

REPRESENTATIVE FOR PETITIONER: Juli J Meyer, Representative, Elkhart Child Development Center, Inc.

REPRESENTATIVE FOR RESPONDENT: Wilmer McLaughlin, Attorney, Elkhart County PTABOA

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

ELKHART CHILD	)	Petition Nos.: 20-012-04-2-8-00009
DEVELOPMENT CENTER, INC.	)	20-012-04-2-8-00010
	)	20-012-04-2-8-00011
Petitioner,	)	20-009-05-2-8-00001
	)	20-009-05-2-8-00002
v.	)	20-009-05-2-8-00003
)	
ELKHART COUNTY PROPERTY	)	Elkhart County
TAX ASSESSMENT BOARD OF	)	Concord Township
APPEALS,)	
	)	Assessment Years: 2004 and 2005
Respondent.)	
	)	Parcel Nos.: 20-06-17-229-016.000-012
	)	20-06-17-229-005.000-012
	)	012-02-00477 Personal Property
)	

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

March 31, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence presented in this case. The Board now enters findings of fact and conclusions of law on the following issue: Is the subject property used for educational purposes that make it exempt from Indiana property tax under Ind. Code § 6-1.1-10-16?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. The Elkhart Child Development Center (ECDC) owns real estate and personal property located at 2121 Prairie Street in Elkhart. It filed exemption applications for two real estate parcels and one personal property for the 2004 assessment on May 14, 2004. It also filed similar exemption applications for the 2005 assessment on May 13, 2005.¹
2. The Elkhart County Property Tax Assessment Board of Appeals (PTABOA) issued its decisions denying exemption for 2004 on November 19, 2004. The PTABOA issued its determinations denying exemption for 2005 on June 3, 2005.
3. Pursuant to Ind. Code § 6-1.1-11-7(c), ECDC filed Form 132 petitions for each of the parcels seeking the Board's review. It filed the petitions for 2004 on December 17, 2004. It filed the petitions for 2005 on June 29, 2005.

Hearing Facts and Other Matters of Record

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on November 17, 2005, in Goshen, Indiana, before Patti Kindler, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2.
5. The following persons were sworn as witnesses at the hearing:
 - For the Petitioner – Juli J Meyer, Representative, ECDC,
 - Paula J. Mumaw, Employee, ECDC,
 - Carolyn Bennett, Coordinator, ECDC,
 - Bruce Nowlin, President, Board of Directors, ECDC,
 - Darren Bickel, United Way representative,

¹ No filing dates are marked on the Form 136 exemption applications. The Respondent does not contend the applications were late. The Respondent provided the filing date for the 2004 application. The Petitioner provided the filing date for the 2005 application.

For the Respondent – R. Eugene Inbody, President, PTABOA,
Cathy Searcy, Secretary, PTABOA,
Veronica Williams, Township Assessor.

6. The following exhibits are part of the record:
 - Petitioner’s Exhibit 1 – ECDC’s Mission Statement,
 - Petitioner’s Exhibit 2 – Curriculum and Assessment Tool sheet and pamphlet of curriculum design,
 - Petitioner’s Exhibit 3 – Goals and objectives for two to five year olds,
 - Petitioner’s Exhibit 4 – Accreditation certificate from the National Association for the Education of Young Children,
 - Petitioner’s Exhibit 5 – Statement regarding ECDC’s target population,
 - Petitioner’s Exhibit 6 – Fee schedule,
 - Petitioner’s Exhibit 7 – Enrollment demographics and fees data,
 - Respondent’s Exhibit 1 – Indiana Board Final Determination for *Richmond Day Nursery Assoc. v. Wayne Co. PTABOA*, dated 3/10/04,
 - Respondent’s Exhibit 2 – PTABOA statement with list of witnesses and exhibits,
 - Board Exhibit A – Form 132 Petitions,
 - Board Exhibit B – Notices of hearing on Petitions dated September 29, 2005.

7. The ALJ did not conduct an on-site inspection of the property.

8. The PTABOA determined all three parcels are 100% taxable for both 2004 and 2005. The Petitioner contends all three parcels are 100% exempt.

9. Evidence considered particularly relevant to this determination includes the following:
 - a. Local churches formed ECDC in 1969 after a survey of the Elkhart community confirmed a need for low-income families to have affordable quality childcare that also offered an educational component. *Bennett testimony*. The ECDC is a 501(c)(3) not-for-profit organization. It is accredited by the National Academy of Early Childhood Programs (NAECP), who reviews that accreditation annually. *Id.*

 - b. The classroom and buildings are similar to public school facilities. They are used for approximately five to six hours per day exclusively to provide educational instruction

- for preschoolers between the ages of two and five. *Meyer testimony; Petitioner Exhibits 2-3.*
- c. The ECDC collaborates with Child Abuse Prevention Service (CAPS) and the Elkhart Schools Pace Program to provide care and preschool for children with developmental delays. *Bennett testimony.* Schools are required by law to provide early childhood services to delayed or developmentally disabled children beginning at age 3. *Nowlin testimony.* There are 12 special needs children currently enrolled at ECDC. *Id.*
 - d. The ECDC uses the same curriculum as the Head Start Program. *Bennett testimony.*
 - e. A number of students qualify for the Head Start program, but cannot get into it because space is lacking. *Bickel testimony.* The ECDC accepts those students. *Id.* The ECDC serves a wider range of families than the Head Start program. *Bennett testimony.*
 - f. The ECDC also serves many single-parent families who are just above the poverty level. They are not eligible for early childhood education programs such as Head Start. *Bennett testimony; Petitioner Exhibit 5.*
 - g. Ninety percent of the children attending ECDC are from single-parent families. These families benefit from the sliding fee scale and would not have the benefit of early childhood education if ECDC were not in operation. *Meyer testimony; Petitioner Exhibit 5-6.*
 - h. The ECDC relieves the Elkhart Community of its burden to provide early childhood education for children just above the poverty level and children with special needs. This program benefits the community by preparing children prior to their entry to school. These children are also less likely to be labeled as high risk later in school and they do much better in first and second grade. *Bickel testimony.*

- i. The taxpayer's petitions claimed educational purposes, but not charitable purposes. *Board Exhibit A*. The PTABOA decided that the taxpayer did not provide sufficient information to qualify for educational exemption based upon what public schools would be required to do. *McLaughlin argument; Respondent Exhibit 2*.
- j. In their denial of exemption, the PTABOA relied on an annotation under Ind. Code § 6-1.1-10-16 that states: "To qualify for educational purposes exemption, an organization must show that it provides at least some substantial part of educational training that would otherwise be provided by tax-supported schools." *Respondent Exhibit 2 at 2*. No public school in Elkhart County provides either daycare or preschool services. *Id.*

Jurisdictional Framework

10. The Indiana Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.

Administrative Review and Petitioner's Burden

11. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
12. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp.*

Assessor, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).

13. Once a petitioner establishes a prima facie case, the burden of going forward with probative evidence shifts to the assessing official. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts such a petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

Basis of Exemption and Burden

14. The general rule is that all property is subject to property taxation. Ind. Code § 6-1.1-2-1. 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.
15. An exemption shifts the amount of taxes to other parcels that are not exempt. *National Ass’n of Miniature Enthusiasts v. State Bd. of Tax Comm’rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996). The transfer of this obligation to non-exempt properties is not an inconsequential shift. Therefore, worthwhile activities or noble purpose alone is not enough for tax exemption. Exemption is justified and upheld on the basis of accomplishment of a public purpose. *Id.* at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm’rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).
16. Property that "is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes" is exempt from property taxation. Ind. Code § 6-1.1-10-16. For this exemption, the property must be predominantly used or occupied for one or more of the listed purposes. Ind. Code § 6-1.1-10-36.3.
17. Use of property by a nonprofit entity does not establish any inherent right to exemptions. The grant of federal or state income tax exemption does not entitle a taxpayer to property

tax exemption because income tax exemption does not depend so much on how property is used, but on how money is spent. *Raintree Friends Housing, Inc. v. Indiana Dep't of Revenue*, 667 N.E.2d 810, 816 n.8 (Ind. Tax Ct. 1996) (non-profit status does not entitle a taxpayer to tax exemption).

Discussion and Analysis

18. The Petitioner contends its personal and real property should be exempt pursuant to Ind. Code § 6-1.1-10-16 because the property is used for educational and charitable purposes, which relieves some public burden, and because it is not making a profit. *Meyer testimony*. The Petitioner asserts the subject real and personal property is used for early childhood education and relieves the public schools of their burden of providing educational programs to children just above the poverty level.
19. The Respondent contends the claim and analysis must be limited to the educational part of the exemption because only that box was marked on the application and the petition to the Board.² The Respondent denied the exemption because the Petitioner did not prove its use benefits the public by relieving some governmental obligation. The Respondent cites the Board's determination in *Richmond Day Nursery Ass'n., Inc. v. Wayne County Assessor* (May 10, 2005) as support for that position. *Respondent Exhibit 2*. The Respondent contends the activities of the ECDC are not something the public schools would otherwise be doing.
20. The Respondent's position that the educational exemption requires the same programs as would be provided by public schools is not consistent with case law. Educational use does not require classes that are identical to those of tax supported institutions. *See Trinity School of Natural Health, Inc. v. Kosciusko County Property Tax Assessment Bd. of Appeals*, 799 N.E.2d 1234, 1238 (Ind. Tax Ct. 2003). The test can be met by providing

² Respondent objected to considering this case as a charitable exemption claim and objected to testimony about the charitable use of the property because the Petitioner had not previously indicated such a claim. The record supports the Respondent's objection on that point. The Board sustains the objection and will limit its determination to the educational exemption. Nevertheless, the record demonstrates that a substantial part of the use of the property would almost certainly qualify as charitable use if the Petitioner had indicated such a claim.

courses found in tax-supported schools, or by providing courses that are related to those found in tax-supported public schools, but not necessarily provided. "Indeed, taxpayers that fill an educational void can relieve the State's burden by adding a new course of study as much as they can by providing a program that is a direct analogue to classes taught in Indiana's tax-supported schools and universities." *Id.* Thus, the taxpayer does not need to teach classes that exactly correspond with classes taught in tax-supported schools. Furthermore, the taxpayer only needs to relieve the State's burden "to some limited extent" with programs and courses that are "related" to those found in tax-supported schools. *Id.*

21. The educational use must confer a public benefit. The closer the activity is to traditional educational programs offered in public schools, the more obvious is the public benefit. *Professional Photographers of America, Inc., v. State Board of Tax Commissioners*, 148 Ind. App. at 601, 268 N.E.2d 617 (1971); *Ft. Wayne Sport Club*, 147 Ind. App. at 129, 258 N.E.2d 874 (1970). "An educational exemption is available to taxpayers who provide instruction and training equivalent to that provided by tax supported institutions of higher learning and public schools because to the extent such offerings are utilized, the state is relieved of its financial obligation to furnish such instruction." *Miniature Enthusiasts*, 671 N.E.2d at 221 (quoting *State Bd. of Tax Comm'rs v. Fort Wayne Sport Club*, 258 N.E.2d 874, 881-882 (Ind. App. 1970)).
22. The Petitioner offered substantial, probative evidence that ECDC is used predominantly for educational purposes. It is used for five to six hours a day exclusively to provide early childhood education. The ECDC provides education similar to the Elkhart Schools PACE program and offers the same curriculum as the Head Start program. ECDC has students that qualify for the Head Start program, but who cannot enroll because there is not enough space available in Head Start. The ECDC has 12 developmentally delayed or disabled students who would require placement in another taxpayer-funded program if ECDC were not available. It also provides the same education to students that are from single-parent families just over the poverty level who would not qualify for Head Start. These students receive the same education as those in Head Start and are more prepared

for primary education. The educational activities that take place at the ECDC are substantially related to those at publicly funded schools. The Petitioner demonstrated that their educational activities, goals and curriculum confer a benefit to the public, (e.g., families, children, public schools, community) similar to the government based Head Start program. Even the Respondent conceded at the hearing that the program is beneficial to the community. The ECDC clearly provides substantial public benefits.

23. The evidence shows the ECDC is an accredited institution. The Petitioner established that ECDC relieves the public of some of its burden by providing early childhood education that is similar to the programs offered in tax supported institutions and public schools, namely the Head Start and Pace programs. Furthermore, the ECDC provides early childhood education, similar to that provided in tax-supported public schools, to students that would not qualify for those programs. Testimony established substantial public benefit from ECDC's programs by reducing or eliminating the public school's obligation to help these children catch-up when they reach first or second grade. Thus, the Petitioner established the property is predominantly used for educational purposes. The Petitioner's have made a prima facie case that the subject property qualifies for a 100% exemption from property taxes.

24. The Respondent claims that the Petitioner failed to provide sufficient evidence at the PTABOA hearing, and therefore, the exemption was denied. The point is irrelevant.

The Indiana board may limit the scope of the appeal to the issues raised in the petition and the evaluation of the evidence presented to the county property tax assessment board of appeals in support of those issues only if all persons participating in the hearing ... agree to the limitation. A person participating in the hearing ... is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county property tax assessment board of appeals.

Ind. Code § 6-1.1-15-4 (m).

25. Further, the Respondent asserts that ECDC failed to prove it provides substantial education that would otherwise be provided by tax-supported schools in accordance with

Ind. Code § 6-1.1-10-16. Respondent is incorrect because, as noted earlier, that is not the proper standard. The Petitioner provided probative evidence showing its curriculum and its students receive the same education as students in the Head Start and Pace programs. Petitioner has shown it “provides at least some substantial part of the educational training which would otherwise be furnished by our tax supported schools” as required in *Miniature Enthusiasts*. 671 N.E.2d at 221. Furthermore, the evidence clearly establishes that ECDC provides a substantial public benefit with the programs it offers. Thus, the subject property is used in an exempt manner.

26. There is no probative evidence that any part of the property is used for any non-related, non-exempt purpose. The Respondent failed to rebut the Petitioner’s case.
27. The Board finds for the Petitioner, the property is 100% exempt.

Summary of Final Determination

28. The Petitioner presented evidence establishing the facility is used exclusively for exempt purposes. The Respondent did not rebut or impeach the Petitioner’s evidence. ECDC’s real and personal property are entitled to a 100% exemption.

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

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code § 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.