

REPRESENTATIVE FOR PETITIONER:
Milton Brown, Early Childhood Crime Prevention

REPRESENTATIVE FOR RESPONDENT:
Frank Agostino, St. Joseph County Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

EARLY CHILDHOOD)	Petition No.: 71-026-05-2-8-00033
CRIME PREVENTION)	
)	
Petitioner,)	Parcel No.: 1810833480
)	
v.)	County: St. Joseph
)	
ST. JOSEPH COUNTY)	
PROPERTY TAX)	Township: Portage
ASSESSMENT BOARD)	
OF APPEALS,)	Assessment Years: 2005 and 2006
)	
Respondent.)	
)	

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

January 29, 2010

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. Early Childhood Crime Prevention appealed determinations by the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) denying Early Childhood property tax exemptions for the 2005 and 2006 tax years. Early Childhood did not timely appeal the PTABOA’s determination for 2005. For 2006, however, Early Childhood offered undisputed evidence to show that it owned, occupied, and predominately used the subject property for charitable purposes. It was therefore entitled to a 100% exemption for that year.

Background and Procedural History

2. This appeal has a convoluted history. On July 18, 2005, Early Childhood filed a Form 136 application seeking an exemption for the March 1, 2005, assessment date. *Resp’t Ex. 1*. On December 15, 2005, the PTABOA issued a Form 120 determination denying that application. *Board Ex. A*. On January 31, 2006, Early Childhood filed another Form 136 application, this time seeking an exemption for the March 1, 2006, assessment date. *Id.* On April 25, 2006, the PTABOA issued a Form 120 determination denying Early Childhood an exemption for 2006. *Id.*
3. Almost five months later, on October 22, 2007, an employee of the St. Joseph County Assessor made a copy of that second Form 120 determination with a handwritten notation that the “[t]axpayer did not receive this in the mail” *Board Ex. A*. Shortly thereafter, on October 24, 2007, Early Childhood filed a Form 132 petition with the Board appealing the PTABOA’s determinations for both the March 1, 2005, and March 1, 2006, assessment dates. *Id.*
4. The Board scheduled a hearing on that Form 132 petition for June 18, 2009. The hearing notice, however, referred only to the March 1, 2005, assessment date. At the June 18 hearing, the Board’s administrative law judge, Jennifer Bippus, refused to allow testimony relating to Early Childhood’s exemption claim for 2006.

5. Because Early Childhood’s petition purported to appeal the PTABOA’s determination for both the 2005 and 2006 assessment dates, the Board issued its Order Re-Opening Hearing. In that order, the Board explained that Early Childhood should have filed separate appeal petitions. Nonetheless, in the interest of judicial economy, the Board re-opened the hearing to address Early Childhood’s appeals for both assessment years.

Board Ex. C.

6. Thus, on November 5, 2009, the Board conducted a second hearing through its designated administrative law judge, Jennifer Bippus (“ALJ”). At that second hearing, the parties were allowed to address Early Childhood’s claims for both assessment dates.

7. The following people were sworn in at both hearings:

For Early Childhood:

Milton Brown, Jr.

For the PTABOA:

Mr. David Wesolowski, St. Joseph County Assessor,

Kevin Klaybor, St. Joseph County PTABOA,

Ross Portolese, St. Joseph County PTABOA,

Ralph Wolfe, St. Joseph County PTABOA

8. The parties offered the following exhibits:

For Early Childhood:

Petitioner Exhibit 1 – Document about determining charitable use,

Petitioner Exhibit 2 – Page 1 from Form 120 for March 1, 2006 assessment date with handwritten notes,

Petitioner Exhibit A – Warranty deed dated July 19, 2005,

Petitioner Exhibit B - Page 1 from Form 120 for March 1, 2005, assessment date,

Petitioner Exhibit C – Article 10, Section 1 of the Indiana Constitution,

Petitioner Exhibit D – DVD about Early Childhood Crime Prevention¹

¹ Early Childhood offered Exhibits 1 - 2 at the first hearing and Exhibits A - D at the second hearing.

For the PTABOA²:

Respondent Exhibit 1 – Form 136

Respondent Exhibit 2 – Warranty deed dated July 19, 2005.

9. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A: Form 132,
 - Board Exhibit B: Hearing notice dated January 16, 2009,
 - Board Exhibit C: Order Re-Opening Hearing, dated September 3, 2009,
 - Board Exhibit D: Hearing notice dated September 30, 2009,
 - Board Exhibit E: May 29, 2009 and October 21, 2009, orders on conducting exemption hearings,
 - Board Exhibit F: Notice of Appearance for Frank Agostino,
 - Board Exhibit G: Notice of County Assessor Appearance as Additional Party,
 - Board Exhibit H: Hearing sign-in sheets.
10. Neither the ALJ nor the Board inspected the subject property.
11. The PTABOA denied Early Childhood's request for an exemption and found that the subject property was 100% taxable for both 2005 and 2006.
12. Early Childhood requests a 100% exemption for each year.

Findings of Fact

13. Early Childhood is a not-for-profit charitable organization that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code. *Pet'r Ex. D.* The subject property is located at 1517 Lincolnway West, South Bend, Indiana. It is in a low-income neighborhood with crime problems. *See Pet'r Ex. D.*
14. Early Childhood bought the subject property from Mary Louise Rumpf on July 15, 2005. *Brown testimony, Pet'r Ex. A.* Early Childhood did not use or occupy the property before that date. *Brown testimony.* Although the building was vacant from at least March 1, 2005, through the date that Early Childhood bought it, there is nothing in the record to show what the property was used for leading up to March 1, 2005. *See id.*

² The PTABOA offered the same two exhibits at both hearings.

15. After buying the subject property, Early Childhood used it to operate a community development center through which Early Childhood provided youth tutoring and mentoring. *Brown testimony; Pet'r Ex. D.* Early Childhood also used the property to offer arts and crafts activities for senior citizens and to operate a food pantry. *Id.* There is no evidence that Early Childhood used the property for any other purpose.

Conclusions of Law and Analysis

A. 2005 exemption

16. As an initial matter, it does not appear that Early Childhood timely filed its appeal for the March 1, 2005, assessment date. Under the law in effect at the time that the PTABOA issued its determination, a taxpayer was required to file a petition for review to the Board within 30 days after the PTABOA mailed notice of its determination. IND. CODE § 6-1.1-15-3(c) (2005 supp.); IND. CODE § 6-1.1-16-7(c) (2004). Early Childhood, however, did not file its Form 132 petition until October 24, 2007—more than 22 months after the PTABOA mailed notice of its determination for the March 1, 2005, assessment year. The Board therefore lacks jurisdiction to consider Early Childhood's appeal.
17. Even if the Board were to consider the merits of Early Childhood's appeal concerning the March 1, 2005, assessment date, Early Childhood would still lose. First, Early Childhood did not timely file its exemption application with the PTABOA. Early Childhood needed to file its application on or before May 15, 2005. IND. CODE §§ 6-1.1-11-3(a) (2004). Early Childhood, however, did not apply for an exemption until July 18, 2005—well past the May 15 deadline.
18. Second, to be exempt under Ind. Code § 6-1.1-10-16, a property must have been owned, occupied, and predominately used for an exempt purpose during the relevant tax year, *i.e.* the year leading up to the assessment date. *Brothers of Holy Cross, Inc. v. St. Joseph County Property Tax Assessment Bd. of Appeals*, 878 N.E.2d 548, 550 (Ind. Tax Ct. 2007). Early Childhood, however, offered no evidence to show that the property was

owned, occupied, or used for an exempt purpose during the year leading up to March 1, 2005.

B. 2006 exemption

19. Early Childhood’s claim for 2006 does not suffer from the same problems. Early Childhood filed its Form 136 exemption application before the May 15 deadline for that year. Similarly, Early Childhood timely filed its Form 132 petition. True, Early Childhood did not file that petition within 30 days of April 25, 2007—the date that the PTABOA purportedly mailed notice of its determination. But Early Childhood did not receive notice of that determination until October 22, 2007. And Early Childhood filed its Form 132 petition two days later. The Board therefore turns to the merits of Early Childhood’s 2006 appeal.

20. A taxpayer bears the burden of proving that its property qualifies for exemption. *Indianapolis Osteopathic Hospital, Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). In its Form 132 petition, Early Childhood sought an exemption under Ind. Code §6-1.1-10-16 on grounds that the subject property was owned, occupied and used for charitable purposes. *Board Ex. A.* That statute exempts a building and the land on which it sits if the building is owned, occupied, and predominantly used for educational, literary, scientific, religious, or charitable purposes. *See* Ind. Code § 6-1.1-10-16(a)-(c); Ind. Code § 6-1.1-10-36.3. The exact meaning of the statute and its predecessors has spawned a significant amount of litigation. But broadly speaking, courts have linked a taxpayer’s right to exemption to its property being used to provide a public benefit. *See, e.g., Fort Wayne Sports Club, Inc. v. State Bd. of Tax Comm’rs*, 147 Ind. App. 129, 258 N.E.2d 874, 881(1970) (“In our view, the well-established and obvious purpose for legislative conferral of tax exemptions requires a showing of some public benefit as a condition precedent to the granting of such exemption.”).

21. Although it did not offer much detail, Early Childhood made a prima facie case that it owned, occupied, and used the subject property to provide a public benefit. Early Childhood used the subject property to offer food and services to children and senior

citizens in a low-income neighborhood. There is no evidence that the property was used for any other purpose. Indeed, the PTABOA did not even attempt to dispute Early Childhood's exemption claim for the 2006 tax year.

22. Thus, based on the undisputed evidence, the subject property qualified for a 100% property tax exemption for the March 1, 2006, assessment date.

Summary of Final Determination

23. For a variety of reasons, Early Childhood was not entitled to an exemption for the March 1, 2005, assessment date. Early Childhood, however, offered undisputed evidence that it owned, occupied, and predominately used the subject property for charitable purposes on the March 1, 2006, assessment date. Early Childhood is therefore entitled to a 100% exemption for 2006.

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

Commissioner, Indiana Board of Tax Review

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>>