

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 47-006-11-1-4-00003
Petitioner: New Life Trinity Holiness Tabernacle
Respondent: Lawrence County Assessor
Parcel: 47-03-17-400-125.000-006
Assessment Year: 2011

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Procedural History

1. The New Life Trinity Holiness Tabernacle (“Trinity”) filed a Form 136 Application for property tax exemption on April 24, 2012. The Lawrence County Property Tax Assessment Board of Appeals (“PTABOA”) granted Trinity an exemption on the subject property for 2012.
2. On May 7, 2012, Trinity filed a Form 130 petition seeking a refund for the taxes it paid based on the property’s 2011 assessment. On January 15, 2013, the PTABOA issued a Form 115 determination explaining that it could not authorize a refund because Trinity did not file a timely exemption application for 2011. Trinity responded by filing a Form 131 petition with the Board on February 27, 2013.
3. The subject property is a church building and accompanying land located at 1208 Washboard Road in Bedford.
4. On February 26, 2015, our designated administrative law judge, Andrew Howell, held a hearing on Trinity’s petition. Neither he nor the Board inspected the subject property.
5. Mark Brock, the pastor and chairman of the board of trustees for Trinity, appeared for Trinity. Marilyn Meighen appeared for the Lawrence County Assessor. Pastor Brock and April Stapp Collins, the Lawrence County Assessor, testified under oath.

Record

6. The official record for this matter is made up of the following:
 - a. A digital recording of the hearing,

b. Exhibits:

- Petitioner's Ex. 1: Outline of Trinity's case,
Petitioner's Ex. 2: Form 130 petition filed by Petitioner on May 7, 2012,
Petitioner's Ex. 3: Unsigned Form 120 determination for March 1, 2012 assessment date,
Petitioner's Ex. 4: Indiana Nonprofit Sales Tax Exemption Certificate.
- Respondent's Ex. 1: Form 130 petition filed by Petitioner on May 7, 2012,
Respondent's Ex. 2: Form 115 determination issued January 15, 2013, for March 1, 2011 assessment date,
Respondent's Ex. 3: Form 131 petition dated February 26, 2013, for March 1, 2011 assessment date,
Respondent's Ex. 4: Form 136 application filed April 24, 2012, for March 1, 2012 assessment date,
Respondent's Ex. 5: Subject property's Real Property Maintenance Report for 2010 tax year,
Respondent's Ex. 6: Subject property's Real Property Maintenance Report for 2011 tax year,
Respondent's Ex. 7: Subject property's Real Property Maintenance Report for 2012 tax year,
- Board Ex. A: Form 131 petition,
Board Ex. B: Hearing notice,

c. These Findings and Conclusions and all other orders and filings.

Findings of Fact

7. Trinity seeks a refund of taxes it paid on the 2011 assessment. Trinity bought the property on June 1, 2010. It was not exempt when Trinity bought it. Around the time of purchase, Pastor Brock visited the Assessor's office where he was told that the property would be exempt from taxes. But he did not remember anybody telling him he needed to file a form. *Brock testimony; Stapp Collins testimony; Resp't Ex. 5.*
8. Trinity acknowledges that it did not file an exemption application until April 24, 2012. *Brock testimony; Stapp Collins testimony; Resp't Ex. 7.*

Conclusions of Law and Analysis

9. The Indiana Code sets out the grounds on which a taxpayer may seek a property tax refund and the procedures for doing so, including the procedures for appealing when a refund claim is denied. Ind. Code § 6-1.1-26-1 through Ind. Code § 6-1.1-26-4. Among other things, a refund claim must be filed with the county auditor on a form prescribed by the State Board of Accounts (Form 17T). I.C. § 6-1.1-26-1(1) and (3); *see also,*

Hutcherson v. Hamilton County Ass'r, 2 N.E.3d 138, 143 (Ind. Tax Ct. 2013). The claim must be based on one of three grounds: (1) taxes for the property were assessed and paid more than once for the same year, (2) the “taxes, as a matter of law, were illegal,” or (3) there was a mathematical error in computing the assessment or taxes. I.C. § 6-1.1-26-1(4). Except for certain claims that must be approved by the Department of Local Government Finance, a refund claim must be approved by three county officials: the auditor, treasurer, and assessor. I.C. § 6-1.1-26-1(1). If the claim is disapproved by one of those officials or by the county commissioners, the taxpayer may appeal to the Board. I.C. § 6-1.1-26-3 and -4.

10. There is nothing in the record to show Trinity complied with the procedures laid out in the refund statute. For example, there is no indication that Trinity filed a Form 17T refund claim, and Trinity has not alleged any of the statutory grounds that would entitle it to a refund. Instead, Trinity claims it is entitled to a refund because it was using the property for an exempt purpose in 2011. Even if we were to (1) assume Trinity’s claim equates to one of the statutory grounds for which taxes may be refunded, and (2) ignore its failure to follow the statutory procedures for claiming that refund, we would still have to deny Trinity any relief.
11. Trinity assumes that it was entitled to an exemption because it used the property as a church. Indeed, the PTABOA granted Trinity an exemption for 2012. But exemption from taxation is a privilege that may be waived. I.C. § 6-1.1-11-1. Thus, an individual or entity seeking an exemption must comply with the statutory procedures for claiming the exemption. *Id.* The deadline for filing an exemption application for 2011 was May 15, 2011. I.C. 6-1.1-11-3.¹ Trinity acknowledges that it did not file its application until almost a year later, on April 24, 2012. Trinity therefore waived its exemption claim for 2011.
12. Nonetheless, Trinity asks for special consideration because Pastor Brock did not know he needed to file an exemption application. The legislature created the Board, however, and we have only those powers given to us by statute. *Whetzel v. Department of Local Government Finance*, 761 N.E.2d 904 (Ind. Tax Ct. 2002) citing *Matonovich v. State Board of Tax Commissioners*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). Trinity fails to direct us to statutory authority that would allow us to waive the filing deadline.

¹ Indiana Code § 6-1.1-11-3 (“section three”) is the primary section governing exemption applications. Other sections create exceptions to the basic procedures laid out in section three. For example, beginning with the year 2000, a not-for-profit corporation that continues to use its property for exempt purposes only needs to file an application in even numbered years, although it must still file a statement in the intervening odd-numbered years. I.C. § 6-1.1-11-3.5 (a) and (b). If the first year for which the corporation seeks an exemption is an odd-numbered year, however, it must still file an application. I.C. § 6-1.1-11-3.5 (a). Similarly, if an entity has filed a valid application once for, among other things, a religious use under Ind. Code § 6-1.1-10-16 or Ind. Code § 6-1.1-10-21 and it continues to meet the requirements for exemption, it need not file any further applications. I.C. § 6-1.1-11-4(d). But those exceptions to annual filing requirements presuppose a prior, timely filed application. Because Trinity had not previously filed an exemption application for the subject property, it needed to timely file an application for 2011.

13. That is true even though Pastor Brock may have relied on information from someone at the Assessor's office in forming his belief that Trinity did not need to file an exemption application. The Indiana Supreme Court addressed an analogous scenario in a case where a taxpayer sought to estop the Department of Revenue from asserting that he had failed to timely file his complaint for a tax refund. The taxpayer claimed that he had relied on erroneous representations by the department's deputy director about the time for filing his refund claim. In rejecting the taxpayer's estoppel claim, the Indiana Supreme Court held:

When the legislature enacts procedures and timetables which act as a precedent to the exercise of some right or remedy, those procedures cannot be circumvented by the unauthorized acts and statements of officers, agents or staff of the various departments of our state government.

Middleton Motors v. Ind. Dep't of State Revenue, 269 Ind. 282, 285, 380 N.E.2d 79, 81 (Ind. 1978) (citing *Walgreen Co. v. Gross Income Tax Div.*, 225 Ind. 418, 75 N.E.2d 784 (Ind. 1947)).

14. The circumstances are unfortunate—Trinity has paid taxes on property that nobody appears to dispute was used for an exempt purpose. But we cannot give Trinity the relief it seeks.

Final Determination

15. Trinity failed to show that it was entitled to a refund for the 2011 tax year. We therefore find for the Assessor.

ISSUED: May 21, 2015

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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.