

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

**Petition No.:** 29-020-17-1-5-00664-18  
**Petitioner:** Brian Alverson Jr.  
**Respondent:** Hamilton County Assessor  
**Parcel No.:** 29-11-28-008-006.000-020  
**Assessment Year:** 2017

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

**Procedural History**

1. The Petitioner initiated his appeal with the Hamilton County Auditor on April 16, 2018. On May 29, 2018, the Hamilton County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner relief. On June 5, 2018, the Petitioner appealed to the Board.
2. On September 11, 2018, the Board's administrative law judge (ALJ) Dalene McMillen held a hearing. Neither the Board nor the ALJ inspected the property.
3. Brian Alverson Jr., appeared *pro se* and was sworn as a witness. Attorney Marilyn Meighen appeared for the Respondent. Hamilton County Auditor's office employee Sadie Eldridge was sworn as a witness for the Respondent.<sup>1</sup>

**Hearing Facts and Other Matters of Record**

4. The property under appeal is a single-family home located at 11437 Aleene Way in Fishers.
5. The official record for this matter is made up of the following:
  - a. A digital recording of the hearing,
  - b. Exhibits:<sup>2</sup>

Respondent Exhibit A: Sales disclosure form dated May 12, 2016,  
Respondent Exhibit B: Indiana Code § 6-1.1-12-37(a) & (j),

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<sup>1</sup> Robin Eckart, Lisa Johnson, Jennifer Dougherty, and Lisa Scherer were present but not sworn to testify.

<sup>2</sup> The Petitioner did not present any exhibits for the record.

Respondent Exhibit C: “Property Tax Deductions - Notification” addressed to Brian and Sandra Alverson dated August 3, 2016,  
Respondent Exhibit D: Certified mail receipt dated August 6, 2016,  
Respondent Exhibit E: Joint Report by Taxpayer / Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134) dated April 16, 2018.

- c. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) these findings and conclusions.<sup>3</sup>

### Summary of the Parties’ Contentions

6. Summary of the Petitioner’s case:

- a. The Petitioner purchased the subject property with his wife on May 12, 2016. Upon purchasing the home, the Petitioner filed for his homestead deduction via the sales disclosure form. The form was completely filled out and filed at the same time his mortgage was processed.<sup>4</sup> The subject property is the Alverson’s principal place of residence. *Alverson testimony.*
- b. The Petitioner testified that prior to purchasing the subject property, he owned a property at 12833 Ramsgate Court in Fishers. The Petitioner was receiving the homestead deduction on this property, but properly vacated the homestead in order to receive the deduction on the subject property. *Alverson testimony (referencing Resp’t Ex. A).*
- c. Mr. Alverson has served in the United States Army for twenty-seven years. In 2016, he was actively serving and stationed at the Pentagon. As a result, the majority of his time was spent in Washington D.C. While Mr. Alverson was away, his wife cared for their disabled daughter on a full-time basis. During 2016 and 2017, Mrs. Alverson and her daughter spent “a majority of their time” at the University of Cincinnati Hospital in Ohio. *Alverson testimony.*
- d. Mr. Alverson argues that because he is active military, neither he nor his wife are required to change their driver’s licenses from the State of Illinois. He acknowledged that Illinois was their previous legal residence before moving to Indiana. *Alverson argument.*

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<sup>3</sup> Also included, as an attachment to the Petition for Review of Assessment (Form 131), are several medical records pertaining to the Petitioner. The Board has marked the medical records confidential at the request of the parties.

<sup>4</sup> The Petitioner used the term “homestead act” throughout his presentation. The Board infers he is referring to the standard deduction for homesteads provided for under Ind. Code § 6-1.1-12-37, and will use the term “homestead deduction” hereinafter.

7. Summary of the Respondent's case:

- a. The Petitioner's homestead deduction was denied because "the Petitioner did not meet the residency requirement." At the time of purchase, the Alversons filed for the homestead deduction via the sales disclosure form and included information from their Illinois driver's licenses. As a result, the Auditor "was unclear" if the subject property was their principal place of residence. *Eldridge testimony; Resp't Ex. A, B.*
- b. The Auditor's office sent a "Property Tax Deduction – Notification" by certified mail to the Alversons on August 3, 2016, requesting copies of their Indiana driver's license numbers by December 31, 2017. The Auditor's office did not receive a reply to their letter, and the homestead deduction was removed for the 2017 assessment year. *Eldridge testimony; Resp't Ex. C, D.*
- c. On April 16, 2018, the Alversons re-filed for the homestead deduction with the proper paperwork proving they are Indiana residents. The homestead deduction has been applied for the 2018 assessment year. *Eldridge testimony; Resp't Ex. E.*

**Analysis<sup>5</sup>**

8. Indiana Code § 6-1.1-12-37 provides a standard deduction from the assessed value for homesteads, which the statute defines as a dwelling that an individual owns and uses as his place of residence and up to one acre of surrounding land. I.C. § 6-1.1-12-37(a)-(c). At all times relevant to this appeal, the taxpayer had to apply for the deduction in one of two ways.<sup>6</sup> First, he could 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 prescribed the Claim for Homestead Property Tax Standard/Supplemental Deduction Form (Form HC10) for that purpose. 50 IAC 24-4-2. A taxpayer had to complete Form HC10 within the calendar year for which the deduction was 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 could use the sales disclosure form at the time of purchase to claim the deduction. *See Id.*; I.C. § 6-1.1-12-44.
9. Here, the Petitioner properly applied for the homestead deduction via the sales disclosure form. In doing so, the Alversons also vacated a previous homestead deduction they were receiving in Hamilton County. The Respondent only challenges whether the Alversons utilized the subject property as their principle place of residence.

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<sup>5</sup> Because the Petitioner's only challenge was with the homestead deduction, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the burden rests with the Petitioner.

<sup>6</sup> Once the auditor grants the deduction, it carries forward and taxpayers need not reapply. *See* I.C. § 6-1.1-27-37(e); I.C. § 6-1.1-12-17.8.

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

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

(A) that is located in Indiana;

(B) that:

(i) the individual owns;

(ii) the individual is buying under a contract, recorded in the county recorder's office, that provides that the individual is to pay the property taxes on the residence, and that obligates the owner to convey title to the individual upon completion of all of the individual's contract obligations;

...

and

(C) that consists of a dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds that dwelling.

...

(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.

Ind. Code § 6-1.1-12-37 (emphasis added).

11. Although Ind. Code § 6-1.1-12-37 does not define “principal place of residence,” the DLGF defines that term 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.
12. Furthermore, in *Kellam v. Fountain Co. Ass’r*, 999 N.E.2d 120, 124 (Ind. Tax Ct. 2013), the Indiana Tax Court stated that the legal standard for determining an individual’s principle place of residence depends on the intention to return to the property after an absence, not continuous physical presence. As further evidence that the subject property was the petitioner’s principal place of address in that case, the court noted the petitioner’s use of the subject property’s address as his mailing address, and as the address on his driver’s license, bank statements, and tax returns. *Id.*
13. The Board therefore must decide how the DLGF’s definition of a taxpayer’s principal place of residence applies to the facts presented in this appeal. The Petitioner presented un rebutted testimony that during the year at issue his family maintained the subject

property as their residence. Their absence from the state was due to Mr. Alverson's active duty in the military and the family experiencing extraordinary out-of-state medical treatment. After these absences, the Alversons returned to the subject property.

14. The Board therefore finds the subject property was the Petitioner's principal place of residence. In reaching this conclusion, the Board recognizes the Alversons applied for the homestead deduction with Illinois driver's license information. Indeed, the Respondent pointed to Ind. Code § 6-1.1-12-37(j), allowing an auditor to limit the evidence that a taxpayer is required to produce to a state income tax return, a valid driver's license, or a valid voter registration card. But the statute does not declare that a homeowner with an out-of-state driver's license is ineligible per se. It is one important factor to consider.
15. Here, the Petitioner persuasively testified he believed that as long as he was active military, neither he nor his wife were required to change their driver's licenses from Illinois. Additionally, the undisputed evidence indicates that prior to applying for a homestead deduction on the subject property, the Petitioner was receiving a homestead deduction on their prior residence in Hamilton County. This fact is extremely persuasive here and bolsters the Petitioner's claim because it shows they have long held themselves out as Indiana residents and conscientiously ensured only one homestead was claimed.
16. Based on the record, the Board finds the Petitioner's testimony to be credible and he established that the subject property was his family's principal place of residence for the year at issue. Therefore, the Board finds the Respondent improperly removed the homestead deduction for 2017.

### **Conclusion**

17. The Board finds for the Petitioner.

## Final Determination

In accordance with these findings and conclusions, the Petitioner is entitled to a homestead deduction for the 2017 assessment year.

ISSUED: January 23, 2019

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>>