

REPRESENTATIVES FOR PETITIONER:

Jon A. Schmaltz, Attorney  
Christian Bartholomew, Attorney

REPRESENTATIVE FOR RESPONDENT:

Adam J. Mindel, Attorney

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Anne M. Walsh Trust,	)	Petition No.:	64-023-12-3-5-01894-17
	)		
	)		
Petitioner,	)	Parcel:	64-07-06-452-001.000-023
	)		
v.	)		
	)		
Porter County Assessor,	)	County:	Porter
	)		
	)		
Respondent.	)	Assessment Years:	2012, 2013, & 2014

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

**July 16, 2018**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (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

### ISSUE

1. Did the Petitioner prove it was entitled to a homestead deduction for the 2012, 2013, and 2014 assessment years?<sup>1</sup>

### PROCEDURAL HISTORY

2. The Anne M. Walsh Trust, by its trustee, Anne M. Walsh, initiated an appeal with the Porter County Auditor on January 19, 2016. On September 12, 2017, the Porter County PTABOA issued its determination denying the Petitioner relief. On October 29, 2017, the Petitioner appealed to the the Board.
3. On January 17, 2018, the Board's designated administrative law judge, Ellen Yuhan (ALJ), held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property.

### HEARING FACTS AND OTHER MATTERS OF RECORD

4. Trustee Anne M. Walsh and Timothy R. Walsh were sworn as witnesses for the Petitioner. Porter County Auditor Vicki Urbanik and Deputy Auditor Jennifer Nolan were sworn as witnesses for the Respondent.
5. The Petitioner offered the following exhibits:

Petitioner Exhibit 1:	Affidavit of Anne M. Walsh and Timothy Walsh, dated May 22, 2017,
Petitioner Exhibit 2:	Copy of Anne M. Walsh's receipt of voter registration,
Petitioner Exhibit 3:	Copy of Anne M. Walsh's driver's license,
Petitioner Exhibit 4:	December 21, 2015, letter from the Porter County Auditor to Anne M. Walsh,
Petitioner Exhibit 5:	Deed for the subject property,

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<sup>1</sup> The Petitioner only filed a Petition for Correction of an Error (Form 133) for the 2012 assessment year. The Form 133, stated the Petitioner was appealing "2012-2015." According to the Porter County Property Tax Assessment Board of Appeals (PTABOA) final determination, the "homestead exemption [deduction] request denied for years 2012 through 2015." The evidence and arguments presented by both sides only addressed assessment years 2012, 2013, and 2014. Accordingly, the Board will consider assessment years 2012, 2013, and 2014.

Petitioner Exhibit 6: Deed for the property at 5200 S. Ellis Avenue, Unit 104, located in Chicago, Illinois,  
 Petitioner Exhibit 7: Correspondence from the Cook County Assessor's Office to the Porter County Auditor dated May 18, 2017, with attachments,  
 Petitioner Exhibit 8: Cook County Assessor's Homeowner Exemption Waiver form signed by Anne Walsh on December 18, 2015,  
 Petitioner Exhibit 9: Subject property information including GIS maps, property cards, and tax statements,  
 Petitioner Exhibit 10: Cook County property information for 5200 S. Ellis Avenue, Unit 104, including GIS maps, property cards, and tax statements,  
 Petitioner Exhibit 11: Form 133 and attachments,  
 Petitioner Exhibit 12: Second Amendment and Restatement of the Anne Maxwell Walsh Trust Agreement, dated April 5, 2017,

2012 Residency

Petitioner Exhibit 13: 2011 County Tax Schedule for Full-Year Indiana Residents (Form IT-40),  
 Petitioner Exhibit 14: Standard Bank and Trust statement for December 10, 2011, to January 10, 2012,  
 Petitioner Exhibit 15: Water bill dated June 29, 2012,  
 Petitioner Exhibit 16: NIPSCO bill dated June 11, 2012,  
 Petitioner Exhibit 17: Sewer bill dated July 18, 2012,  
 Petitioner Exhibit 18: Hoosier Window Washer bill dated September 27, 2012,  
 Petitioner Exhibit 19: Monroe Pest Control bill dated September 12, 2012,  
 Petitioner Exhibit 20: Marc T. Nielsen Interiors bill dated January 24, 2012,  
 Petitioner Exhibit 21: Dave Hodge Tree Service bill dated September 28, 2012,  
 Petitioner Exhibit 22: Danko Irrigation Service, Inc., bill dated August 30, 2012,  
 Petitioner Exhibit 23: Ellis Electric, Inc., bill dated July 31, 2012,

2013 Residency

Petitioner Exhibit 24: 2012 IT-40,  
 Petitioner Exhibit 25: Standard Bank and Trust Bank statement for May 11, 2013, to June 10, 2013,  
 Petitioner Exhibit 26: Water bill dated December 19, 2013,  
 Petitioner Exhibit 27: NIPSCO bill dated October 2, 2013,  
 Petitioner Exhibit 28: Sewer bill dated November 16, 2013,

Petitioner Exhibit 29: LaPorte Seamless Gutter bill dated August 6, 2013,  
Petitioner Exhibit 30: Marc T. Nielsen Interiors bill dated June 26, 2013,  
Petitioner Exhibit 31: Sta-Kleen bill dated September 9, 2013,  
Petitioner Exhibit 32: Ellis Electric, Inc., bill dated December 17, 2013,  
Petitioner Exhibit 33: Chicago Tribune bill dated November 23, 2013,  
Petitioner Exhibit 34: Alert Alarm, Inc., bill dated October 1, 2013,  
Petitioner Exhibit 35: Monroe Pest Control bill dated September 24, 2013,  
Petitioner Exhibit 36: Land Designers bill dated November 1, 2013,

#### 2014 Residency

Petitioner Exhibit 37: 2013 IT-40,  
Petitioner Exhibit 38: Standard Bank and Trust Bank statement for  
January 11, 2014, to February 10, 2014,  
Petitioner Exhibit 39: Water bill dated April 21, 2014,  
Petitioner Exhibit 40: NIPSCO bill dated January 7, 2014,  
Petitioner Exhibit 41: Sewer bill dated January 17, 2014,  
Petitioner Exhibit 42: Marc T. Nielsen Interiors bill dated February 5,  
2014,  
Petitioner Exhibit 43: McAfee Animal Hospital bill dated January 31,  
2014,  
Petitioner Exhibit 44: Alert Alarm, Inc., bill dated April 1, 2014,  
Petitioner Exhibit 45: Land Designers bill dated April 14, 2014,  
Petitioner Exhibit 46: Danko Irrigation Service, Inc., bill dated May 29,  
2014,  
Petitioner Exhibit 47: Gray Art & Design bill dated June 27, 2014.

6. The Respondent offered the following exhibits:

Respondent Exhibit 1: Subject property profile report for “payable” 2011,  
2012, 2013, 2014, and 2015,  
Respondent Exhibit 2: Correspondence from Cook County Assessor to the  
Porter County Auditor dated May 18, 2017,  
regarding the Illinois general homestead exemption  
with attachments,  
Respondent Exhibit 3: Text of 35ILCS 200/15-175 and 35 ILCS 200/9-  
275,  
Respondent Exhibit 4: Department of Local Government Finance (DLGF)  
Frequently Asked Questions regarding Homestead  
Standard Deduction and Other Deductions, revised  
March 27, 2014.

7. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeal; (2) all orders, notices, and memorandum issued by the Board or our administrative law judge; and (3) the digital recording of the hearing.

8. The property under appeal is a single-family residence located at 1551 Hogan Avenue in Chesterton.

### **OBJECTIONS**

9. The Respondent objected to several questions posed to his witnesses. Each time the ALJ overruled the objection and allowed the witness to answer to question. The Board formally adopts all of the ALJ's rulings and the testimony is to remain part of the record.

### **JURISDICTIONAL FRAMEWORK**

10. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

### **SUMMARY OF PETITIONER'S CASE**

11. The relevant facts are largely undisputed. Mr. and Mrs. Walsh took possession of the subject property in 2008. Upon taking possession, they placed the title in the name of Anne M. Walsh Trust (Petitioner). The subject property has been their principal place of residence since they purchased it in 2008. Mrs. Walsh's driver's license and voter's registration lists the subject property as her primary address. Additionally, all tax bills and banking statements are mailed to the subject property. *Schmaltz argument; T. Walsh testimony; A. Walsh testimony; Pet'r Ex. 2, 3, 13-47.*
12. In 2006, the Petitioner took title to a property located at 5200 South Ellis Avenue, Unit 104, in Chicago, Illinois. This property was previously owned by Mrs. Walsh's son and daughter-in-law, who had claimed the Illinois homestead exemption "by way of a Certificate of Error after purchasing the property in 2004."<sup>2</sup> This homestead exemption

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<sup>2</sup> In Indiana it is a homestead deduction, while in Illinois it is referred to as a homestead exemption.

carried over when the Petitioner took title to the property “in a no-consideration conveyance.” However, at no point did either Mr. Walsh or Mrs. Walsh ever reside at the Illinois property. From 2006 to present, the Illinois property has always been occupied by family members or tenants. *Schmaltz argument; T. Walsh testimony; A. Walsh testimony; Pet’r Ex. 1, 6, 10.*

13. Cook County did not notify the Petitioner to “reapply for the exemption” because the conveyance of the Illinois property was exempt from the requirement to file a transfer notice. For this reason, the Petitioner was unaware there was an exemption applied to the Illinois property. When the Petitioner was alerted by the Porter County Auditor of the situation, Mrs. Walsh “disclaimed any Illinois homeowner’s exemption by filing a waiver with the Cook County Assessor’s Office on December 18, 2015.” The Petitioner have not been contacted by any entity in Illinois to correct the mistake or to pay back taxes since the waiver was filed. *Schmaltz argument; T. Walsh testimony; A. Walsh testimony; Pet’r Ex. 4, 8.*
14. Upon receiving the letter from the Porter County Auditor, the Petitioner was informed it was responsible for back taxes and penalties in the amount of \$12,636.35. This amount was the result of the Respondent removing the homestead deduction on the subject property for assessment years 2012, 2013, and 2014. According to the Respondent, Ind. Code § 6-1.1.12-37(h) limits a taxpayer to one homestead deduction. According to this statute, a county auditor may not grant the deduction if an individual claims the deduction on two or more applications for the deduction. The Petitioner, however, never applied for the homestead exemption on the Illinois property. *Schmaltz argument; T. Walsh testimony; A. Walsh testimony; Pet’r Ex. 4, 8.*
15. Indiana Code § 6-1.1-12-37(f)(2) requires homeowners to notify the county of their ineligibility for the Indiana’s homeowner’s deduction if they are already receiving the deduction for another Indiana property or a deduction under the law of another state that

is equivalent to the deduction provided by this section.<sup>3</sup> This statute would presuppose the homeowners know they are receiving a deduction, and if the deduction is in another state, realize the deduction is equivalent. Here, the Petitioner was unaware it was erroneously receiving the Illinois exemption until it received notice in 2015.

Additionally, it is not clear that the Illinois exemption is equivalent to the Indiana homestead deduction. In Illinois, the homestead exemption is worth a maximum of \$7,000. While in Indiana, the homestead deduction is worth up to \$45,000. Additionally, Illinois offers the exemption to different classes of people, such as tenants responsible for the property taxes. *Schmaltz argument.*

16. If error exists in this case “the problem lies with Illinois and Cook County and should be for them to resolve.” To disallow the Indiana homestead deduction from the Petitioner’s primary residence is to unfairly penalize the taxpayers. *Schmaltz argument.*

#### **SUMMARY OF RESPONDENT’S CASE**

17. The Petitioner was inappropriately benefiting from two homestead deductions at the same time. The Petitioner was receiving a homestead exemption in Illinois and a homestead deduction in Indiana for each year under appeal. Because the Petitioner was receiving the Illinois exemption prior to purchasing the subject property “the Indiana homestead deduction application was void from the onset because only one homestead deduction is allowed.” *Mindel argument; Nolan testimony; Resp’t Ex. 1, 2.*
18. The Petitioner received a homestead deduction on its Illinois property from 2004 to 2015. According to Cook County, the homestead exemption was applied “because the owner requested the exemption for 2004 going forward.” Accordingly, the Petitioner made an “affirmative action” to request the homeowners’ exemption. Granted, the Petitioner did not take legal ownership of the Illinois property until 2006, but according to the Cook County tax records for 2004, the subject property is listed as the tax billing address. *Nolan testimony; Resp’t Ex. 2.*

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<sup>3</sup> The Board notes that Petitioner’s counsel and Respondent’s counsel both cite to a version of Ind. Code § 6-1.1-12-37(f)(2) that was not effective until July 1, 2017. The previous version of this statute did not include any reference to “a deduction under the law of another state that is equivalent to the deduction provided by this section.”

19. Indiana Code § 6-1.1-12-37 requires a homeowner to notify the auditor if they are receiving a deduction under the law of another state that is equivalent to the deduction provided under Indiana law. The auditor did not receive any notice from the Petitioner. When the Petitioner submitted its 2010 homestead verification form, it failed to include any information regarding the Illinois exemption. *Nolan testimony.*
20. Because the Petitioner received and paid the tax bills on the Illinois property from 2004 to 2015, the Petitioner “should have known the general homestead exemption was applied.” Further, the Petitioner “either knew or should have known that Illinois law requires the property be one’s principal place of residence.” The Illinois exemption was not waived until 2015. *Mindel argument (referencing Pet’r Ex. 8).*
21. The county auditor is charged with the responsibility of enforcing homestead deduction compliance and the DLGF provides guidance regarding the application of the homestead deduction. When a married couple owns two homes, according to the DLGF, a married couple is limited to one homestead standard deduction statewide regardless of living arrangements or how the properties are deeded. The county auditor may not grant a homestead to an individual or married couple if the individual or married couple, for the same year, claims the deduction on two or more different applications for the deduction and the applications claim the deduction for different property. This same limitation applies whether the homes are located in the same or different states. *Urbanik testimony; Resp’t Ex. 4.*
22. The Petitioner’s argument that it “did not apply for the Illinois general homestead exemption so the Indiana statute is not violated” is flawed. The Petitioner failed to notice the Indiana statute does not mention “application” but instead states an individual “is not eligible for a deduction under this section because the person is already receiving a deduction under the law of another state that is equivalent to the deduction provided by this section.” *Mindel argument (citing Ind. Code § 6-1.1-12.37 (f)(2)).*



## ANALYSIS

23. Indiana Code § 6-1.1-12-37 provides a standard deduction for homesteads. That statute provides, in relevant part:

- (a) The following definitions apply throughout this section:
  - (1) “Dwelling” means any of the following:
    - (A) Residential real property improvements that an individual uses as the individual’s residence, including a house or garage.
    - ...
    - (2) “Homestead” means an individual’s principal place of residence:
      - (A) that is located in Indiana;
      - (B) that:
        - (i) the individual owns;
        - ...
        - (iv) is a residence described in section 17.9 of this chapter that is *owned by a trust* if the individual is an individual described in section 17.9 of this chapter; and
        - (C) that consists of a dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds the dwelling. (Emphasis added)
        - ...
- (b) Each year a homestead is eligible for a standard deduction from the assessed value of the homestead for an assessment date. Except as provided in subsection (p), the deduction provided by this section applies to property taxes first due and payable for an assessment date only if an individual has an interest in the homestead described in subsection (a)(2)(B) on:
  - (1) the assessment date; or
  - (2) any date in the same year after an assessment date that a statement is filed under subsection (e) or section 44 of this chapter, if the property consists of real property.
  - ...
- (f) If an individual who is receiving the deduction provided by this section or who otherwise qualifies property for a deduction under this section:
  - ...
  - (2) is no longer eligible for a deduction under this section on another parcel of property because:
    - (A) the individual would otherwise receive the benefit of more than one (1) deduction under this chapter; or

(B) the individual maintains the individual's principal place of residence with another individual who receives a deduction under this section; the individual must file a certified statement with the auditor of the county, notifying the auditor of the change of use, not more than sixty (60) days after the date of that change.

...

(h) . . . Except as provided in subsection (n), the county auditor may not grant an individual or a married couple a deduction under this section if:

- (1) the individual or married couple, for the same year, claims the deduction on two (2) or more different applications for the deduction; and
- (2) the applications claim the deduction for different property.

...

(j) A county auditor may require an individual to provide evidence proving that the individual's principle place of residence as claimed in the certified statement filed under subsection (e.) . . . . The department of local government shall work with county auditors to develop procedures to determine whether a property owner that is claiming a standard deduction or homestead credit *is not eligible for the standard deduction or homestead credit because the property owner's principal place of residence is outside of Indiana.* (Emphasis added.)

...

(n) A county auditor shall grant an individual a deduction under this section regardless of whether the individual and the individual's spouse claim a deduction on two (2) different applications and each application claims a deduction for a different property if the property owned by the individual's spouse is located outside Indiana and the individual files an affidavit with the county auditor containing the following information:

- (1) The names of the county and state in which the individual's spouse claims a deduction substantially similar to the deduction allowed by this section.

Ind. Code. § 6-1.1-12-37 (this version effective until 7/1/2017).

24. Indiana Code § 6-1.1-12-37.5 provides a supplemental deduction for homesteads. That statute provides, in relevant part:

(a) A person who is entitled to a standard deduction from the assessed value of property under section 37 of this chapter is also entitled to receive a supplemental deduction from the assessed value of the homestead to which the standard

deduction applies after the application of the standard deduction but before the application of any other deduction, exemption, or credit for which the person is eligible.

- (b) The amount of the deduction under this section is equal to the sum of the following:
  - (1) Thirty-five percent (35%) of the assessed value determined under subsection (a) that is not more than six hundred thousand dollars (\$600,000).
  - (2) Twenty-five percent (25%) of the assessed value determined under subsection (a) that is no more than six hundred thousand dollars (\$600,000).

Ind. Code. § 6-1.1-12-37.5.

- 25. Although the aforementioned statutes do not define “principal place of residence,” the DLGF defines the term as “an individual’s true, fixed permanent home to which the individual has the intention of returning after an absence.” *See* 50 IAC 24-2-5. The Petitioner provided substantial probative evidence indicating the subject property was its principal place of residence for each year under appeal. *See Kellam v. Fountain Co. Ass’r*, 999 N.E. 2d 120, 124 (Ind. Tax Ct. 2013) (explaining that taxpayer’s use of property as his mailing address as the location of his voter registration, and as the address on his driver’s license, bank statements, and tax returns, supported finding that the property under appeal was his principal place of residence). In fact, the Respondent did not dispute the subject property was the Petitioner’s principal place of residence.
- 26. Instead, the Respondent argues the Petitioner is not eligible for the homestead deduction because it received a homestead exemption in Illinois during the same time period. Additionally, the Respondent argues that because the Petitioner was receiving the Illinois exemption prior to purchasing the subject property, the Indiana homestead deduction application was void from the beginning.
- 27. According to un rebutted testimony, the Petitioner never affirmatively applied for the exemption in Illinois. Additionally, the Petitioner was not aware of the Illinois exemption until the 2015 letter from the Porter County Auditor. The fact that the Petitioner erroneously received a homestead exemption in Illinois is due in part to the inefficiencies of that state. For example, the tax bills for the Illinois property were sent to

Mrs. Walsh at 1551 Hogan in Chesterton. This fact alone should have indicated that Mrs. Walsh was not using the Illinois property as her primary residence. Further, the 2004 tax record for the Illinois property clearly indicates the billing address as the subject property when, according to the property record card, the Petitioner did not purchase the subject property until 2008.

28. According to the Respondent, the Petitioner was required to provide the Porter County Auditor with notice that it was ineligible for the Indiana deduction. According to Ind. Code § 6-1.1-12-37(j), “[T]he department of local government shall work with county auditors to develop procedures to determine whether a property owner that is claiming a standard deduction or homestead credit is not eligible for the standard deduction or homestead credit *because the property owner’s principal place of residence is outside Indiana.*” Because the Petitioner’s principal place of residence was the subject property, the Petitioner had no obligation to notify the auditor.
29. The Petitioner provided probative evidence to support its position that the subject property was its principal place of residence for the years in question and the Respondent failed to rebut that fact. Accordingly, the Petitioner was eligible to receive the Indiana homestead deduction and supplemental homestead deduction for those years. If the Petitioner erroneously received an exemption in Illinois, it is Illinois’ responsibility to enforce its regulations.
30. As for the penalties assessed to the Petitioner, the Board lacks jurisdiction to afford the Petitioner relief.<sup>4</sup> The Tax Court has held that the Board’s enabling statute “did not grant any power to the State Board to review penalties by the county for the late payment of property taxes,” because it contemplated only a review of assessments, deductions, exemptions, and credits.<sup>5</sup> *Whetzel v. Dep’t of Local Gov’t Fin.*, 761 N.E.2d 1093, 1096 (Ind. Tax Ct. 2002).

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<sup>4</sup> This should be a moot point because the Board finds in favor of the Petitioner regarding the homestead and supplemental homestead deduction for each year under appeal.

<sup>5</sup> *Whetzel* cited Ind. Code § 6-1.1-30-11 which has since been repealed, but is now in effect in substantially similar language in Ind. Code § 6-1.5-4-1(a).

**SUMMARY OF FINAL DETERMINATION**

31. The Petitioner provided substantial probative evidence establishing the subject property was its primary place of residence for each year under appeal. Accordingly, the Board finds the Petitioner was eligible for the homestead deduction and the supplemental deduction for assessment years 2012, 2013, and 2014.

The Final Determination of the above captioned matter is issued on the date first written above.

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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>>.