

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

**Petition #:** 84-009-04-1-5-00007  
**Petitioners:** Dr. Wei He & Yueyi Lin  
**Respondent:** Lost Creek Township Assessor (Vigo County)  
**Parcel #:** 120-07-30-207-013  
**Assessment Year:** 2004

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. The Petitioners initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (the PTABOA) via a Form 133 Petition for Correction of an Error (Form 133 petition) dated April 27, 2005.
2. The PTABOA issued its Form 115 Notification of Final Assessment Determination (Form 115) on October 5, 2005, denying the Petitioners claims. That same day, the PTABOA issued an amended Form 115, also denying the Petitioners' claims.
3. The Petitioners timely filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment (Form 131 petition) with the Vigo County Assessor on October 26, 2005.<sup>1</sup> The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated October 6, 2006.
5. The Board held an administrative hearing on November 14, 2006, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. Persons present and sworn in at hearing:
  - a. For Petitioners: Dr. Wei He, Petitioner

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<sup>1</sup> Form 131 petitions are designed to address the assessed valuation of property. The Petitioners, however, do not contest the valuation of the subject property, but rather claim that they were improperly denied a homestead credit and mortgage deduction. Thus, the Form 133 petition initially filed by the Petitioners, not a Form 131 petition, appears to be the proper vehicle for redress of the Petitioners' claims. The PTABOA may have engendered the Petitioners' confusion by issuing Form 115s rather than completing the section of the Form 133 petition reserved for the PTABOA to set forth its decision. When viewed together, the documents submitted by the Petitioners show that the PTABOA denied their Form 133 petition, and the issues raised therein are properly before the Board.

Yueyi Lin, Petitioner

b. For Respondent: Judith Robinson, Lost Creek Township Assessor.

### Facts

7. The subject property is a single-family residence located at 503 S. Dobbsdell Street, Terre Haute, Indiana.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the subject property to be \$25,500 for the land and \$171,000 for the improvements, for a total assessed value of \$196,500.
10. The Petitioners are not appealing the actual assessed value of the subject property. The Petitioners instead contend that they failed to timely file applications for a mortgage deduction and homestead credit with the office of the Vigo County Assessor, because Vigo County assessing officials failed to notify them of the deadlines and procedures to claim exemptions and credits. The Petitioners seek a refund of \$2,011.99 - the amount by which the Petitioners claim that their 2004 property tax obligation would have been reduced had their applications been granted.

### Jurisdiction of the Board

11. Although not raised by the parties, the Board must first decide whether it has jurisdiction to address the Petitioners' 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 property tax assessment board of appeals to the Indiana Board under any law." Ind. Code § 6-1.5-4-1(a).
13. The Petitioners' claim regarding the denial of a mortgage deduction fits within the express terms of Ind. Code § 6-1.5-4-1(a). Subsection (2) of that statute expressly refers to appeals concerning "property tax deductions." Moreover, Indiana Statute Code § 6-1.1-15-12 provides that a taxpayer may appeal the denial of its claim 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. § 6-1.1-15-2(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 Petitioners' claim that they were improperly denied a homestead credit is another question. 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 Petitioners are 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 Petitioners' claim regarding the denial of a homestead credit in this case, the Board does not find any statute giving the PTABOA the authority to address that claim. The Petitioners' homestead credit claim therefore differs from its mortgage deduction claim, which the PTABOA was specifically authorized to address pursuant to Ind. Code § 6-1.1-15-12(d).
16. Thus, the Petitioners' appeal appears to be from a decision of the Vigo County Auditor. A county auditor's duties, however, do not include a role in determining the assessed value of property. *See* Ind. Code § 36-2-9(describing duties of auditor); *c.f.*, Ind. Code §§ 36-2-15-5, 36-6-5-3(1)(describing duties of township and county assessors). 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." Ind. Code § 6-1.1-1-1.5(a).
17. Consequently, the Board has authority to address the Petitioners' claim regarding the auditor's failure to apply a mortgage deduction to the subject property but lacks jurisdiction to address the Petitioners' claim regarding their entitlement to a homestead credit. The Board therefore dismisses the latter claim for lack of jurisdiction. Even if the Board were to address the Petitioners' claim concerning the denial of a homestead credit, it would deny the Petitioners' claim on the merits for the same reasons it denies the Petitioners' claim regarding their entitlement to a mortgage deduction. *See infra*.

### **Issues**

18. Summary of Petitioners' contentions:
  - a. The Petitioners contend they were denied a mortgage deduction for the subject property because they failed to file an application for the deduction within the statutorily required timeframe. *Wei He argument*.
  - b. According to the Petitioners, their failure to file a claim for a mortgage deduction in a timely manner was caused by the negligence of Vigo County and Lost Creek Township officials, who did not inform the Petitioners of the deadline and procedures for claiming a mortgage deduction. *Wei He testimony*. The Petitioners contend that those officials had a duty to help taxpayers. *Wei He argument*.

- c. In support of their position, the Petitioners submitted a statement of contentions, a corporate warranty deed showing that they purchased the subject property on July 29, 2003, a copy of a form entitled “Indiana Property Tax Benefits” that the Petitioners received on April 27, 2006, and e-mail correspondence with the Realtor who was involved in the transaction pursuant to which the Petitioners bought the subject property. *Wei He testimony; Pet’rs Exs. 2, 8-10.*

19. Summary of Lost Creek Township Assessor’s contentions:

- a. The Lost Creek Township Assessor contends that the subject property is appropriately and fairly assessed, a fact with which the Petitioners agreed at the hearing. *Robinson testimony.*
- b. The Lost Creek Township Assessor contends that it fulfilled its duties to the Petitioners and that it had no responsibility concerning the Petitioners’ application for a mortgage deduction or homestead credit. *Robinson testimony.*

**Record**

20. The official record for this matter is made up of the following:

- a. The Petition,
- b. The compact disk recording of the hearing labeled 84-009-04-1-5-00007-WeiHe-11-14-2006,
- c. Exhibits:

- Petitioners Exhibit 1 – Copy of Form 131,
- Petitioners Exhibit 2 – Letter detailing a summary of contentions,
- Petitioner Exhibit 3 – Copies of tax bills for 2004-pay-2005,
- Petitioners Exhibit 4 – Form 115 Notice of Final Assessment,
- Petitioners Exhibit 5 – Form 115 Notice of Final Assessment amended
- Petitioners Exhibit 6 – Property record card for subject property
- Petitioners Exhibit 7 – Copy of letter used in Form 130 hearing with PTABOA,
- Petitioners Exhibit 8 – Corporate Warranty Deed dated July 29, 2003,
- Petitioners Exhibit 9 – Indiana Property Tax benefits sheet,
- Petitioners Exhibit 10 – Copy of e-mails between Wei He and realtor

- Board Exhibit A – Form 131 petition,
- Board Exhibit B – Notice of Hearing,
- Board Exhibit C – Sign in sheet,

- d. These Findings and Conclusions.

## **Analysis**

21. The Petitioners failed to establish their entitlement to a mortgage deduction. The Board reaches this conclusion for the following reasons:
- a. The Petitioners contend that they did not timely file their application for a mortgage deduction due to the negligence of county and township officials who failed to notify the Petitioners of the procedures and the deadline for filing such claims.
  - b. The Petitioners, however, do not point to any authority establishing a duty on the part of local officials to notify taxpayers of deductions for which they might be eligible or of the procedures for claiming such deductions. Although the Indiana General Assembly enacted a statute requiring closing agents in real estate transactions occurring after December 31, 2004, to provide to purchaser information concerning certain enumerated deductions and the homestead credit, it did not create a similar duty on the part of local assessing officials. *See* Ind. Code § 6-1.1-12-43. It is clear from the legislature's actions in that regard that it did not intend to create a duty on the part of local officials to notify taxpayers of the availability of deductions and credits. Instead, taxpayers are responsible for acquainting themselves with the applicable statutes governing eligibility for deductions and credits as well as with the procedures for obtaining those deductions and credits.
  - c. Pursuant to Indiana Code § 6-1.1-12-2 as it existed at the times relevant to this appeal, a person seeking a deduction for mortgaged property provided by Indiana Code § 6-1.1-12-1 was required to file a statement with the county auditor by May 11 of the year for which the person desired to claim the deduction. Ind. Code § 6-1.1-12-2 (2002). The Petitioners do not contend that they filed the required statement on or before May 11, 2004. The Petitioners therefore failed to establish their entitlement to a mortgage deduction for the March 1, 2004, assessment date.

## **Conclusion**

22. The Board lacks jurisdiction to address Petitioners' claim regarding denial of homestead credit. The Board therefore dismisses the Petitioners' claim with regard to their entitlement to a homestead credit. The Petitioners also failed to establish their entitlement to a mortgage deduction for the March 1, 2004, assessment date. The Board finds in favor of the Respondent.

## **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: \_\_\_\_\_

\_\_\_\_\_  
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>.