

REPRESENTATIVE FOR PETITIONER: Sheila Glass, Church Secretary

REPRESENTATIVE FOR RESPONDENT: Marc Pe-Caine Sultzer, Attorney at Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

L.D.G. ABUNDANT FAITH)	
APOSTOLIC CHURCH, INC,)	Petition No.: 49-101-07-2-8-00002
)	and 49-101-07-2-8-00003
)	
Petitioner,)	
)	Marion County
v.)	
)	Center Township
MARION COUNTY PROPERTY)	
TAX ASSESSMENT BOARD OF)	Parcel No.: 1094002
APPEALS,)	and 1014227
)	
Respondent.)	Assessment Year: 2007

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

February 13, 2009

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 and conclusions of law on the following issues:

Issue 1—Did the Petitioner waive its exemption claim by failing to comply with statutory filing procedures?

Issue 2—Is the subject property entitled to the exemption for religious use as provided by Ind. Code § 6-1.1-10-16?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. L.D.G. Abundant Faith Apostolic Church, Inc. (“L.D.G.”) filed a Form 136 Application for Property Tax Exemption for the subject property on May 10, 2007.
2. The Marion County Property Tax Assessment Board of Appeals (“P.T.A.B.O.A.”) denied that exemption on October 26, 2007.
3. On November 21, 2007, the Petitioner filed a Form 132 Petition for Review of Exemption requesting the Board to consider the exemption claim.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. The Board conducts an impartial review of appeals concerning assessed valuations, deductions, and exemptions for tangible property. Ind. Code § 6-1.5-4-1(a). Such appeals are conducted under Ind. Code § 6-1.1-15.
5. The Board’s designated Administrative Law Judge, Ted J. Holaday, held the hearing in Indianapolis on November 20, 2008. He did not conduct an on-site inspection of the property.
6. Pastor Larry D. Glass, the church secretary Sheila Glass, and Deputy Assessor Melissa Tetrick were sworn as witnesses at the hearing. Chief Deputy Assessor Maurice Cox was present, but only as an observer.
7. The following exhibits were entered into the record:
 - Petitioner Exhibit 1 – Summary of the evidence pertaining to Parcel 1094002,
 - Petitioner Exhibit 2 – Summary of the evidence pertaining to Parcel 1014227,
 - Respondent Exhibit 1 – Form 136 Application for Property Tax Exemption,

Respondent Exhibit 2 – Form 120 Notice of P.T.A.B.O.A.’s denial for Parcel
1094002,

Respondent Exhibit 3 – Form 120 Notice of P.T.A.B.O.A.’s denial for Parcel
1014227,

Respondent Exhibit 4 – Warranty Deed,

Respondent Exhibit 5 – Warranty Deed (duplicate of Exhibit 4),

Respondent Exhibit 6 – Copy of Ind. Code § 6-1.1-11-3,

Respondent Exhibit 7 – Copy of Ind. Code § 6-1.1-11-4.

8. The following additional items are part of the record:

Board Exhibit A – Form 132 Petition with attachments,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing sign-in sheet,

Board Exhibit D – Notice of Appearance.

9. The subject property is a building and parking lot at 1313 E. 25th Street in Indianapolis.

10. The P.T.A.B.O.A. determined the subject property was 100% taxable for 2007.

11. L.D.G. contends it should be 100% exempt.

PETITIONER’S CONTENTIONS

12. L.D.G. outgrew a previous worship facility and purchased the subject property from Nichols Financial on May 8, 2007. Before L.D.G. purchased the subject property, it had been used as a restaurant. L.D.G. made significant renovations. Worship at the subject property began in February 2008. *S. Glass testimony; Pet’r Ex. 1, 2.*

13. The subject property is L.D.G.’s main worship facility. It should be exempt because it is used for religious purposes. *S. Glass testimony; Pet’r Ex. 1, 2.*

14. The subject property was purchased for continuous religious use. Allowing the exemption would permit L.D.G. to continue its work. *S. Glass testimony*.

RESPONDENT'S CONTENTIONS

15. The law requires ownership on the assessment date to qualify for the exemption. *Tetrick testimony*.
16. L.D.G. was not the property owner on the assessment date. The warranty deed shows that L.D.G. did not own the subject property until May 2007. Therefore, the P.T.A.B.O.A. correctly denied the exemption. *Tetrick testimony; Resp't Ex. 2, 3, 4, 5*.

ANALYSIS OF ISSUE 1: DID THE PETITIONER WAIVE ITS EXEMPTION CLAIM BY FAILING TO COMPLY WITH STATUTORY FILING PROCEDURES?

17. "An exemption is a privilege which may be waived by a person who owns tangible property that would qualify for the exemption. If the owner does not comply with the statutory procedures for obtaining an exemption, he waives the exemption. If the exemption is waived, the property is subject to taxation." Ind. Code § 6-1.1-11-1.
18. The most relevant statute regarding the procedural requirements for filing an exemption is Ind. Code § 6-1.1-11-3, which states in pertinent part that "an owner of tangible property who wishes to obtain an exemption from property taxation shall file a certified application in duplicate with the county assessor of the county in which the property that is the subject of the exemption is located. The application must be filed annually on or before May 15...."
19. Case law also clearly requires the owner and legal title holder to file the application for exemption. *See Word of His Grace Fellowship, Inc. v. State Bd. of Tax Comm'rs*, 711 N.E.2d 875, 878 (Ind. Tax Ct. 1999); Ind. Code § 6-1.1-1-9 (defining owner as the holder of legal title). But the statutes and case law do not deal specifically with the precise

timing question presented in this case where ownership changed between the assessment date and the deadline for filing an exemption application.

20. The evidence established that L.D.G. did not own the property on the assessment date, March 1, 2007, but apparently it did own the property when it filed a timely application for exemption on May 10, 2007 (the deadline for filing was May 15). The Respondent did not dispute the fact that L.D.G. acquired ownership based on a deed dated May 8, 2007.¹ Consequently, the Board finds that L.D.G. became the owner and legal title holder of the subject property on May 8, 2007.
21. The Respondent claimed that the March 1 assessment date should be used to determine ownership for exemption purposes, but it failed to provide any authority to support that position. And Ind. Code § 6-1.1-11-3 clearly does not mention or reference the assessment date in establishing the requirements for an exemption application.
22. The logical meaning of Ind. Code § 6-1.1-11-3 relates the ownership requirement to the time of filing the exemption application, which must be on or before May 15, rather than the assessment date. In this case, L.D.G. was the owner when it filed the exemption application on May 10. L.D.G. acquired the property subject to taxes payable in May and November 2007 and thereafter. Furthermore, if any taxes were due and remained unpaid, the property could be taken from L.D.G. for tax sale. Clearly L.D.G. had a significant interest in the property when it applied for the exemption.
23. Therefore, the Board concludes that L.D.G. satisfied the procedural requirements for filing the exemption application for 2007.

¹ The evidence regarding the precise date of the warranty deed, however, is ambiguous. The Grantor's statement says it was executed on the "___ day of May, 2007." The notarization is dated May 8, 2007. One file mark on the deed is illegible. Another file mark dated May 31, 2007, is crossed out. A notation also states "06/01/07 11:21AM Julie L. Voorhies Marion Cty Recorder JNV 18.00 Pages: 2 Inst # 2007-0080781." The ambiguity about the precise date title transferred is not significant to the outcome of this case.

**ANALYSIS OF ISSUE 2: IS THE SUBJECT PROPERTY ENTITLED TO THE EXEMPTION
FOR RELIGIOUS USE PROVIDED BY IND. CODE § 6-1.1-10-16?**

24. Indiana Code § 6-1.1-2-1 provides that as a general proposition, all tangible property in this state on the assessment date of a year is subject to assessment and taxation.² But Ind. Code § 6-1.1-10-16(a) provides an exception: “all or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.” If a property is exclusively used for exempt purposes, then it is totally exempt. If a property is predominantly used for exempt purposes, then it gets a partial exemption based on the percentage of exempt use. If a property is predominantly used for non-exempt purposes, then it gets no exemption. Ind. Code § 6-1.1-10-36.3(b). “Predominant use” means more than 50% of the time that a property is used during the year that ends on the assessment date. Ind. Code § 6-1.1-10-36.3(a).
25. Tax exemption statutes are strictly construed against the person claiming the exemption. *Trinity Episcopal Church v. State Bd. of Tax Comm’rs*, 694 N.E.2d 816, 818 (Ind. Tax Ct. 1998); *Sangralea Boys Fund, Inc. v. State Bd. of Tax Comm’rs*, 686 N.E.2d 954, 956 (Ind. Tax Ct. 1997). Exemption provisions, however, are not to be construed so narrowly that the legislature’s purpose is defeated or frustrated. *See id.* Furthermore, the listed exempt purposes are to be construed broadly and in accordance with their constitutional meaning. *Trinity Church*, 694 N.E.2d at 818.
26. Anyone who seeks an exemption bears the burden of proving that the requirements for exemption are satisfied. *Indianapolis Osteopathic Hospital, Inc v. Dep’t of Local Gov’t Fin.*, 818 N.E. 2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel Co, Inc. v. State Bd. of Tax Comm’rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Ass’n of Seventh Day Adventists v. State Bd. of Tax Comm’rs*, 512 N.E 2d 936, 938 (Ind. Tax Ct. 1987).

² Except for mobile homes, “assessment date” means March 1. Ind. Code § 6-1.1-1-2.

27. “[T]he proper focus of any inquiry into the propriety of an exemption is whether the use of the property furthers exempt purposes.” *Trinity Church*, 694 N.E.2d at 818 (citing *Sangralea*, 686 N.E.2d at 957).
28. Consideration must focus on the use that pertains to the assessment date in question. *Id.* at 819. “[O]nly the facts as they exist on the 1st day of March of each year are material to the determination of questions of assessment and valuation.... This is also true for purposes of exemption. Property either is or is not exempt from taxation according to the situation on the 1st of March each year.” *Stark v. Kreyling*, 207 Ind. 128, 131, 188 N.E. 680, 681 (1934). Occurrences outside the assessment date are relevant and material to the extent that they demonstrate the situation on the assessment date. *See Trinity Church*, 694 N.E.2d at 819. For example, Trinity Church purchased a building and parking lot on August 10, 1994. Sometime later, it started extensive, costly renovations to the building so that it could be used as a community mental health center. These renovations were in progress on the March 1, 1995 assessment date. On July 12, 1995, after the renovations were complete, Trinity leased the property to Midtown, who used it as a community mental health center. In determining that the exemption should have been allowed, the Tax Court stated:
- it is apparent that, *on the assessment date*, Trinity’s intent to use the building in furtherance of exempt purposes was more than a dream, and that it did more than merely own the building. Trinity had taken concrete steps at great expense to prepare the building for use as a community mental health center. This is more than enough objective evidence to support Trinity’s contention that, *as of the assessment date*, it held the building with an intention to use the building in the future for exempt purposes.
- Id.* at 818 (emphasis added).
29. The “predominant use test” for exemptions is based on the use of the property during the year that ends on the assessment date. Ind. Code § 6-1.1-10-36.3(a). While L.D.G.’s claim does not turn on the question of predominant use, that provision is closely related to the question of what period of use is determinative. Consequently, it provides further

guidance about what period of use is relevant to the 2007 exemption and indicates that here the relevant period of use is before L.D.G. acquired the property.

30. There is almost no probative evidence regarding the use of the subject property as of March 1, 2007, or during the year ending on that date, other than the fact that Nichols Financial owned the property. At some prior time it had been used as a restaurant. These facts do not establish any kind of exempt use. The Petitioner offered substantial evidence about its religious use of the property after it acquired the property in May, but none of that use related to the situation as of the assessment date, March 1, 2007. Therefore, it does not help to prove that an exemption for religious use should be allowed for the 2007 assessment.
31. The Petitioner had the burden to establish exempt use during a time that is relevant or probative for the 2007 assessment. The record contains no such evidence. Therefore, the exemption claim cannot be granted.

CONCLUSION

32. The Petitioner failed to prove that the use of the subject property qualifies for any exemption for the 2007 assessment date. The Board finds in favor of the Respondent. Consequently, the property is 100% taxable.

This Final Determination 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>