

REPRESENTATIVES FOR PETITIONER:

Linda Minnick, Secretary

REPRESENTATIVE FOR RESPONDENT:

D. Mark Barnhart, Clay County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Brazil First United Methodist Church,)	Petition No. 11-011-10-3-5-00001
)	
Petitioner,)	Parcel No. 008-00511-12
)	
v.)	
)	
Clay County Assessor,)	Clay County
)	
Respondent.)	2010 Assessment Year

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

December 18, 2012

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.

ISSUES

The issues presented for consideration by the Board was whether the Petitioner was entitled to the benefit of the former owner's homestead deduction on the property or whether the property was entitled to an exemption in 2010 for its use as a parsonage.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject property is located at 1043 Golden Oaks Drive in Brazil, Indiana. It is a single family home that was purchased by the Petitioner for use as a parsonage. There is no dispute that the Petitioner bought the property on October 21, 2010.

2. The Petitioner filed its Form 136 Application for Property Tax Exemption on March 16, 2011, seeking a 100% exemption for the property.¹ The Petitioner then filed a Form 133 Petition for Correction of an Error with the Clay County Assessor April 5, 2011. The Petitioner claimed that "when purchasing this property the Trustee President was told we had until May to file exemption. We filed our application for tax exemption in March. We only owned the property at 1043 Golden Oaks ... for 2 months in 2010. We do not feel that we should have to pay taxes for 12 months of 2010."

3. The Clay County Property Tax Assessment Board of Appeals (PTABOA) denied the Petitioner's request on April 11, 2011. On the Form 133, Barbara Scott, on behalf of the PTABOA, stated "the church had not filed Form 136 (exemption status) until 11 P 12 which is not retroactive" and the PTABOA voted "to deny the request to allow HS (presumably referring to the former owner's homestead deduction) to remain on parcel for 10 P 11."

¹ The Petitioner's representative only introduced the first page of the Form 136 into evidence at the hearing. The assessment date indicated at the top of Petitioner's Form 136 indicates an assessment date of March 1, 2011; however, the assessment date at the top of Petitioner's Form 133 indicates an assessment date of March 1, 2010.

4. On April 12, 2011, the Petitioner re-filed its Form 133 with the Board seeking to overturn the PTABOA's denial through this appeal.
5. The Board issued a notice of hearing to the parties dated August 16, 2012.
6. The Board held an administrative hearing on October 2, 2012, before the duly appointed Administrative Law Judge (the ALJ) Tom Martindale.
7. The following persons were present and sworn in at hearing:
 - For Petitioner: Linda Minnick, Administrative Assistant
 - For Respondent: D. Mark Barnhart, Clay County Assessor
8. The Petitioner presented the following exhibits:
 - Petitioner Exhibit 1 – Settlement Statement,
 - Petitioner Exhibit 2 – Petitioner's Form 136.
9. The Respondent presented the following exhibits:
 - Respondent Exhibit 2 – Email from Amanda Stanley at DLGF,
 - Respondent Exhibit 3 – Subject property's property report card.
10. The following additional items are recognized as part of the record:
 - Board Exhibit A – Form 133 petition,
 - Board Exhibit B – Hearing sign-in sheet,
 - Board Exhibit C – Notice of hearing dated August 16, 2012.

Parties' Contentions

11. Summary of the Petitioner's contentions:
 - a. Linda Minnick, an administrative assistant for the Petitioner, Brazil First United Methodist Church, testified that the Petitioner purchased the subject property on October 21, 2010. *Minnick testimony*. Ms. Minnick further testified that, Brian Johnson, the Petitioner's trustee and chairman, signed a settlement statement which

- outlined who would be responsible for the 2010 tax payments. *Id.*; *Petitioner Exhibit 1*. According to the agreement, Ms. Minnick contends, the Petitioner's pro-rated amount of the taxes on the property should have been \$404.00. *Id.*; *Petitioner Exhibit 1*. However, the Petitioner was billed \$1,400.00 for the entire 2010 tax year. *Minnick testimony*. Ms. Minnick contends that the Petitioner should not be responsible for the entire 2010 tax bill since the Petitioner did not purchase the subject property until October of 2010. *Id.*
- b. The Petitioner's representative also contends that the Petitioner is exempt as a 501(c) nonprofit organization. *Minnick testimony*. Ms. Minnick testified that the Petitioner files a Form 136 every year to maintain its tax exempt status. *Id.* According to Ms. Minnick, the Petitioner believed they had until May of 2011 to file their Form 136 after purchasing the subject property. *Id.* Ms. Minnick argues that they met the May 2011 deadline because the Petitioner filed its application in March of 2011. *Id.*; *Petitioner Exhibit 2*.
12. Summary of the Respondent's contentions in support of the assessment:
- a. The Respondent testified that the homestead deduction on the subject property was removed by the county auditor for the 2010 tax year because the property had sold on October 21, 2010. *Barnhart testimony*. Moreover, Mr. Barnhart contends, the Petitioner was not eligible for the previous owner's homestead deduction. *Id.* And once the homestead deduction was removed, Mr. Barnhart argues, the Petitioner became responsible for the subject property's entire 2010 tax bill.² *Id.*
- b. The Respondent further contends that, in order for the Petitioner to have received an exemption on the property for the 2010 tax year, an application for exemption would have had to have been filed on or before May 15, 2010. *Barnhart argument*; *Respondent Exhibit 2*. The Respondent testified that the Petitioner did not file its

² After the homestead deduction was dropped, taxes on the property went from \$404.34 to \$1,537.91.

application on the subject property until March of 2011; thus precluding the property from receiving a 2010 exemption. *Id.*; *Respondent Exhibit 2*.

BASIS OF EXEMPTION AND BURDEN

13. 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.

14. Property that is owned, occupied, and used for charitable purposes is allowed an exemption from property taxation under Indiana Code § 6-1.1-10-16. But this exemption is a privilege that is waived if the owner does not comply with the statutory procedures for obtaining an exemption. Ind. Code § 6-1.1-11-1. Exemption applications generally must be filed by May 15 of the year for which exemption is sought. Ind. Code § 6-1.1-11-3. Specific requirements for a not-for-profit corporation are contained in Indiana Code § 6-1.1-11-3.5. The most relevant part of that statute is:
 - (a) 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.

15. When a property is exempt from taxation, the effect shifts the amount of taxes that exempt property would have paid to other parcels that are not exempt. *See generally, Nat'l Assoc. of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218, 220-221 (Ind. Tax Ct. 1996). Therefore, 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 Monarch Steel v. State*

Bd. of Tax Comm'rs, 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).

16. Exemptions must be strictly construed in favor of taxation. Nevertheless, determinations must "give full effect to the legislature's intent and avoid construing [the exemption] 'so narrowly its application is defeated in cases rightly falling within its ambit.'" *Monarch Steel*, 611 N.E.2d at 713 (quoting *Harlan Sprague Dawley, Inc. v. Dep't of State Rev.*, 605 N.E.2d 1222, 1225 (Ind. Tax Ct. 1992)).

ANALYSIS

17. Here the Petitioner's representative argues that, under the terms of the agreement the Petitioner signed with the seller of the subject property as memorialized in the settlement statement, the Petitioner's liability for taxes should be limited to \$404.34 for the 2010 assessment year.
18. 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 a 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).
19. In the present case, the Petitioner contracted with the seller of the subject property in regards to the 2010 property taxes. The Petitioner now appears to ask the Board to impose that agreement on the county. However, the general rule is that only parties to a contract, or those in privity with the parties to the contract, have rights under the contract. *OEC-Diasonics, Inc. v. Major*, 674 N.E. 2d 1312, 1314-15 (Ind. 1996). While it is unfortunate that the closing company underestimated the tax burden facing the Petitioner,

the county was not a party to that agreement and cannot be bound by the taxes estimated by the closing company.

20. Even if the county assessor or auditor could be seen as somehow bound by the agreement between the Petitioner and the property's former owner, the Board could not enforce that agreement. The Board is a creature of the legislature and therefore has only those powers conferred by statute. *See Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999) (addressing the authority of the now abolished State Board of Tax Commissioners). And "[a]ll doubts regarding a claim to power of a governmental agency are resolved against the agency." *State ex rel. ANR Pipeline Co. v. Indiana Dep't of State Revenue*, 672 N.E.2d 91, 94 (Ind. Tax Ct. 1996). The Board therefore must address appeals from determinations made by local assessing officials or county PTABOs that concern property valuations, property tax deductions, property tax credits or property tax exemptions. Ind. Code § 6-1.5-4-1. By contrast, no statute authorizes the Board to review or enforce the private contract rights or obligations of buyers and sellers in real estate transactions.
21. Finally, to the extent that the Petitioner's representative can be seen as arguing that the Petitioner should continue to receive the seller's homestead deduction on the subject property, that argument must also fail.
22. In *Fuller v. Cass County Assessor*, Pet. No. 09-014-08-1-5-00001 (Ind. Bd. Tax Rev. Nov. 10, 2010), *aff'd Fuller v. Cass County Assessor*, Cause No. 49T10-1011-TA-68 (Ind. Tax Ct., Nov. 9, 2011) (unpublished decision), the taxpayers bought a house on October 31, 2007. Although the previous owner had what Mr. Fuller referred to as "exemptions" for 2007, he claimed that those exemptions had been removed and that the county auditor's office had told the taxpayers that it was too late to file an application for that tax year. *Fuller*, at 3. The Board explained that there were several benefits – including the homestead credit and the standard deduction – that a taxpayer could claim if the taxpayer owned or was buying a homestead as of March 1, 2007. *Id.* at 6. But,

because the taxpayers had not bought the property under appeal until October 31, 2007, the Board held that the taxpayers were not entitled to those benefits for the March 1, 2007, assessment date. *Id.*

23. Like the taxpayers in *Fuller*, Brazil First United Methodist Church did not buy the subject property until after the assessment date for which it seeks a homestead deduction. When a taxpayer claims entitlement to a property tax credit or deduction, he must establish that he comes within the specific statutory provisions allowing those credits and deductions. *See, e.g., Indiana Dep't of State Revenue v. Estate of Daugherty*, 938 N.E.2d 315, 320 (Ind. Tax Ct. 2010) (citation omitted), *review denied*. Accordingly, to establish that it qualified for the homestead deduction in 2010, the Petitioner needed to show, among other things, that it filed a statement with the county auditor “on or before January 5 of the immediately succeeding calendar year.” *See* Ind. Code § 6-1.1-12-37. More importantly, a “homestead” is an individual’s principal place of residence. Ind. Code § 6-1.1-12-37. A “homestead” does not include “property owned by a corporation, partnership, limited liability company, or other entity not described in this subdivision.” *Id.* Thus, even if the Petitioner had properly filed, it would not have been entitled to a homestead deduction on the property pursuant to the requirements of the statute.
24. The Board therefore reaches the same result that it did in *Fuller* – Brazil First United Methodist Church did not make a prima facie showing that it was entitled to the former owner’s homestead deduction on the property.
23. The bigger issue here was the Petitioner’s inability to timely file for an exemption on the property for 2010 because the Petitioner did not own the property until after the application deadline.
25. In *Ind. Cmty. Action Assoc., Inc. v. Dep't of Local Gov't Fin.*, 797 N.E.2d 878 (Ind. Tax Ct. 2003), CAP, a non-profit organization, acquired property located in Indianapolis, Indiana on August 25, 1998. As the new property owner, CAP filed a Form 136

Application for Property Tax Exemption (application) for the 1998 tax year on April 28, 1999. 797 N.E.2d at 879. The Marion County Property Tax Assessment Board of Appeals denied the application and the State Board held a hearing on January 13, 2000, at which time it ascertained that CAP's application was not timely filed. *Id.* The Tax Court found that “CAP, not having received a tax exemption for the previous year, filed its application seeking a tax exemption for the 1998 tax year on April 28, 1999. CAP was required to file its application by May 15, 1998. As a result, CAP's exemption application was properly denied.” *Id.*

26. Indiana Code §6-1.1-11-3.5 clearly specifies that the Petitioner was required to file an application for exemption by May 15th of the year for which the exemption was sought. The undisputed evidence established that the Petitioner bought the subject property on October 21, 2010, and therefore did not file by May 15, 2010, for the 2010 assessment year (nor could the Petitioner have reasonably filed by May 15, 2010). While the result appears unfair, especially in light of the fact that the Petitioner is unable to benefit from the former property owner's homestead deduction, the Board is bound to follow the law as written and interpreted by the Tax Court. *See Word of His Grace Fellowship, Inc. v. State Board of Tax Commissioners*, 711 N.E.2d 875, 878, fn. 2 (Ind. Tax Ct. 1999) (“It is true that in this case requiring [the property owner] to file the exemption application is exalting form over substance, especially in light of the fact that Word, as a possessor, can be responsible for the property taxes at issue... However, because the legislature has stated in unmistakable terms that only a legal title holder may be an ‘owner’ for purposes of this case, the Court has no choice but to follow that legislative command.”)
27. Under these circumstances, denying the property an exemption for 2010 because of the Petitioner's untimely exemption application was not an error.

SUMMARY OF FINAL DETERMINATION

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

This Final Determination of the above captioned matter is issued on the date first written above.

Commissioner, Indiana Board of Tax Review

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- 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>