

REPRESENTATIVE FOR PETITIONER: Grant Thompson, property owner

REPRESENTATIVE FOR RESPONDENT: Chris Coakes, valuation specialist for the
Tippecanoe County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Grant Thompson,)	Petition Nos.: 79-030-17-1-5-00331-21
)	79-030-18-1-5-00332-21
Petitioner,)	79-030-19-1-5-00333-21
)	
v.)	Parcel No.: 79-11-18-305-014.000-030
)	
Tippecanoe County Assessor,)	County: Tippecanoe
)	
Respondent.)	Assessment Years: 2017-2019

Appeal from the Final Determination of the
Tippecanoe County Property Tax Assessment Board of Appeals

March 30, 2022

FINAL DETERMINATION

The Indiana Board of Tax Review, having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Findings of Fact and Conclusions of Law

Introduction

1. The Tippecanoe County Auditor revoked Grant Thompson's standard and supplemental homestead deductions for 2017-2019 on grounds that Thompson was not living at the subject property. The touchstone for determining whether a property qualifies as a person's homestead is whether it is his true, fixed, permanent home to which he intends to return after an absence, not whether he has maintained a continuous physical presence

at the property. Although Thompson and his family were not continuously present at the subject property while he completed extensive renovations, Thompson proved that it was his true, fixed, permanent home to which he always intended to, and eventually did, return. Thompson is therefore entitled to have his deductions reinstated for 2017-2019.

Procedural History

2. Thompson filed Form 130 petitions for the 2017-2019 assessment dates. He appealed the revocation of a homestead deduction for his residential property located at 807 North Admirals Pointe Drive in Lafayette. On February 2, 2021, the Tippecanoe County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations denying Thompson’s claims. Thompson then timely filed Form 131 petitions with the Board.
3. On January 5, 2022, our designated administrative law judge, Joseph Stanford (“ALJ”), held a telephonic hearing on Thompson’s petitions. Neither he nor the Board inspected the property.
4. Thompson represented himself. Chris Coakes, valuation specialist for the Assessor’s office, represented the Assessor. Thompson and Sue Eavey, property records manager for the Auditor, testified.
5. Thompson submitted the following exhibits:

Petitioner Exhibit A:	Sales disclosure form, dated December 21, 2017,
Petitioner Exhibit B:	Photographs at time of move-in (December 2017),
Petitioner Exhibit C:	Photographs during the remodel process,
Petitioner Exhibit D:	Photographs after remodel,
Petitioner Exhibit E:	Electricity expenses for 2018 and 2019,
Petitioner Exhibit F:	Natural gas expenses for 2019,
Petitioner Exhibit G:	Property tax payments,
Petitioner Exhibit H:	2017, 2018, and 2019 federal tax returns

(Confidential).

6. The Assessor submitted the following exhibits:
- | | |
|-----------------------|---|
| Respondent Exhibit 1: | Property Maintenance Reports for the subject property and 111 Detchon Court, |
| Respondent Exhibit 2: | Sales disclosure form dated December 21, 2017, |
| Respondent Exhibit 3: | Emails from the City of Lafayette from December 2017 through October 2021 regarding the subject property, |
| Respondent Exhibit 4: | Emails from the City of Lafayette from December 2017 through October 2021 regarding 111 Detchon Court, Lafayette. |
7. The record also includes the following: (1) all petitions or other documents filed in these appeals, (2) all notices and orders issued by the Board or the ALJ, and (3) an audio recording of the hearing.

Objections

8. The Assessor objected to all of Thompson's exhibits on the grounds that Thompson failed to provide a witness and exhibit list at least 15 days before the hearing. The parties agreed that Thompson provided the list on December 17, 2021, which the Assessor argued was three days late. *Thompson testimony; Eavey testimony and argument.* The parties also agreed that Thompson provided his actual exhibits on the same date. And Thompson testified, without dispute, that he submitted Exhibits A-F at the PTABOA hearing. *Thompson testimony.*
9. To promote settlement and prevent unfair surprise, our procedural rules require parties to exchange witness and exhibit lists at least 15 business days before a hearing and copies of documentary evidence at least five business days before the hearing. 52 IAC 4-8-1(b). Failure to comply with those requirements may serve as grounds to exclude exhibits or testimony. 52 IAC 4-8-1(f). We may also waive the deadlines for materials that were previously tendered to the opposing party or that were made part of the record at the PTABOA hearing from which the appeal arises. 52 IAC 4-8-1(d).

10. We overrule the Assessor's objections. We waive the exchange deadline for identifying Exhibits A-F because Thompson offered them at the PTABOA hearing. As for Exhibits G and H, we find that Thompson's slight tardiness in identifying the exhibits did not unfairly surprise the Assessor. Indeed, Thompson provided copies of those exhibits before the deadline for doing so. And Exhibit G simply shows that Thompson paid taxes on the property, a fact not in dispute.

Parties' Contentions

A. Thompson's Contentions

11. Thompson contends that he is entitled to a homestead deduction for the subject property for 2017-2019. He bought the property on December 21, 2017. At closing, he elected to remove his homestead deduction from his previous residence, 111 Detchon Court, and request one for the subject property. He did not receive a homestead deduction for any other property during 2017-2019. *Thompson testimony; Pet'r Exs. A-B.*
12. Thompson and his family moved into the subject property in December 2017. Shortly after moving in, Thompson decided to remodel the home. As the remodeling became more extensive, it created a "dust zone" that made it impossible for his family to sleep. So they started sleeping at the Detchon Court property. *Thompson testimony; Pet'r Exs. B-C.*
13. During 2018 and 2019, Thompson was at the subject property "nearly every day" working on the remodel. He slept there "on numerous occasions." According to Thompson, the property is his primary residence, and not a second home. He always intended to return to the property when the remodeling was finished. The law does not identify length of absence from a property that would disqualify a person from receiving a homestead deduction. Nor does it specify an amount of water or electricity that must be used to qualify a property as a homestead. *Thompson testimony and argument; Pet'r Exs. D-H.*

B. The Assessor's Contentions

14. On August 22, 2020, a “concerned neighbor” notified the Auditor that the subject property had been vacant since the end of 2017.¹ The Auditor therefore contacted the water company to determine water usage at both the subject property and Thompson’s previous residence during the years in question. *Eavey testimony; Resp’t Exs. 3-4.*

15. Based on water usage, the Auditor concluded that Thompson and his family must have been living at the Detchon Court residence rather than the subject property. At the subject property, water usage never reached 1,000 gallons, which triggers a bill, until July 2018. And it stayed at either 0 or 1,000 gallons until January 2021. At Detchon Court, water usage stayed fairly constant. Sue Eavey, the Auditor’s property records manager, noted that an email from the water company indicated that the company was notified in 2018 that the subject property was being remodeled. The email also said that the company had been mailing bills to Thompson at a different property that he owned. *Eavey testimony; Resp’t Exs. 3-4.*

16. Eavey speculated that Thompson preferred having the homestead deduction on the subject property because it was assessed significantly higher than the Detchon Court property (\$317,500 versus \$134,800) and therefore would yield more tax savings. In any event, the Auditor removed the subject property’s homestead deduction for the years in question because the water usage indicated that Thompson and his family did not live there. *Eavey testimony and argument.*

Analysis

17. Indiana Code § 6-1.1-12-37 provides a standard homestead deduction from the assessed value of a homestead, which the statute defines as a dwelling that an individual or

¹ Eavey did not offer the neighbor’s email into evidence because she promised to keep the neighbor’s name confidential.

married couple owns and uses as their principal place of residence, and up to one acre of surrounding land. I.C. § 6-1.1-12-37(a)-(c). A person entitled to the standard deduction is also entitled to a supplemental homestead deduction under Ind. Code § 6-1.1-12-37.5. Taxpayers may apply for the standard homestead deduction in one of two ways.² First, they may file a certified statement with the county auditor on forms 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. A taxpayer must complete Form HC10 within the calendar year for which the deduction is sought and file that form on or before January 5 of the immediately succeeding year. *Id.*; I.C. § 6-1.1-12-37(e). Alternatively, a taxpayer may claim the deduction using the sales disclosure form that is completed when the property is purchased. *Id.*; I.C. § 6-1.1-12-44.

18. There is no dispute that Thompson applied for the homestead deduction using the disclosure form from his purchase. In fact, the Auditor initially approved the deduction for 2017 and it carried forward to 2018 and 2019. The Auditor removed the deduction for those three years upon learning that Thompson was remodeling the property rather than living in it full-time, which she concluded disqualified Thompson from receiving the deduction.

19. Indiana Code § 6-1.1-12-37 provides in relevant part, that:

(a) The following definitions apply throughout this section:

...

(2) “Homestead” means an individual’s *principal place of residence*:

(A) that is located in Indiana;

(B) that:

(i) the individual owns[]

...

and

(C) that consists of a dwelling and the real estate, not exceeding one

(1) acre, that immediately surrounds the dwelling

...

² Once the auditor grants the deduction, it carries forward and taxpayers need not reapply. *See* I.C. § 6-1.1-12-37(e); I.C. § 6-1-1-12-17.8.

(j) A county auditor may require an individual to provide evidence proving that the individual's residence is the individual's principal place of residence as claimed in the certified statement filed under subsection (e). The county auditor may limit the evidence that an individual is required to submit to a state income tax return, a valid driver's license, or a valid voter registration card showing that the residence for which the deduction is claimed is the individual's principal place of residence.

I.C. § 6-1.1-12-37 (emphasis added).

20. The statute does not define “principal place of residence.” But the DLGF promulgated an administrative rule defining it as “an individual’s true, fixed, permanent home to which the individual has the intention of returning after an absence.” 50 IAC 24-2-5. Based on that definition, the Tax Court has explained that the standard for determining an individual’s principal place of residence depends on his intention to return to the property after an absence, not on his continuous physical presence. *Kellam v. Fountain Cnty. Ass’r*, 999 N.E.2d 120, 124 (Ind. Tax Ct. 2013).
21. In *Kellam*, the taxpayer claimed a homestead deduction for a Fountain County property that he co-owned with Carol Myers and that he was renovating. *Id.* at 121. While working on the house, he stayed next door with Myers’s parents. *Id.* The taxpayer and Myers both signed the homestead deduction application, and both were receiving homestead deductions on other properties at that time. *Id.* Although the Fountain County Auditor initially granted a homestead deduction, she later removed it because utility records showed that nobody lived at the property. *Id.* The auditor also told the taxpayer that if he removed his deduction on his other property, she would reinstate the deduction on the Fountain County property. *Id.* When the taxpayer did so, the Auditor refused to reinstate the deduction on grounds that Myers still had a homestead deduction on another property. *Id.*
22. The Board denied the taxpayer’s appeal on grounds that both he and Myers owned other properties for which they received homestead deductions. *Id.* at 122-23. The Tax court, however, found that the taxpayer had successfully removed the homestead deduction on

his other property and that he was therefore entitled to a deduction on the Fountain County property. *Id.* at 124.


23. But it appeared to the Tax Court that the Board had also concluded that the Fountain County property was not the taxpayer's principal place of residence because he did not physically reside there. *Id.* at 124. The court disagreed, explaining that the legal standard for determining a taxpayer's principal place of residence depends on "the 'intention' to return to the property after an absence, not continuous physical presence at the property." *Id.* (citing 50 IAC 24-2-5). In that regard, the court pointed to the taxpayer's testimony that he did not physically reside at the property because he was renovating it. The court also noted that the taxpayer had used the property as his mailing address, as the location of his voter registration, and as the address on his driver's license, tax returns, and bank statements. *Id.*
24. We find that the subject property was Thompson's principal place of residence from 2017 through 2019. Like the taxpayer in *Kellam*, Thompson bought the property intending to move his family into the home. Indeed, he went further than the taxpayer in *Kellam* by immediately removing the deduction on the property where he and his family had previously resided. Thompson, however, quickly embarked on protracted renovations that led the rest of his family to move back to their old residence, much like the taxpayer in *Kellam* moved in with his co-owner's parents while renovations were being completed. Thompson's testimony, supported by photographs, shows that the home was not habitable during the renovations. But that does not change the fact that the property was Thompson's "true, fixed, permanent home" to which he intended to return after an absence. Indeed, based on the pre- and post-renovation photographs, it appears that Thompson's family moved back to the property once he completed the renovations. That is corroborated by the Assessor's property maintenance report classifying the land and improvements as "homestead" for the 2021 assessment year. *See Pet'r Exs. A, D; Resp't Ex. 1.*

25. The Assessor did little to counter Thompson's evidence. She pointed to the limited water usage at the property during the contested period. But that is consistent with Thompson's evidence showing that the home was not habitable during his extensive renovations. Again, continuous physical presence at the property is not the touchstone for determining whether the subject property was Thompson's principal place of residence. While the Assessor did offer evidence that Thompson was receiving at least some mail (the water bill) at the Detchon Court address, Thompson offered copies of his federal tax returns for 2017-2019, albeit unsigned, listing the subject property as his address. And we give little weight to Eavey's speculation that Thompson was simply trying to take advantage of the subject property's comparatively higher assessed value, and hence greater deduction amount, while he renovated the home to flip it.

Final Determination

26. We find for Thompson and order that the Auditor reinstate the standard and supplemental homestead deductions on the subject property for 2017, 2018, and 2019.

We issue this Final Determination on the date first 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 of 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>>.