

REPRESENTATIVE FOR PETITIONER:
Ronnie D. West, *Pro Se*

REPRESENTATIVE FOR RESPONDENT:
Marilyn Meighen, *Attorney*

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Ronnie D. West,	)	Petition Nos.:	29-020-10-1-5-82924-15
	)		29-020-11-1-5-82353-15
	)		29-020-12-1-5-20429-15
	)		29-020-13-1-5-20413-15
Petitioner,)		
	)	Parcel Nos.:	19-15-08-003.401-2000
)		
v.)		
)		
)		
Hamilton County Assessor,	)	County:	Hamilton
	)	Township:	Fall Creek
)		
Respondent.	)	Assessment Year:	2010, 2011, 2012, 2013

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

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has 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. The Petitioner challenges the denial of his homestead standard deduction. The Board finds the Petitioner has timely challenged the denial, and that he is entitled to the deduction.

HEARING FACTS AND OTHER MATTERS OF RECORD

2. The property is a residence located at 10185 Cheswick Lane in Fishers.
3. The Petitioner initiated assessment appeals for the 2010, 2011, 2012, and 2013 tax years by filing a request for preliminary hearing on May 27, 2015. On July 24, 2015, the Hamilton County Property Tax Assessment Board of Appeals issued its notice denying relief.
4. The Petitioner timely filed Form 131 Petitions for Review of Assessment seeking the Board's review of the PTABOA determinations.
5. The Board set the matter for hearing on April 21, 2016, and designated Commissioner Jonathan Elrod as the hearing officer. The hearing was conducted on the record. The Board did not conduct a physical inspection.
6. The Petitioner appeared in person. The Respondent, Robin Ward, appeared in person and by counsel, Marilyn Meighen and Heather Scheel. The Petitioner, the Respondent, Hamilton County Auditor Dawn Coverdale, Auditor's office staffer Lisa Scherer, and Deputy Auditor Sadie Eldridge were sworn under oath. Only the Petitioner and Ms. Eldridge testified.

7. The Petitioner presented the following exhibits.¹

- Petitioner Exhibit 1 – Indiana driver’s license, voter registration, social security card, Arkansas driver’s license, utility bill, birth certificate
- Petitioner Exhibit 2 – Property tax statements and PRC for a residence owned by the Petitioner in Iowa
- Petitioner Exhibit 3 – Correspondence from the office of the Douglas County Assessor regarding a residence owned by the Petitioner in Nebraska
- Petitioner Exhibit 4 – Correspondence from the Petitioner’s landlord regarding his residence in Arkansas
- Petitioner Exhibit 5 – The Petitioner’s Form 131, the Petitioner’s correspondence to the PTABOA, a “Frequently Asked Questions” page, the Form 115, the PRC, the Petitioner’s correspondence to the Hamilton County Treasurer regarding a change of address in 2012, 2013 tax statement and request for change of address, the Petitioner’s request for preliminary conference, insurance declarations for 2012 and 2013, a page from the Petitioner’s 2013 federal tax return, the Petitioner’s April 2013 checking account statement, the Petitioner’s 2013 mortgage interest statement, circular on “Secure ID,” the Petitioner’s birth certificate, the Petitioner’s social security card, the Petitioner’s Arkansas driver’s license, Forms 131
- Petitioner Exhibit 6 – December 30, 2015 denial of homestead
- Petitioner Exhibit 7 – 2010 claim for homestead

8. The Respondent presented the following exhibits:²

- Respondent Exhibit R-1 – 2006 claim for homestead
- Respondent Exhibit R-2 – Auditor’s “County Notes” 2009
- Respondent Exhibit R-3 – 2010 claim for homestead
- Respondent Exhibit R-4 – 2011 notice of homestead removal
- Respondent Exhibit R-5 – 2014 request for homestead verification
- Respondent Exhibit R-6 – 2014 notice of homestead removal
- Respondent Exhibit R-7 – 2015 screenshot of Auditor’s address records
- Respondent Exhibit R-8 – portions of the Petitioner’s federal tax returns for 2010, 2011, 2012, and 2013
- Respondent Exhibit R-9 – copy of envelope
- Respondent Exhibit 10 – green unredacted copy of Respondent’s Exhibit R-3

9. The Board also recognizes as part of the record of proceedings the Form 131 Petitions, notices of hearing, motions, orders, supplemental filings, hearing sign-in sheet, and the digital recording of the hearing.

¹ The Petitioner also presented exhibit cover letters that contain narrative information.

² The Respondent also presented an exhibit cover letter.

PETITIONERS' CONTENTIONS

10. The Petitioner contended that the homestead standard deduction was improperly removed.
 - A. The Petitioner testified that he has worked out of state for several years for Con Agra, including in Iowa, Nebraska, and Arkansas. During this period, he purchased homes in Iowa and Nebraska. He has not claimed homestead status on either property during the tax years on appeal. He currently leases in Arkansas. He keeps belongings in the residence and intends to return after he retires. He testified that he maintained the residence since 2005. *West testimony; Petitioner Ex. 2, Ex. 3, Ex. 4.*
 - B. The Petitioner originally sought and received the homestead in 2006. The Petitioner's ex-wife resided in the subject home for portions of 2008 and 2009, and he considered the property as a rental at that time. At some time during this period, the homestead was removed. His ex-wife did not reside in the property in 2010 or any year thereafter. The Petitioner sought and received a homestead in 2010. A notice of removal was sent in 2011, which was later re-instated. In 2014, the Auditor sought verification of the homestead and sent another notice of removal. At some point in 2014, the property was being sold on contract. In regard to his income taxes, he relied on an accountant to prepare them. *West testimony; see also Eldridge testimony, Respondent Ex. R-2, Ex. R-3, Ex. R-4, Ex. R-6.*
 - C. At some point, the Petitioner moved from Batesville, Arkansas to Russellville, Arkansas. He mailed notice of the change of address to the Hamilton County Treasurer in 2012. The Petitioner also handwrote an address correction on the tax statement returned with his payment in May of 2014, and mailed it to the Hamilton County Treasurer. The Petitioner testified that he did not receive any notice of the 2014 removal until 2015. He admitted that he resided in Fishers during a portion of

2014, and while it was possible he received notice, he has no recollection of it. *West testimony; Petitioner Ex. 1.*

RESPONDENT'S CONTENTIONS

11. The Respondent contended that the appeal was untimely, and even if it were timely, the evidence supports the conclusion the property was used as a rental in 2011 and 2012.
 - A. Ms. Eldridge testified that the 2014 request for verification was based on an audit prompted by the Petitioner's out-of-state mailing address. The 2014 request for verification and the removal were properly mailed to the address of record. She stated that there is no record of the Hamilton County Treasurer forwarding the notices of change of address on to the Auditor's office. The County Auditor is charged with maintaining address rolls, and the Treasurer uses the Auditor's records for its operations. The Auditor's staff changed the address in 2015 when the Petitioner contacted her office. *Eldridge Testimony, Respondent Ex. R-7.*
 - B. Ms. Eldridge stated that in order to be eligible for a homestead deduction, the property must be used as the owner's primary residence. The materials sent by the Petitioner, including an out-of-state driver's license, indicated that the property was not his primary residence. Citing I.C. §6-1.1-12-37.5, the Respondent argues that Petitioner did not provide other indications of residency, such as a voter registration or an Indiana income tax return. The Petitioner's 2010 and 2011 income tax returns indicate the property was listed as a rental and rental expenses were deducted. *Eldridge Testimony, Respondent Ex. R-8.*
 - C. The Respondent argued that the Petitioner only had 45 days from the June 2, 2014, notice of removal to file his appeal, and the appeal was untimely. Respondent cited to *Elizondo v. Read*, 588 N.E.2d 501 (Ind. 1992), and argued that the Board should

find that the Petitioner received notice because it was mailed to the address of record.
Meighen argument.

ANALYSIS

12. First, the Board addresses the timeliness of the appeal. It is without dispute that the Respondent mailed the notice of removal to the address of record on file with the Auditor's office. It is likewise without dispute that the Petitioner no longer lived at that address and had taken steps to inform the county of that fact prior to the notice.
13. The Respondent cited to *Elizondo v. Read*, 588 N.E.2d 501 (Ind. 1992) for the proposition that the Board is compelled to find that the Petitioner received notice under these circumstances. The hearing officer inquired whether *Elizondo* was still good law after the U.S. Supreme Court decision in *Jones v. Flowers*, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006), and, whether the Indiana Supreme Court had revisited the issue in light of that decision. Counsel indicated she thought it was still good law but was less certain as to whether the Indiana Supreme Court had considered the issue post-*Flowers*. It appears the Indiana Supreme Court has reconsidered *Elizondo* in light of *Flowers*:

As an initial matter, it is unmistakable that Jones creates tension over the viability of at least part of our decision in *Elizondo*. . . . Thus, we think it safe to say that the portion of *Elizondo* dealing with a property owner has been abrogated to the extent it implies an auditor may receive a notice back "unclaimed" and then effectively sit on his or her hands and do nothing more—and if the abrogation was not by Jones, then definitely it was by statutory amendment.

M & M Inv. Group, LLC v. Ahlemeyer Farms, Inc., 994 N.E.2d 1108, 1117 (Ind. 2013). However, the Court ultimately held that, in regard to notice to mortgage holders, "our conclusion today is no different than the conclusion we reached over two decades ago in *Elizondo*." *Id.* at 1124. The Board finds that Respondent's blanket citation to *Elizondo*, without further analysis in light of *Flowers*, is insufficient to support a claim that the Board is compelled to find that notice mailed to the address of record is sufficient notice.

14. The appeal statute contemplates two statutory deadlines for filing an appeal in regard to a deduction. The Respondent relies on I.C. §6-1.1-15-1(c), which runs 45 days from the notice of the county official's action. Under these circumstances it is far from clear that notice was "given to the taxpayer" as required under I.C. §6-1.1-15-1(b). Neither party fully develops this issue or cites case law that is on point. In circumstances where "notice is not given as described in subsection (b)," the deadline is extended to the later of May 10th or 45 days after the tax statement is mailed by the Treasurer. I.C. §6-1.1-15-1(d). The Respondent did not address whether the Petitioner was untimely under this statutory deadline. Under the limited facts and arguments on the record in this hearing, the Board finds the Petitioner timely appealed the removal of the homestead.

15. The Board now turns to the merits of the claim.³ The Respondent argues that the Petitioner's tax returns provide evidence the property was held as a rental, at least for years 2010 and 2011. The return discloses the property was listed as a rental. Some expenses were deducted for 2010 and the expenses are obscured for 2011. On the other hand, the return indicates no income from the property for either year and no entry for the number of "rental days." The Petitioner was unequivocal in his testimony that the property was not a rental during the years on appeal. The evidence supports the conclusion that listing of the property as a rental on the tax return was most likely an oversight by the Petitioner's accountant, and it does not impeach the Petitioner's testimony.

16. The Petitioner has presented evidence that during the years at issue he maintained the residence as his domicile, and his absence from the state during those years has been due to the requirements of his employment. The evidence reflects that the Petitioner did not seek homesteads on his out-of-state properties during that period. It also appears that the Petitioner did not receive a homestead in 2009 when the Petitioner leased the property to

³ For tax years 2010 and 2011, the Board is troubled that the Respondent previously sought verification of those years in 2011, removed the deduction, reinstated the deduction, and then, three years later, challenged the homestead again. Absent fraud, a taxpayer should expect to rely on an informal resolution of eligibility as to the years resolved.

his ex-wife, or in 2014 when he sold the property on contract. The Respondent failed to cross-examine the Petitioner regarding whether he was registered to vote in another state. Likewise, there is no evidence as to where the Respondent filed his state income tax returns, or where he would be required to file them as an Indiana resident working out of state. Moreover, the Respondent made no further inquiry into the Petitioner's Arkansas driver's license, which is the fact that weighs most heavily against his claim for the deduction.⁴ The Respondent generally references the Auditor's authorization to request verification under I.C. §6-1.1-12-37.5, but fails to analyze how the Petitioner's use of the property fails to meet the definition of a "primary residence."⁵ The Tax Court has rejected a requirement that someone must physically reside at the property because eligibility "depends on the 'intention' to return to the property after an absence, not continuous physical presence at the property." *Kellam v. Fountain County Assessor*, 999 N.E.2d 120, 124 (Ind. Tax Ct. 2013). Based on the record, the Board finds the Petitioner's testimony to be credible and that he has established that the subject property was his primary residence.

17. The Board finds the evidence supports the Petitioner's claim for a homestead deduction during the years at issue.

CONCLUSION

18. The homestead standard deductions are reinstated for tax years 2010, 2011, 2012, and 2013.

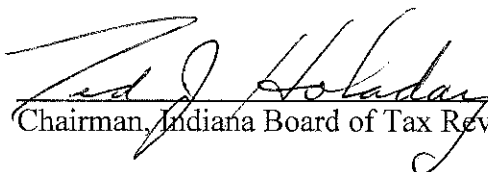
⁴ The Arkansas license was issued in July of 2013. The record does not shed light on whether the Petitioner had an Indiana license prior to that.

⁵ While the homestead statute specifically grants an auditor the right to request proof of residency in the form of an Indiana voter registration card, driver's license, and income tax return, the statute does not limit eligibility to employed, registered voters who have valid driver's licenses.

FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that homestead standard deductions are re-instated for tax years 2010, 2011, 2012, and 2013.

ISSUED: 6-17-16


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>.