

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

**Petition Nos.:** 29-018-17-1-5-00498-21  
29-018-18-1-5-00499-21  
29-018-19-1-5-00500-21  
29-018-20-1-5-00377-21  
**Petitioners:** Brian J. & Sarah K. Shapiro  
**Respondent:** Hamilton County Assessor  
**Parcel No.:** 29-13-06-001-022.000-018  
**Assessment Years:** 2017, 2018, 2019 & 2020

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 Shapiros contested the revocation of the 2017, 2018, 2019, and 2020 homestead deductions for a property located at 4610 Woodhaven Drive in Zionsville. On March 16, 2021, the Hamilton County Property Tax Assessment Board of Appeals (“PTABOA”) denied the appeals and they timely appealed to the Board, electing to proceed under the Board’s small claims procedures.
2. On October 19, 2021, Dalene McMillen, the Board’s designated Administrative Law Judge (“ALJ”), heard the case telephonically. Neither the Board nor the ALJ inspected the property.
3. Brian Shapiro appeared *pro se* and was sworn. Attorney Marilyn Meighen appeared for the Respondent. Hamilton County Deputy Auditor Sadie Eldridge was sworn as a witness for the Respondent. After the hearing, Attorney Maggie Smith appeared for the Shapiros and filed their post-hearing brief.
4. The parties submitted the following exhibits:
  - Petitioner Exhibit 1: Three Leelanau County Register of Deeds dated June 26, 1996, January 13, 2016, and October 24, 2016,
  - Respondent Exhibit A: Warranty deed for subject property,
  - Respondent Exhibit B: Subject property record card,
  - Respondent Exhibit C: Michigan Principal Residence Exemption (PRE) Affidavit,

- Respondent Exhibit D: Leelanau County property information & “Recommendation: Denial Verified” for 4560 North Omena Point Road in Omena, Michigan,
- Respondent Exhibit E: Michigan summary of “What is a Principal Residence Exemption (PRE)?,”
- Respondent Exhibit F: Michigan summary of “What is a millage rate and where do I find it?” and Property Tax Definitions,
- Respondent Exhibit G: Hamilton County’s Homestead Standard Deduction Audit Notice and United States Postal Service proof of mailing,
- Respondent Exhibit H: Hamilton County’s Notice of Removal of Property Tax Standard Homestead Deduction and Additional Taxes plus 10% Penalty,
- Respondent Exhibit I: Respondent’s review of facts & laws,
- Respondent Exhibit J: Michigan Homestead Property Tax Credit Information and a 2020 Michigan Homestead Property Tax Credit Claim MI-1040CR,
- Respondent Exhibit K: Form IT-40 – Schedule 2: Deductions for 2017, 2018, 2019 & 2020 and one page of a 2020 Indiana Full-Year Resident Individual Income Tax Return – IT-40.<sup>1</sup>

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

### **Findings of Fact**

6. Brian and Sarah Shapiro bought the subject property in 1991. Brian Shapiro is a resident of Indiana. In 1996, Sarah Shapiro purchased a property in Leelanau County, Michigan where she lives “over 200 days a year.” She has a Michigan driver’s license and votes in Michigan. On January 13, 2016, the Michigan property was titled to both Brian and Sarah Shapiro as part of a refinancing in which Brian Shapiro co-signed on a mortgage. Because this was not their intention, Brian Shapiro deeded his share of the Michigan property back to Sarah Shapiro on October 24, 2016. *Brian Shapiro testimony; Pet’r Ex 1; Resp’t Ex. A:*
7. For each of the years under appeal, Sarah Shapiro received a Principal Residence Exemption (“PRE”) for the Michigan property. The PRE exempts a principal residence from local school operating taxes up to a certain cap. Michigan also has an income tax credit for homestead taxes for certain low-income residents. Sarah Shapiro did not qualify for or receive this credit. *Eldridge testimony; Resp’t Exs A-E.*

---

<sup>1</sup> The Assessor did not offer Respondent’s Exhibit L for the record.

8. During an audit by Tax Management Associates, the Auditor discovered that Sarah Shapiro was receiving the PRE for the Michigan property while still having an ownership interest in the subject property. The Auditor then revoked the homestead deduction for the subject property for the years under appeal. *Eldridge testimony; Resp't Exs. G-K.*

### Analysis

9. The Indiana Constitution directs the legislature to limit property tax liability for certain types of property. For “[t]angible property, including curtilage, used as a principal place of residence...” the Constitution directs the legislature to limit the property tax liability to 1% of gross assessed value. Indiana Constitution, Article 10, Section 1. The legislature has chosen to link this limit on taxes to property that receives the standard homestead deduction. That deduction applies to an owner’s principal place of residence consisting of a dwelling and the real estate not exceeding one acre that immediately surrounds that dwelling. Ind. Code § 6-1.1-12-37(a)(1)(A). Property owners then receive a credit under I.C. § 6-1.1-20.6-7(a) which is often referred to as a “tax cap” against taxes exceeding a specified percentage of the homestead’s gross assessment.
10. The standard homestead deduction statute, I.C. § 6-1.1-12-37, provides limits on what property can qualify as a homestead. Foremost, the property must be used as a principal place of residence. In addition, a person may not receive the deduction if they or their spouse are receiving an “equivalent” deduction in another state. I.C. § 6-1.1-12-37(f)(2)(B). I.C. § 6-1.1-12-37(n) provides an exception to this restriction for married couples living separately in different states provided they submit an affidavit stating that:
- They maintain separate principal places of residence.
  - Neither has an ownership interest in the other residence.
  - Neither is claiming a substantially similar deduction for any property other than their principal place of residence.
11. Here, there is no dispute to the facts. As of the dates at issue, Brian and Sarah Shapiro jointly owned the subject property. Sarah Shapiro separately owned another residence in Michigan for which she received the Michigan PRE.
12. We first note that the exception in I.C. § 6-1.1-12-37(n) does not apply here because Mrs. Shapiro maintains an ownership interest in both properties. While the Shapiros argue that removing Mrs. Shapiro from the Indiana property is a “ministerial” act that should be overlooked, we have no power to waive a requirement of the statute. Thus, we examine whether they could still receive an Indiana homestead deduction under the theory that Mrs. Shapiro was not receiving an “equivalent” deduction in Michigan.
13. The Shapiros spend much of their brief arguing that the Michigan income tax credit for homestead taxes is not equivalent to the Indiana homestead deduction. The Assessor does not dispute this claim, nor do we. Instead, we focus on whether it is permissible for an individual to receive both an Indiana homestead deduction as well as a Michigan PRE. The Shapiros argue that the Michigan PRE and the Indiana homestead deduction are not

“equivalent”, and thus do not run afoul of I.C. § 6-1.1-12-37(f)(2)(B). They base this argument on the Black’s Law dictionary definition of equivalent which states “[c]orresponding in effect or function; nearly equal; virtually identical.” Black’s Law Dictionary (11<sup>th</sup> ed. 2019). They also point to Merriam-Webster, which defines it as: “virtually identical, especially in effect or function.” (<http://www.merriam-webster.com/dictionary/equivalent>). The Shapiros claim that the PRE and the Indiana Homestead deduction are not “virtually identical”, but they do little to develop this argument.<sup>2</sup> They do not point out any substantive differences between the two statutes nor do they compare and contrast the two. We note that they are similar in both requirements and function. Both only apply to principal places of residence, and both reduce the property taxes paid as a result.

14. Moreover, we do not think it likely that the Indiana legislature intended equivalent to mean identical. Were we only to apply the restrictions of I.C. § 6-1.1-12-37(f) if another state’s homestead statute exactly mirrored all parameters of the Indiana statute, it would never be applied. Instead, we find it more likely that the legislature intended equivalent to mean “substantially similar”, a term it used in the same section instead of equivalent for the requirements for affidavits for married couples seeking to receive two deductions. I.C. § 6-1.1-12-37(n). The Michigan PRE and the Indiana homestead deduction are substantially similar. Sarah Shapiro had an ownership interest in both the subject property and the Michigan property, so the exception in I.C. § 6-1.1-12-37(n) does not apply. Because she received the Michigan PRE for each of the years under appeal, the Shapiros are ineligible for an Indiana homestead deduction for those same years under I.C. § 6-1.1-12-37(f).
15. They also argue that if the Indiana homestead deduction is disallowed, it should be prospective and not retroactive, and that no penalties should be applied. The Shapiros claim that such a result would be inequitable because they relied on a “reasonable” interpretation of the statute. We first note that we lack the authority to address the penalties. I.C. § 6-1.1-15-1.1(e)(2). Rather, a taxpayer must appeal the penalties to the county auditor, and then to a court of competent jurisdiction under I.C. § 6-1.1-26. As to the retroactive application, I.C. 6-1.1-36-17 permits an auditor to issue taxes for ineligible deductions up to three years from when the taxes were first due. There are no caveats on that authority for reasonable interpretations, nor may we read any into the statute. The Board is a creation of the legislature and has only those powers conveyed by statute. *Whetzel v. Dept. of Local Gov’t. Finance*, 761 N.E.2d 904 (Ind. Tax Ct. 2002). Thus, we do not have the authority to ignore the statute on equitable grounds.

---

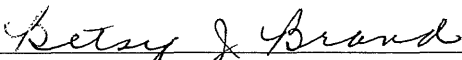
<sup>2</sup> Mr. Shapiro does cite to a Michigan case which allows Michigan residents to receive a Michigan homestead exemption regardless of whether they are receiving a similar exemption in another state. But he failed to show what bearing that had on Indiana law.

## Final Determination

16. For the reasons stated above we find the subject property is ineligible for a homestead deduction for the years under appeal. We order no change to the subject property's 2017, 2018, 2019, and 2020 assessments.

ISSUED: 2/17/2022

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