

REPRESENTATIVES FOR PETITIONER: Duane Rinker & Mary Rinker

REPRESENTATIVES FOR RESPONDENT: Sheri Jobes, Deputy Auditor, Hamilton County

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

DUANE & MARY RINKER,	)	Petition No.: 29-007-02-3-5-00001
	)	
Petitioner,	)	County: Hamilton
	)	
v.	)	Township: Fall Creek
	)	
HAMILTON COUNTY	)	Parcel No.: 1311210000021001
PROPERTY TAX ASSESSMENT	)	
BOARD OF APPEALS,	)	Assessment Year: 2002
	)	
Respondent.	)	

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

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**July 30, 2004**

**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**

**Issues**

1. The issue presented for consideration by the Board was:

*Whether the Petitioner is entitled to the Homestead Credit for Assessment Year 2002.*

## **Procedural History**

2. Pursuant to Ind. Code § 6-1.1-15-3, Duane Rinker filed a Form 133 petitioning the Board to conduct an administrative review of the above petition. The Form 133 was filed on July 28, 2003. The determination of the PTABOA was issued on July 3, 2003.

## **Hearing Facts and Other Matters of Record**

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on February 5, 2004, at the Hamilton County Judicial Center before Brian McKinney, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were present at the hearing:
  - For the Petitioner: Duane Rinker, Taxpayer  
Mary Rinker, Taxpayer
  - For the Respondent: Sheri Jobes, Deputy Auditor, Hamilton County  
Debbie Folkerts, Hamilton County Assessor  
Pamela Zager, Fall Creek Township Assessor
5. All persons present at the hearing were sworn in as witnesses.
6. No exhibits were presented as evidence by either the Petitioner or Respondent.
7. The following additional items are officially recognized as part of the record of proceedings:
  - A. Form 133 Petition; and
  - B. Notice of Hearing.

## **Jurisdictional Framework**

8. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.

9. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

### **State Review and Petitioner's Burden**

10. The Board does not undertake to reassess property, or to make the case for the petitioner. The Board bases its decision upon the evidence presented and the issues raised during the hearing. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118-1119 (Ind. Tax Ct. 1998).
11. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products*, 704 N.E.2d at 1119 (Ind. Tax. Ct. 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
12. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the Board in its evaluation of the evidence. *See generally, Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
13. The Board will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case' and proven, by a 'preponderance of the evidence,' both the alleged error(s) in the assessment and specifically what the assessment should be. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E.2d 765 (Ind. Tax Ct. 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the Board (as the fact-finder) to conclude that the petitioner's position is correct. The

petitioner has proven his position by a ‘preponderance of the evidence’ when the petitioner’s evidence is sufficiently persuasive to convince the Board that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]

### **Discussion of Issues**

*Whether the Petitioner is entitled to the Homestead Credit for Assessment Year 2002.*

14. The Petitioner contends that they were given erroneous information when they attempted to apply for a homestead credit after they purchased their home in 1984.
15. The Respondent contends that there is no application for the homestead credit on file for the subject property.
16. The applicable statute governing this issue is:  
**Ind. Code § 6-1.1-20.9-3**  
Details the requirements for a person to obtain a homestead credit.
17. Evidence and testimony considered particularly relevant to this determination include the following:
  - a. Petitioner purchased their home in 1984. They did not have a mortgage on the home. Petitioner stated that an employee of the auditor’s office told them that because they did not have a mortgage, they did not have to file any paperwork to receive the credits. *D. Rinker testimony.*
  - b. Through the years, there has been an adjustment to their assessment shown in a box on their tax bill. The Deputy Auditor stated that in years past the box showed adjustments for both the homestead credit and the state replacement credit. *Jobes testimony.*
  - c. The Petitioner has filed for, and will receive a homestead credit for Assessment Year 2003.

### Analysis of the Issue

18. The Petitioner claims that they are entitled to a Homestead Credit for Assessment Year 2002 because someone at the auditor's office told them they would receive it without needing to apply. *D. Rinker testimony*. The Petitioner's only evidence is their memory of that conversation that took place over 15 years ago. *D. Rinker testimony*. From the time the Petitioner moved into the home in 1983 through 2002, the Petitioner did not receive the Homestead Credit.<sup>1</sup>
19. The Petitioner did not provide any evidence of an application for a Homestead Credit. The Auditor had no evidence that a Homestead Credit had ever been applied for until 2003. *Jobes testimony*. Unfortunately, this Board cannot determine that the Petitioner is entitled to a Homestead Credit without evidence of a timely filed application. *See Ind. Code § 6-1.1-20.9-3*.
20. The Petitioner did not provide probative evidence of error. Accordingly, the Board will not change the decision of the Hamilton County Property Tax Assessment Board of Appeals regarding the denial of the homestead credit for 2002.

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

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Commissioner, Indiana Board of Tax Review

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<sup>1</sup> It appears that the Rinkers believed they were receiving the homestead credit throughout the time that they lived in the home, when in fact they were not. The appearance of the state property tax replacement credit in the box on the form misled them into thinking that they were receiving the homestead credit. *Jobes testimony; D. Rinker testimony*. When the form was changed to differentiate the two credits, the Rinkers became aware that they were not receiving this credit and filed this appeal.

## **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.**