

REPRESENTATIVES FOR PETITIONER:  
Craig D. Doyle, DOYLE & FRIEDMEYER, P.C.  
Kurt V. Laker, DOYLE & FRIEDMEYER, P.C.

REPRESENTATIVE FOR RESPONDENT:  
Kostas A. Poulakidas, ASSISTANT CORPORATION COUNSEL (PTABOA)  
Joseph Bowman, ASSISTANT CORPORATION COUNSEL (Auditor)

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

JAMES W. LILLIS,	)	Petition No.:	49-800-00-9-1-00002
	)	Parcel:	8023015
Petitioner,	)		
	)		
v.	)		
	)	County:	Marion
MARION COUNTY PROPERTY	)	Township:	Washington
TAX ASSESSMENT BOARD OF	)	Assessment Year:	2000
APPEALS; MARION COUNTY	)		
AUDITOR,	)		
	)		
Respondents.	)		

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

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**January 20, 2006**

**FINAL DETERMINATION**

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

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **ISSUES**

1. The parties presented the following restated issue for consideration by the Board:  
*Whether the Petitioner timely filed applications for a homestead credit and/or mortgage deduction*

### **PROCEDURAL HISTORY**

2. Pursuant to Ind. Code § 6-1.1-15-12, Craig D. Doyle, DOYLE & FRIEDMEYER, P.C., filed a Form 133 Petition for Correction of an Error (“Form 133 Petition”), on behalf of James W. Lillis (the “Petitioner”). The Petitioner filed his Form 133 Petition on May 25, 2004. The Marion County Property Tax Assessment Board of Appeals (the “PTABOA”) issued its determination on June 25, 2004.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on May 25, 2005, in Indianapolis, Indiana before Brian McKinney, the duly designated Administrative Law Judge (the “ALJ”) authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Jerry Leugers, President, Title Services, LLC  
David Schmitz, General Counsel, Title Services, LLC  
Sally Percy, Title Services, LLC

For the Respondent:

Melissa Thompson, Marion County Auditor’s Office  
Anne Hall, Marion County Auditor’s Office

5. The following exhibits were presented for the Petitioner:

Petitioner's Exhibit A – Authorizations for Titles Services to file to file Mortgage Deduction and Homestead Credit applications;  
Petitioner's Exhibit B – Log of documents filed dated September 10, 1999;  
Petitioner's Exhibit C – Log of documents filed dated September 1999;  
Petitioner's Exhibit D – Log of documents filed dated October 1999;  
Petitioner's Exhibit E – Copies of Homestead Credit applications (not filed);  
Petitioner's Exhibit F – Copies of Mortgage Deduction applications (not filed);  
Petitioner's Exhibit G – Affidavit of Patricia Cantrell;  
Petitioner's Exhibit H – Copy of the Warranty Deeds;  
Petitioner's Exhibit I – Copy of the Surveyor Location Reports;  
Petitioner's Exhibit J – Copy of a check (#2582) from Title Services to the Marion County Auditor;  
Petitioner's Exhibit K – Copy of a check (#2583) from Title Services to the Marion County Auditor;  
Petitioner's Exhibit L – Copy of a check (#2612) from Title Services to the Marion County Auditor;  
Petitioner's Exhibit M – Deposit slip of Marion County Auditor dated October 1, 1999;  
Petitioner's Exhibit N – Deposit slip of Marion County Auditor dated October 18, 1999;  
Petitioner's Exhibit O – Letter from Ellen Record to Jerry Leugers dated September 24, 2001;  
Petitioner's Exhibit P – Letter from Jerry Leugers to Martha Womacks dated August 15, 2001; and  
Petitioner's Exhibit Q – Computer print-outs showing information for subject properties.

6. The following exhibits were presented for the Respondent:

Respondent's Exhibit 1 – Letter from Martha Womacks to Jerry Leugers, dated August 16, 2001.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – The Form 133 Petition; and  
Board Exhibit B – Notices of Hearing dated April 20, 2005.

8. The subject property is a single family residence.

9. The ALJ did not conduct an on-site inspection of the subject property.

10. The Petitioner is not appealing the actual assessed value of the subject property. The Petitioner instead contends that he timely filed applications for a mortgage deduction and homestead credit with the office of the Marion County Auditor (the “Auditor”), but that the Auditor either discarded or misplaced those applications resulting in the subject property not receiving a homestead credit or mortgage deduction for the year 2000. The Petitioner’s witnesses, all of whom were employed by Title Services, LP, testified that Title Services filed the mortgage deduction and homestead credit applications on the Petitioner’s behalf, and that Title Services reimbursed the Petitioner for the amount he would have received had the Auditor not lost or discarded those applications. Title Services made identical claims with regard to five other parcels, all owned by different individuals. At the request of the parties, the ALJ conducted a consolidated hearing on all of the petitions (a total of six different parcels, all owned by different individuals).<sup>1</sup> In each instance, Title Services reimbursed the homeowner for the credit and deduction that Title Services contends were erroneously denied to the homeowner.<sup>2</sup> The Board addresses each parcel in a separate Final Determination.

#### **JURISDICTION OF THE BOARD**

11. Although not raised by the parties, the Board must first decide whether it has jurisdiction to address the Petitioner’s claims. The Board is a creation of the legislature and therefore has only those powers conferred by statute. *Matonovich v. State Bd. of Tax Comm’rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999). Thus, “[a]ll doubts regarding a claim to power of a governmental agency are resolved against the agency.” *State ex rel. ANR Pipeline Co. v. Indiana Dep’t of State Revenue*, 672 N.E.2d 91, 94 (Ind. Tax Ct. 1996).
12. Indiana Code § 6-1.5-4-1(a) empowers the Board to review all appeals concerning: “(1) the assessed valuation of tangible property; (2) property tax deductions; or (3) property tax exemptions; that are made from a determination by an assessing official or a county

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<sup>1</sup> Three of the six parcels had Petitions filed for both the 2000 and 2001 tax years. The remaining three parcels only had Petitions filed for the 2000 tax year.

<sup>2</sup> The Form 133 Petition was filed on behalf of the Petitioner named in the caption to this Final Determination. Given that all of the Petitioner’s witnesses were employed by Title Services, the Board alternately refers to the Petitioner’s contentions as the contentions of Title Services throughout this Final Determination.

property tax assessment board of appeals to the Indiana Board under any law.” Ind. Code § 6-1.5-4-1(a).

13. The Petitioner’s claim regarding the denial of its application for a mortgage deduction fits within the express terms of the Ind. Code § 6-1.5-4-1(a). Subsection (2) of that statute expressly refers to appeals concerning “property tax deductions.” Moreover, Indiana Code § 6-1.1-15-12 provides that a taxpayer may appeal a claim, such as the mortgage deduction claim at issue in this case, that “[t]hrough an error of omission by any state or county officer the taxpayer was not given credit for an exemption *or deduction* permitted by law.” I.C. § 6-1.1-15-12(a)(8)(emphasis added). Such appeals proceed through the county PTABOA to the Board. *See* Ind. Code § 6-1.1-15-12(d) and (e).
14. The Petitioner’s claim regarding the denial of his application for a homestead credit, however, is another matter. Indiana Code § 6-1.5-4-1(a) does not list the denial of a property tax credit as a matter upon which the Board may entertain an appeal. In fact, the statute was amended in 2003 to omit subsection (a)(4), which had contained a reference to appeals concerning “credits.” *See* P.L. 256-2003, SEC 31.
15. Moreover, it does not appear that the Petitioner is properly appealing from the decision of an “assessing official” or the county PTABOA as required by Indiana Code § 6-1.5-4-1(a). Although the PTABOA actually addressed the Petitioner’s claim concerning the denial of a homestead credit in this case, the Board can find no statute giving the PTABOA the authority to address that claim. The Petitioner’s homestead credit claim, therefore differs from its mortgage deduction claim, which the PTABOA was specifically authorized to address under I.C. § 6-1.1-15-12(d).
16. Thus, the Petitioner’s appeal appears to be from a decision of the Auditor. A county auditor’s duties, however, do not include any role in assessing property. I.C. § 36-2-9; *c.f.*, I.C. §§ 36-2-15-5, 36-6-5-3(1). The Auditor therefore cannot be considered “an assessing official” within the meaning of the Board’s jurisdictional statute. This interpretation is consistent with Ind. Code § 6-1.1-1-1.5, which defines “assessing

official,” as “(1) a township assessor; or (2) a member of a county property tax assessment board of appeals.” I.C. § 6-1.1-1-1.5(a).

17. Consequently, the Board has authority to address the Petitioner’s claim regarding the Auditor’s failure to apply a mortgage deduction to the subject property, but lacks jurisdiction to address the Petitioner’s claim regarding his entitlement to a homestead credit. The Board therefore dismisses the latter claim for lack of jurisdiction.

#### **ADMINISTRATIVE REVIEW AND THE PETITIONER’S BURDEN**

18. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
19. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
20. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

#### **ANALYSIS**

*Whether the Petitioner timely filed an application for a mortgage deduction*

21. The Petitioner presented the following evidence and argument in support of his position:

- A. In August and September of 1999, Title Services conducted real estate sale closings for numerous properties, including the subject property. *Schmitz testimony; Pet'r Ex. A.* When closing the sale of a property located in Marion County, Title Services customarily offered to file applications for a mortgage deduction and homestead credit for qualifying homeowners. *Schmitz testimony.*
- B. When a homeowner owner agreed to allow Title Services to file those applications, Title Services had the homeowner sign both applications together with a separate document authorizing Title Services to file the applications. *Schmitz testimony; Pet'r Exs. A, E, & F.*
- C. At all times relevant to this appeal, Title Services conducted approximately 150 to 175 closings per month. When closings occurred, the "closers" put the applications in envelopes addressed to the appropriate homeowner and placed them in a stack. *Schmitz testimony.* Another employee then collected those applications and entered them into a "log" containing the file number, taxpayer name and parcel number for each application. *Schmitz testimony; Pet'r Exs. B-D.* The applications and log were then sent downtown to a Title Services employee named Sally Percy, whose responsibility it was to file the applications. *Schmitz testimony; Percy testimony.*
- D. Due to the high volume of closings conducted by Title Services, and to the fact that homestead credit and mortgage deduction applications were not overly time sensitive, Title Services filed such applications in groupings. *Id.* Title Services refers to a grouping of such applications as a "batch." *Id.* Title Services normally filed two batches with the Auditor each month - one toward the beginning of the month and another toward the end of the month. *Id.*
- E. The application forms for both the homestead credit and mortgage deduction include a receipt to indicate when the application has been filed. *Pet'r Exs. E & F.* The receipt is below a perforated line at the bottom of the application. *Id.* Title Services included a postage-paid envelope addressed to the homeowner with each application. *Percy testimony; Hall testimony.* It was the Auditor's practice upon processing an application filed by Title Services to stamp the receipt, place it in the envelope provided by Title Services, and mail the receipt to the homeowner on whose behalf Title Services had filed the application. *Id.* Percy did not wait for the Auditor to

- process any of the applications that she filed, nor did she pick-up the receipts. *Pearcy testimony.*
- F. In 1999, there was a \$1.00 fee for filing a mortgage deduction application. *Pearcy testimony; Hall testimony.* There was no fee for filing an application for a homestead credit. *Pearcy* had the authority to write checks on Title Services' account to pay the filing fee for mortgage deduction applications. *Pearcy testimony; Leugers testimony.* When filing a batch of applications, *Pearcy* would either count the number of applications listed on the log, or get the number of deduction applications being filed from each page of the log and write a check for the appropriate amount. *Pearcy testimony.* It was not part of *Pearcy's* normal duties to check whether there were actual applications in the batch matching the names and parcel numbers on the log. *Id*
- G. Title Services used this process for many years leading up to September 1999. *Pearcy testimony; Schmitz testimony.* Prior to September 1999, Title Services had never had a problem with the filing of applications. *Pearcy testimony; Schmitz testimony.*
- H. Beginning in September 1999, the Auditor mishandled three batches of applications. *Leugers testimony; Schmitz testimony.* The Auditor failed to process two batches of applications dropped off in September 1999 and one batch of applications dropped off in October of 1999. *Leugers testimony.* Included in those three batches were the applications at issue in the present group of appeals before the Board.
- I. Title Services first became aware of a problem in early 2000 when some homeowners began calling Title Services to indicate that they had not received a receipt from the Auditor. *Schmitz testimony.* Title Services began an internal investigation into the matter. As a result of that investigation, Title Services discovered that there had been a problem with at least one batch of applications. *Id.*
- J. The log serves as a starting point in any investigation when a homeowner claims he or she did not receive a homestead credit or mortgage deduction. *Id.* Title Services submitted as evidence the three logs for the batches it claims that the Auditor failed to process. *Pet'r Exs. B-D.*



- K. Included on the logs are Title Services' file number, the last name of each homeowner for which Title Services was filing an application, the parcel number of each property for which an application was being filed, and columns indicating whether the homeowner was applying for a homestead credit, a mortgage deduction, or both. *See Id.* The logs also contain lines calling for the following information: "County," "Month Ending," "Total Mtg" and "Total HS." *Id.* The first two logs in question contain the following information for "month ending": "9/10" (*Pet'r Ex. B*) and "September" (*Pet'r Ex. C*). The "month ending" information for the third log is cut-off on the photocopy submitted by the Petitioner. *Pet'r Ex. D.* That log contains the handwritten notation "10/99" at the top, although it is unclear regarding whether that notation was made at the time the log was completed or during Title Services' subsequent investigation.
- L. Ms. Pearcy testified that she delivered the three batches in question to the Auditor's office in September and October of 1999. *Pearcy testimony.*
- M. It was Pearcy's custom and practice to write a notation of "Ex." on the memorandum line for checks she wrote to pay the filing fee for mortgage deduction applications.<sup>3</sup> *Id.* The Petitioner also submitted as evidence copies three cancelled checks. *Pet'r Exs. J-L.* The first check is dated September 27, 1999, and is for \$87.00. *Pet'r Ex. J.* The second check is also dated September 27, 1999, and is for \$67.00. *Pet'r Ex. K.* The third check is dated October 15, 1999, and is for \$77.00. *Pet'r Ex. L.* Given the dates on those checks, Ms Pearcy believes that she wrote them for the batches in question. *Pearcy testimony.*
- N. When Jerry Leugers, Title Services' president, reviewed checks from the relevant time period, he determined that the checks presented as Petitioner's Exhibits J-L must have represented filing fees for the three batches in question. *Schmitz testimony; Pearcy testimony.*
- O. The Auditor cashed and deposited all three of the checks in question. *See Pet'r Exs. J-N.* When Title Services requested documents to show how the Auditor applied the funds from those checks, the Auditor provided Title Services with deposit slips for

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<sup>3</sup> At various points during the hearing, the parties referred to the homestead credit and mortgage deduction as exemptions.

- multiple checks that did not contain a dollar-for-dollar breakdown of the funds received by the Auditor. *Pearcy testimony; Leugers testimony.*
- P. Title Services claims that, on more than one occasions, employees of the Auditor's office said that the batches in question had been discarded. *Schmitz testimony; Leugers testimony; Pet'r Ex. G.*
22. The Respondent presented the following evidence and argument in support of its position:
- A. The Auditor's office is responsible for processing applications for homestead credits and mortgage deductions. If a homeowner does not file an application, the Auditor has no duty to apply the homestead credit or mortgage deduction to the homeowner's property. *Poulakidas argument.*
- B. Anne Hall, who was one of the employees responsible for handling mortgage deduction and homestead credit applications for the Auditor during the time period relevant to this appeal, testified that she would file stamp both the top and bottom portions of those applications when they were filed. *Hall testimony.* Thus, both the Auditor and the homeowner would have something in their records to show that an application had been filed. *Hall testimony.*
- C. The Auditor's office does not throw away either processed applications or unprocessed applications. *Hall testimony; Thompson testimony.* During the relevant period of September and October of 1999, the Auditor's office did not throw away receipts associated with any homestead credit or mortgage deduction application filed by Title Services. *Hall testimony.*
- D. At some point in 1999, Laura Nelson, an employee of the Auditor's office, discarded receipts from processed applications filed by a different title company. *Hall testimony.* Nelson did so only after the Auditor's office made numerous attempts to contact that company to pick-up the receipts. *Id.; Thompson testimony.* Nelson discarded the receipts after a period of months had passed. *Id.*
23. The sole issue before the Board is whether Title Services actually filed an application for a mortgage deduction on behalf of the Petitioner.

24. Title Services did not submit a file stamped copy either of the Petitioner's mortgage deduction application itself, or of a receipt indicating that the application had been filed.
25. Title Services instead relied upon circumstantial evidence purporting to show that the Petitioner completed an application, that the application was logged to a "batch" of applications to be filed with the Auditor, and that an employee of Title Services, delivered to the Auditor's office the "batch" to which the Petitioner's application was logged. Title Services further relied on the testimony of three of its employees that they were told that the Auditor had discarded batches of applications.
26. Title Services failed to prove that it filed the Petitioner's mortgage deduction application. The Board reaches this conclusion for a number of reasons.
27. First, the Board finds that the evidence is insufficient to establish that Title Services actually filed the "batch" to which the Petitioner's application is alleged to have belonged. While Ms. Percy testified that she actually delivered the batch in question to the Auditor's office, that testimony is contradicted by the fact that Title Services could produce neither a file stamped copy of the Petitioner's application nor a file stamped copy showing the Auditor's receipt.
28. Moreover, Ms. Percy was unclear regarding whether she remembered actually delivering the specific batches at issue. To the extent that Ms. Percy testified as to her actual memory, the Board finds Ms. Percy's testimony to lack credibility. Ms. Percy testified that she filed numerous documents with the Auditor's office every month. In addition to filing at least two batches of applications for mortgage deductions and homestead credits, Ms. Percy also filed deeds and sales disclosure statements. *Percy testimony*. Ms. Percy was at the City County Building almost every day. *Percy testimony*. In fact, the volume of documents filed at the Auditor's office by Title Services was so great that Title Services maintained a desk on the seventh floor of the City County Building. *Percy testimony; Schmitz testimony*. Ms. Percy did not testify

regarding any unusual circumstances that would have caused her to remember filing the batches in question. In fact, she could not remember the identity of the employee of the Auditor's office to which she delivered the batches. *Pearcy testimony*.

29. The more reasonable interpretation of Ms. Pearcy's testimony is that she believed she filed the batches based upon the log sheets and cancelled checks submitted by the Petitioner as Exhibits B-D and J-L and upon her customary practices in dealing with batches of applications.
  
30. The amounts set forth on the checks, however, do not match the number of mortgage deduction applications listed on the log sheets. The fee for filing an application for a mortgage deduction was \$1.00 at all times relevant to the appeals at issue. *Pearcy testimony; Schmitz testimony*. The log sheets for the two September batches reflect totals of 96 and 52 mortgage deduction applications, respectively. *Pet'r Exs. B-C*. The checks, by contrast, are for \$87.00 and \$67.00. *Pet'r Exs. J-K*. Similarly, the log sheet for the October batch reflects a total of 71 mortgage deduction applications, while the check is for \$77.00. *Pet'r Exs. D, L*. Thus, none of the amounts for the checks matches the number of mortgage deduction applications listed on the logs for any of the batches at issue. This is true even if one looks at the September batches collectively. In that case, there are 148 applications, while the total amount of the two checks is \$154.00.
  
31. Title Services' president, Jerry Leugers, sought to explain the discrepancy by positing that additional applications that were not reflected on the logs could have been included in the batches. Leugers, however, acknowledged that he did not actually know that to be the case, and no other witness testified that it was Title Services' practice to add applications to batches without listing those applications on a log. Anne Hall, an employee of the Auditor, testified that Title Services and other title companies occasionally submitted checks that did not exactly match the number of applications being filed. *Hall testimony*. Ms. Hall, however, also testified that the checks were never off by more than "a couple" of dollars. *Hall testimony*.

32. Leugers nonetheless testified that, based upon his investigation, the checks in question must have been for the three batches at issue. *Leugers testimony*. Leugers based his conclusion on comparing the amounts of the checks to all other transactions occurring at or near the timeframes at issue. He determined that the checks could not have been for sales disclosures, because the fee for filing sales disclosures was \$5.00. Consequently, any check for sales disclosure filings would have had to be in an amount divisible by \$5.00. *Leugers testimony*. Moreover, Leugers found no checks made payable to the office of the Marion County Recorder dated the same day as the checks at issue in this case. *Leugers testimony*. Presumably, the import of Mr. Leugers' testimony on that point is that, if Title Services filed sales disclosure statements for a group of properties, it also would have recorded the deeds for those properties on the same day. The absence of any checks for recording deeds, therefore, shows that the checks in question were not written in conjunction with the filing of sales disclosures. Moreover, Leugers noted that the checks in question contain the notation "Ex," which Ms. Percy explained was the notation she used when filing applications for mortgage deductions and homestead credits. *Leugers testimony; Percy testimony*.
33. While Leugers' testimony does tend to make it unlikely that Percy wrote the checks to pay for the filing of sales disclosures, it does not eliminate the possibility that the checks were written for batches of mortgage deduction applications other than those identified by Title Services in this case. Leugers did testify that Title Services did not have any record of other logs prior to September 27, 1999, other than the September 10, 1999, log at issue in this case. Of course, Leugers' testimony begs the question as to whether Title Services' records on that point are accurate. Title Services' own position presupposes a degree of inaccuracy in its record keeping, given that none of the checks matches the logs at issue.
34. Even if one were to assume that Title Services presented sufficient evidence to demonstrate that Title Services filed the batches in question, the evidence does not demonstrate that the Petitioner's application was contained within any of those batches. At most, Schmitz testified that some unnamed employees were responsible for collecting

the mortgage applications and entering them into a log, and that such log, together with all of the applications referenced therein were forwarded to Ms. Percy for filing. No witness testified to having personal knowledge that the Petitioner's mortgage deduction application actually was contained in the September 10, 1999, batch to which it was logged.

35. Thus, at most, Title Services presented evidence as to its normal office procedures to support the inference that the Petitioner's mortgage deduction application was in one of the batches allegedly filed by Ms. Percy. The question arises, however, as to whether proof of normal office procedures regarding filing of documents is sufficient to demonstrate that a given document has been filed. At least two Indiana courts addressing the analogous question of whether such proof is sufficient to establish that a document has been mailed have answered that question in the negative. *See, e.g., F & F Construction Co. v. Royal Globe Ins. Co.*, 423 N.E.2d 654, 656 (Ind. Ct. App. 1981); *Indiana Sugars v. State Bd. of Tax Comm'rs*, 683 N.E.2d 1383, 1386 (Ind. Tax Ct. 1987)(following *F & F Construction Co.*, but finding that taxpayer's controller had testified that he personally mailed the applications at issue). Thus, "[n]ormal office procedure in preparing and dispatching outgoing mail is not sufficient to prove mailing, instead, proof consisting of testimony from one with direct and actual knowledge of the particular message in question is required to establish proof of mailing." *F & F Construction*, 423 N.E.2d at 656.
36. Moreover, if one believes Title Services' allegations that the checks it submitted as evidence correspond to the batches in question, Title Services either failed to follow its own office procedures by including unlogged applications in batches, or the accuracy of Title Services' logging system was woefully inadequate. In either case, the reliability of Title Services' office procedures is open to serious question. Consequently, the fact that the Petitioner's mortgage deduction application was reflected in a particular log does little to establish that the application actually was included in any of the batches allegedly filed by Ms. Percy on September 27, 2005.

37. Finally, Title Services contends that the Auditor discarded the mortgage deduction and homestead credit applications at issue. Schmitz testified that on March 19, 2000, he had a telephone conversation with someone named “Melissa,” who identified herself as an employee of the Auditor’s office. Schmitz further testified that Melissa showed knowledge of the problem at issue and acknowledged that batches of exemption forms had been thrown away. *Schmitz testimony*. Title Services also submitted the affidavit of Patricia Cantrell, who affirmed that, during a visit to the Auditor’s office, Laura Nelson informed her that mortgage deduction and homestead exemption forms had been thrown away. *Pet’r Ex. G*. According to Cantrell, Nelson indicated that the Auditor would not store the documents, and that the documents had been placed in the trash after several calls to Title Services were not returned. *Id*. Cantrell further affirmed that Anne Hall, another employee of the Auditor’s office, witnessed the conversation. *Id*.
38. Anne Hall, however, testified that the Auditor did not discard unprocessed applications. *Hall testimony*. Hall acknowledged that Laura Nelson had thrown away receipts for applications filed by another title company, but only after that company failed to pick up receipts after numerous attempts were made to contact the company. *Id*. Hall further testified that she was present for the conversation between Laura Nelson and Pat Cantrell, and that Nelson did not say anything about discarding applications, although she did say that the receipts for another title company had been discarded. *Id*.
39. The Board credits the testimony of Hall, who had personal knowledge of the events in question, and who was present at the hearing and subject to cross examination, over the hearsay assertions contained Cantrell’s affidavit and Schmitz’s testimony. Thus, the Board finds that, although the Auditor may have discarded the receipts for applications filed by another title company, it did not discard any mortgage deduction or homestead credit applications filed by Title Services.
40. Based on the foregoing, the Petitioner failed to prove by a preponderance of the evidence that a mortgage deduction application for the year 2000 was timely filed on his behalf.

## SUMMARY OF FINAL DETERMINATION

### Whether the Petitioner timely filed applications for a homestead credit or mortgage deduction

41. The Board lacks jurisdiction to address the Petitioner's claims regarding the denial of a homestead credit. The Petitioner failed to prove by a preponderance of the evidence that an application for a mortgage deduction was timely filed on his behalf. The Board finds in favor of the Respondent.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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Commissioner, Indiana Board of Tax Review



## **IMPORTANT NOTICE**

### **- APPEAL RIGHTS -**

**You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.** You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at [http://www.in.gov/judiciary/rules/trial\\_proc/index.html](http://www.in.gov/judiciary/rules/trial_proc/index.html). The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.