

REPRESENTATIVE FOR PETITIONER:
Abraham Grossbaum, Lubavitch of Indiana

REPRESENTATIVES FOR RESPONDENT:
Debbie Folkerts, Hamilton County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Lubavitch of Indiana,	)	Petition No.:	29-003-06-2-8-00008
	)	Parcel:	17-13-08-00-00-017.000
Petitioner,)		
)		
v.)		
	)	County:	Hamilton
Hamilton County Property Tax	)	Township:	Clay
Board of Appeals)		
	)	Assessment Year:	2006
Respondent.)		

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

July 26, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (the 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

ISSUE

1. The issue presented for consideration by the Board was whether the subject property is entitled to an exemption from property taxation for 2006.

PROCEDURAL HISTORY

2. The Petitioner, Lubavitch of Indiana, filed a Form 136 Application for Property Tax Exemption (Form 136) on June 14, 2006. On December 21, 2006, the Hamilton County Property Tax Assessment Board of Appeals (PTABOA) mailed notice of its determination that the property is 100% taxable. On December 27, 2006, the Petitioner filed a Form 132 Petition to the Indiana Board of Tax Review for Review of Exemption (Form 132). The Board has jurisdiction over the Petitioner's appeal under Ind. Code §§§ 6-1.1-11-7(c), 6-1.1-15, and 6-1.5-4-1.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. The Board held an administrative hearing on May 5, 2007, in Noblesville, Indiana before Alyson Kunack, the Board's duly designated Administrative Law Judge (ALJ).
4. The following persons were sworn and presented testimony at the hearing:
 - For the Petitioner:
 - Abraham Grossbaum, Executive Vice President, Lubavitch of Indiana
 - For the Respondent:
 - Debbie Folkerts, Hamilton County Assessor
5. The Petitioner did not submit any documentary evidence.

6. The Respondent submitted the following exhibits:
 - Respondent's Exhibit 1 – Subject Property Record Card (PRC)
 - Respondent's Exhibit 2 – Form 132 Petition
 - Respondent's Exhibit 3 – Form 120
 - Respondent's Exhibit 4 – Form 136 Application for Exemption
 - Respondent's Exhibit 5 – Indiana Code § 6-1.1-11-1 and § 6-1.1-11-3

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – The Form 132 Petition
 - Board Exhibit B – Notice of Hearing dated March 30, 2007
 - Board Exhibit C – Hearing Sign-in sheet
 - Board Exhibit D – Respondent's List of Witnesses and Exhibits

8. The subject property is a single-family dwelling with two outbuildings located at 2640 West 96th Street, Carmel.

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

10. For 2006, the PTABOA determined the property to be 100% taxable. The Petitioner contends the property should be 100% exempt.

ANALYSIS

11. The general rule is that all tangible property is subject to 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.

12. This provision is not self-enacting; the General Assembly must enact legislation to create exemptions within the constitutional authority provided to it. The Indiana General Assembly has exercised that authority by enacting various statutes, including Ind. Code § 6-1.1-10-16 — the statute upon which the Petitioner bases its claim.

13. An exemption, however, is a privilege, which may be waived by a person that would otherwise qualify for the exemption. Ind. Code § 6-1.1-11-1. A property owner waives its entitlement to an exemption by failing to comply with the statutory procedures for obtaining such exemption. *Id. See also, Indiana C.A.P. Director’s Ass’n v. Dep’t of Local Gov’t Fin.*, 797 N.E.2d 878 (Ind. Tax. Ct. 2003). If an exemption is waived, the property is subject to taxation. Ind. Code 6-1.1-11-1.
14. In order to obtain an exemption, a property owner must file a written application on or before May 15 of the year for which it seeks the exemption. Ind. Code § 6-1.1-11-3(a). A not-for-profit corporation that seeks an exemption for 2000 or any even numbered year thereafter must only file an exemption application in those even numbered years. Ind. Code § 6-1.1-11-3.5(a). Once the not-for-profit corporation has received such an exemption, the auditor applies that exemption for the intervening odd-numbered years without the taxpayer taking any action, unless the taxpayer notifies the county assessor of its ineligibility or the county PTABOA determines that the taxpayer is no longer eligible. Ind. Code § 6-1.1-113.5(c) and (d).
15. The facts of this case are not in dispute. The Petitioner filed its Form 136 application for the 2006 tax year on June 14, 2006 — almost a month past the filing date specified in Ind. Code § 6-1.1-11-3(a). Even if the Petitioner had received an exemption for the subject property in preceding years, 2006 was an even-numbered year, requiring the Petitioner to file an application. The Petitioner’s Form 131 petition, however, does not allege that the Petitioner previously received an exemption on the subject property. *See Board Ex. A.* To the contrary, the Petitioner alleged that it purchased the property on February 27, 2006. *Id.*
16. Indeed, Mr. Grossbaum admitted that the Petitioner did not timely file its Form 136 application. Mr. Grossbaum testified that the Petitioner misunderstood the filing deadline due to a conversation with one of the Respondent’s employees. *Grossbaum testimony.* Mr. Grossbaum asked the Board and the PTABOA to show “mercy” and find a way to waive the filing deadline. *Id.*

17. Mr. Grossbaum, however, pointed to no authority for his request. The Petitioner did not timely file its Form 136 application and the Respondent correctly denied the Petitioner's claimed exemption for that reason. The Board therefore finds that the Petitioner waived its claim for an exemption in 2006.

SUMMARY OF FINAL DETERMINATION

18. The Petitioner did not timely file its exemption application. The Board finds in favor of the Respondent.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review 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 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>