

REPRESENTATIVE FOR PETITIONER:

Dana Childress-Jones, Attorney

REPRESENTATIVE FOR RESPONDENT:

John C. Slatten, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

CIRCLE CITY CHURCH OF CHRIST,)	Petition No.: 49-400-05-2-8-00978
)	
Petitioner,)	Parcel No.: 4026666
)	
)	
v.)	Marion County
)	Lawrence Township
MARION COUNTY ASSESSOR,)	
)	Assessment Year: 2005
Respondent.)	

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

August 16, 2013

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE

1. Did the Petitioner waive its exemption claim by failing to comply with statutory filing procedures?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

2. The subject property is a building and parking lot located at 6405 Castleplace Drive in Indianapolis that the Petitioner purchased on June 15, 2005.
3. On September 22, 2008, the Petitioner filed an Application for Property Tax Exemption (Form 136) claiming that its real and personal property should be 100% exempt for 2005 because of religious use. The statutory basis for the claim was Ind. Code §6-1.1-10-16. According to the Form 136, the assessed value of the land is \$750,000 and the assessed value of the improvements is \$65,000.
4. The Marion County Property Tax Assessment Board of Appeals (PTABOA) determined the subject property was 100% taxable for 2005. The PTABOA issued its decision on a Form 120 dated September 26, 2008. Noting the application's filing date, the PTABOA said the exemption was not allowed because the application was not timely according to Ind. Code § 6-1.1-11-3(a).¹ The PTABOA further stated that the Petitioner did not own the property until June 15, 2005.
5. The Petitioner filed a Petition for Review of Exemption (Form 132) on October 6, 2008, claiming the property should be entirely exempt based on its religious use and Ind. Code § 6-1.1-10-16. The Form 132 states, “[w]e are appealing this ruling by county board under Enrolled Act, House Bill 1125 which allow for relief of late filing of Form 136 for property tax exemption for the year 2003, 2004, and 2005 assessment dates. Under House Bill 1125 which expires January 1, 2010, the church’s property was, except for the failure to timely file an application for property tax exemption, otherwise eligible for the claimed exemption.”

¹ The Application for Property Tax Exemption indicated that it was filed on September 22, 2008. The Notice of Action on Exemption Application, however, indicated that the Application was filed on September 18, 2008.

HEARING FACTS AND OTHER MATTERS OF RECORD

6. Administrative Law Judge (ALJ) Jaime S. Harris held the Board's hearing in Indianapolis on May 21, 2013. There was no inspection of the property by either the ALJ or the Board.
7. Attorney Dana Childress-Jones appeared on behalf of the Petitioner. Attorney John Slatten appeared for Respondent. Neither of them was sworn and no testimony was offered by either side.
8. The Petitioner submitted the following exhibit:
Exhibit A – Circle City Church Property Tax Assessment Analysis.
9. The Respondent submitted the following exhibits:

Respondent Exhibit1 – Form 132 Petition to the Indiana Board of Tax Review for Review of Exemption,

Respondent Exhibit 2 – Property Record Card for Subject Property,

Respondent Exhibit 3 – Correspondence with the Assessor's Office dated September 19, 2008,

Respondent Exhibit 4 – Form 120 Notice of Action on Exemption Application,

Respondent Exhibit 5 – Aerial Photographs of the Subject Property,

Respondent Exhibit 6 – Form 136 Application for Property Tax Exemption,

Respondent Exhibit 7 – Archived Transfer History for Subject Property.
10. The following additional items are recognized as part of the record:
Board Exhibit A – Notice of Hearing,
Board Exhibit B – Petition for Review (Form 132),
Board Exhibit C – Hearing Sign-In Sheet.

SUMMARY OF PETITIONER'S CASE

11. The subject property was purchased by Petitioner on June 15, 2005. Prior to the purchase, the property was owned by a private entity called Zirp-Castleton, LLC. According to Ind. Code § 6-1.1-4-1, real property shall be assessed to the person liable for taxes under Ind. Code § 6-1.1-2-4. That statute indicates that the owner of any real property on the assessment date of the year is liable for the taxes that year. Therefore, any delinquent taxes assessed prior to the June 15, 2005, purchase date should not be

assessed against Petitioner. They should be assessed to the prior owner, Zirp-Castleton, LLC. The assessor's office should reassess and remove any delinquent taxes that were assessed prior to the Petitioner's purchase of the property. Any property taxes assessed to Petitioner prior to the purchase were improperly and unfairly assessed against the church. *Childress-Jones argument.*

12. In reviewing the records of the assessor, it is clear that once the Form 136 was filed by Petitioner, the church was given tax exempt status. It is undisputed that the church is exempt for religious purposes. It seems as though the assessor correctly made the Petitioner's tax exempt status retroactive. The only remaining issue is Petitioner's request for the assessor's office to remove any delinquent taxes that would have been assessed to the church prior to the June 15, 2005, purchase date. *Childress-Jones argument.*
13. As the Petition to the Board states, House Enrolled Act 1125 establishes that the Petitioner's 2005 Application for Exemption must be considered as being timely. This Act allows for relief from the late filing of a Form 136 for property tax exemption for the 2003, 2004, and 2005 assessment dates. Under this Act, the church's property was otherwise eligible for the claimed exemption, except for the failure to timely file an Application for Property Tax Exemption. The Petitioner's application in this case comes within the intent of this law. Kingsley Maitland, who was supposed to be a witness for the Petitioner, prepared the Petition and would know more about the Act and its application to Petitioner's case.² *Childress-Jones argument.*
14. Mr. Maitland also prepared Petitioner's property tax assessment analysis, Exhibit A.³ He was meant to explain the exhibit to the Board. The document contains information that was obtained from the Marion County Treasurer. It details the penalties Petitioner paid for delinquent taxes. Petitioner paid approximately half of the delinquent taxes before

² No substantial reason was given by Petitioner's attorney for witness Maitland's absence.

³ Petitioner's attorney stated that she felt no need to go through Petitioner's Exhibit A because the exhibit "speaks for itself." Every exemption case "stand[s] on its own facts" and on how the parties present those facts. *See Indianapolis Osteopathic Hospital., Inc.*, 818 N.E.2d 1009, 1018 (Ind. Tax Ct. 2004); and *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that a taxpayer has a duty to walk the Indiana Board through every element of its analysis; it cannot assume the evidence speaks for itself).

starting this appeal process. Petitioner is owed money from the assessor's office for the period of time in 2005 when Petitioner did not own the property. At most, Petitioner should only have been forced to pay \$8,631.69 in delinquent taxes. Petitioner's mortgage company paid the penalty fees in order to keep the subject property from being sold at a tax sale. *Childress-Jones argument.*

SUMMARY OF RESPONDENT'S CASE

15. The Form 136 in this case was not timely filed. Petitioner did not own the property as of the relevant assessment date. Accordingly, the property was not owned, occupied, or used by Petitioner during the relevant time period. *Slatten argument; Resp. Ex. 6.*
16. The owner of the property as of the assessment date was liable for the taxes, and Zirp-Castleton, LLC owned the property on that date. But even though the Petitioner did not own the property on the assessment date, the church is liable for the unpaid taxes on the property it bought because a lien attached to the property. *Slatten argument; Resp. Ex. 7.*⁴

ANALYSIS

17. The General Assembly may exempt any property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. IND. CONST., Art. 10 § 1. This provision, however, is not self-enacting. The General Assembly must enact legislation granting an exemption.
18. A taxpayer seeking exemption bears the burden of proving the property is entitled to the exemption by showing that the property is specifically within the statutory authority for the exemption. *See Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004); *Monarch Steel v. State Bd. of Tax Comm'rs*,

⁴ Respondent's attorney, Mr. Slatten, chose not to discuss or explain any of the exhibits he entered into evidence. He stated that there was no need to go through said exhibits. His lack of specificity has the effect of placing a stack of paperwork before the Board and leaving it to figure out for itself the identity of the documents contained in each of the exhibits, what the relevant portions of each document are, why they are relevant, and whether those documents are reliable. This task, however, does not belong with the Board.

611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Assoc. of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

19. An exemption is a privilege that may be waived by a person who would otherwise qualify for it. Ind. Code § 6-1.1-11-1. If the Petitioner does not comply with the statutory procedures for obtaining an exemption, the exemption is waived. *Gulf Stream Coach v. State Bd. of Tax Comm'rs*, 519 N.E.2d 238, 242 (Ind. Tax Ct. 1988).
20. Indiana Code § 6-1.1-11-3(a) requires a property owner to file a written application on or before May 15 of the year for which it seeks the exemption. Indiana Code § 6-1.1-11-3.5 allows a slightly different requirement for not-for-profit corporations. Since the Petition for Review of Exemption and the Application for Exemption both state that Petitioner is a not-for-profit corporation, section 3.5(a) applies in this case. It states the following:

A not-for-profit corporation that seeks an exemption provided by IC 6-1.1-10 for 2000 or for a year that follows 2000 by a multiple of two (2) years must file an application for the exemption in that year. However, if a not-for-profit corporation seeks an exemption provided by IC 6-1.1-10 for a year not specified in this subsection and the corporation did not receive the exemption for the preceding year, the corporation must file an application for the exemption in the year for which the exemption is sought. The not-for-profit corporation must file each exemption application in the manner (other than the requirement for filing annually) prescribed in section 3 of this chapter.
21. Nevertheless, the legislature has enacted limited exceptions to the May 15 filing requirement. In the Form 132 Petition for Review of Exemption filed in case, Petitioner claimed to qualify for an exception provided by House Enrolled Act No. 1125. For 2003, 2004 and 2005, this exception permits an entity that is a church or religious society that failed to timely file an application for exemption under Ind. Code § 6-1.1-11 to file an application that will be considered as timely.
22. As Respondent noted, the Petitioner did not own, occupy or use the property on March 1, 2005. The logical meaning of Ind. Code § 6-1.1-11-3, however, relates the ownership requirement to the time of filing the exemption application, which must be on or before May 15, rather than the assessment date. In this case, Petitioner did not own the property on either date, the assessment date of March 1 or the filing date of May 15, 2005. The

Application for Exemption was due by May 15. The evidence shows Petitioner did not file the Application until September 22, 2008.

23. Petitioner did not establish that it met the requirements of House Enrolled Act No. 1125. Petitioner failed to present any evidence or argument relating to that Act.
24. The Board finds the Petitioner's 2005 claim for exemption must be denied because it was filed after the May 15 deadline and because Petitioner failed to establish that it satisfied the requirements for any exception that might have allowed approval of such a claim.
25. Responsibility for property taxes is governed by Indiana Statute. "The owner of any real property on the assessment date of a year is liable for the taxes imposed for that year on the property..." Ind. Code § 6-1.1-2-4. "When a person other than the owner pays any property taxes, as required by this section, that person may recover the amount paid from the owner, unless the parties have agreed to other terms in a contract." *Id.*
26. Property taxes are a lien on the property and attach on the assessment date. The sale and purchase of the property does not affect the lien. Ind. Code § 6-1.1-22-13(a). Due to the delay between assessment and billing as well as the possibility of having a lien on the property, parties frequently assign responsibility for the tax liability within the purchase agreement. *Van Prooyen Builders, Inc. v. Lambert*, 907 N.E.2d 1032 (Ind. Ct. App. 2009).
27. Regardless of whether or not Petitioner owned the subject property on the assessment date, the purchase of the property by Petitioner did not affect the tax lien that attached when the 2005-pay-2006 taxes were not paid in a timely manner. While Petitioner may have a possible claim against the prior owner of the property, it is not an issue for the Board. Therefore, Petitioner's request that the assessor's office remove any delinquent taxes that were assessed to the church prior to the June 15, 2005 purchase date is denied.

FINAL DETERMINATION

In accordance with these findings and conclusions the Petitioner's claim for exemption is denied.

Commissioner,
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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.