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IN THE INDIANA TAX COURT

MATTHEW A. SCHIFFLER,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cause No. 21T-TA-00014
	)	
MARION COUNTY ASSESSOR,	)	
	)	
Respondent.	)	

ON APPEAL FROM A FINAL DETERMINATION OF
THE INDIANA BOARD OF TAX REVIEW

FOR PUBLICATION
February 23, 2022

WENTWORTH, J.

Matthew A. Schiffler appeals the Indiana Board of Tax Review's final determination that calculated his residential real property tax liability for the 2019 tax year using a combination of the 1%, 2%, and 3% property tax caps. Upon review, the Court reverses that final determination.

FACTS AND PROCEDURAL HISTORY

Schiffler owns and occupies residential real property on West 44th Street in Indianapolis, Indiana. (See Cert. Admin. R. at 1-3, 12-16.) Schiffler's property consists of: 1) a house with an attached garage, 2) a detached carriage house, 3) a detached 2-

car garage, and 4) the 2.56 acres of land upon which all those improvements are situated. (See Cert. Admin. R. at 2, 10-16, 52.)

For the 2019 tax year, Schiffler's property tax liability was computed in the following manner: the 1% property tax cap was applied to the assessed value of the house with the attached garage; the 2% property tax cap was applied to the assessed value of the detached carriage house; and the 3% property tax cap was applied to the assessed value of the detached garage. (See Cert. Admin. R. at 2.) Schiffler appealed that computation, first to the Marion County Property Tax Assessment Board of Appeals and then to the Indiana Board.[1] (See Cert. Admin. R. at 1-3.)

The Indiana Board held a telephonic hearing on Schiffler's appeal on November 17, 2020. (See Cert. Admin. R. at 48.) During that hearing, Schiffler claimed that the assessed value of both the carriage house and the detached garage should have also received the benefit of the 1% property tax cap. (See, e.g., Cert. Admin. R. at 2-3, 52-54.) Schiffler argued that those two improvements qualified for the 1% property tax cap because they were "curtilage" under the Indiana Constitution that constituted part of his "homestead" eligible for the standard homestead deduction under Indiana Code § 6-1.1-12-37. (See, e.g., Cert. Admin. R. at 2-3, 53-60.)

On February 9, 2021, the Indiana Board issued a final determination denying Schiffler's request for relief. (See Cert. Admin. R. at 42-47.) In its final determination, the Indiana Board explained that "the Indiana Constitution does not establish the tax caps directly, rather, it directs the legislature to do so. Thus, it is our responsibility to examine

[1] The application of property tax caps to the assessed value of Schiffler's land is not at issue in this appeal. (See Cert. Admin. R.; Initial Br. Pet'r ("Pet'r Br."); Oral Arg. Tr. at 1-26, 45-49 (demonstrating that Schiffler did not challenge their application at either the administrative level or with this Court).)

whether Schiffler's property qualifies for a homestead deduction under the Indiana Code, not whether it meets the constitutional definition of curtilage." (Cert. Admin. R. at 45-46 ¶ 10(c).) The Indiana Board then explained that while the evidence demonstrated that Schiffler's carriage house and detached garage were used as extensions of his home, they nonetheless did not qualify as part of his homestead eligible for the standard homestead deduction – and thus 1% property tax cap – under Indiana Code § 6-1.1-12-37. (See Cert. Admin. R. at 45-46 ¶ 10(d).) In support of that conclusion, the Indiana Board stated:

> the legislature has put specific limits on what type of property is eligible for a homestead deduction. Specifically, Ind[iana] Code § 6-1.1-12-37 provides that the homestead includes "house or garage" and "another residential yard structure that is . . . attached to the dwelling."
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> *****
>
> The legislature did not define attached, and absent such guidance, we must give the term its ordinary and usual meaning. We are not persuaded that any structure, so long as it shares a driveway or utilities, is "attached." Rather, it seems far more likely that the legislature intended the homestead to only apply to buildings that were structurally attached via a shared roof or wall. Because neither [the carriage house nor the detached garage] is connected in such a way, they fall outside the bounds of the homestead deduction and thus the 1% tax cap.

(Cert. Admin. R. at 46-47 ¶¶ 10(d)-(e) (internal citation omitted).)

Schiffler initiated an original tax appeal on March 19, 2021. The Court heard the parties' oral arguments on September 9, 2021. Additional facts will be supplied when necessary.

STANDARD OF REVIEW

The party seeking to overturn an Indiana Board final determination bears the burden of demonstrating its invalidity. Osolo Twp. Assessor v. Elkhart Maple Lane

Assocs., 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003). Thus, to prevail in his appeal, Schiffler must demonstrate to the Court that the Indiana Board's final determination is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege or immunity; in excess of or short of statutory jurisdiction, authority, or limitations; without observance of the procedure required by law; or unsupported by substantial or reliable evidence. See IND. CODE § 33-26-6-6(e)(1)-(5) (2022).

LAW

In Indiana, all real property is subject to taxation. See IND. CONST. art. X, § 1(a); IND. CODE § 6-1.1-2-1 (2019). Nevertheless, the Indiana Constitution provides that the Legislature "may exempt" from property taxation, among other things, "[t]angible property, including curtilage, used as a principal place of residence by an[ ] owner of the property[.]" IND. CONST. art. X, § 1(c)(4)(A) (emphasis added). The Indiana Constitution also provides that any tax liability on this type of property is limited to – or "capped" at – 1% of its gross assessed value. IND. CONST. art. X, § 1(f).

Indiana Code § 6-1.1-12-37 contains what is known as the "standard homestead deduction." See IND. CODE § 6-1.1-12-37 (2019). See also IND. CONST. art. X, § 1(b) (explaining that when exempting property from taxation, the Legislature is "also permit[ted] . . . to exercise its legislative power to enact property tax deductions and credits"). Generally speaking, the standard homestead deduction removes from taxation the first $45,000 of assessed value of one's "homestead." See I.C. § 6-1.1-12-37(b),(c)(2). A "homestead," i.e., an individual's principal place of residence in Indiana, "consists of a dwelling and the real estate, not exceeding one (1) acre, that immediately

surrounds that dwelling." I.C. § 6-1.1-12-37(a)(2)(A)-(C). "Dwelling," in turn, is defined as any of the following:

> (A) Residential real property improvements that an individual uses as the individual's residence, including a house or garage.
>
> (B) A mobile home that is not assessed as real property that an individual uses as the individual's residence.
>
> (C) A manufactured home that is not assessed as real property that an individual uses as the individual's residence.

I.C. § 6-1.1-12-37(a)(1). Moreover, "[f]or assessment dates after 2009, the term 'homestead' [also] includes: (1) a deck or patio; (2) a gazebo; or (3) another residential yard structure, as defined in rules adopted by the department of local government finance (other than a swimming pool); that is assessed as real property and attached to the dwelling."[2] I.C. § 6-1.1-12-37(m).

The benefit conferred by the standard homestead deduction coincides with the legislatively-implemented "caps" that limit a taxpayer's property tax liability to a certain percentage of his property's gross assessed value. See IND. CODE §§ 6-1.1-20.6-0.3 to -13 (2022) (governing the application of those property tax caps). Those tax caps work as

> [a] credit i[n] the amount by which the person's property tax liability attributable to the person's:
>
> (1) homestead exceeds one percent (1%);
> (2) residential property exceeds two percent (2%);
> (3) long term care property exceeds two percent (2%);
> (4) agricultural land exceeds two percent (2%);

[2] Indiana's Assessment Guidelines, as adopted by the Department of Local Government Finance, provide a non-exclusive list of residential yard structures that includes, among other things, utility sheds, greenhouses, tennis courts, boat houses, car sheds, bath houses, and detached garages. See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2011 (incorporated by reference at 50 IND. ADMIN. CODE 2.4-1-2 (2011)), Ch. 5 at 2.

> (5) nonresidential real property exceeds three percent (3%); or
> (6) personal property exceeds three percent (3%);
>
> of the gross assessed value of the property that is the basis for determination of property taxes for that calendar year.

I.C. § 6-1.1-20.6-7.5(a).

ANALYSIS

On appeal, Schiffler contends that the Indiana Board's final determination must be reversed because it is contrary to law. (See, e.g., Initial Br. Pet'r ("Pet'r Br.") at 1, 4, 8, 22.) More specifically, he argues that the Indiana Board contravened the definition of "dwelling" set forth in Indiana Code § 6-1.1-12-37 when it determined that his carriage house and detached garage did not qualify for the standard homestead deduction and thus the associated 1% property tax cap.[3] (See Pet'r Br. at 5, 8-12.) In defense of the Indiana Board's final determination, the Assessor merely asserts that under Indiana Code § 6-1.1-12-37, the application of the standard homestead deduction "is simple": it applies to "one house, one garage, and one acre of land." (See Resp't Br. at 3-5, 8; Oral Arg. Tr. at 27-28, 30.)

The interpretation of a statute presents a question of law. Nash v. State, 881 N.E.2d 1060, 1063 (Ind. Ct. App. 2008), trans. denied. If the language of a statute is clear and unambiguous, as it is here, it is not subject to judicial interpretation. See id. Thus, the Court will apply the statute as written, giving all of its words their plain and ordinary

[3] Alternatively, Schiffler has asserted that because the carriage house and detached garage are part of the "real estate" within the one acre that immediately surrounds his house, they are part of his homestead eligible for the 1% property tax cap. (See, e.g., Pet'r Br. at 5, 13-14; Oral Arg. Tr. at 5.) Given its disposition of the issue addressed above, however, the Court need not address this alternative argument.

meaning unless the statute indicates otherwise. See Chambliss v. State, 746 N.E.2d 73, 77 (Ind. 2001).

Here, the plain language of Indiana Code § 6-1.1-12-37 provides that the standard homestead deduction applies to an individual's "dwelling" and the one acre of real estate surrounding it. I.C. § 6-1.1-12-37(a)(2)(A)-(C). But contrary to the position advocated by the Assessor, the term "dwelling" is not defined as "just one" house and garage. (See, e.g., Resp't Br. at 4 (indicating that the Assessor conflates the terms "dwelling" and "house").) Instead, a "dwelling" is defined as the "[r]esidential real property improvements that an individual uses as [his] residence, including a house or garage." I.C. § 6-1.1-12-37(a)(1)(A) (emphases added). That plain language places no limitations on the number of improvements that can qualify as a "dwelling"; rather, it hinges an improvement's eligibility for the standard homestead deduction as a "dwelling" based on how the individual uses it. I.C. § 6-1.1-12-37(a)(1)(A). Moreover, through its use of the phrase "including a house or garage," the plain language of the statute indicates that a dwelling can consist of improvements that are not a house or garage. I.C. § 6-1.1-12-37(a)(1)(A). See also WEBSTER'S THIRD NEW INT'L DICTIONARY 1143 (2002 ed.) (defining "include" as "to place, list, or rate as a part or component of a whole or of a larger group, class, or aggregate . . . to take in, enfold, or comprise as a discrete or subordinate part or item of a larger aggregate, group, or principle"). Because the Indiana Board determined that Schiffler's carriage house and detached garage were used as extensions of his home, (see Cert. Admin. R. at 45-46 ¶ 10(d)), those improvements necessarily constituted part

of Schiffler's "dwelling" and were therefore eligible for the standard homestead deduction and the 1% property tax cap.[4]

The Assessor would have the Court believe that this result conflicts with the "principal place of residence" language contained in both the Indiana Constitution and the Indiana Code. (See, e.g., Resp't Br. at 3, 6 (arguing that "a principal place of residence" means "one place," but Schiffler would get the standard homestead deduction on "multiple places" if his carriage house and detached garage are eligible).) (See also Oral Arg. Tr. at 27-29, 34-36 (emphasizing the fact that the term "residence" in Indiana Code § 6-1.1-12-37(a)(1)(A), like the terms "dwelling," "house," and "garage," is used in the singular).) But it does not.

For purposes of Indiana Code § 6-1.1-12-37, this Court has repeatedly explained that one's "principal place of residence" is simply his "true, fixed, permanent home to which [he] has the intention of returning after an absence." Monroe Cnty. Assessor v. Strychalski, 176 N.E.3d 267, 271 (Ind. Tax Ct. 2021) (citation omitted); Kellam v. Fountain Cnty. Assessor, 999 N.E.2d 120, 122 (Ind. Tax Ct. 2013) (citation omitted), review denied. See also Brookover v. Kase, 83 N.E. 524, 524 (Ind. Ct. App. 1908) (stating that "[r]esidence, as used in our tax laws, means a permanent abode as distinguished from a temporary sojourn" (citation omitted)); WEBSTER'S THIRD NEW INT'L DICTIONARY at 1931 (defining "residence" as a "place, abode, or habitation to which one intends to return as distinguished from a place of temporary sojourn or transient visit"). The thrust of this definition is the permanency of one's "home," not how many improvements comprise it.

[4] As such, the Indiana Board's analysis based on whether, as residential yard structures, those improvements were "attached" to the dwelling was entirely misplaced. To the extent the Assessor did very little to address the Indiana Board's analysis, (see Resp't Br.; Oral Arg. Tr. at 26-45), he has missed his opportunity to attempt to convince the Court otherwise.

See, e.g., I.C. § 6-1.1-12-37(j) (indicating that as evidence of one's principal place of residence, a county auditor may request from a property owner certain state-issued documents showing that the residence for which the standard homestead deduction is claimed is the individual's principal place of residence).[5]

CONCLUSION

The Indiana Board's determination that Schiffler's carriage house and detached garage that he used as extensions of his home were not eligible for the standard homestead deduction – and thus the 1% property tax cap – is contrary to law. Accordingly, the Indiana Board's final determination is REVERSED and REMANDED for action consistent with this opinion.

[5] On a final note, the Court acknowledges that the Assessor indicated to the Indiana Board during the administrative hearing that he merely followed the guidance provided in the Department of Local Government Finance's "Fact Sheet" stating that "improvements not attached to the dwelling (i.e., a pool, shed, second garage, etc.) . . . will be capped at 3%." (See Cert. Admin. R. at 30-31, 61-62.) The Department of Local Government Finance's Fact Sheet is not law and to the extent its guidance conflicts with the plain ordinary meaning of the law as embodied in the statute, it cannot prevail. See Universal Health Realty v. Fluty, 144 N.E.3d 857, 861 (Ind. Tax Ct. 2020) (holding that the Department of Local Government Finance "is authorized to adopt rules, regulation, and advisory memoranda . . . that enable it to accomplish the purposes of Indiana's property assessment statutes, but it is not authorized to make any rules, regulations, or issue memoranda that are inconsistent with the statutes it administers or that add to or detract from the law as enacted").