

REPRESENTATIVE FOR PETITIONER:

Sheila M. Wheeler, Administrative Assistant to the Chief Financial Officer

REPRESENTATIVE FOR RESPONDENT:

Frank Agostino, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

DIOCESE OF FORT WAYNE-)	Petition Nos.: 71-015-06-2-8-00001
SOUTH BEND, INC.,)	71-015-06-2-8-00002
)	71-015-06-2-8-00003
Petitioner)	
)	Key Nos.: 16-1162-6507 [Lot 36]
v.)	16-1162-6508 [Lot 35]
)	16-1162-6509 [Lot 34]
ST. JOSEPH COUNTY)	
ASSESSOR,)	County: St. Joseph
)	Township: Penn
Respondent.)	Assessment Year: 2006

Appeal from the Final Determination of
St. Joseph Property Tax Assessment Board of Appeals

August 16, 2013

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. Nobody disputes that two of the three parcels under appeal qualified for a property tax exemption in 2006. The Diocese claims that it timely mailed exemption applications for those parcels, but the Assessor denies having received them. These appeals therefore

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turn on the following question: Did the Diocese offer reasonable evidence that it timely mailed the applications? Based on testimony from the Diocese's administrative assistant that the applications went out in the mail with other documents that the Assessor apparently did receive, the answer is yes.

PROCEDURAL HISTORY

2. The parcels at issue are part of St. Bavo Parish in Mishawaka. The Diocese believed that it had timely filed exemption applications for those parcels with the St. Joseph County Assessor before the May 15, 2006 deadline. When the Diocese began receiving tax bills, it notified the St. Joseph Property Tax Assessment Board of Appeals ("PTABOA"), which held a hearing on the matter. On September 9, 2009, the PTABOA denied exemptions for all three parcels. *Wheeler testimony; Bd. Ex. A.*
3. The Diocese timely filed three Form 132 petitions with the Board. On March 28, 2013, the Board held a hearing on all three petitions through its administrative law judge, Joseph Stanford ("ALJ"). Sheila Wheeler, Rev. Barry England, and St. Joseph County Assessor Rosemary Mandrici were sworn as witnesses.
4. Neither party offered exhibits.¹ The following items are part of the record:
 - Board Exhibit A: Form 132 petitions with completed exemption applications and PTABOA determinations attached
 - Board Exhibit B: Hearing notices
 - Board Exhibit C: Hearing sign-in sheet
 - Board Exhibit D: Order Regarding Conduct of Exemption Hearing
5. Neither the Board nor the ALJ inspected the parcels.

¹ The Respondent began to offer the exemption application for Lot 34 as an exhibit. The ALJ, however, pointed out that applications for all three parcels were attached to the Diocese's Form 132 petitions. The Board cites to Board Exhibit A when referencing those applications.

SUMMARY OF THE DIOCESE'S EVIDENCE AND ARGUMENTS

6. The parties refer to the three parcels, which consist of a former bank building and parking lot, as Lots 34, 35, and 36. National City Bank donated the parcels to the Diocese. St. Bavo Parish now uses the building as office space and the rest of the property as a parking lot for parish employees and parishioners. The bank transferred Lots 34 and 35 to the Diocese in April 2005, but it did not transfer Lot 36 to the Diocese until after March 1, 2006. Lot 36 was therefore ineligible for exemption on that date. *See Wheeler testimony; England testimony.*
7. The bank sent St. Bavo Parish the parcels' tax bills for the fall of 2005 and the parish paid them. Ms. Wheeler, the administrative assistant to the Diocese's chief financial officer, used information from those tax bills to prepare and sign exemption applications for all three parcels on May 13, 2006. *Wheeler testimony; see also, Bd. Ex. A.*
8. Ms. Wheeler normally drives to South Bend to file exemption applications with the Assessor's office. But in this instance, she was short on time and the Diocese was busy with other things. She therefore sent the applications "by regular mail, United States Postal Service." *Wheeler testimony.* When asked whether she specifically remembered mailing the applications, Ms. Wheeler responded, "I mailed them from the Fort Wayne, from the post office, well, through work, you know, it went out in the mail with all the other Diocesan mail that day." *Id.* Ms. Wheeler further testified that other forms, including personal property returns on which the Diocese claimed exemptions, were mailed "the same day from the same place," and that she never heard anything about the exemptions lapsing for the property covered by those returns. *Id.*
9. The Diocese also asks for relief for assessment years after 2006. Nobody in the Assessor's office ever told Ms. Wheeler that she needed to file exemption applications for later years. She thought that because an appeal was pending, everything would carry forward and she therefore did not have to file any more applications. *Wheeler testimony.*

SUMMARY OF THE ASSESSOR'S EVIDENCE AND ARGUMENTS

10. Exemption is a privilege for which a taxpayer must apply. The Assessor does not have any exemption applications for the parcels on file. *Mandrici testimony*. Indeed, the applications attached to the Diocese's Form 132 petitions are on old, obsolete forms. The "sole issue" is that the Diocese did not timely file exemption applications. *Agostino argument*.
11. Although Ms. Wheeler referred to assessment years following 2006, she did not adequately explain what the Diocese is requesting for those years. In any case, the Assessor does not give legal advice to taxpayers on how to proceed. Like a trial court clerk, she collects forms that are filed with her. While she can tell taxpayers what form to use for different types of appeals, she cannot give legal advice about what a taxpayer should do. *Agostino argument*.

DISCUSSION

12. Generally, all tangible property in Indiana is subject to property taxation. I.C. § 6-1-1-2-1. Nonetheless, Indiana Code § 6-1.1-10-16 exempts all or part of a building from taxation if it is owned, occupied and predominately used for educational, literary, scientific, religious, or charitable purposes. I.C. § 6-1.1-10-16(a); I.C. § 6-1.1-10-36.3(c) - (d); *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13, 14 (Ind. Tax Ct. 2009). It similarly exempts land under exempt buildings and parking lots or structures serving those buildings. *See* I.C. § 6-1.1-10-16(c)(1) - (2). The Diocese conceded that it did not own Lot 36 on March 1, 2006, and that the parcel was ineligible for an exemption that year. Other than the filing issue, there appears to be no dispute that Lots 34 and 35 qualified for an exemption in 2006.
13. Exemptions, however, are not self-executing—a taxpayer must follow the statutory procedures for obtaining one. I.C. § 6-1.1-11-1. Under the relevant statutes as they existed in 2006, a property owner had to file an application with the county assessor before May 15 of the year in which the taxpayer wished to obtain an exemption. I.C. § 6-

1.1-11-3(a) (2006 repl. vol.). The Diocese claims that it prepared and mailed its applications before May 15, 2006, while the Assessor claims that her office did not receive them.

14. An exemption application is timely filed when it is placed in the United States first class mail, properly addressed with sufficient postage, and post-marked on or before the due date. I.C. § 6-1.1-36-1.5(b); *see also, Indiana Sugars v. State Bd. of Tax Comm'rs*, 683 N.E.2d 1386, 1387 (Ind. Tax Ct. 1997). When an assessor receives an application through the mail, determining timeliness is normally a straightforward proposition—one can simply look at the postmark. But the question is more complicated where, as here, a taxpayer mailed applications the assessor did not receive.
15. The Indiana Tax Court faced a similar question in *Indiana Sugars*. To answer it, the court looked to two cases for guidance: *F & F Construction Co. v. Royal Globe Insurance Co.*, 423 N.E.2d 654 (Ind. Ct. App. 1981) and *Tri Creek Lumber Co. v. State Bd. of Tax Comm'rs*, 558 N.E.2d 1130 (Ind. Tax Ct. 1990). *F & F Construction* turned on whether an insured mailed papers to notify its insurer of a lawsuit. The insured's president had placed the papers on his office manager's desk and told him to mail them. The office manager, however, did not acknowledge that directive. *Indiana Sugars*, 683 N.E.2d at 1386 (*citing F & F Construction*). Normal office procedure would have been for the office manager to give the papers to one of the “girls” to mail, but neither he nor anyone else involved in the mailing processes remembered seeing the papers, addressing or stamping an envelope, enclosing the papers in the envelope, or taking them to the post office or a mail box. *F & F Construction*, 423 N.E.2d at 655. The court of appeals held that the insured failed to identify facts precluding summary judgment against it. *Id.*
16. In *Tri Creek Lumber*, the Tax Court was asked to determine whether a taxpayer, which argued that its personal property return was lost in the mail, should have been penalized for failing to file a return. *Indiana Sugars*, 683 N.E.2d at 1386 (*citing Tri Creek Lumber*, 558 N.E.2d at 1386). The court analogized to a statute governing the Indiana Department of Revenue, which provides that a document mailed to, but not received by, the

department will be considered timely filed based on “reasonable evidence” that it was mailed before its due date. *Tri Creek Lumber*, 558 N.E.2d at 1132. In the court’s view, testimony from the taxpayer’s president that he gave the return to his secretary to mail did not meet that standard. *Id.* at 1387 (citing *Tri Creek Lumber*, 558 N.E.2d at 1131).

17. Turning to the facts before it in *Indiana Sugars*, the Tax Court found reasonable evidence that the taxpayer mailed its application for a tax-credit. *Indiana Sugars*, 558 N.E.2d at 1387. To support its finding, the court pointed to the following: (1) the taxpayer’s extensive procedures designed to guard against missing filing deadlines; (2) the fact that the taxpayer’s accountant had delivered the completed application, which needed only to be signed and mailed, to the taxpayer; and (3) testimony from the taxpayer’s controller that he personally deposited the application in the U.S. mail on or before its due date. *Id.* at 1387.
18. Thus, based on *Indiana Sugars* and the cases discussed therein, the Diocese needed to offer reasonable evidence that it mailed Lot 34 and 35’s applications before May 15, 2006. The Diocese met that standard, if only barely. True, Ms. Wheeler did not place the applications in the U.S. mail as the taxpayer’s president in *Indiana Sugars* did. But she did not just drop the applications on somebody’s desk like the taxpayers’ presidents in *F & F Construction and Tri Creek Lumber* either. Instead, Ms. Wheeler knew that the applications went out with the rest of the Diocesan mail. And she testified that the Diocese had no problem obtaining exemptions claimed on personal property returns that were included in the same day’s outgoing mail. That supports an inference that the Assessor received and processed those other documents, which in turn supports an inference that the applications for Lots 34 and 35 were timely deposited in the U.S. mail.
19. Finally, the Diocese also requests exemptions for years after 2006, arguing that the Assessor failed to explain the need to file applications for those years. The PTABOA’s denials of the Diocese’s exemption applications for the 2006 assessment date, however, are the only actions covered by the Diocese’s Form 132 petitions. The Board therefore will not address what, if any, relief the Diocese may be entitled to for later years.

SUMMARY OF FINAL DETERMINATION

20. Lots 34 and 35 qualified for exemption in 2006. While the Assessor may not have received exemption applications for those parcels, the Diocese offered reasonable evidence that the applications were timely mailed. The Board finds that Lots 34 (key # 16-1162-6509) and 35 (key #16-1162-6508) were exempt for 2006. The Diocese, however, acknowledged that Lot 36 (Key # 16-1162-6507) did not qualify for an exemption in 2006.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, 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>>