REPRESENTATIVES FOR PETITIONERS: Zia Mollabashy, Randal Kaltenmark, Barnes & Thornburg, LLP

REPRESENTATIVE FOR RESPONDENT: Jess Reagan Gastineau, Office of Corporation Counsel

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Robert A. and Louann Palmer	)	
	)	
Petitioners,	)	Petition Nos.: 49-400-12-3-5-01772-16
	)	49-400-12-3-5-01776-16
v.	)	
	)	
Marion County Assessor,	)	Parcel Nos.: 49-01-30-116-004.000-400
	)	49-01-30-116-005.000-400
Respondent.	)	
	)	
	)	Assessment Year: 2012
	)	
	)	

April 8, 2019

FINAL DETERMINATION

I. Introduction

1. These appeals raise substantive and procedural questions about whether Robert and Louann Palmer were entitled to a credit for homesteads that would effectively cap taxes at 1% of their property's gross assessed value. Substantively, we find that the Palmers' property qualified for the homestead credit under the 2012 version of the tax-cap statute because it was eligible for the standard deduction. Procedurally, we find that the Palmers properly brought their claims under the since-repealed correction-of-error statute and that their Form 133 petitions were timely.

II. Procedural History

2. On June 20, 2016, the Palmers filed eight Form 133 petitions for correction of error. The petitions addressed two parcels and covered tax years 2012-2015. The two petitions covering the 2012 tax year are at issue in this Final Determination. The Palmers alleged that their taxes were illegal as a matter of law, that there were mathematical errors in computing their assessments, and that through an error of omission, they were not given a credit permitted by law. All of their claims centered on having been denied the 1% tax-cap credit for homesteads under Indiana Code § 6-1.1-20.6-7.5(a)(1), although their petitions for 2012 assessment year only sought to correct the error for the second of the two tax installments that were based on that assessment.

3. A little over a month later, the Marion County Property Tax Assessment Board of Appeals denied all the petitions. The Palmers responded by filing their petitions with the Board.

4. On May 1, 2018, the Palmers filed a motion for summary judgment for all four assessment years. We struck the Assessor's untimely response, but our designated administrative law judge ("ALJ"), David Pardo, held a hearing at which the Assessor was allowed to make legal argument. On November 14, 2018, we issued a final determination granting summary judgment to the Assessor on the Palmers' appeals for 2013-2015 because the Palmers had not applied for or been granted the standard deduction for homesteads under Ind. Code § 6-1.1-12-37.

5. That same day, we issued an order denying the Palmers' motion for summary judgment on their 2012 appeals and indicated that we would set those appeals for a hearing on the merits. For that year, the tax-cap statute did not define a homestead as a property that had been granted the standard deduction; rather, the property simply had to be eligible for that deduction. We recognized that the Palmers "designated ample evidence to show that they used a home situated on one of the two parcels under appeal as their principal place

of residence." But we explained that to be eligible for the standard deduction, they also needed to show that the property consisted of a dwelling and no more than one acre of immediately surrounding land. Because the Palmers did not designate any evidence to show what, if any, other improvements were on the parcels or how much land either parcel contained," we found that they failed to demonstrate the absence of any genuine issues of material fact or their entitlement to judgment as a matter of law. *Order Denying Summary Judgment at 8.*

6. On January 8, 2019, our designated ALJ, David Smith, held a hearing on the merits. Neither he nor the Board inspected the property. Zia Mollabashy appeared for the Palmers, and Jess Reagan Gastineau appeared for the Assessor.

7. Neither party called any witnesses. The Assessor did not offer any exhibits. The Palmers offered the following two exhibits:

Petitioner's Exhibit 1:	Property record card for 9330 Sandbury Road
Petitioner's Exhibit 2:	Property Record Card for 9320 Sandbury Road

8. The record also includes the following: (1) all pleadings, motions, briefs, and other documents filed in these appeals; (2) all orders and notices issued by the Board or our ALJs; and (3) an audio recording of the hearing.

III. Objections

9. The Palmers objected to the Assessor's legal arguments on grounds that he did not disclose those arguments at least five days before the hearing. According to the Palmers, that violated our procedural rules. We overrule the objection. Our rules governing pre-hearing exchanges require parties to disclose evidence—not legal arguments. *See* 52 I.A.C. §2-7-1(b) (requiring parties to exchange witness and exhibit lists at least 15 days before a hearing and copies of documentary evidence at least 5 business days before a hearing).

10. The Assessor objected to part of Petitioners' Exhibit 1, the property record card for 9330 Sandbury Road. Specifically, he objected to a notation in the "memorandum" section of the card, which refers to the two parcels under appeal having been combined in 2017. He argued that the notation was irrelevant because it reflected an event that occurred after the assessment date at issue. We overrule the objection, although we do not rely on the notation in reaching our final determination.

IV. The Palmers' Contentions

11. The Palmers claim their parcels, which are located next to each other at 9320 and 9330 Sandbury Road, are entitled to the 1% tax-cap credit for homesteads. According to the Palmers, our order denying summary judgment found that they used the parcels as their principal place of residence. But the order also found that they did not show the property was their dwelling or the amount of land that was included. So they offered the property record card for each parcel. The card for 9330 Sandbury Road lists a dwelling and wood deck on .699 acres of land. The card for 9320 Sandbury Road describes a vacant .792-acre parcel. The Palmers believe the entire property should receive the 1% cap for homesteads. At a minimum, they argue that the improvements and a total of one acre should receive the 1% cap, leaving only .491 acres of land at a higher cap. *Pet'rs Exs. 1-2.*

12. Although the Assessor contends that the Palmers did not prove they owned the property, the property record cards list them as the owners. And materials they designated with their summary judgment motion show they owned the property both before and after 2012. *Pet'rs Exs. 1-2; Mollabashy argument; Palmers' post-hearing brief at 7-8.*

13. The Palmers similarly disagree with the Assessor's two procedural arguments: (1) that they could not bring their claims on Form 133 petitions, and (2) that they did not timely file their petitions. As to the appropriateness of using Form 133 petitions, the Palmers argue that they alleged an objective error. Similarly, they believe that an omission by

local officials resulted in them receiving the wrong tax-cap credit, which made their taxes, as a matter of law, illegal. *Mollabashy argument; Palmers' post-hearing brief at 9-10.*

14. The Palmers argue that the Assessor waived his argument about the timelines of their petitions because he did not raise that argument either in his stricken response to their summary judgment motion or at the hearing on that motion. In any case, the Assessor claims that the Palmers filed their petitions more than three years after May 10, 2013—the due date for the first installment of taxes based on the 2012 assessment. But the Palmers are only seeking a refund of the second installment, which was not due until November 10, 2013. The refund statute, as it existed at the times relevant to these appeals, allowed a taxpayer to file claims for "a refund of all or a portion of a tax *installment*" and required that the claim be filed within three years after "the taxes were first due." While the Assessor points to Ind. Code § 6-1.1-22-9(a) for the proposition that the Palmers' taxes were "first due" on May 10, 2013, the word "first" is nowhere in that subsection. Instead, it provides that taxes are assessed in two equal installments: on May 10 and November 10 of the year following an assessment date. *Palmers' post-hearing brief at 11-12* (*quoting I.C. § 6-1.1-26-1 (emphasis added) and I.C. § 6-1.1-22-9(a)).*

V. The Assessor's Contentions

15. The Assessor did not offer any evidence at the hearing. But he makes two procedural arguments and one substantive one. For his first procedural argument, the Assessor contends that the Palmers did not allege claims that met any of the three grounds that properly could have been raised under the correction-of-error statute. First, they do not allege a math error or an error that could be corrected through a simple true-or-false factual determination. Second, while the correction-of-error statute contemplated claims that a taxpayer was denied the appropriate tax-cap credit, it only did so where the denial was through an "error of omission" that did not require subjective judgement. Finally, because the Palmers did not first challenge the denial of the 1% tax-cap credit through the

regular appeal process and obtain a decision from the Indiana Tax Court, they could not claim relief on grounds that their taxes, as a matter of law, were illegal. *Gastineau argument; Assessor's post-hearing brief at 2-5.*

16. Even if the Palmers' claims were cognizable under the correction-of-error statute, the Assessor argues that their Form 133 petitions were untimely. Subsection (i) of the correction-of-error statute required taxpayers to file a petition "within three (3) years after the taxes were first due." Under Ind. Code § 6-1.1-22-9(a), taxes for an assessment year are due in two equal installments on May 10 and November 10 of the following year. Thus, the Palmers' taxes for the 2012 assessment year were first due on May 10, 2013. They did not file their petitions until June 20, 2016, which was three years and 41 days past that date. *Gastineau argument; Assessor's post-hearing brief at 5-6.*

17. While the Palmers claim that the three-year deadline ran from the November 10, 2013 installment because that is the only installment for which they sought a refund, neither the statute nor case law supports their position. To the contrary, the Assessor points to *Walker Mfg., Co. v. Dep't of Local Gov't Fin.*, 772 N.E.2d 1 (Ind. Tax Ct. 2002). According to the Assessor, the Tax Court interpreted identical language from the refund statute and a prior version of Ind. Code § 6-1.1-22-9(a) to find that a Form 133 petition had to be filed within three years of the May installment date. *Gastineau argument; Assessor's post-hearing brief at 5-6.*

18. As for the substance of the Palmers' claims, the Assessor argues that we denied summary judgment because they did not designate any evidence to describe the land and buildings at issue beyond indicating that their home sat on one of the parcels. At the hearing on the merits, the Palmers once again failed to offer any evidence to show those things or to walk us through "any explanation of the land and buildings at issue." Assuming, for the sake of argument, that the property record cards could suffice to meet that burden, the two parcels were not combined until 2017. The vacant parcel (9220 Sandbury Road) therefore would not qualify for the 1% cap. *Assessor's post-hearing brief at 1-2.*

19. At the hearing, the Assessor also contended that the Palmers failed to prove that they owned the parcels on the assessment date, arguing that property record cards printed in 2019 did not suffice to show ownership in 2012. In making that argument, the Assessor referred to evidence and arguments from the summary judgment proceedings as well as from the hearing on the merits. The Assessor did not contest the Palmers' ownership of the property in his post-hearing brief. *Gastineau argument; Assessor's post-hearing brief at 1-2*.

VI. Analysis

20. As explained above, these appeals have a somewhat involved procedural history given the relatively straightforward substantive question at issue—whether the Palmers should have received the 1% tax-cap credit that applies to homesteads. In presenting their cases at the hearing on the merits, both parties referred to our order denying the Palmers' summary judgment motion and to evidence the Palmers designated in that motion. And they appear to agree that there is no factual dispute as to whether the Palmers used the home on 9330 Sandbury as their principal place of residence.

21. With that background in mind, we turn to our analysis. We begin with what the Assessor argues are two procedural defects in the Palmers' claims. First, the Assessor argues that the Palmers have not alleged claims that could properly be brought on Form 133 petitions. As the Assessor correctly recognizes, for the 2012 tax year, a taxpayer had two ways to challenge assessments and other determinations by local assessing officials: (1) the general appeal procedures laid out under Ind. Code § 6-1.1-15-1[1] and certain other statutes, or (2) the correction-of-error process under Ind. Code § 6-1.1-15-12,[2] for which a Form 133 petition was used. A taxpayer could use the general appeal procedures to challenge any element of the determination, but it had to file its appeal within tight

[1] Indiana Code § 6-1.1-15-1 was repealed in 2017. 2017 Ind. Acts 232 § 9.
[2] Indiana Code § 6-1.1-15-12 was repealed in 2017. 2017 Ind. Acts 232 § 17.

deadlines. *See* I.C. § 6-1.1-15-1(c) and (d) (2011 supp.); I.C. § 6-1.1-11-7 (2010 repl. vol.).

22. By contrast, the correction-of-error process could be used to correct errors from prior years. Unlike the general appeal procedures, however, the correction-of-error process was only available to correct a limited subset of errors—that there was a mathematical error in computing the taxpayer's assessment, that the "taxes, as a matter of law, were illegal," and that through an "error of omission," the taxpayer was not given certain things, including the proper tax-cap credit. I.C. § 6-1.1-15-12(a)(6)-(8) (2011 supp.); *see also, Muir Woods, Inc. v. O'Connor*, 36 N.E.2d 1208, 1210 (Ind. Tax Ct. 2015) ("[T]he types of errors that are correctable using a Form 133 appeal procedure are expressly limited; whereas, the types of errors correctable using a Form 130/131 appeal procedure are not.").

23. We find that the Palmers' Form 133 petitions properly allege an error of omission. The Assessor rightly observes that an error of omission is something more than a mere error. Otherwise, the correction of error process would have offered an end run around the general appeal procedures. For example, a taxpayer would have been able to revive an untimely appeal from the denial of its exemption application by simply characterizing the PTABOA's decision as an error of omission. But the error at issue in these appeals is different. Unlike exemptions, the general appeal procedures did not explicitly contemplate appeals concerning tax-cap credits. The correction-of-error statute is the only place where those appeals were mentioned. And unlike exemptions or deductions, a taxpayer does not apply for the tax-cap credit—the county auditor identifies property eligible for the credit and applies it. I.C. § 6-1.1-20.6-8. For purposes of the statute, the auditor's failure to apply the appropriate tax-cap credit may be characterized as an omission in a way that the denial of exemption or deduction applications cannot.

24. Which brings us to the Assessor's second procedural argument: that the Palmers' Form 133 petitions were untimely. The parties agree that the Palmers had to file their petitions

"within three (3) years after the taxes were first due." I.C. § 6-1.1-15-12(i). But they disagree about what date that was. The Assessor argues that "first due" refers to the first time any taxes based on an assessment were due. For any given assessment date, that means May 10 of the following year, when the first installment is due. The Palmers, by contrast, argue that taxpayers had to file a Form 133 petition within three years of the installment to which they wanted the correction of error to apply. And their Form 133 petitions address only the November 2013 installment.

25. We agree with the Palmers. The term "first due" is ambiguous. It reasonably may be read as referring to the first time any taxes on an assessment are due. But it also may be read as referring to the initial due date for the installment to which taxpayer seeks to have a correction of error apply. In that sense, "first" refers to the date that installment is initially due, as opposed to the due date for that installment listed on subsequent notices, such as those seeking payment of delinquent taxes. We believe that the second interpretation more likely reflects the legislature's intent. As the Assessor acknowledges, that is how the DLGF interprets the statute. *See Assessor's post-hearing brief* at 5 (acknowledging that the "DLGF has interpreted Form 133s to go back six installments . . . .")[3]

26. According to the Assessor, our interpretation conflicts with *Walker Mfg. Co. v. Dep't of Local Gov't Fin*. In that case, the Indiana Tax Court cited to identical language from the refund statute in explaining that a taxpayer's Form 133 petitions were untimely because it "did not file them until September 1994—approximately five months after the three-year time limit for requesting a refund for the 1990 tax year." *Walker Mfg. Co. v. Dep't of Local Gov't Fin*., 772 N.E.2d 1, 13 n. 12 (Ind. Tax Ct. 2002) (*citing* I.C. § 6-1.1-1-22-

[3] The DLGF's commissioner issued an informative bulletin on House Enrolled Act 1266, which amended the correction of error statute to add the three-year limitation. As an example, the commissioner explained, "a taxpayer seeking to file a Correction of Error Appeal concerning his November 2011 property tax installment has until November 10, 2014 to do so." Micah G Vincent, Commissioner, Dep't of Local Gov't Fin., *Legislative Changes Affecting the Correction of Error Appeal*, May 7, 2014, available at https://www.in.gov/dlgf/files/pdf/140507_-_Vincent_Memo_-_Legislative_Changes_Affecting_the_Correction_of_Error_Appeal.pdf. (last accessed April 4, 2019)

9(a); I.C. § 6-1.1-26-1(2); 50 IAC 4.2-3-12(g)(4) (1992); 50 IAC 4.2-3-14(f) (1992)). That excerpt, which is contained in a footnote and relies partly on since-repealed regulations from the State Board of Tax Commissioners, is dictum. The Court based its holding on different grounds—that it lacked subject matter jurisdiction because the taxpayer simply re-filed claims that the Tax Court had previously dismissed based on the taxpayer's failure to timely seek judicial review. *Walker Mfg. Co.*, 772 N.E.2d at 11-13.

27. Having found that the Palmers timely filed Form 133 petitions alleging a claim that was cognizable under the correction-of-error statute, we now turn to the substance of their claim that they were entitled to the 1% tax-cap credit for homesteads.

28. There are several potential benefits available to homeowners under our property tax statutes. Some or all of their property may qualify for the standard and supplemental deductions. Those deductions apply to "homesteads," which the standard-deduction statute defines, in relevant part, as a property owner's[4] "principal place of residence," consisting 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) (2011 supp.) The standard-deduction statute defines a "dwelling" as "[r]esidential real property improvements that an individual uses as the individual's residence, including a house or garage." I.C. § 6-1.1-12-37(a)(1)(A)(2011 supp.).

29. Property owners also receive a credit under Ind. Code § 6-1.1-20.6-7.5, often called a "tax cap," against taxes exceeding a specified percentage of their property's gross assessment. That cap varies based on the type of property at issue. For property defined as a "homestead" under the tax-cap statute, taxes are capped at 1% of gross assessed value. I.C. § 6-1.1-20.6-7.5(a)(1). The caps are higher for other types of property. I.C. § 6-1.1-20.6-7.5(a)(2)-(6).

---

[4] Certain individuals who did not own a property, but who had certain other interests in it, such as buyers on recorded land contracts that made them responsible for paying property taxes, could also qualify. *See* I.C. § 6-1.1-12-37(a)(2)(B) (2011 supp.).

30. At all times relevant to the Palmers' 2012 appeals, the tax-cap statute defined a "homestead" as "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) (2010 repl. vol.). As we have explained in previous decisions, and as the Assessor concedes, a taxpayer's property simply needed to meet the definition of a homestead under the standard-deduction statute—and therefore be "eligible" for the deduction—in order for the taxpayer to qualify for the 1% tax-cap credit. The taxpayer need not have applied for, or been granted, the standard deduction. *See Martin v. Ripley Cnty. Ass'r*, pet. no. 69-003-09-1-5-00001 (IBTR Dec. 2, 2011).[5]

31. In their summary judgment motion, the Palmers designated unopposed evidence that they used the home at 9330 Sandbury as their principal place of residence, and the Assessor does not dispute that fact. The property record cards fill-in the missing elements from the summary judgment proceedings. They show that the two adjacent parcels consisted of a home, deck, and 1.491 acres of land. Contrary to what the Assessor suggests, the fact that the cards were printed after the assessment date does not deprive them of probative value. The underlying data appears to describe the parcels as they existed on the assessment date.

32. Although the Assessor initially claimed that the Palmers failed to show they owned the parcels in 2012, he dropped that argument in his post-hearing brief. There does not appear to be any serious dispute that the Palmers owned the property or otherwise had a sufficient interest in it to be eligible for the standard deduction. They paid the taxes on the property. In any case, the record as a whole shows that the Palmers owned the parcels. In arguing the case at the hearing on the merits, both parties referenced materials the Palmers designated with their summary judgment motion. And those materials show

[5] The legislature amended Ind. Code § 6-1.1-20.6-2 in 2013. 2013 Ind. Acts 257, § 28. For purposes of the tax-cap statute, a homestead is now defined as "a homestead that has been granted a standard deduction under IC 6-1.1-12-37." Id. (emphasis added).

that the Palmers owned the property in 2012. *See, e.g. Affidavit of Louann Palmer* (affirming that the Palmers bought the parcels in 2005 and 2007, respectively).

33. The Palmers therefore proved that 9330 Sandbury Road was eligible for the standard deduction. Because the standard-deduction statute defines a homestead to include up to one acre of real estate immediately surrounding a dwelling, .208 acres of 9320 Sandbury Road was also eligible for the standard deduction. We see nothing in the standard-deduction or tax-cap statutes to support the Assessor's view that property must be on a single parcel to be eligible for the standard deduction or the 1% tax-cap credit for homesteads. "Key" or "parcel" numbers are merely tools used by assessing officials to distinguish properties from one another for various administrative purposes. *Cedar Lake Conf. Ass'n v. Lake Cnty. Prop. Tax Assessment Bd. of Appeals*, 887 N.E.2d 205, 209 (Ind. Tax Ct. 2008) (citing I.C. § 6-1.1-1-8.5). The fact that local officials separated the Palmers property into different parcels for administrative purposes does not change the land's relationship to the Palmers' dwelling or how the Palmers used the property. *See id*. (the fact that properties were separate parcels with distinct key numbers did not change their use or the user's religious purpose).

34. We therefore find that the Palmers are entitled to the 1% tax-cap credit on the November 2013 installment for 9330 Sandbury Road. As for 9320 Sandbury Road, we find that the Palmers are entitled to the 1% cap on their November 2013 installment for the portion of those taxes that were based on the assessment of .208 acres. The Palmers are not entitled to the 1% cap on the taxes that were based on the assessment of the remaining .491 acres.

VII. Conclusion

35. We grant the Palmers' Form 133 petition for 9330 Sandbury Road and grant their petition for 9320 Sandbury Road, in part. The 1% tax-cap credit under Ind. Code § 6-1.1-20.6-7.5(a)(1) must be applied to the Palmers' November 2013 installment for taxes assessed to 9330 Sandbury Road. For 9320 Sandbury Road, that same credit must be applied to

the Palmers' November 2013 installment for the portion of taxes that were based on the assessment of .208 acres.

We issue this order on the date 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 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>.