

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

Petition: 49-800-18-1-5-00446-19
Petitioner: Todd Gardner
Respondent: Marion County Assessor
Parcel: 8019739
Assessment Year: 2018

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Todd Gardner contested the denial of his application for a 2018 homestead deduction for his single-family residence located at 5047 Graceland Avenue in Indianapolis.
2. Gardner filed a Form 131 petition with the Board and elected to proceed under the Board’s small claims procedures. On November 21, 2019, Jennifer Thuma, the Board’s designated administrative law judge (“ALJ”), held a hearing on the petition. Neither she nor the Board inspected the subject property.
3. Gardner appeared *pro se* and testified under oath. Jess Reagan Gastineau represented the Assessor.

Record

4. The following exhibits were admitted without objection:

Petitioner Exhibit 1:	Bank Statement, Copy of Check for Spring 2019 Property Taxes
Petitioner Exhibit 2:	2019 Property Tax Bill
Petitioner Exhibit 3:	Quitclaim Deed
Petitioner Exhibit 4:	2017 IPL Bill for 5047 Graceland Avenue
Petitioner Exhibit 5:	Chicago Title Invoices
Petitioner Exhibit 6:	Property Tax Bill Detail 2019
Petitioner Exhibit 7:	Letter to Assessor’s Office
Petitioner Exhibit 8:	Claim for Homestead Deduction
Respondent Exhibit 1:	Affidavit of Drew Carlson, Marion County Real Estate Director & Chief Finance Officer

5. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or the ALJ; (3) an audio recording of the hearing.

BURDEN OF PROOF

6. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. Ind. Code § 6-1.1-15-17.2(b) and (d).
7. Gardner asserted that the Assessor should have the burden of proof. The Assessor disagreed, arguing that the burden shifting statute in Ind. Code § 6-1.1-15-17.2 does not apply to deductions. We agree, and find the burden rests with Gardner.

SUMMARY OF CONTENTIONS

8. Gardner presented the following case:
 - a. Gardner argued that he should receive a homestead deduction for the subject property for the 2018 assessment year. In support of this, he testified that he had timely and fully paid the property taxes for the property in the past. He also noted that the subject property had received the homestead deduction since its purchase by his father. *Gardner testimony.*
 - b. In 2015, Gardner moved to the subject property from another state to care for his elderly parents and his sibling. Caring for his parents involved many difficult tasks that were, at times, overwhelming. *Gardner testimony.*
 - c. In July of 2017, Gardner's parents transferred the property to him via quitclaim deed. At the time, he did not realize that a transfer of ownership required a new application for a homestead deduction. When he received the 2019 tax bill, he immediately applied for the homestead deduction. He requested the Board waive the filing deadline for the 2018 assessment year. *Gardner testimony.*
9. The Assessor presented the following case:
 - a. The Assessor argued that Gardner should not receive a 2018 homestead deduction for the subject property because he did not timely apply for it. In support of this, the Assessor offered an affidavit from Drew Carlson, Chief Financial Officer and Real Estate Director for the Marion County Auditor. Carlson averred that the subject property was transferred to Gardner from his parents' trust in 2017. But Gardner did not apply for the homestead deduction until April of 2019. Carlson acknowledged that Gardner would be eligible for the homestead deduction going forward. *Resp't Ex. 1.*

- b. The Assessor argued that deadline to file an HC10 form for a 2018 homestead deduction was January 5, 2019, based on Ind. Code § 6-1.1-12-37(e). Alternatively, taxpayers can use the sales disclosure form to apply for the deduction, but no sales disclosure form was filed for the transfer of the subject property to Gardner.

ANALYSIS

10. It is uncontested that Gardner used the subject property as his primary residence in the 2018 assessment year. But he failed to timely apply for the deduction and the Board does not have the authority to waive statutory deadlines. We reached this decision for the following reasons:
 - a. Ind. 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 their principal place of residence including a one acre home site. Ind. Code § 6-1.1-12-37(a)-(c).
 - b. In accordance with Ind. Code § 6-1.1-12-37(e), a taxpayer must apply for the homestead deduction by January 5 in the calendar year in which the taxes are due and payable. In this case, Gardner missed the January 5, 2019 deadline to file an application for a 2018 homestead deduction. Nor did Gardner apply using a sales disclosure form.
 - c. Gardner asks the Board to waive the deadline to apply for a homestead deduction. But the Board is a creation of the legislature, and it has only those powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 1093, 1096 (Ind. Tax Ct. 2002) citing *Matonovich v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1021 (Ind. Tax Ct. 1999). No statute gives the Board authority to waive a statutory deadline. While we acknowledge the difficulties Gardner faced in moving to Indiana to care for his parents, we are compelled to follow the law. Thus, we must find that he is not entitled to a homestead deduction for the 2018 assessment year.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board finds for the Assessor and orders no change to the subject property's 2018 assessment.

ISSUED: February 13, 2020

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>>.