

REPRESENTATIVE FOR PETITIONER:

Fred W. Heaney, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Frank Agostino, J. Agostino

**BEFORE THE INDIANA BOARD  
OF TAX REVIEW**

FRED W. HEANEY

Petitioner,

v.

ST. JOSEPH COUNTY ASSESSOR

Respondent.

)

) Petition No.: 71-001-08-3-5-00001

)

)

) Parcel No.: 71-08-34-126-002.000-001

)

)

) Assessment Year: 2008

)

)

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

**April 19, 2012**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### INTRODUCTION

1. Fred W. Heaney and his wife used portions of the subject property as their homestead on March 1, 2008. Mr. Heaney seeks a credit under Ind. Code § 6-1.1-20.6-7(a)(1), commonly called a “tax cap,” that would effectively limit the Heaneys’ taxes to 1.5% of the homestead’s gross assessment. There is no application required for receiving the homestead tax cap, although a homeowner can separately claim an additional benefit known as the “standard deduction.”<sup>1</sup> The St. Joseph County Assessor claims that the Heaneys’ failure to apply for the standard deduction made them ineligible for the homestead tax cap. The tax-cap statute, however, simply predicates a taxpayer’s entitlement to the homestead tax cap on the taxpayer’s property being a homestead that is “eligible” for the standard deduction; it does not require the taxpayer to have actually applied for the standard deduction.

### PROCEDURAL HISTORY

2. Mr. Heaney filed a Form 133 Petition for Correction of an Error with the St. Joseph County Auditor. Mr. Heaney appears to have signed the petition on February 24, 2010, but it is file stamped April 21, 2010 by both the St. Joseph County Assessor and the St. Joseph County Auditor. On April 21, 2010, the Auditor disapproved the petition and it was forwarded to the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA mailed notice that it denied the Form 133 petition on January 6, 2011, and Mr. Heaney sought review by timely filing that petition with the Board.
3. On October 25, 2011, the Board’s designated administrative law judge, David Pardo, held a hearing on Mr. Heaney’s petition. The following people were sworn-in as witnesses:

---

<sup>1</sup> See I.C. § 6-1.1-12-37(b) and (e). Before its repeal (effective January 1, 2009), Ind. Code § 6-1.1-20.9 also allowed homeowners to claim a homestead credit against their taxes. See I.C. § 6-1.1-20.9 (repealed by 2008 Ind. Acts 146 § 813).

Fred W. Heaney  
Donna Dziubinski, Corrections Clerk for the St. Joseph County Auditor  
Rosemary Mandrici, St. Joseph County Assessor

Frank Agostino appeared as the Assessor's counsel.

4. Mr. Heaney offered the following exhibits, all of which were admitted into evidence:

- Petitioner's Exhibit 1: Tax bill for Fred & Debra Heaney; Special Notice to Property Owner; property record card ("PRC) for the subject property printed 11/13/09 (with portions highlighted)
- Petitioner's Exhibit 2: Form 133 petition
- Petitioner's Exhibit 3: Homestead Standard Deduction and Other Deductions Frequently Asked Questions (FAQs) Revised 3/6/09 (page 1 of 27) (with portions highlighted); Frequently Asked Questions (with portions highlighted); February 11, 2009 e-mail from Amanda Stanley to Patricia Henry (with portions highlighted, circled, and underlined)
- Petitioner's Exhibit 4: Circuit Breaker Fact Sheet (with portions highlighted)
- Petitioner's Exhibit 5: October 30, 2008 memorandum from Barry Wood, Assessment Division Director of Department of Local Government Finance ("DLGF"), to county assessor and county auditors (with portions highlighted) (page 1 of 7)
- Petitioner's Exhibit 6: June 2, 2008 memorandum from Cheryl Musgrave, Commissioner for the DLGF and Timothy Rushenberg, general counsel, to county assessors and auditors (with portions highlighted) (pages 1 through 3 of 13)
- Petitioner's Exhibit 7: Portions of P.L. 146-2008

5. The Assessor offered the following exhibits, all of which were admitted into evidence:

- Respondent's Exhibit 1: Form 133 petition with the following attachments: property record card for the subject property printed 2/24/2010; View Payable 2009 Real Property Master screenshot; February 11, 2009 e-mail from Amanda Stanley to Patricia Henry; second copy of Form 133 petition,
- Respondent's Exhibit 2: PRC for subject property printed 11/13/09
- Respondent's Exhibit 3: PRC for subject property printed 9/20/11
- Respondent's Exhibit 4: February 11, 2009 e-mail from Amanda Stanley to Patricia Henry; June 2, 2008 memorandum from Musgrave and Rushenberg to county assessors and auditors (pages 1 through 3 of 13)
- Respondent's Exhibit 5: Circuit Breaker Fact Sheet

- Respondent's Exhibit 6: October 30, 2008 memorandum from Barry Wood (page 1 of 7)
- Respondent's Exhibit 7: Homestead Standard Deduction and Other Deductions Frequently Asked Questions (FAQs) Revised 3/6/09 (page 1 of 27); Portions of P.L. 146-2008

6. All pleadings and documents filed in the appeal as well as all orders and notices issued by the Board or its ALJ are part of the record, as is the digital recording of the Board's hearing.

### FINDINGS OF FACT

7. The subject property is located at 60145 Locust Road in South Bend. It consists of the following: (1) a one-acre homesite with a house (including exterior features) and attached garage, and (2) 5.014 acres of land classified as "residential excess." *Pet'r Ex. 1*. Mr. Heaney and his wife built the home in 2005 and 2006. They then moved to the property in November 2006. Although Mr. Heaney also owns an office and manufacturing facility in South Bend, neither he or his wife own any other residences. *See Heaney testimony*.
8. Mr. Heaney applied for what he called a "mortgage exemption" for the subject property. *Heaney testimony*. Although Mr. Heaney thought that he also applied for what he alternately called a "homestead exemption," "homestead deduction," and "homestead credit," he did not have a receipt showing that he did so. *Id.* The Board assumes that Mr. Heaney used the term "mortgage exemption" in reference to the mortgage deduction provided by Ind. Code § 6-1.1-12-1 and the terms "homestead credit," "homestead deduction" and "homestead exemption" in reference to the standard deduction provided by Ind. Code § 6-1.1-12-37.<sup>2</sup>

---

<sup>2</sup> There is no statute that exempts mortgaged property from taxation, so when people refer to a "mortgage exemption" they usually mean the mortgage deduction under Ind. Code § 6-1.1-12-1. Similarly, there is no exemption for homesteads, and the Indiana Code does not refer to a homestead deduction, although homesteads are entitled to a standard deduction under Ind. Code § 6-1.1-12-37. As explained *infra*, there was also a homestead credit available under Ind. Code § 6-1.1-20.9 in 2008. It is possible that Mr. Heaney was referring to that credit.

9. In any case, the St. Joseph County Auditor did not receive an application from the Heaneys for the standard deduction in connection with subject property's March 1, 2008 assessment or with the taxes first due and payable on that assessment in 2009. As a result, the Heaneys did not receive what they have referred to as the homestead "tax cap"—a credit equaling the amount that the property taxes first due and payable in 2009 exceeded 1.5% of the subject property's gross assessment. Instead, the entire property, including the one-acre homesite and improvements, was taxed at more than 2% of its assessed value. *See Heaney testimony; Pet'r Ex. 1 (Special Message to Property Owner); see also, Dziubinski testimony.*

## CONCLUSIONS OF LAW AND DISCUSSION

### A. The Board's Jurisdiction

10. As an initial matter, the Board has jurisdiction to hear Mr. Heaney's appeal. The Board's enabling statute provides, in part:
- (a) The Indiana board shall conduct an impartial review of all appeals concerning:
    - (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.
- I.C. § 6-1.5-4-1(a) (emphasis added). Subsection four, giving the Board authority to review appeals concerning credits, was added effective July 1, 2011. 2011 Ind. Acts 172 § 49.
11. The correction of error statute similarly contemplates review of the denial of credits:
- (a) Subject to the limitations contained in subsections (c) and (d) [inapplicable in this case], a county auditor shall correct errors which are discovered in the tax duplicate for any one (1) or more of the following reasons:

...  
(8) Through an error of omission by any state or county officer, the taxpayer was not given:

- (A) the proper credit under IC 6-1.1-20.6-7.5 for property taxes imposed for an assessment date after January 15, 2011;
- (B) *any other credit permitted by law*;
- (C) an exemption permitted by law; or
- (D) a deduction permitted by law.

I.C. 6-1.1-15-12 (a) (emphasis added). Again, the provisions concerning credits were added effective July 1, 2011. 2011 Ind. Acts 172 § 31.

12. Mr. Heaney brought his appeal on a Form 133 petition—the petition that the Department of Local Government Finance has prescribed for correcting errors under Ind. Code § 6-1.1-15-12—claiming that the wrong tax cap was applied to the Heaneys’ 2009 taxes. According to Mr. Heaney, the subject property was the Heaneys’ homestead, and Ind. Code § 6-1.1-20.6-7 therefore required the Heaneys’ taxes to be capped at 1.5% of the property’s gross assessed value. Indiana Code § 6-1.1-20.6-7 involves tax credits, so the Board has the authority to address Mr. Heaney’s claims generally. And his claim meets the “any other credit permitted by law” clause of the correction of error statute, so it is cognizable on a Form 133 petition.<sup>3</sup> The Board therefore turns to the merits of Mr. Heaney’s claim.

## **B. The Merits of Mr. Heaneys’ claim**

13. Indiana Code § 6-1.1-20.6-7 provides the following credits, which are commonly referred to as “tax caps” and which vary in amount based on the class of property at issue:
- (a) This subsection applies to property taxes first due and payable in 2009. A person is entitled to a credit against the person's property tax liability for property taxes first due and payable in 2009. The amount of the credit is

---

<sup>3</sup> The Assessor addressed two other grounds for correction of error under Ind. Code § 6-1.1-15-12—that there was a mathematical error in computing the assessment and that the taxes, as a matter of law, were illegal—and argued that Mr. Heaney’s claim did not meet those criteria. *See Agostino argument*; *see also*, I.C. § 6-1.1-15-12 (a)(6) and (7). But the Assessor did not argue that Mr. Heaney’s claim falls outside Ind. Code § 6-1.1-15-12(a)(8). Indeed, the Assessor did not address that subsection at all.

the amount by which the person's property tax liability attributable to the person's:

- (1) homestead exceeds ... (1.5%);
- (2) residential property exceeds ... (2.5%);
- (3) long term care property exceeds ... (2.5%);
- (4) agricultural land exceeds ... (2.5%);
- (5) nonresidential real property exceeds ... (3.5%); or
- (6) personal property exceeds ... (3.5%)

of the gross assessed value of the property that is the basis for determination of property taxes for that calendar year.

(b) This subsection applies to property taxes first due and payable in 2009. Property taxes imposed after being approved by the voters in a referendum or local public question shall not be considered for purposes of calculating a person's credit under this section.

(c) This subsection applies to property taxes first due and payable in 2009. As used in this subsection, "eligible county" means only a county for which the general assembly determines in 2008 that limits to property tax liability under this chapter are expected to reduce in 2010 the aggregate property tax revenue that would otherwise be collected by all units of local government and school corporations in the county by at least twenty percent (20%). Property taxes imposed in an eligible county to pay debt service or make lease payments for bonds or leases issued or entered into before July 1, 2008, shall not be considered for purposes of calculating a person's credit under this section.

I.C. § 6-1.1-20.6-7.<sup>4</sup> For purposes of the tax caps, a "homestead" "refers to a homestead that is eligible for a standard deduction under IC 6-1.1-12-37." I.C. § 6-1.1-20.6-2(a).

Indiana Code § 6-1.1-12-37 in turn provides, in relevant part:

(a) The following definitions apply throughout this section:

...

(1) "Dwelling" means any of the following:

(A) Residential real property improvements that an individual uses as the individual's residence, including a house or garage.

...

(2) Homestead means an individual's principal place of residence:

(A) that is located in Indiana;

(B) that:

(i) the individual owns;

...

---

<sup>4</sup> Ind. Code § 6-1.1-20.6-7.5 provides lower caps for taxes first due and payable after 2009. For example, a taxpayer is entitled to a credit in the amount by which the taxes on his homestead first due and payable after 2009 exceed 1% of the homestead's gross assessed value. I.C. § 6-1.1-20.6-7.5(a)(1).

(C) that consists of a dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds that dwelling.

...  
(b) Each year a homestead is eligible for a standard deduction from the assessed value of the homestead for an assessment date. . . .

I.C. § 6-1.1-12-37(a)(2).

14. A taxpayer, however, is not required to apply for the appropriate tax cap; instead, the statute requires the county auditor to identify eligible property and then apply the 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:

- (1) identify the property in the county eligible for the credit under this chapter; and
- (2) apply the credit under this chapter to property tax liability on the identified property.

I.C. § 6-1.1-20.6-8.

15. Mr. Heaney testified without contradiction that he and his wife used the subject property as their principle residence on March 1, 2008. A significant portion of the subject property therefore met the definition of a homestead that was eligible for the standard deduction and consequently qualified for the homestead tax cap under Ind. Code § 6-1.1-20.6-7(a)(1). Of course, Mr. Heaney did not apply for the standard deduction. And the Assessor rests her entire defense on that fact. According to the Assessor, a taxpayer must apply for the standard deduction in order to get the homestead tax cap because the auditor would otherwise have no way of knowing whether a property meets the statutory definition of a homestead, *i.e.* whether the taxpayer uses the property as his primary residence.
16. But a homestead under the tax cap statute is simply a homestead that is “eligible” for the standard deduction, not a homestead that is the subject of an application for, or that has been granted the standard deduction. The fact that the Heaneys did not take advantage of



their property's eligibility for the standard deduction by applying for that deduction is beside the point.

17. The Board sympathizes with the Assessor's position to an extent. Not all residential properties are entitled to the homestead tax cap—only those used as a taxpayer's principle residence are. And a county auditor has no way of knowing whether a taxpayer uses a given property for his principle residence unless the taxpayer affirmatively shows that fact, such as when the taxpayer applies for a standard deduction. Thus, a homeowner's failure to apply for a standard deduction can lead to an auditor erroneously failing to apply the homestead tax cap in the first instance. But when a taxpayer brings that error to the auditor's attention, as Mr. Heaney did in this case, the auditor can and must correct that error.
  
18. Not all portions of the subject property, however, qualify as a homestead; only the Heaneys' one-acre homesite and improvements do. The Heaneys are only entitled to receive the homestead cap credit for the qualifying portions of the subject property. Similarly, the parties offered no evidence about whether any taxes must be excluded from calculating the Heaneys' credit under Ind. Code § 6-1.1-20.6-7(b) or (c). The Board therefore will not attempt to calculate the Heaneys' credit or their tax bill.

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

19. Because the Heaneys' homesite and improvements meet the definition of a homestead for purposes of applying the credit provided in Ind. Code § 6-1.1-20.6-7(a)(1), that credit must be applied in determining the Heaneys' 2008-pay-2009 tax bill. For the reasons explained above, however, the Board will not calculate either the amount of that credit or the Heaneys' tax bill.

---

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, 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>>