

REPRESENTATIVE FOR PETITIONER:  
Thomas A. Teach, Jr., *Pro Se*

REPRESENTATIVE FOR RESPONDENT:  
Frank Agostino, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

THOMAS A. TEACH, JR.,	)	Petition No.: 71-018-06-9-1-00001
	)	
Petitioner,	)	Parcel/Key No.: 18-7189-6685
	)	
v.	)	
	)	County: St. Joseph
ST. JOSEPH COUNTY	)	
PROPERTY TAX ASSESSMENT	)	Township: Portage
BOARD OF APPEALS, and ST.	)	
JOSEPH COUNTY ASSESSOR	)	Assessment Year: 2006
Respondents.	)	

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Appeal from the Final Determination of the  
St. Joseph County Property Tax Assessment Board of Appeals

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**March 25, 2010**

**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**

### **INTRODUCTION**

1. In this Form 133 appeal, the Petitioner, Thomas Teach, Jr., claimed that he was improperly denied “exemptions” under the “Homestead Act.” While the Board is not aware of any statute providing for a homestead exemption, the Indiana Code did provide various credits and deductions for homeowners during the assessment year at issue. But the Board lacks jurisdiction to hear appeals from the denial of tax credits, and Mr. Teach offered nothing to show for which, if any, deductions he applied. The Board therefore denies his appeal.

### **PROCEDURAL HISTORY**

2. On January 18, 2008, Mr. Teach filed a Form 133 Petition for Correction of an Error with the St. Joseph County Assessor claiming that he “filed at the county city building for [his] tax exemption” but did not receive that exemption for 2006. On May 14, 2008, the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) denied Mr. Teach’s petition. On June 16, 2008, Mr. Teach timely filed his Form 133 petition asking the Board to review the PTABOA’s determination.
3. On December 16, 2009, the Board’s designated administrative law judge, Jennifer Bippus (“ALJ”), held a hearing on Mr. Teach’s appeal. Neither the Board nor the ALJ inspected the subject property.
4. The following people were sworn in as witnesses

Thomas Teach, Jr.

For the Respondents:

David Wesolowski, St. Joseph County Assessor,  
Dennis J. Dillman, St. Joseph County PTABOA,  
Ross Portolese, St. Joseph County PTABOA,

Ralph J. Wolfe, St. Joseph County PTABOA,  
Kevin Klaybor, St. Joseph County PTABOA.

5. Neither Mr. Teach nor the Respondents presented any exhibits.
6. The Board recognizes the following additional items as part of the record of proceedings:
  - Board Exhibit A – The Form 133 petition,
  - Board Exhibit B – Notice of hearing, dated August 25, 2009,
  - Board Exhibit C – Notice of Appearance for Frank Agostino,
  - Board Exhibit D – Hearing sign-in sheet.

#### **ADMINISTRATIVE REVIEW AND THE PETITIONER’S BURDEN**

7. A taxpayer seeking review of an assessing official’s determination bears the burden of proof to show that he is entitled to relief. *Thorntown Tel. Co. v. State Bd. of Tax Comm’rs*, 629 N.E.2d 962, 965 (Ind. Tax Ct. 1995) (addressing a taxpayer’s burden in an appeal from an assessment determination).

#### **PARTIES CONTENTIONS**

##### **A. Mr. Teach’s contentions**

8. Mr. Teach bought the subject property sometime in August 2004. Within 45 days after buying the property, he filed documents with a county office “downstairs” from where the Board’s hearing was held. He alternately described what he filed as “all of the paperwork necessary to do the Homestead Act and things like that” and “the homestead exemption.” *Teach testimony*.
9. When Mr. Teach noticed that his mortgage payments had increased from \$700 per month to \$1,200 per month, he went back to the office where he had filed his paperwork to straighten things out. The office was very disorganized; papers were stacked on top of each other to the point where an office employee had to stand on a stool. Mr. Teach

believes that the office lost the paperwork that he filed. Unfortunately, he did not have copies of that paperwork because they were stolen from his house. *Teach testimony.*

**B. The PTABOA's contention**

10. The Auditor's office did not have any exemption or deduction filings for Mr. Teach. *Wesolowski testimony.*

**ANALYSIS**

11. Mr. Teach neither produced copies of the documents that he claimed to have filed nor specifically identified what those documents were. He alternately called those documents "paperwork necessary to do the Homestead Act" and "the homestead exemption."
12. The Board is unaware of any provision under Indiana law for a homestead exemption. In 2006, however, the Indiana Code provided at least three benefits to homeowners that could reduce a homestead's assessment or the homeowner's tax liability:
- A homestead credit that was applied against property taxes. I.C. § 6-1.1-20.9 (repl. vol. 2006).<sup>1</sup>
  - A standard deduction from a homestead's assessed value. The homeowner was entitled to that standard deduction if he was entitled to a homestead credit for the following year. I.C. § 6-1.1-12-37(a) (repl. vol. 2006).
  - A deduction from a mortgaged property's assessed value. I.C. § 6-1.1-12-1 (repl. vol. 2006).
13. To the extent that Mr. Teach claims that he was entitled to a homestead credit, the Board lacks jurisdiction to hear his appeal. The Board is a creation of the legislature and therefore has only those powers conferred by statute. *Matonovich v. State Bd. of tax*

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<sup>1</sup> Ind. Code § 6-1.1-20.9 has since been repealed. P.L. 146-2008 § 813.

*Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999). “All doubts regarding a claim to power of a governmental agency are resolved against the agency.” *State ex rel. ANR Pipeline Co. v. Indiana Dep't of State Revenue*, 672 N.E.2d 91, 94 (Ind. Tax Ct. 1996).

14. The Board's general jurisdictional statute empowers the Board to review appeals concerning: “(1) the assessed valuation of tangible property; (2) property tax deductions; or (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law.” Ind. Code § 6-1.5-4-1(a). That statute previously had contained a fourth subdivision, which had referenced appeals concerning “credits.” *See* I.C. § 6-11.5-4-1(a)(2002). But the statute was amended in 2003 to omit the reference to credits. *See* P.L. 256-2003 § 31.
15. The homestead-credit statute itself is silent about a taxpayer's right to appeal. *See* I.C. § 6-1.1-20.9 (repl. vol. 2006). In light of that silence and of the legislature's decision to omit credits from the Board's general jurisdictional statute, the Board lacks jurisdiction to address claims regarding the denial of a homestead credit.
16. To the extent that Mr. Teach claims that he was improperly denied a standard deduction, the jurisdictional question is not as clear. Being a deduction, it appears to fall within the Board's general jurisdictional statute. On the other hand, the deduction is directly tied to the taxpayer's entitlement to a homestead credit. The Board need not resolve that question, however, because Mr. Teach did not prove that he was entitled to a standard deduction, a mortgage deduction, or any other deduction or exemption.
17. Deductions and exemptions typically are not self-enacting, at least not initially. Thus, in 2006, a taxpayer was entitled to the standard deduction if he was entitled to a homestead credit for the following year. I.C. § 6-1.1-12-37(a) (repl. vol. 2006). But to receive a homestead credit, the taxpayer had to file with the auditor of the county in which the homestead was located a certified statement on a Department of Local Government Finance prescribed form. I.C. § 6-1.1-20.9-3(a)(repl. vol. 2006). And the taxpayer had to

file that statement during the 12 months before June 11 of the year prior to the first year for which he sought the credit. *Id.* A taxpayer seeking a mortgage deduction had to file a similar statement with the auditor during the 12 months before June 11 of each year for which he sought the deduction. I.C. § 6-1.1-12-2 (repl. vol. 2006).<sup>2</sup>

18. Thus, Mr. Teach needed to prove that he filed the required statements with the St. Joseph County Auditor by the statutory deadlines. The clearest evidence of that would have been file-stamped copies of the required statements. Mr. Teach, however, testified that those documents were stolen from his house. Mr. Teach may have been able to overcome that unfortunate circumstance through credible, detailed testimony describing exactly what he filed and when he filed it. But Mr. Teach offered only vague testimony about filing “paperwork,” probably within 45 days of buying the subject property in August 2004. That testimony did not suffice to meet Mr. Teach’s burden of proof.

#### **SUMMARY OF FINAL DETERMINATION**

19. Mr. Teach failed to prove that he complied with statutory requirements for receiving an exemption or deduction. The Board therefore finds for the St. Joseph County Assessor.

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<sup>2</sup> For both the homestead credit and the mortgage deduction, the statements had to be filed in duplicate. I.C. § 6-1.1-12-2 (repl. vol. 2006); I.C § 6-1.1-20.9-3(a)(repl. vol. 2006).

The 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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Commissioner, 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>>.