REPRESENTATIVE FOR PETITIONER:
Kevin Weldon, *pro se*

REPRESENTATIVES FOR RESPONDENT:
Marilyn S. Meighen, Attorney
Heather A. Scheel, Attorney

BEFORE THE INDIANA BOARD OF TAX REVIEW

Kevin Weldon,	)	Petition No.:	53-009-13-3-5-00001
	)		
Petitioner,	)	Parcel No.:	53-08-03-203-028.000-009
	)		
v.	)	County:	Monroe
	)		
Monroe County Assessor,	)	Assessment years:	2009-2012
	)		
Respondent.	)		

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

September 6, 2016

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. The Auditor removed the homestead deduction and tax cap credit from the subject property for the years at issue. We find that the Petitioner was entitled to the deduction and credit for all of the years at issue.

PROCEDURAL HISTORY

2. The Petitioner initiated this appeal by filing a Petition for Correction of an Error (Form 133 petition) with the Monroe County Assessor on October 7, 2013. On November 7, 2013, the Monroe County Property Tax Assessment Board of Appeals ("PTABOA") issued a determination denying the petition. On December 20, 2013, the Petitioner filed his Form 133 petition to appeal the matter to the Board.[1]

3. On June 8, 2016, the Board's administrative law judge Joseph Stanford ("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. Petitioner Kevin Weldon appeared *pro se*. Monroe County Assessor Judith A. Sharp and Monroe County Auditor Steve Saulter also appeared as witnesses. All were sworn.

5. The Petitioner offered the following exhibits:[2]

Petitioner Exhibit A:	Death certificate for Barbara Weldon,
Petitioner Exhibit B:	Petitioner's original 2013 tax bill,
Petitioner Exhibit C:	Petitioner's adjusted 2013 tax bill,
Petitioner Exhibit D:	Petitioner's second adjusted 2013 tax bill,
Petitioner Exhibit E:	Petitioner's 2014 tax bill,
Petitioner Exhibit F:	Petitioner's 2015 tax bill,
Petitioner Exhibit G:	Form 133 petition including PTABOA determination,
Petitioner Exhibit H:	Notice of Tax Sale, dated August 26, 2014,
Petitioner Exhibit I:	Tax Sale Redemption form; Statement of Costs Paid on Tax Sale Property; Petitioner's 2015 tax bill and receipt,
Petitioner Exhibit J:	Back taxes payment plan,

[1] The Petitioner filed the Form 133 petition with the Monroe County Auditor, who then forwarded it to the Board. An employee of the Auditor's office included with the Form 133 a cover letter and attachment describing the history of the case. As it does not appear that the employee provided the Petitioner with a copy of these documents, we find they are *Ex Parte* communications and do not consider them in reaching our decision.

[2] In addition, the Petitioner provided "courtesy copies" of Article 10, Section 1 of the Indiana Constitution; Ind. Code § 29-1-2-1; Ind. Code § 6-1.1-5-5; Ind. Code § 6-1.1-5-7; *Equicor Development, Inc. v. Westfield-Washington Twp. Plan Com'n,* 758 N.E.2d 34 (Ind. 2001); and *Richmond State Hospital, et al. v. Paula Brattain, et al.*, 961 N.E.2d 1010 (Ind. 2012).

Petitioner Exhibit K:	Original and corrected taxes for 2009-pay-2010 and 2010-pay-2011,
Petitioner Exhibit L:	Department of Local Government Finance (DLGF) memorandum regarding homestead and tax cap guidance, dated May 22, 2012,
Petitioner Exhibit M:	Copies of selected slides from DLGF Power Point presentation, *The Tricks and Treats of Deductions*, dated October 23, 2013.

6. The Respondent offered the following exhibits:

Respondent Exhibit A:	Notice of hearing,
Respondent Exhibit B:	Form 133 petition,
Respondent Exhibit C:	"Property Profile Report,"
Respondent Exhibit D:	Petitioner's 2014 tax bill.

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

Board Exhibit A:	Form 133 petition with attachments,
Board Exhibit B:	Hearing notice, dated April 5, 2016,
Board Exhibit C:	Hearing sign-in sheet.

8. The property under appeal is a residential property located at 400 South Eastside Drive in Bloomington.

OBJECTIONS

9. The parties made several objections at the hearing, all of which were taken under advisement by the ALJ. Some of those objections are directly related to a dispute regarding what years were properly before the Board. We first address the objections not related to that issue.

10. The Petitioner objected to Ms. Scheel's making objections and motions on behalf of the Assessor. Specifically, the Petitioner argued that while the law states that the Assessor shall represent the PTABOA, the Assessor had no deliberative part in the denial of the homestead deduction. For that reason, he concluded that any objection coming from the Assessor's counsel "is inappropriate." We overrule this objection. We agree, as does the

Assessor's counsel, that the County Auditor originally removed the homestead deductions, and that removal was then upheld by the PTABOA. But neither of those entities is a party to this appeal. Rather, the Assessor is "*the party to the review* under this section to defend the determination of the county board." *See* Ind. Code § 6-1.1-15-3(b) (emphasis added). Thus, the Assessor is the Respondent in this matter. As the Respondent's counsel, Ms. Scheel is entitled to make objections, motions, arguments, etc.

11. In a related objection, the Petitioner objected to any testimony from Ms. Sharp, the Assessor, again arguing that she played no role in the decision to deny the homestead deduction and had no communication with the Auditor regarding that decision. Therefore, he argued, any testimony from her would be hearsay. We similarly find no legal reason that Ms. Sharp should not be allowed to testify. Although the Petitioner posited that Ms. Sharp's testimony could only be based on hearsay, this was incorrect. Ms. Sharp actually testified about her experiences with PTABOA hearings, and she testified that she serves as the secretary of the PTABOA. The Petitioner did not object to any of Ms. Sharp's specific testimony as hearsay. Thus, while it has no bearing on our determination, Ms. Sharp's testimony remains in evidence.

12. During the closing argument, the Petitioner objected to Ms. Scheel's statement that "there is no communication between county offices that would put anyone on notice." The Petitioner argued that Ms. Scheel attempted to state a fact that is not in evidence. We agree, and sustain the Petitioner's objection. Ms. Scheel's statement is stricken from the record and we do not consider it in reaching our decision.

13. We now turn to the Respondent's objections. Ms. Scheel objected to the Petitioner's testimony regarding his conversations with a former employee of the Auditor's office that the parties identified as "Mr. Horsley." While Ms. Scheel initially made a hearsay objection, she then stated, "I don't want you to speak badly of Mr. Horsley. I just don't think it is appropriate."

14. To the extent Ms. Scheel intended her objection to be a hearsay objection, it is overruled. Ms. Scheel failed to explain how the Petitioner's testimony regarding conversations that he participated in amounts to hearsay. In fact, it is readily apparent that the Petitioner did not offer the statements of Mr. Horsley in order to prove the truth of the matter asserted, because the Petitioner testified that he did not believe Mr. Horsley was correct in those statements. The objection is overruled.

MOTION TO DISMISS

15. Before the Petitioner began his case-in-chief, the Respondent moved to dismiss the appeal, contending that the Petitioner failed to properly complete petitions for the years he contends are under appeal because he did not file separate petitions for each year. Further, the Respondent argued, the Board's notice of hearing indicates that the year of appeal is 2013. Ms. Scheel stated that the Respondent's evidence would show that the Petitioner already received a homestead deduction for that year. *See Resp't Ex. D.* The Respondent also made numerous objections to the Petitioner's evidence on the grounds that it was irrelevant because it did not pertain to the 2013 assessment year. The ALJ took the motion and objections under advisement and proceeded with the hearing.

16. First we address the Respondent's contention that we should dismiss the appeal because the Petitioner did not file a separate Form 133 for each assessment year. A petitioner is normally required to file a separate Form 133 for each year, and as the Respondent points out, that requirement is printed on the front of the form. However, this case presents unique circumstances. The Petitioner was appealing a single action of the Auditor's office: the adjusted tax bill issued August 16, 2013. Moreover, that adjusted tax bill failed to specify which years the Auditor removed the deduction for, although it appears that the Petitioner was told that this bill was based on the removal of the deduction for the 2009-2012 assessment years. Given these facts, we do not find it appropriate to dismiss the Petitioner's appeal because he did not file separate forms. Moreover, it is apparent from the Form 133 that the PTABOA was aware that the Petitioner intended to appeal all

of the years that the Auditor retroactively removed, and they ruled on all of those years in their determination.

17. The Respondent also argued that only the 2013 assessment year was properly noticed, and because the Petitioner was receiving the deduction for the 2013 year, we should dismiss the appeal. We first note that the Respondent did receive a timely notice of hearing, although we acknowledge that both our notice of hearing and the "Assessment Date" box of the Form 133 indicate that the year under appeal is 2013. However, given that the PTABOA's determination on the Form 133 clearly indicates that all of the years affected by the adjusted tax bill were under appeal, we find that the Respondent had sufficient notice that the 2009-2012 assessment years were under appeal. We also note that the Respondent never requested a continuance, only to dismiss the Petitioner's appeal.

18. For these reasons the Respondent's motion to dismiss is denied and we will consider all the assessment years reflected in the August 16, 2013 adjusted tax bill (2009-2012). We also overrule all of the Respondent's objections as to the relevance of evidence not related to the 2013 assessment year.

PETITIONER'S CONTENTIONS

19. The Petitioner's mother, Barbara Weldon, purchased the subject property in 1974 or 1975, and the property served as the family home. In 2003, Mrs. Weldon became ill, and the Petitioner moved back to the home from Chicago to take care of her and his brother, who has disabilities. In November 2003, Mrs. Weldon passed away. *Weldon testimony; Pet'r Ex. A.*

20. Since then, the Petitioner has resided at the property, never rented the property, and paid the property taxes. But because there were no liens or mortgages on the property, he never deemed it critically important to change the name on the property, at least until

2014. In the "bankruptcy world," in which the Petitioner practices as an attorney, it is a universal concept that if you own the home and live in the home, it is your primary residence. He also argued that in Indiana, the estate of a person dying intestate vests at once in the decedent's surviving child or children. Thus, as a matter of law, the Petitioner owns the property, and has since November 2003. *Weldon testimony and argument* (citing Ind. Code § 29-1-2-1(c)(2)).

21. In 2013, the Petitioner received a notice informing him of a new homestead database being implemented to help track "homestead exemption fraud." Before then, he was unaware of any filing requirements for the homestead deduction. When the Petitioner went to the Auditor's office to file the form, he attempted to change the tax records to reflect his ownership of the property, but was told by an employee that he could not do that, because he did not legally own the property. Two days later, he received an adjusted tax bill increasing his taxes for "the entire 2013 pay year." After an additional meeting with the auditor's employee, the Petitioner was informed that the homestead deduction was also being removed for bills dating back to 2010 (the 2009 assessment year). The Petitioner received another adjusted tax bill that increased his taxes due by "almost $10,000." Because the Petitioner could not immediately pay that amount, the Auditor's office offered him an installment plan. *Weldon testimony; Saulter testimony Pet'r Ex. C.*

22. Eventually, the Petitioner was able to get the property transferred to himself and his brother on the tax rolls. Subsequently, the homestead deduction was applied to the subject property for "pay 2014" (the 2013 assessment year). *Weldon, Saulter testimony.*

23. The Petitioner also contends that the Auditor incorrectly applied the "circuit breaker," by failing to apply the "1% tax cap." Mr. Saulter testified that the application of tax caps is not his office's responsibility, but the responsibility of the Treasurer's Office. *Weldon argument* (citing *Fred W. Heaney v. St. Joseph Co. Ass'r*, Ind. Bd. of Tax Rev. pet. no.

71-001-08-3-5-00001 (April 19, 2012); IND. CONST., Art. 10 § 1); *Pet'r Exs. L, M; Saulter testimony.*

24. The Petitioner argues that the Auditor lacked any legal authority to retroactively remove the homestead deductions. At most, the removal should have only applied to the 2013 tax bill. He argued that the provision for retroactively removing the deductions applied to only people committing fraud or double claiming the deduction, not to people who had innocently made a mistake. *Weldon argument.*

25. According to the Petitioner, the Auditor's action "should be barred through both equitable estoppel and laches as both equitable documents." As to his equitable estoppel argument, the Petitioner contends that the Auditor had the duty to notify the Petitioner of the requirements necessary for obtaining a homestead deduction. Further, the Auditor was "put on notice" of a change in the property's ownership through the death certificate issued by the Monroe County Health Department, a division of county government. Yet, that office continued to issue tax bills in Mrs. Weldon's name and accept the Petitioner's payments. Thus, the Auditor has "unclean hands." Finally, even if the Petitioner is not entitled to the homestead deduction, if the constitutionally-mandated "tax cap" had been properly applied, the difference in taxes due would have been $167 for 2013 (2012 assessment year) and between $800 and $900 for all four years in question. *Weldon testimony and argument* (citing *Equicor Development, Inc. v. Westfield-Washington Twp. Plan Com'n,* 758 N.E.2d 34 (Ind. 2001)).

26. The Petitioner further argues that the laches doctrine applies. The Auditor had actual notice of a change in the property's ownership, but continued to send tax statements in Mrs. Weldon's name. The Petitioner argues that the Auditor had a duty to investigate and take corrective action. Instead, they continued to accept the Petitioner's payments without complaint. *Weldon argument* (citing *Richmond State Hospital, et al. v. Paula Brattain, et al.,* 961 N.E.2d 1010 (Ind. 2012)).

RESPONDENT'S CONTENTIONS

27. The Respondent briefly called the Assessor to testify about what typically happens at a PTABOA hearing. The Respondent did not offer any additional evidence or argument regarding whether the Petitioner was entitled to the deduction beyond her motion to dismiss, which we addressed above.

ANALYSIS

28. We first note that the Petitioner originally received a homestead deduction for each of the years under appeal. In 2013, the Auditor removed the deduction for the 2012 assessment year, and subsequently the 2009-2011 assessment years. As a result of these removals, the Petitioner received adjusted tax bills. The Auditor apparently bases his authority to remove the deductions on two separate statutes.

29. For the 2012 assessment year, the auditor removed the deduction because the Petitioner failed to file the homestead verification form.[3] A county auditor has the discretion to terminate a standard deduction for assessment dates after January 15, 2012, if a taxpayer failed to comply with the verification statute's requirements before January 1, 2013. Ind. Code § 6-1.1-12-17.8(a). That statute also states that the auditor "shall reinstate the deduction if the taxpayer provides proof that the taxpayer is eligible for the deduction and is not claiming the deduction for any other property." Ind. Code § 6-1.1-12-17.8(h). Thus, if we determine the Petitioner was eligible for the deduction, it must be reinstated.

30. For the 2009-2011 assessment years, it appears the Auditor relied on Ind. Code § 6-1.1-12-37(k). This statute also provides that the Auditor must reinstate the homestead deduction if the Petitioner demonstrates he was eligible for the deduction for the years at issue.

[3] We note that there is some indication in the record that the Petitioner attempted to file the form, but was told he was not eligible for the deduction.

31. Indiana 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:
> …
> (2) "Homestead" means an individual's principal place of residence:
> (A) that is located in Indiana;
> (B) that:
> (i) the individual owns;
> …
> (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…

Ind. Code § 6-1.1-12-37.

32. There is no dispute that the property served as the Petitioner's principal place of residence during the years at issue. The Respondent failed to offer any evidence or argument that the Petitioner was not entitled to the deduction. However, it is apparent from the Petitioner's evidence that the Auditor's office removed the deduction because the Petitioner was not the owner of record for the 2009-2012 assessment years. Despite the Respondent's failure to make any cogent argument as to this issue, we will address it.

33. The Petitioner asserts that he has been the legal owner of the subject property since November 2003, when his mother passed away, up to and including the relevant assessment dates. For that reason, he argued that he was entitled to the deduction as well as the tax cap (or circuit-breaker) credits.

34. In support of this, the Petitioner cited to Ind. Code § 29-1-2-1, a statute regarding intestacy. According to that statute, "[t]he fee shall, at the decedent's death, vest at once in the decedent's surviving child or children…" Ind. Code § 29-1-2-1(c)(2). Based on

this statute, the Petitioner argued that he was the legal owner of the property immediately upon his mother's death, and was therefore the legal owner on the assessment dates in question.

35. We agree with this interpretation. The Petitioner, and more specifically the Petitioner and his brother, inherited the property in November 2003 and retained ownership through the assessment dates at issue. The question left unanswered is whether the Petitioner is entitled to a homestead deduction when neither he nor his brother filed an application prior to the removal. Under these circumstances, where a homestead deduction has been removed under Ind. Code § 6-1.1-12-17.8 or Ind. Code § 6-1.1-17-37(k), proof of eligibility requires reinstatement.

36. We find that the Petitioner owned the property and met the requirements of the homestead deduction statute for the years at issue. For these reasons, we also find the Petitioner is entitled to the homestead credit for all of the years at issue. *See* Ind. Code § 6-1.1-20.6-7.5.

SUMMARY OF FINAL DETERMINATION

37. For the 2009-2012 assessment years, we find the Petitioner is entitled to the standard deduction and the tax cap credit for homesteads.

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 of 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>.