
STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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Frequently Asked Questions

Marion County v. Schiffler case

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The Indiana Tax Court issued a case, *Marion County v. Schiffler*, in February of 2022. The Indiana Supreme Court denied the Marion County Assessor’s petition on appeal. Thus, the Tax Court case stands. The case spoke to a narrow part of the homestead statute and the Indiana Constitution’s 1% tax cap. In response to specific questions from assessors, the Department of Local Government Finance (“Department”) provides the following FAQs.

1. What is a homestead, according to Ind. Code § 6-1.1-12-37?

A “homestead,” is an individual’s principal place of residence in Indiana, “consisting of a dwelling and the real estate, not exceeding one (1) acre, that *immediately* surrounds that dwelling.” Ind. Code § 6-1.1-12-37(a)(1)(A)-(C).

IC 6-1.1-12-37

Standard deduction for homesteads; amount; statement to apply for deduction; notice of ineligibility for deduction; limitations on deduction; homestead property data base

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- (1) “Dwelling,” in turn, is defined as any of the following:
 - (A) Residential real property improvements that an individual uses as the individual’s residence, including a house or garage.
 - (B) A mobile home that is not assessed as real property that an individual uses as the individual’s residence.
 - (C) A manufactured home that is not assessed as real property that an individual uses as the individual’s residence. Ind. Code § 6-1.1-12-37(a)(1).
- (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, or evidenced by a memorandum of contract recorded in the county recorder's office under IC 36-2-11-20, 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;

(iii) the individual is entitled to occupy as a tenant-stockholder (as defined in 26 U.S.C. 216) of a cooperative housing corporation (as defined in 26 U.S.C. 216); or

(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 that dwelling.

Except as provided in subsection (k), the term does not include property owned by a corporation, partnership, limited liability company, or other entity not described in this subdivision.

Additionally, the homestead statute in Ind. Code § 6-1.1-12-37 includes the following language. This will be discussed below.

For assessment dates after 2009, the term ‘homestead’ [also] includes (1) a deck or patio; (2) a gazebo; or (3) another residential yard structure, as defined in rules adopted by the department of local government finance (other than a swimming pool); that is assessed as real property and attached to the dwelling.” Ind. Code § 6-1.1-12-37(m).

2. How is the 1% tax cap connected to the homestead?

Per Article 10, Section 1 of the Indiana Constitution¹ and Ind. Code § 6-1.1-20.6-2², when property qualifies for a homestead deduction, the owner’s tax liability is limited to 1% of the gross assessed value. The Tax Court in *Schiffler* addressed what is included in the definition of dwelling for purposes of what is considered to be part of an individual’s homestead.

3. What part of the homestead statute is specifically impacted by the *Schiffler* Tax Court opinion?

The Tax Court specifically addressed Ind. Code § 6-1.1-12-37 (m) and also what is to be included in the definition of “dwelling.”

IC 6-1.1-12-37

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(m) For assessment dates after 2009, the term “homestead” includes:

¹ Article 10, Section 1 of the Indiana Constitution establishes the property tax liability limits, which is commonly referred to as property tax caps.

² Indiana Code § 6-1.1-20.6-7.5 specifies that homestead property is limited to a property tax liability of one percent (1%). Indiana Code § 6-1.1-20.6-2 defines “homestead” to refer to property that has been granted a standard homestead deduction under Ind. Code § 6-1.1-12-37.

- (1) a deck or patio;
 - (2) a gazebo; or
 - (3) another residential yard structure, as defined in rules adopted by the department of local government finance (other than a swimming pool);
- that is assessed as real property and attached to the dwelling.

4. The homestead deduction statute requires that the owner have only one homestead and that it be the principal place of residence. Is this still true after the *Schiffler* case?

Yes. There are no changes to any of these foundational requirements in statute and case law.

5. After the *Schiffler* Tax Court case, should assessing officials apply as much of the homestead deduction statute as they have before the decision?

Yes. The case only refers to additional structures on the homestead when they are used as an extension of the dwelling. It does not address any other key qualifying requirements for homestead eligibility, such as principal place of residence, among others. The homestead statute is lengthy, and significant prior case law interprets it. This new case only discusses a narrow part of it.

6. As an assessing official, should I disregard prior 50 IAC 2.4-1-2 (Department guidelines on defining yard structures such as tennis courts, greenhouses, boathouses, and the like that were previously excluded from the homestead)?

Yes. The Department rule (50 IAC 2.4-1-2) incorporates the Real Property Assessment Guidelines for 2021 by reference. Chapter 5 of the 2021 Real Property Assessment Guidelines outlines the guidelines for establishing the true tax value of residential yard and agricultural yard structures. This portion of the guidelines is not impacted by the *Schiffler* decision, as the guidance does not specify that the outlined residential yard structures have to be attached to the homestead for purposes of determining true tax value. However, the Tax Court also cited an old Department “fact sheet” from approximately 2018, which was based on Ind. Code § 6-1.1-12-37(m). Assessors should disregard this previously issued fact sheet.

WHAT SHOULD BE INCLUDED IN THE HOMESTEAD?

7. Should assessing officials now include detached garages in the homestead?

Yes. They should now be included if the property otherwise qualifies for a homestead. Ind. Code § 6-1.1-12-37 (m) specifically states that attached structures are included as part of the homestead. The Tax Court case holds that detached garages that meet the other qualifications for a homestead should be included within the one-acre per Article 10, Section 1 of the Indiana Constitution.

8. What if the detached garage is a second garage, and the homeowner has an attached garage too?

If the second detached garage is on the one-acre homestead and is being used as a part of the homestead, it should be included under the homestead deduction and subject to the 1% property tax cap.

9. How should assessors determine where to place the one-acre for purposes of applying the homestead deduction?

The *Schiffler* Tax Court case did not address this point, and assessors should apply the one-acre to the advantage of the taxpayer, which may result in land that does not fit into a perfect square. As stated in Ind. Code § 6-1.1-12-37(a)(2) above, the land must *immediately* surround the residence.

10. Should barns be included in the one-acre homestead?

It depends. If the barn is used as a part of the homestead property and is located on the one-acre surrounding the house, it would be included.

11. As an assessor, do I have to go back and change all the properties in the database retroactively, to apply to prior tax years?

No. The Department recommends that you adjust property record cards as needed now, going forward so that they are ready for the January 1, 2023, assessment date.

12. Should yard structures should be included with the homestead?

The Department recommends including all yard structures that are used as a part of the homestead within the 1% homestead.

13. Are decks and patios included with the homestead?

Yes. They are specifically included in Ind. Code § 6-1.1-12-37(m) and have been included as part of the homestead. There is no change. They were included before the *Schiffler* case, and they are included now.

SWIMMING POOLS

14. Is a swimming pool a residential yard structure?

Yes. Chapter 5 of the 2021 Real Property Assessment Guidelines outlines in-ground swimming pools and above-ground swimming pools as residential yard structures.

15. Should a swimming pool be included in the homestead and receive the 1% tax cap for homestead property?

Yes.

SAMPLE SCENARIOS

Example 1: Mrs. Jones owns a one-acre parcel and home on an old city block. The parcel is triangular-shaped. Her residence meets the requirements for a homestead. Does this one-acre with its triangular shape receive the homestead deduction?

Yes. The one-acre includes the entire triangular-shaped parcel. There is no change under the *Schiffler* decision.

Example 2: Mrs. Maxwell owns a two-acre parcel in the city. She has a homestead deduction. Her home sits on one-acre and she has a detached garage on the second acre. Does the detached garage receive the homestead deduction?

Mrs. Maxwell's home and the surrounding one-acre should receive the homestead. The second acre and the detached garage on it, are not eligible for the homestead deduction. There is no change under the *Schiffler* decision.

Example 3: Mrs. Maxwell owns a two-acre parcel in the city. She rents the house and its property, including the detached garage, to renters.

Mrs. Maxwell's property is not eligible for a homestead deduction, just as it always has been ineligible. There is no change under the *Schiffler* decision.

Example 4: Mr. Maisy owns a home with an in-ground swimming pool on his one-acre homestead. Should it be included in the homestead? Should the assessor apply the 1 % tax cap to it?

Yes. The swimming pool is a yard structure. According to the Tax Court case, the swimming pool should be considered part of the homestead if it is being used as a part of the homestead. This is a new distinction under the *Schiffler* decision.

Example 5: Mr. Elias owns a barn on his one-acre homestead. He uses it to shelter the mowing equipment for his yard. Should it be included in the homestead? Should the assessor apply the 1 % tax cap to it?

Yes. Since the barn is on the one-acre surrounding the homestead and is being used to store equipment used to maintain the homestead, the barn should be included as part of the homestead.

Example 6: Mr. Elias owns a second barn on a second acre of property adjacent to the homestead. He houses mowing equipment in it for his yard. Should it be included in the homestead? Should the assessor apply the 1 % tax cap to it?

No. Even though the barn is being used to store equipment to maintain the homestead, it is outside the one acre immediately surrounding the homestead. There is no change under the *Schiffler* decision.

Example 7: Mr. Elias owns a barn on the one-acre surrounding his house. He runs a business out of his barn. Should it be included in the homestead? Should the assessor apply the 1 % tax cap to it?

No. The barn is not being used as a part of the homestead, and it is not included in the homestead. There is no change under the *Schiffler* decision.

Example 8: Ms. Madigan owns a home with a main dwelling house, a carriage house used for hobbies, and a detached garage, all on one-acre. She owns a second, adjacent parcel of one-acre land. It includes a detached building used for storage. These all are situated behind a gated wall. Ms. Madigan argues that all of this comprises her dwelling. What receives the homestead?

The homestead-eligible property must *immediately* surround the principal residence. Ms. Madigan uses the main dwelling house as her residence. The assessor should include the main dwelling and structures on the one-acre immediately surrounding the dwelling within the homestead and the 1% property tax cap. The detached building on the second acre is not eligible for the homestead deduction.