INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: **69-003-09-1-5-00001**
Petitioner: **Gerald P. Martin**
Respondent: **Ripley County Assessor**
Parcel: **69-02-36-000-011.003-001**
Assessment Year: **2009**

The Indiana Board of Tax Review (Board) issues this determination in the above matter, finding and concluding as follows:

Procedural History

1. The Petitioner appealed the assessment of the subject property, as well as the denial of mortgage and homestead deductions. He also claims his tax bill (2009 payable 2010) improperly exceeds the 1% tax cap.

2. The Ripley County Property Tax Assessment Board of Appeals (PTABOA) issued notice of its decision on July 27, 2010. The PTABOA lowered the assessed value, but did not allow the mortgage or homestead deductions. Furthermore, the 1% tax cap was not applied to the subject property.

3. The Petitioner filed a Form 131 petition with the Board on August 23, 2010. He elected to have the case heard according to the Board's small claims procedures. Although it is not file stamped, a Form 133 for 2009 is attached to the Form 131 Petition.

4. Senior Administrative Law Judge Ted Holaday held the Board's administrative hearing on September 30, 2011. He did not inspect the property.

5. Petitioner Gerald Martin, County Assessor Shawna Bushhorn, and County Auditor William Lee Wagner were sworn as witnesses.

Facts

6. The property at issue is a residential parcel with approximately 3.56 acres located at 6420 East State Road 46 in or near Batesville.

7. The PTABOA determined that the 2009 assessment is $36,800 for land and $230,200 for improvements (total $267,000).

8. The Petitioner initially claimed the assessment value should be $36,800 for land and $181,200 for improvements (total $218,000). But prior to hearing the Petitioner and Respondent reached an agreement that the 2009 assessment would be $49,900 for land and $180,300 for improvements for a total of $230,200. *Martin testimony; Bushhorn testimony.*

Record

9. The official record for this matter contains the following:

   a) Petition,

   b) Digital recording of the hearing,

   c) Petitioner Exhibit A – Notice of Homestead Credit Instructions,
   Petitioner Exhibit B – Statement of Mortgage or Contract Indebtedness for Deduction from Assessed Valuation,
   Petitioner Exhibit C – Receipts for Application of Homestead and Mortgage Deductions,
   Petitioner Exhibit D – State Form 5473, Claim for Homestead Deduction,
   Petitioner Exhibit E – State Form 43709, Statement of Mortgage or Contract Indebtedness for Deduction from Assessed Valuation,

   d) Respondent Exhibit 1 – Auditor's notes from discussions with Petitioner's sister,
   Respondent Exhibit 1A – Letter from Petitioner's sister,
   Respondent Exhibit 2 – Board's Order of Dismissal relating to Petitioner's sister's appeal,
   Respondent Exhibit 3 – Ripley County Area Planning Commission Improvement Location Permit Application,
   Respondent Exhibit 4 – Excerpt from Ripley County Area Zoning Code,

   e) Board Exhibit A – Form 131 Petition and attachments,
   Board Exhibit B – Notices of Hearing,
   Board Exhibit C – Hearing sign-in Sheet,

   f) These Findings and Conclusions.

Contentions

10. Summary of the Petitioner's case:

   a. The agreement with the county assessor means that valuation is no longer in dispute for 2009. *Martin testimony; Bushhorn testimony.*

b. The subject property should have the mortgage and homestead deductions. In 2009 the Petitioner had a mortgage on the property and already was living there even though construction of the home was not complete. *Martin testimony.*

c. The mortgage and homestead deductions were not applied for during 2009 because of incorrect information from the auditor's office. The auditor's office told the Petitioner to wait until he received his assessment to file the deduction forms. The county auditor mailed the Petitioner the forms along with instructions on how to complete them. These instructions stated that the deduction forms needed to be filed by June 11. When he got these instructions it was already past June 11, 2009, therefore the Petitioner understood the deadline to be June 11, 2010. The Petitioner received the assessment for the subject property on November 23, 2009, and appealed it. The Petitioner was not aware that the law changed, allowing homestead and mortgage deductions to be filed by the end of the year for which the deductions were sought—in this case, that deadline would have been December 31, 2009. *Martin testimony; Petitioner Exhibit A, B.*

d. The Petitioner filed the homestead and mortgage deduction on February 25, 2010, but they were denied. *Martin testimony; Petitioner Exhibit C, D, E.*

e. The tax bill exceeds the 1% tax cap, which should apply. *Martin testimony*.

f. Based on the agreed change to the assessed value of $230,200, the Petitioner's tax bill for 2009 payable in 2010 is $3,982.30. *Bushhorn testimony.*

11. Summary of the Respondent's case:

a. The Petitioner failed to file for the mortgage deduction or the homestead deduction on time. Therefore, they both were denied. The reliance on information about the filing date being later is unfounded because the document does not indicate the filing deadline was June 11, 2010. Rather, it states that the "claim must be filed … during the twelve months before June 11 of the year prior to the first year for which the person wishes to obtain credit." *Wagner testimony; Petitioner Exhibit A*.

b. Filing an assessment appeal does not change the filing requirements for the homestead or mortgage deduction. Those deductions must be filed in the year for which the Petitioner wants the deductions. Here, the homestead and mortgage deductions had to be filed by December 31, 2009. Although the Petitioner stated that he relied on the auditor's advice and instructions on when to file, if he would have filed when he received his assessment in November 2009, this would not be an issue. *Wagner testimony*.

c. The Board dismissed the Petitioner's sister's appeal and it had similar circumstances to this case. Because the circumstances here are virtually identical

to those of his sister's appeal, the Board should deny this appeal as well. *Wagner testimony; Respondent Exhibit 2*.

d. The Petitioner has a history of not checking and ignoring rules and statutes. Here, the Petitioner is relying on an instruction form rather than on the statute because he claims he did not know the statute. Similarly, the Petitioner obtained a building permit for the subject property on July 21, 2006. This permit was effective for 12 months. The Petitioner stated previously, however, that construction was completed in 2008 or 2009 which was beyond the 12 month time period for the permit. Additionally, the Petitioner only obtained inspections on the electrical and nothing else. This shows that the Petitioner does not pay attention to the rules, building codes, and statutes. *Wagner testimony; Respondent Exhibit 3, 4*.

Analysis

12. The Board is a creation of the legislature and it has only those powers conferred by statute. *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999). The relevant statute is Ind. Code § 6-1.5-4-1, which provides as follows:

> (a) The Indiana board shall conduct an impartial review of all appeals concerning:
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> (1) the assessed valuation of tangible property;
> (2) property tax deductions;
> (3) property tax exemptions;
> (4) property tax credits;
>
> that are made from a determination by an assessing official or county property tax assessment board of appeals to the Indiana board under any law.
> (b) Appeals described in this section shall be conducted under IC 6-1.1-15.

This version of the statute reflects an amendment, effective July 1, 2011, adding new authority in subsection 4 to review tax credits.

13. The mortgage deduction is provided by Ind. Code § 6-1.1-12-1 and the homestead deduction is provided by Ind. Code § 6-1.1-12-37. The "tax caps" are provided as credits in Ind. Code § 6-1.1-20.6-7.5. Accordingly, the Petitioner's claims regarding those deductions and credits come within the scope of appeals the Board is authorized to hear and determine.

14. The Petitioner did not prove his claim for the mortgage deduction or the homestead deduction.

a. The statutory time limits for filing a claim for a mortgage deduction or a homestead deduction are clear. In both instances the person seeking the

deduction for 2009 must file the required forms with the county auditor in the calendar year for which the person wants to obtain the deduction. Ind. Code § 6-1.1-12-2, Ind. Code § 6-1.1-12-37(e). This deadline represents a change from prior years that *extended* the time to file. The Petitioner apparently believes that change shortened the time to file, but he is wrong. (The Petitioner got outdated deduction forms and instructions still using the old deadline of June 11, but that date would have been in 2009, not 2010.)

b. There is no dispute that the Petitioner did not file for either deduction until February 25, 2010. This time is clearly later than what the applicable versions of Ind. Code § 6-1.1-12-2 or Ind. Code § 6-1.1-12-37(e) permit.

c. The Petitioner's situation is an unfortunate misunderstanding, possibly due to statutory changes in the filing deadlines for the deductions. While the Board sympathizes with the Petitioner, it cannot ignore the filing requirements.

d. Whether characterized as a misunderstanding, a mistake, or something else, the point is irrelevant to this case because the statute itself controls. "When the legislature enacts procedures and timetables which act as a precedent to the exercise of some right or remedy, those procedures cannot be circumvented by the unauthorized acts and statements of officers, agents or staff of the various departments of our state government. *** All persons are charged with the knowledge of the rights and remedies prescribed by statute." *Middleton Motors, Inc. v. Indiana Dep't of State Revenue*, 380 N.E.2d 79, 81 (Ind. 1978) (citations omitted).

e. Even if the auditor's office gave erroneous information about the filing deadline, the Petitioner was responsible for knowing his rights and responsibilities for claiming the deductions. The Board cannot grant any relief regarding the deductions for 2009.

15. The Petitioner made a case for application of what he termed the "1% tax cap."

a. The Respondent pointed out that a prior Board dismissal order said property tax caps do not fall within the Board's jurisdiction. That order was dated March 14, 2011, and it relied on the version of Ind. Code § 6-1.5-4-1 that was current at that time (without subsection (4) concerning credits). As previously noted, the addition of credits to the Board's jurisdiction was effective as of July 1, 2011. Because "tax caps" are provided as credits in Ind. Code § 6-1.1-20.6-7.5, the present case must be distinguished from the earlier dismissal that was introduced as Respondent Exhibit 2. The recently amended version of the Board's jurisdictional statute dictates a different conclusion from the prior dismissal order.

b. The most relevant portion of Ind. Code § 6-1.1-20.6-7.5(a) states:

> A person is entitled to a credit against the person's property tax liability for property taxes first due and payable after 2009. The amount of the credit is the amount by which the person's property tax liability attributable to the person's:
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> (1) homestead exceeds one percent (1%);
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> ***
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> of the gross assessed value of the property that is the basis for determination of property taxes for that calendar year.

c. Indiana Code § 6-1.1-20.6-2(a) states, "As used in this chapter, 'homestead' refers to a homestead that is eligible for a standard deduction under IC 6-1.1-12-37."

d. The most relevant portion of Ind. Code § 6-1.1-12-37(a)(2) states:

> "Homestead" means an individual's principal place of residence:
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> (A) that is located in Indiana;
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> (B) that:
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> (i) the individual owns;
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> (ii) the individual is buying under a contract; recorded in the county recorder's office, that provides that the individual is to pay the property taxes on the residence;
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> (C) that consists of a dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds that dwelling.

e. According to Ind. Code § 6-1.1-20.6-8, the Petitioner is not required to file for this credit:

> Except as provided in section 8.5 of this chapter [inapplicable in this case], a person is not required to file an application for the credit under this chapter. The county auditor shall:
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> (1) identify the property in the county eligible for the credit under this chapter; and
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> (2) apply the credit under this chapter to property tax liability on the identified property.

f. Except for the land in excess of one acre, the undisputed evidence shows the subject property fits the statutory definition of a "homestead"—there was no dispute about the testimony that the Petitioner was living in the home in 2009 even though its construction was incomplete or about the fact that the Petitioner owns it. In other words, the subject property was a "homestead" that was eligible for the standard deduction, even though the Petitioner missed the filing deadline to get that deduction.

g. When interpreting statutory language, it can be just as important to recognize what a statute does not say as it is to recognize what it does say. *See Le Sea Broadcasting Corp. v. State Bd. of Tax Comm'rs*, 525 N.E.2d 637, 639 (Ind. Tax Ct. 1988). And in this instance, the language in chapter 20.6 does not state that the homestead standard deduction must be allowed or applied in order to get the credit provided in section 7.5.

h. Furthermore, it is also important to interpret the language of a statute as a whole. *See Dalton Foundries v. State Bd. of Tax Comm'rs*, 653 N.E.2d 548, 552 (Ind. Tax Ct. 1995). And the broad elimination of filing requirements as contained in Ind. Code § 6-1.1-20.6-8 is a significant indication that legislative intent for this credit was less restrictive than most exemptions or deductions.

i. An interpretation that requires actually having the homestead deduction on the subject property in order to get the credit provided by Ind. Code § 6-1.1-20.6-7.5 would be overly restrictive. The county auditor should have applied this credit to the subject property even though the Petitioner's filing for the homestead deduction was late.

Conclusion

16. The Petitioner failed to make his case for allowing the homestead deduction or the mortgage deduction.

17. The Petitioner did establish that the subject property is entitled to the credit provided by Ind. Code § 6-1.1-20.6-7.5(a)(1), but the Board will not attempt to calculate either the credit or the tax bill.

Final Determination

If the assessed value has not already been changed to $230,200 as the parties agreed, then that change must be made. In accordance with these findings and conclusions, the homestead deduction and the mortgage deduction are denied. Finally, the 2009/pay 2010 tax bill must be determined with the credit provided by Ind. Code § 6-1.1-20.6-7.5(a)(1).

ISSUED: ________________

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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

- 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>