

REPRESENTATIVES FOR PETITIONER:

Board Members Maria A. LaRosa and Thomas J. LaRosa

REPRESENTATIVE FOR RESPONDENT:

Attorney Andrew D. Baudendistel

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

D'Andrea LaRosa)	Petition No. 15-013-08-3-5-00001
Art Foundation,)	
)	Parcel No. 15-07-14-402-054.000-026
Petitioner,)	
)	
v.)	
)	Dearborn County
Dearborn County Assessor,)	Lawrenceburg Township
)	Assessment Years 2008 and 2009
Respondent.)	

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

August 30, 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 Petitioner wants an exemption for real property it purchased on December 14, 2007. Did the Petitioner prove that it should be allowed an exemption for the 2008 or 2009 assessment years when it did not file an application for exemption until 2010? In spite of the 2010 filing date, can the Petitioner get the relief it seeks by filing this case as a Form 133 Petition For Correction Of Error?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject property is located at 130 Short Street and is the old Lawrenceburg post office. There is no dispute about the fact that the Petitioner bought the property on December 14, 2007.
2. The Petitioner filed an Application for Property Tax Exemption, Form 136, with the Dearborn County Assessor on or about April 21, 2010. It claimed the subject property should be 100% exempt pursuant to Ind. Code § 6-1.1-10-16 (charitable use). The Form 136 stated that it was for the 2008 assessment date, but it resulted in the claim being granted for the 2010 assessment date and not for prior years. On or about March 11, 2011, the Petitioner filed a Petition For Correction Of An Error, Form 133, also claiming that the exemption should have been allowed for the 2008 assessment date. In explaining the alleged error, the Form 133 states that when the Petitioner bought the subject property it was one not-for-profit selling to another not-for-profit “and no notice was given that its exempt status would ... change.”
3. The Property Tax Assessment Board of Appeals (PTABOA) denied the claim for 2008 exemption on the Form 133 Petition on March 14, 2011, because “the paperwork was not filed in a timely manner.”
4. On March 21, 2011, the Petitioner filed the Form 133 with the Indiana Board seeking to overturn the PTABOA’s denial through this appeal.
5. The Board’s designated Senior Administrative Law Judge, Ted Holaday, held a hearing on the Form 133 Petition on May 10, 2012. He did not conduct an on-site inspection of the property.

6. Maria LaRosa, Thomas LaRosa, Stan Beeler, County Assessor Gary Hensley, Gladys Rumsey, Megan Keith, Mark Neff, and Gail Hamilton were sworn as witnesses.
7. The Petitioner presented the following exhibits:
 - Exhibit 1 – Application For Property Tax Exemption, Form 136, for assessment date March 1, 2008,
 - Exhibit 2 – Warranty Deed from Lawrenceburg Conservancy District to D’Andrea LaRosa Art Foundation, December 2007,
 - Exhibit 3 – Special Warranty Deed from The United States Postal Service to Lawrenceburg Conservancy District, October 2002,
 - Exhibit 4 – Notice Of Assessment Of Land And Structures, Form 11, for assessment date March 1, 2010,
 - Exhibit 5 – Notice Of Hearing On Petition – Real Property, Form 114, for assessment date March 1, 2009, with other information from the Assessor’s Office,
 - Exhibit 6 – Form 133, page 3,
 - Exhibit 7 – Tax bill for the subject property, 2007 payable 2008,
 - Exhibit 8 – Treasurer’s record for the subject property, 2008 payable 2009, showing it as “government owned” with 0 tax bill,
 - Exhibit 9 – Letter to D’Andrea LaRosa Art Foundation from County Treasurer about tax sale,
 - Exhibit 10 – Property Record Card (“commercial” printed April 7, 2010),
 - Exhibit 11 – Property Record Card (“exempt” printed April 2, 2012),
 - Exhibit 12 – Memo from Dep’t of Local Gov’t Finance regarding exemptions dated July 20, 2009,
 - Exhibit 13 – Statement from Richard Strzynski dated April 24, 2012,
 - Exhibit 14 – Mailing receipts,
 - Exhibit 15 – Summary of the Petitioner’s case,

Exhibit 16 – Cover letter dated April 17, 2012, (when the Petitioner mailed copies of hearing exhibits to the Board prior to this hearing),

Exhibit 17 – Email from Barry Wood, Assessment Division Director, to Ms. LaRosa,¹

Exhibit 18 – “Winners of the D’Andrea LaRosa Art Foundation” (as representing what the Petitioner does),

Exhibit 19 – Recorded Document Summary from Dearborn County Recorder.

8. The Respondent presented no exhibits.
9. The following additional items are recognized as part of the record:
 - Form 133 Petition,
 - Notice of Hearing on Petition–Re-Schedule,
 - Pre-Hearing Order,
 - Hearing Sign-In Sheet.

SUMMARY OF THE PETITIONER’S CASE

10. The subject property is the old Lawrenceburg post office located at 130 Short Street. The Lawrenceburg Conservancy District bought it from the United States Postal Service in October 2002. Then in December 2007, the Petitioner bought it from the Conservancy District. *M. LaRosa testimony; Pet’r Ex. 2, 3.*
11. In November 2007 the Petitioner was recognized by the IRS as an exempt 501(c)(3) organization. *M. LaRosa testimony.*

¹ The Respondent objected to Exhibit 17 because the Petitioner failed to provide a copy of it prior to the hearing and because it contains hearsay. The statements in this document appear to contain Mr. Wood’s summary of some 2009 legislation and certain filing requirements regarding those exemptions. As noted at the hearing, Mr. Wood was not present to identify the document or answer any questions about it. It is hearsay and under these circumstances it is not reliable evidence. Therefore, the objection to Exhibit 17 is sustained, which means the Board will not rely on this document in making its final determination.

12. In the Petitioner's view, the subject property should have retained property tax exemption because when the Petitioner bought it the transaction was from one non-profit to another non-profit.² The Conservancy District's attorney, Richard Butler, purportedly failed to handle the transaction properly because there were problems and delays in getting the deed. Furthermore, he purportedly failed to take all the required steps to carry the Conservancy District's exemption over for the Petitioner. According to the Petitioner, Mr. Butler knew or should have known the formalities of such a transaction, and specifically about his duty to report the information to the Assessor and the Auditor to maintain the tax exemption. *M. LaRosa testimony.*

13. The Petitioner thought that whatever needed to be done to maintain exemption had been taken care of by Mr. Butler and the Petitioner's accountant. The Petitioner found out differently in 2010 when the Notice of Assessment, Form 11, arrived. This Notice is dated September 15, 2010, and states that the new assessment is a total of \$167,500 effective March 1, 2010. (The notice was not mailed to the correct address. The notice contains an added notation, "This document is what alarmed us about our tax exempt status!") As a result of getting the Form 11, Mrs. LaRosa went to see her accountant. *M. LaRosa testimony; Pet'r Ex. 4.*

14. In spite of testifying that they first became alarmed upon getting the September 15, 2010, Form 11, the Petitioner also presented a Form 114 dated June 28, 2010. It is notice for a hearing on July 15, 2010. The Form 114 states it applies to assessment date March 1, 2009, but Mrs. LaRosa added a note about how they filed 2008 and it was changed to 2009. Purportedly, this Form 114 was also the point where the Petitioner first discovered there was some kind of problem. *M. LaRosa testimony; Pet'r Ex. 5.*

15. On April 15, 2010, the Petitioner first filed an Application For Property Tax Exemption, Form 136, for the subject property. It sought exemption based on charitable use as

² Presumably the Petitioner is a not-for-profit corporation, but there is no evidence about that fact, one way or the other. The record also contains no probative evidence that the Lawrenceburg Conservancy District is a not-for-profit corporation.

allowed by Ind. Code § 6-1.1-10-16 and purported to be for 2008. *M. LaRosa testimony, Pet'r Ex. 1.*

16. The subject property was allowed exemption, but only starting with the 2010 assessment year. *M. LaRosa testimony.*³ The two property record cards presented by the Petitioner show that the status of this property was changed to exempt sometime between April 7, 2010, and April 2, 2012. *Pet'r Ex. 10, 11.*
17. Before the assessment for March 1, 2009, the assessed values were zero. The Petitioners called Gladys Rumsey, First Deputy Assessor, who explained that these zero entries for assessed value for 2008 and before were based on the subject property being government owned. They were not based on an exemption. Government owned property does not file for exemption. And right or wrong, the Respondent is not claiming that any taxes are owed for 2008. *Rumsey testimony; Pet'r Ex. 7, 8, 10, 11.*
18. Even though no taxes were assessed for 2008, the Petitioner believes it is important to get the exemption allowed for 2008 so it will carry forward to 2009. The total assessed value of the subject property for 2009 was \$162,800. *Pet'r Ex. 10, 11.* In a letter from the County Treasurer dated February 1, 2011, the Petitioner was advised about the coming tax sale and that it owed \$3,854.70. This notice, along with many other notices, was sent to an old post office box address rather than the correct address at 130 Short Street. *M. LaRosa testimony; Pet'r Ex. 9.*
19. The Department of Local Government Finance issued a memorandum about exemptions. Under the heading "Change in Property Ownership or Use" it explains that "[a]n exemption on property is still valid after a change in ownership if the property continues to meet the requirements for an exemption under IC 6-1.1-10-16 or IC 6-1.1-10-21. However, if title to the property changes or the property is used for a non-exempt

³ The Respondent agreed the subject property was allowed exemption for 2010 and has been exempt since then. The evidence is not clear about procedurally how or when this action occurred; however, it appears to have been the result of the Form 136 Application that was filed on April 15, 2010.

purpose, the person who obtained the exemption, or the current owner, must notify the county assessor in the year the change occurs.” Under the heading “Untimely or Incomplete Exemption Applications [§479]” the memorandum explains that for assessment dates after March 1, 2000, and before March 1, 2010, entities that did not timely file an application for exemption have the opportunity to cure the problem by filing or re-filing an exemption application before September 1, 2009. *Pet’r Ex. 12.*

20. Both Mr. and Mrs. LaRosa testified that they paid the liability of approximately \$3,800 and seek to get it back. The Petitioner’s accountant, Richard Strzynski, helped to prepare the Petition For Correction Of Error, Form 133, that was filed on March 11, 2011. According to Mrs. LaRosa, he prepared the whole thing and she signed it: “I signed off on it. He was my accountant. I did not even read it your honor.” The Form 133 should have included a statement about wanting that payment back. Failure to do so is a mistake. *M. LaRosa testimony.*
21. A notarized statement from Mr. Strzynski explains that his office made several errors that led to “complications” regarding the tax exemption for the subject property. That statement is as follows:

This statement is documenting the issue concerning tax exempt forms 131, 133 and 136 prepared by Richard Strzynski CPA office. The errors that were on the 2008 tax exempt form 136 resulted it to being miss filed. It was miss filed from tax exempt status to residential status. Typo error page 1 of 4 the property name was in Thomas and Maria LaRosa, suppose to be D’Andrea LaRosa Art Foundation, the address was 20543 Longview Drive, suppose to be 130 Short Street Lawrenceburg, In. 47025. On the bottom of page 1 Title was typed in owner and should have been typed in D’Andrea LaRosa Art Foundation. Document sent in a timely manner on 4/15/10 but was filed incorrectly. It was filed in residential status instead of tax exempt status. Strzynski CPA office prepared a petition document on 3/11/11 to correct an error form 133, and property was still typed incorrectly on the form instead of D’Andrea LaRosa Art Foundation it was in Thomas and Maria LaRosa name and the address was 20543 Longview Drive instead of 130 Short St. Lawrenceburg, In. 47025. Page 2 typo error letters “No” needed to be taken out. and was overlooked and signed off by the President of the Foundation on 3/11/11. On 131 form it also had

the property owner as Thomas and Maria LaRosa instead of D'Andrea Larosa Art Foundation and address 20543 Longview Drive instead of 130 Short St. Lawrenceburg, In. 47025. The same letters "No" typo error was made. These errors went to the State level when requesting for a hearing *** These are the complications and results of the errors made by our Foundation's accountant Richard Strzynski CPA Office.
I Richard Strzynski after reviewing all documents that were prepared in my office, I realized these errors occurred.

Pet'r Ex. 13.

22. After it was filed with the Indiana Board, the Petitioner corrected the Form 133 to indicate that it was for a property owned by the D'Andrea LaRosa Art Foundation. *M. LaRosa testimony.*
23. Mrs. LaRosa had not handled a 501(c)(3) before. These were honest mistakes based on pure ignorance. The Assessor's Office and the Treasurer's Office also made lots of errors (improper address). If the Petitioner had been properly notified that any taxes were going to be owed, "we" would have attended to the matter as soon as possible. *M. LaRosa testimony.*

SUMMARY OF THE RESPONDENT'S CASE

24. The Petitioner has not proved any error in denying exemption for 2008 or 2009 that can be corrected through the Form 133 process. *Baudendistel argument.*
25. The Petitioner's exemption application was not filed until April 2010. Therefore, it was not timely for 2008 or 2009. *Baudendistel argument.*
26. The Petitioner was the beneficiary of a mistake in the Assessor's Office for 2008 because at that point the record still showed the subject property was owned by the government. Therefore, no taxes were charged for 2008. *Baudendistel argument.*

27. The authority for property owners to go back (if they had failed to timely file an exemption) states that they may file or re-file before September 1, 2009. The Petitioner did not file until April 15, 2010. So even under that authority the Petitioner did not satisfy the requirements. *Baudendistel argument; Pet'r Ex. 12.*

BASIS OF EXEMPTION AND BURDEN

28. 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.
29. Property that is owned, occupied, and used for charitable purposes is allowed an exemption from property taxation under Ind. 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 Ind. 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.

30. 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).

31. 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

32. In spite of the Petitioner's repeated attempts to establish that it had an exemption for 2008, the evidence shows otherwise. The first time the Petitioner was granted an exemption for the subject property was 2010. And that was a result of the first application for exemption it filed on April 15, 2010.
33. Undisputed evidence established that the Petitioner bought the subject property in December 2007. Therefore, March 1, 2008, was the first assessment date that the Petitioner owned the subject property. Undisputed evidence established that no assessed value was recorded for the subject property for the 2008 assessment and no tax was claimed to be due for 2008. After considering all of the evidence, the Board concludes that showing no assessed value and no tax liability for 2008 was a mistake (considering the subject property to still be government owned), but it was a mistake in the Petitioner's favor because the result was no tax liability for 2008. That situation does not prove an exemption was granted for 2008 and it does not create a basis for any exemption to carry over to 2009.

34. Throughout this case the Petitioner demonstrated a fundamental misunderstanding about statutory exemption procedures. The Petitioner attempted to argue that it would have filed the exemption application if it had been notified about the need to do so. The Petitioner provided no substantial basis for requiring such a notice and simply disregarded the May 15 deadline specified in the statute. Ultimately the Petitioner was responsible for making sure that whatever needed to be done to claim an exemption for the property it recently bought actually got done.
35. The Petitioner's erroneous assumption that some kind of exemption for the prior owner of the property would be carried over is not supported by any substantial authority or argument. Furthermore, Ind. Code §6-1.1-11-3.5 clearly specifies that the Petitioner was required to file an application for exemption by May 15 of the year for which exemption was sought. The Petitioner's failure to file any application for exemption during 2008 or 2009 waived whatever exemption might have been available. And here that is the decisive point.
36. The case dwelled on many things that simply do not matter. The Petitioner's 501(c)(3) status is unimportant to the real issue. The Petitioner's attempt to blame others—the Conservancy District, the Conservancy District's attorney, the accountant, the Assessor, the Treasurer—for various problems and mistakes is irrelevant. The fact that Mrs. LaRosa made honest mistakes based on ignorance also does not change the outcome of this case. Again, missing the specific statutory filing requirements for an exemption is the controlling point.
37. Nevertheless, the Petitioner had an opportunity to salvage its claim for 2008 or 2009 based on the non-Code provision for untimely exemption applications⁴ discussed in the Department of Local Government Finance memo, Petitioner Exhibit 12. That legislation probably would have allowed the Petitioner until September 1, 2009, to file its exemption claim for 2008 and/or 2009. But the

⁴ 2009 Acts (SS) 182 § 479.

Petitioner also failed to meet that extended deadline. The Board cannot extend the filing deadline any further than the Legislature already did.

38. Consequently, even if the Petitioner otherwise would have qualified for a charitable exemption on the subject property for 2008 or 2009, the failure to file any application for exemption until April 15, 2010, operates as a waiver of the exemption.
39. A Form 133 cannot be used to get around the fact that the Petitioner missed both the original filing date and the extended filing date for the exemption it sought. *See Barth , Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 (Ind. Tax Ct. 1998); *Bock Prods. v. Indiana State Bd. of Tax Comm'rs*, 683 N.E.2d 1368, 1370 (Ind. Tax Ct. 1997) (explaining proper use of Form 133 to correct objective errors). Under these circumstances, denying the exemption for 2008 and 2009 because of the 2010 filing date was not an error.

SUMMARY OF FINAL DETERMINATION

40. 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

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>