attachment to Board's Exhibit A, Real Estate Contract.

32. For all the above reasons, the Petitioner has met her burden on the issue of the homestead credit. Accordingly, the homestead credit deduction should be applied to the Petitioner's assessment for the 1997 assessment year.

Whether the mortgage/contract deduction should have been denied for 1997

33. Again, there were no members of the former Board of Review present at the hearing to defend their denial of the mortgage/contract deduction for 1997. The Respondents present at the hearing did not rebut the Petitioner's claims of eligibility for the mortgage/contract deduction.
34. The Petitioner asserts that the Cass County Auditor would not grant exemptions for the property because the Veterans Administration, not her father or herself, owned it. However, a document attached to Board's Exhibit A affirms the recorded real estate contract agreement made between Mr. Haynes and the Petitioner. The Cass County Recorder recorded the document on September 20, 1996.
35. There is no evidence on record that the Petitioner's father failed to receive prior approval from Veteran's Affairs to transfer the ownership via contract sale, or that the subject contract sale is invalid.
36. To repeat, the Respondents agreed with the Petitioner that the mortgage/contract deduction should *not* have been denied for the 1997 assessment year. Therefore, the Board is required to review the statutes to insure that they comply with the consensus between the parties that the mortgage/contract deduction was warranted.
37. Ind. Code § 6-1.1-12-1(a)(2) which details the eligibility of mortgage or contract deductions, states that a resident of the state may receive a deduction from assessed value of real property that he is buying under a contract, with the contract or a memorandum of

the contract recorded in the county recorder's office, which provides that he is to pay the property taxes on the real property.

38. Ind. Code § 6-1.1-12-2 states that a person who desires to claim the deduction must file a statement in duplicate with the auditor of the county in which the real property is located. The statement must be filed within the twelve months prior to May 11 of the year the person wishes to obtain the deduction. A contract buyer who desires the deduction must submit a copy of the recorded contract, which contains a legal description sufficient to meet the requirements of Ind. Code § 6-1.1-5, with the first statement that the buyer files under this section with respect to a particular parcel of real property. The statement must also contain: (1) the balance of the person's contract indebtedness on the assessment date of the year the deduction is claimed; (2) the assessed value of the real property; (3) the full name and complete residence address of the person and the contract seller; (4) the name and residence of any assignee or bona fide owner or holder of the mortgage or contract, if known, and if not known, the person shall state that fact; and, (5) the record number and page where the mortgage, contract, or memorandum of the contract is recorded.
39. The record indicates the Petitioner meets the requirements of the above statutes regarding mortgage/contract deductions. In accordance with Ind. Code § 6-1.1-12-1 and Ind. Code § 6-1.1-12-2, the Petitioner submitted the required statement showing: the recorded contract stating that the Petitioner is responsible for the taxes; the balance of indebtedness; the property's assessed value; the name and address of the property, as well as the contract seller; the name of the mortgage holder; the record and page number of the recorded contract; and, the legal description.
40. The Respondents did not rebut the Petitioner's request for the mortgage/contract deduction for the 1997 assessment year. For all the above reasons, the Petitioner met her burden with regard to the mortgage/contract deduction request. Accordingly, the mortgage/contract deduction should be applied to the Petitioner's assessment for the 1997 assessment year.

Summary of Final Determination

Determination of the Issue: *Whether the homestead and mortgage deductions should have been denied for the 1997 assessment year*

41. The Petitioner met her burden in this appeal. Accordingly, there is a change in the assessment.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.