

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

**Petitions:** 29-020-21-1-5-00567-23 and 29-020-22-1-5-00568-23  
**Petitioners:** Mark J. & Ellie M. Rose  
**Respondent:** Hamilton County Assessor  
**Parcel:** 29-11-33-024-018.000-020  
**Assessment Years:** 2021 and 2022

The Indiana Board of Tax Review issues this determination, finding and concluding as follows:

**Procedural History**

1. Mark J. & Ellie M. Rose appealed the Hamilton County Auditor’s action terminating for the 2021 and 2022 assessment years the homestead deduction that previously had been applied to the subject property. The Hamilton County Property Tax Assessment Board of Appeals (“PTABOA”) issued Form 115 determinations denying the Roses’ appeals for both years.
2. The Roses then filed Form 131 petitions with us, electing to proceed under our small claims docket. On December 20, 2023, our designated administrative law judge, Joseph Stanford (“ALJ”), held a hearing on the Roses’ petitions. Neither he nor the Board inspected the property. John Johantges, a certified tax representative, represented the Roses. Marilyn Meighen appeared as counsel for the Hamilton County Assessor. Johantges, the Roses, and Sadie Eldridge of the Hamilton County Auditor’s Office testified under oath.

**Record**

3. The official record for this matter includes the following:

Petitioners Exhibit A:	2021 property record card (“PRC”) for the subject property,
Petitioners Exhibit B:	2022 PRC for the subject property,
Petitioners Exhibit C:	Sales disclosure,
Petitioners Exhibit D:	Indiana Code § 6-1.1-12-45,
Petitioners Exhibit E:	United States Postal Service (“USPS”) response to proof of delivery request,
Petitioners Exhibit F:	Email correspondence between Johantges and Eldridge,
Petitioners Exhibit G:	“Certified Mail® - The Basics” from the USPS,
Petitioners Exhibit H:	PRC for 12367 Berry Patch Lane,
Petitioners Exhibit I:	PRC for 12367 Brean Way,
Petitioners Exhibit J:	PRC for 12367 Brompton Road,

Petitioners Exhibit K:	PRC for 12367 Ensley Drive,
Petitioners Exhibit L:	Flagstar Bank statement (Confidential),
Petitioners Exhibit M:	Internal Revenue Service (“IRS”) Form 1098 (Confidential),
Petitioners Exhibit N:	Redacted IRS Form 8879.
Respondent Exhibit A:	Warranty Deed dated July 28, 2014,
Respondent Exhibit B:	Redacted sales,
Respondent Exhibit C:	Quitclaim deed,
Respondent Exhibit D:	Property Tax Deductions—Removal Notification,
Respondent Exhibit E:	USPS response to proof of delivery request,
Respondent Exhibit F:	2021-Payable-2022 tax bill,
Respondent Exhibit G:	Form HC10 Claim for Homestead Property Tax/Standard Deduction for 2023-payable-2024, dated January 18, 2023
Respondent Exhibit H:	Discussion of Board and Tax Court decisions.

4. The record also includes: (1) all petitions and other documents filed in this appeal, (2) all notices and orders issued by the Board or the ALJ, and (3) an audio recording of the hearing.

### Findings of Fact

5. The Roses got married in September 2007. In July 2014, Mark Rose bought the subject property, which is located at 12367 Wheathill Pass in Fishers. In completing the sales-disclosure form, Mark checked the boxes indicating that he was claiming a homestead deduction, that the property would be his primary place of residence, and that he did not have an Indiana homestead to be vacated for his new residence. *M Rose testimony; Pet’rs Exs. A-C; Resp’t Exs. A-B.*
6. Mark signed the form and provided the last five digits of his driver’s license and social security numbers as directed. Because his father, Phillip Rose, “cosigned on the closing documents,” Mark originally wrote Phillip’s name in the space provided for listing a second buyer and gave the last five digits of his father’s social security number in the space provided for the signature and identifying information for “Buyer 2/Spouse.” But he crossed out those entries. The Auditor applied the homestead standard deduction to the subject property for the 2014 through 2020 assessment years. *M. Rose testimony; see also, Eldridge testimony; Pet’rs Ex. C.*
7. On July 20, 2020, Mark recorded a quitclaim deed transferring the property to himself and Ellie Rose as husband and wife. One week later, Laurie Reiter, of the Hamilton County Auditor’s Office, sent Mark and Ellie a notice indicating that there had been a “change to the deeded owner name” and that “[c]urrently there are not deductions filed in your name(s).” The notice went on to indicate that if the property was the Roses’ primary residence, they would need to apply for “all your deductions by December 31, 2020.” *Eldridge testimony; Resp’t Ex. D (emphasis in original).*

8. The notice was sent via certified mail through the U.S. Postal Service. The return receipt indicates that it was “Left with Individual” on August 1, 2020. In the area for “Recipient Signature” there is a set of initials from the mail carrier rather than signatures from the recipients. That is because mail carriers were not handing their electronic signature pads to people at that point in the COVID-19 pandemic. Next to “Address of Recipient,” the mail carrier wrote “12367” but did not include the street name, although the subject property’s full address is typed at the bottom of the return receipt. There are four other streets in Fishers with the numerical address of 12367. *Eldridge, Johantges, and M. Rose testimony; Resp’t Exs. E, H-K.*
9. The Roses maintain that they did not receive the notice. Because the certified mail did not come back as undeliverable, the Auditor’s office did not follow up by mailing the notice through regular first-class mail. *M. Rose, E. Rose, and Eldrige testimony.*
10. The Roses did not file a certified statement requesting the homestead standard deduction by December 31, 2020. For the 2021 and 2022 assessment years, the Auditor did not apply the homestead standard deduction or the accompanying supplemental deduction to the subject property. And she applied the credit under Ind. Code § 6-1.1-20.6-7.5 for residential properties, which capped the subject property’s taxes at 2% of its gross assessed value, instead of the credit for homesteads, which would have capped the property’s taxes at 1%. *Eldridge testimony; Resp’t Ex. F.*
11. Although the Hamilton County Treasurer mailed tax bills based on the 2021 assessment in April 2022, the Roses deny becoming aware that their homestead deduction had been removed until sometime after they received a statement from their lender near the end of 2022. On January 18, 2023, the Roses filed a Form HC10 Claim for Homestead Property Tax Standard/Supplemental deduction for the year “23-24.” They included the last five digits of their driver’s license and social security numbers on the form. *M. Rose and Eldridge testimony; Pet’rs Ex. L; Resp’t Ex. G.*

### **Conclusions of Law and Analysis**

12. While the parties argue about whether or not the Roses received adequate notice of the Assessor’s intent to terminate Mark’s standard homestead deduction for the subject property, the Roses were ultimately able to timely challenge the termination. Because the Assessor failed to allege, much less prove, that Mark was ineligible for the deduction during the years at issue, we find for the Roses.
13. Indiana Code § 6-1.1-12-37 provides a standard deduction from the assessed value of a homestead. During the years at issue, the statute, in relevant part, defined a homestead as a dwelling (including a house or garage), certain other structures, and up to one-acre of real estate immediately surrounding the dwelling that was located in Indiana and that an individual owned and used as the individual’s principal place of residence. I.C. § 6-1.1-12-37(a), (m) (2021). With certain exceptions, however, an auditor cannot grant an

individual or married couple a deduction if the individual or couple claims the deduction for two or more different properties for the same year. I.C. § 6-1.1-12-37(h), (k).

14. There are two ways taxpayers can apply for the deduction. First, they can file a certified statement with the county auditor on a form prescribed by the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-12-37(e). The DLGF has prescribed Form HC10 for that purpose. 50 IAC 24-4-2. During the years at issue, taxpayers had to complete Form HC10 within the calendar year containing the assessment date for which the deduction was sought and file it with the county auditor on or before January 5 of the immediately succeeding year (i.e. the year in which taxes on the assessment were first due). *Id.*; I.C. § 6-1.1-12-37(e) (2021); *see also*, I.C. § 6-1.1-12-45(d) (2021). Second, taxpayers can claim the deduction on the sales disclosure form when they buy the property. *Id.*; I.C. § 6-1.1-12-44. Taxpayers receiving the standard homestead deduction are also entitled to a supplemental deduction and to a credit capping taxes at 1% of their homestead’s gross assessed value. I.C. § 6-1.1-12-37.5; I.C. § 6-1.1-20.6-2; I.C. § 6-1.1-20.6-7.5(a)(1).<sup>1</sup>
15. If a taxpayer receives a deduction for a particular assessment year and remains eligible, the deduction carries forward without the need for a new application. I.C. § 6-1.1-12-37(e); I.C. § 6-1.1-12-17.8(a); I.C. § 6-1.1-12-44(b). Subject to certain exceptions, if a person who is receiving a homestead deduction in his name (1) changes the property’s use so that all or part of the property no longer qualifies for the deduction, or (2) is not eligible for the deduction because he or his spouse is already receiving an Indiana homestead deduction or an equivalent deduction under the law of a different state, the person must file a certified statement notifying the county auditor of his ineligibility. I.C. § 6-1.1-12-37(f); *see also* I.C. § 6-1.1-12-17.8(b) (“An individual who becomes ineligible for a deduction under section 37 of this chapter shall notify the county auditor . . . in conformity with section 37 of this chapter.”). But the deduction statutes neither provide that a taxpayer becomes ineligible for the homestead deduction, nor require him to file a new application or statement, solely because he conveys an interest in his property to an additional owner.<sup>2</sup>
16. Before a county auditor terminates a deduction, she must “give the person claiming the deduction written notice” of her intention to terminate the deduction and her reasons for doing so. I.C. § 6-1.1-12-45(f). The notice may be by first class or electronic mail. *Id.* While the notice itself is not appealable, the taxpayer may appeal the county auditor’s action in terminating the deduction. *Id.*
17. The parties largely focused their arguments on whether the Auditor properly gave notice of her intent to terminate the standard deduction that Mark had applied for in 2014 and

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<sup>1</sup> The county auditor has an affirmative duty to apply the supplemental deduction and the homestead tax-cap credit without the need for a separate application from the taxpayer. I.C. § 6-1.1-12-37.5(b)-(c); I.C. § 6-1.1-20.6-8.

<sup>2</sup> The same is not true where a joint owner from the original application is removed. By negative implication, Indiana Code § 6-1.1-12-17.8 generally requires a taxpayer to reapply for the deduction under those circumstances. *See* § 6-1.1-12-17.8(d) (providing that where joint owner is removed a taxpayer who remains eligible need not reapply if the taxpayer is the sole owner following the death of a spouse or joint owner).

had continuously received through 2020. According to the Roses, they never received the notice that the Auditor sent via certified mail, which prevented them from reapplying for the deduction in time to receive it for the 2021 and 2022 assessment years. The Assessor argued that the certified mailing—which the mail carrier indicated he had delivered by initialing the return receipt—sufficed to give notice that the Auditor intended to terminate the deduction.

18. We find that the parties' focus on the Auditor's pre-termination notice is beside the point. The Auditor substantially complied with the statute when she mailed notice to the Roses at the subject property, and the Roses ultimately received notice that the deduction had been terminated in sufficient time to challenge that termination. *See* I.C. § 6-1.1-15-1.1(a)(3), (b) (providing that a taxpayer may appeal the denial or omission of a deduction, credit, exemption, abatement, or tax cap "not later than three (3) years after the taxes were first due").
19. As to the merits, the Assessor argued that the Auditor rightly terminated the deduction because the subject property changed ownership when Mark conveyed it to himself and Ellie as husband and wife. The Assessor further argued that Mark should never have been granted the deduction in the first place because he failed to disclose the last five digits of Ellie's social security and driver's license numbers on the sales disclosure form that he originally used to apply for the deduction. According to the Assessor, that omission was crucial, because it denied the Auditor the opportunity to search her database to determine whether Ellie was receiving a homestead deduction on another property.
20. The dispositive issue is whether Mark Rose remained eligible for the deduction in 2021 and 2022. Because he was already receiving the deduction, there was no need for him to reapply as long as he remained eligible. By itself, the fact that Mark quitclaimed title to himself and Ellie as husband and wife neither rendered Mark ineligible to receive the deduction for the subject property nor triggered the need for him to reapply. Instead, Mark continued to be eligible for the deduction as long as the property consisted of a dwelling (including a house or garage) and up to one-acre of immediately surrounding real estate that he owned and used as his principal place of residence. The Assessor failed to allege, much less prove, that the property did not meet those criteria.
21. The Assessor claimed Mark should never have received the deduction in the first place because he neither disclosed that he had a spouse nor provided her relevant identifying information on the 2014 sales disclosure form. According to the Assessor, that prevented the Auditor from confirming through her database whether Ellie was receiving a homestead or equivalent deduction on another property. The Auditor and Assessor, however, now know about Ellie and have her identifying information. Yet the Assessor did not allege, much less prove, that Ellie was receiving the same deduction or its equivalent on another property. This is not to suggest that the Auditor exceeded her authority in scrutinizing the eligibility for the deduction. Rather, whatever errors were made on the sales disclosure form in 2014, Mark was eligible for the deduction at that

time and for all assessment years thereafter. And there is no evidence that Ellie claimed a homestead elsewhere at any time.

22. We therefore find that the Roses are entitled to the standard homestead deduction for the 2021 and 2022 assessment years. The deduction (and the accompanying supplemental deduction and 1% tax-cap credit) must be reinstated for those years.

### Conclusion

23. The Assessor did not allege, much less prove, that Mark Rose was no longer eligible for the standard homestead deduction for the subject property. We therefore order that the deduction be reinstated along with the supplemental deduction under Ind. Code § 6-1.1-12-37.5 and the homestead tax-cap credit under Ind. Code § 6-1.1-20.6-7.5(a)(1) for the 2021 and 2022 assessment years.

Date: March 19, 2024

  
Chairman, Indiana Board of Tax Review

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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>.