

REPRESENTATIVE FOR PETITIONER: Bill Bottom, DAV State Inspector General

REPRESENTATIVE FOR RESPONDENT: Cathy S. Searcy, Elkhart County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Disabled American Veterans #15,	)	Petition No.: 20-015-08-2-8-00002
	)	
Petitioner,	)	Parcel No.: 20-11-09-276-162.000-015
	)	
v.	)	County: Elkhart
	)	
Elkhart County Assessor,	)	Township: Elkhart
	)	
Respondent.	)	Assessment Year: 2008

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Appeals from the Final Determination of the  
Elkhart County Property Tax Assessment Board of Appeals

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*October 28, 2010*

**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**

**INTRODUCTION**

1. The Disabled American Veterans #15 (“DAV”) appeals to the Board from the Elkhart County Property Tax Assessment Board of Appeals’ determination denying the subject property an exemption for 2008. DAV, however, waived its right to an exemption for that year because it did not timely file its application.

## **PROCEDURAL HISTORY**

2. On November 16, 2009, DAV applied to have the subject property exempted from taxes for the 2008 tax year (taxes based on the March 1, 2008 assessment).<sup>1</sup> On January 14, 2010, the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying DAV’s application.
  
3. DAV then timely filed a Form 132 petition asking the Board to review the PTABOA’s determination. The Board has jurisdiction over DAV’s appeal.
  
4. On August 11, 2010, the Board’s duly appointed administrative law judge, Patti Kindler (“ALJ”), conducted a hearing in Goshen, Indiana.
  
5. The following people were sworn as witnesses at the hearing:  

For DAV:	Bill Bottom, State Inspector General, Disabled American Veterans of Indiana
	Mike Whelihan, State Adjunct, Disabled American Veterans of Indiana
	Richard Gaskill, Manager, DAV
	Charles Harrell, Senior Vice-Officer, DAV
For the Assessor:	Cathy Searcy, Elkhart County Assessor
  
6. DAV did not offer any exhibits.
  
7. The Assessor offered the following exhibits, which were admitted into evidence:  

Respondent Exhibit 1:	Form 136 application
Respondent Exhibit 2:	Copy of Ind. Code § 6-1.1-11-5
Respondent Exhibit 3:	Notice of Lapse of Exemption dated June 27, 2008
Respondent Exhibit 4:	Certified Mail Receipt signed by Richard Gaskill
Respondent Exhibit 5:	Action by the County Property Tax Assessment Board of Appeals
Respondent Exhibit 6:	Document explaining denial of exemption application

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<sup>1</sup> On its exemption application, DAV listed the 2008 and 2009 tax years. This appeal, however, covers only 2008; the Elkhart County Property Tax Assessment Board of Appeals granted DAV an exemption for 2009.

8. The following additional items are part of the record of proceedings:
  - Board Exhibit A: Form 132 petition
  - Board Exhibit B: Hearing notice
  - Board Exhibit C: Hearing sign-in sheet
  - Board Exhibit D: Order Regarding Conduct of Exemption Hearing
9. Neither the Board nor the ALJ inspected the subject property.
10. The PTABOA determined that the subject property was 100% taxable.
11. DAV requested a 100% exemption for the subject property.

### **FINDINGS OF FACT**

12. DAV is a not-for-profit organization that has owned the subject property since 1920. *Bottom testimony.* Historically, the property has been exempt from property taxes. *Id.;* *Searcy testimony.* But DAV did not apply for an exemption in 2008. *Searcy testimony.* After noticing that fact, on June 27, 2008, the Assessor mailed DAV a Notice of Lapse of Exemption, informing DAV that the property would not be exempt from taxes levied in 2008 and payable in 2009 unless DAV applied for an exemption on or before July 14, 2008. *Id.; Resp't Ex. 3.*
13. Despite the Assessor's efforts, DAV did not apply for an exemption until November 16, 2009. *Searcy testimony; Resp't Ex. 1.* In that application, DAV asked the PTABOA to grant the subject property an exemption for the 2008 and 2009 tax years. *Resp't Ex. 1.* Although the PTABOA granted DAV's request for 2009, it denied DAV's request for 2008. *Searcy testimony; Resp't Ex. 5.*

### **CONCLUSIONS OF LAW AND ANALYSIS**

14. Consistent with its constitutionally granted authority, the Indiana General Assembly has enacted various statutes exempting certain types of property from taxation. An exemption, however, is a privilege that a taxpayer may waive by failing to comply with the statutory procedures for obtaining it. I.C. § 6-1.1-11-1 (2009 supp.). If an exemption is waived, the property is taxable. *Id.*

15. Generally, a not-for-profit organization seeking to continue an exemption previously granted under Ind. Code § 6-1.1-10 must file an application on or before May 15 of every even-numbered year. *See* I.C. § 6-1.1-11-3.5(a) (2009 supp.). That general rule, however, is subject to exceptions. For example, a property owner seeking an exemption under Ind. Code § 6-1.1-10-16 or Ind. Code § 6-1.1-10-21 need not continue to file applications provided: (1) the owner properly filed an application at least once, and (2) the property continues to meet the statutory requirements for exemption. I.C. § 6-1.1-11-4(d) (2009 supp.). Before June 30, 2009, however, that exception applied only to a narrow class of exemptions: exemptions under Ind. Code § 6-1.1-10-21 and exemptions for property that was both owned by a church or religious society and used for educational purposes under Ind. Code § 6-1.1-10-16.<sup>2</sup> Thus, for the 2008 tax year, property owners seeking other types of exemptions under Ind. Code § 6-1.1-10-16, including charitable-use exemptions like the one claimed by the DAV, still had to file applications.

16. The Indiana Code also provides limited relief for property owners who miss the deadline to file an application for property that was exempt in the preceding year. In those instances, the county assessor must mail notice informing the owner that its property will be placed on the tax duplicate unless the owner applies for an exemption within 15 days. I.C. § 6-1.1-11-5(b). The statute requires the assessor to mail that notice before June 16 of the year in which the exemption petition should have been filed, but further provides:

A county assessor's failure to give the notice required by subsection (b) does not continue an exemption unless an exemption application is filed by the owner and approved by the county property tax assessment board of appeals on or before the first Monday in November of the year following the year in which the application should have been filed.

I.C. § 6-1.1-11-5(d).

17. In addition, the General Assembly passed two un-codified laws providing a mechanism for certain taxpayers to receive charitable-use exemptions for 2001 through 2009 where

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<sup>2</sup> *See* I.C. § 6-1.1-11-4(d)(1) and (2) (2006 replacement vol.); 2009(ss) Ind. Acts. 182, § 107 (amending I.C. § 6-1.1-11-4(d) to add subdivision (1)(C), which references other exempt uses under Ind. Code § 6-1.1-10-16 besides religious and educational).

the taxpayers had missed the statutory application deadlines. *See* 2009(ss) Ind. Acts § 479; 2010 Ind. Acts 113 § 178. Among other eligibility requirements, however, a taxpayer had to file an exemption application for those earlier tax years by September 1, 2009. *Id.*

18. Here, DAV does not claim that it timely applied for an exemption. Indeed, the DAV did not file its application until November 16, 2009—approximately 18 months after Ind. Code § 6-1.1-11-3.5’s deadline. While current law might excuse the DAV from having to continue to apply for a charitable-use exemption, that law was not enacted until June 30, 2009. *See note 2, supra.* It therefore did not apply to the 2008 tax year.
19. And while the Assessor waited until June 27, 2008, to notify DAV that its exemption would lapse, which was more than a week after Ind. Code § 6-1.1-11-5(b) required the Assessor to mail that notice, that fact does not help DAV. Even if the Assessor had completely failed to mail DAV notice, DAV would have needed to apply for its 2008 exemption and have that application approved by the PTABOA before Monday November 9, 2009 (the first Monday in November of the year following the year in which DAV should have filed its application). Similarly, DAV would have needed to file its application by September 1, 2009, to take advantage of the non-code provisions giving taxpayers relief for missed deadlines from 2001 through 2009.
20. Nonetheless, DAV asks the Board to recognize an exception in light of DAV’s charitable activities and the hardship that it will suffer if it does not receive an exemption. While the Board sympathizes with DAV, the Board must follow the statutes that were in effect for the 2008 tax year. The Board therefore upholds the PTABOA’s determination.

#### **SUMMARY OF FINAL DETERMINATION**

21. Because DAV did not follow the statutory procedures for claiming an exemption for the 2008 tax year, it waived its right to that exemption. The Board therefore upholds the PTABOA’s determination finding the subject property 100% taxable for the 2008 tax year.

The Indiana Board of Tax Review issues this Final Determination of the above captioned matter on the date written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

### **IMPORTANT NOTICE**

#### **- 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>.