

REPRESENTATIVE FOR PETITIONER:
Patsy Penn, *pro se*

REPRESENTATIVE FOR RESPONDENT:
Paige Kilgore, Vermillion County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Patsy and Robert Penn)	Petition No.: 83-007-16-3-5-01729-16
)	
)	
Petitioners,)	
)	Parcel: 83-10-02-260-018.000-007
v.)	
)	
Vermillion County Assessor,)	County: Vermillion
)	
)	
Respondent.)	Assessment Years: 2012, 2013, & 2014

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

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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioners contend that the Vermillion County Auditor did not apply the homestead deduction to the subject property for the years at issue. The Board finds that Petitioners did not prove that they were entitled to the deduction for those years.

PROCEDURAL HISTORY

2. Petitioners initiated this appeal on May 10, 2016. On July 21, 2016, the Vermillion County Property Tax Assessment Board of Appeals (“PTABOA”) issued a determination denying the appeal. On September 8, 2016, Petitioners filed the Form 133 petition with the Board.

3. On June 14, 2017, the Board’s designated administrative law judge, Ellen Yuhan (“ALJ”), held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Patsy Penn was sworn and testified for Petitioners. Paige Kilgore, Vermillion County Assessor, and Amy Tolbert, Vermillion County Auditor, were sworn and testified for Respondent. Tonya Lewis, Vermillion County Deputy Auditor, was sworn but did not testify.

5. Petitioner offered the following exhibits:

Petitioner Exhibit 1:	Notice of Quietus,
Petitioner Exhibit 2:	Tax Deed for the subject property ,
Petitioner Exhibit 3:	Copy of check redeeming property from 2010 tax Sale,
Petitioner Exhibit 4:	E-mail from Tonya Lewis to Mike Duffy,
Petitioner Exhibit 5:	Notice of default of mortgage dated May 15, 2017,
Petitioner Exhibit 6:	Explanation of commissioner’s certificate sale from SRI, Inc.,

6. Respondent offered the following exhibits:

Respondent Exhibit 1:	List of deductions applied to Penn properties,
Respondent Exhibit 2:	Summary of Respondent’s case,

7. The following additional items are recognized as part of the record:

Board Exhibit A:	Form 133 Petition with attachments,
Board Exhibit B:	Notices of Hearing,
Board Exhibit C:	Hearing Sign-In Sheet.

8. The property under appeal is a residential lot located at 4250 East Washington Street in Hillsdale.¹
9. Petitioners do not challenge the assessed value of the property but do challenge the county's failure to apply the homestead deduction for the years at issue.²

PETITIONERS' CONTENTIONS

10. Petitioners contend the appeal is for the 2012 pay 2013, 2013 pay 2014, and 2014 pay 2015 assessments. According to Petitioners, prior to moving to the Washington Street property, they resided at 101 Briarwood in Dana. When they forfeited the house in Dana in 2012 due to foreclosure, Ms. Penn approached the county to have the deductions transferred to the Washington Street property. Ms. Penn contends that a county official provided her with the appropriate forms to complete, and subsequently advised her to return them via U.S. mail, which she did, even though she had offered to fill them out and return them while she was on the premises. *Penn testimony.*
11. Petitioners contend that after mailing their application, they did not receive any correspondence from the county such as a Form 11 or a tax statement until early 2013, when they eventually received notice that the property was being placed in a tax sale. *Penn testimony.*
12. Petitioners contend that Respondent sold the property in November 2016 without providing any notice to them. They contend Respondent had no authority to conduct such a sale and that it was, in fact, illegal. Further, Petitioners claim that Respondent

¹ Petitioners do not currently own the subject property. They contend that it was sold at a tax sale on January 27, 2016, and transferred by a tax deed dated November 9, 2016.

² Both parties used the terms "deduction" and "exemption" interchangeably throughout the proceedings. There is no statute that exempts homesteads from taxation. The Board infers they are referring to the standard deduction for homesteads provided for under Ind. Code § 6-1.1-12-37, and will use the term "homestead deduction" hereinafter.

knew that this appeal would eventually be before the Board, but proceeded with the sale nonetheless. *Penn testimony.*

RESPONDENT'S CONTENTIONS

13. Respondent contends Petitioners' appeal was heard by the PTABOA and, after review, the PTABOA agreed with the assessor and the auditor to deny any relief. *Kilgore testimony; Resp't Ex. 2.*
14. Respondent contends Petitioners have, over time, owned several properties in Vermillion County. According to Respondent, there was no way of knowing which property was Petitioners' primary residence. Respondent contends that it is the taxpayer's responsibility to inform the auditor when it is necessary to have the deduction transferred from one parcel to another. *Kilgore testimony; Tolbert testimony.*
15. Respondent contends that the county did not have a correctly completed homestead deduction application for the subject property until December 30, 2015. When Respondent received the application, Respondent contends that the deductions were applied for 2015 and forward. However, Respondent contends that there were still taxes and penalties that were pending that had not been settled. *Kilgore testimony.*
16. Respondent contends that Petitioners claim that there was an error made with regard to the Washington Street parcel and, because the auditor did not transfer the deductions, the parcel was placed in a tax sale. *Kilgore testimony.*
17. Respondent contends that Petitioners had previously received a homestead deduction and other various deductions for their property located at 101 Briarwood in Dana, which was their primary residence. *Kilgore testimony; Tolbert testimony.*

ANALYSIS

18. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001) (citing *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). By statute, the Board conducts an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, property tax exemptions, and property tax credits that are made from a determination by an assessing official or county property assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1. Regarding the homestead deduction, Ind. Code § 6-1.1-12-37(o) states that if “the county auditor has determined that the property is not the property owner’s principal place of residence, the property owner may appeal the county auditor’s determination ... as provided in IC 6-1.1-15.”
19. Petitioners’ claim regarding the homestead deduction comes within the scope of appeals the Board is authorized to hear and determine. Ind. Code § 6-1.1-12-37 provides a standard deduction for homesteads. 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;
- (B) that: (i) the individual owns;
-
- (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 under subsection (e) or section 44 of this chapter, if the property consists of real property.

.....
(f) If any individual who is receiving the deduction provided by this section or otherwise qualifies 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;

.....
(B) The individual must file a certified statement with the auditor of the county, notifying the auditor of the change in use, not more than sixty (60) days after the date of that change. An individual who fails to file the statement required by this subsection is liable for any additional taxes that would have been due on the property if the individual had filed the statement as required by this subsection plus a civil penalty equal to ten percent (10%) of the additional taxes due.

Ind. Code. § 6-1.1-12-37. (2012)

20. 50 IAC 24-3-7 mirrors the language in Ind. Code § 6-1.1-12-37 stating that if an individual who is receiving the homestead standard deduction changes the use of the real property, so that all or a part of the real property no longer qualifies for the homestead deduction, the individual must file a certified statement with the auditor of the county notifying the auditor of the change in use within sixty (60) days after the date of the change. An individual who changes the use of the individual's real property and fails to notify the auditor is liable for the amount of homestead standard deduction the individual was allowed. 50 IAC 24-3-7 was enacted in May of 2009 and repealed in 2016.
21. Ind. Code § 6-1.1-12-17.8 provides that the auditor may, in the county auditor's discretion, terminate the deduction for assessment dates after January 15, 2012, if the individual does not comply with the requirements in Ind. Code § 6-1.1-22-8.1(b)(9).
22. Petitioners failed to prove that they properly applied for their homestead deduction. Petitioners contend that they informed the county that the homestead deduction should be removed from the 101 Briarwood property because they no longer owned that property

after 2012. They claim to have subsequently requested a transfer of that homestead deduction to the 4250 E. Washington property. Ms. Penn testified that she mailed the application forms to the county but the homestead deduction was never correctly applied to the property.

23. Nonetheless, Petitioners failed to provide evidence as to when they notified the county of their move to 4250 E. Washington. They also failed to show when they allegedly mailed the application for the homestead deduction to the county. They did not submit any copies of the application to support their contentions, nor did they submit any evidence to show that 4250 E. Washington was their primary residence for the years at issue. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Prod's, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). The Board does not find Petitioners' testimony compelling or persuasive under these circumstances.
24. Where petitioners have not supported their claim with probative evidence, the respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Summary of Final Determination

25. Petitioners failed to establish a prima facie case that they were entitled to a deduction for the years at issue. Consequently, the Board finds in favor of Respondent.

The Final Determination of the above captioned matter is issued on the date first written above.

ISSUED: September 12,2017

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>>.