

REPRESENTATIVES FOR PETITIONER:

Deborah Shubert, Secretary, O. C. Properties, LLC  
Mark Shubert, President, O.C. Properties, LLC

REPRESENTATIVE FOR RESPONDENT:

Frank Agostino, St. Joseph County Attorney

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

O.C. Properties, LLC,	)	Petition Nos.: 71-022-05-2-8-00002
	)	71-022-07-2-8-00001
Petitioner,	)	
	)	Parcel: 15-1066-1479 and
v.	)	Personal Property <sup>1</sup>
	)	
St. Joseph County Property Tax	)	County: St. Joseph
Assessment Board of Appeals and	)	Township: Penn
St. Joseph County Assessor, <sup>2</sup>	)	
	)	
Respondent.	)	Assessment Years: 2005 and 2007

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

**November 24, 2008**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and

<sup>1</sup> The personal property is only at issue for the year of 2005.

<sup>2</sup> The St. Joseph County Assessor entered a notice of appearance as an additional party pursuant to Ind. Code § 6-1.1-15-4 for the assessment year of 2005.

having considered the issues, now finds and concludes the following:

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **Issue**

1. The issue presented for consideration by the Board is whether the subject property qualifies for an educational purpose exemption under Ind. Code § 6-1.1-10-16.

### **Procedural History**

2. Pursuant to Indiana Code § 6-1.1-11-7, on September 15, 2005, and on August 24, 2007, the Petitioner, O.C. Properties, LLC, (Petitioner) filed Form 132 Petitions for Review of Exemption (Form 132 Petitions), petitioning the Board to conduct an administrative review of the denial of the Petitioner's applications for exemption.

### **Hearing Facts and Other Matters of Record**

3. Pursuant to Indiana Code § 6-1.1-15-4, Dalene McMillen, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, held a hearing on May 29, 2008, in South Bend, Indiana.
4. The following persons were sworn as witnesses at the hearing:

For the Petitioner:

Mark Shubert, President, O.C. Properties, LLC,  
Deborah Shubert, Secretary, O.C. Properties, LLC,

For the Respondent:<sup>3</sup>

Dennis Dillman, PTABOA member  
Ross A. Portolese, PTABOA member  
Ralph J. Wolfe, PTABOA member

5. The Petitioner submitted the following exhibits:<sup>4</sup>

- Petitioner Exhibit 1 – Two Notices of Action on Exemption Application – Form 120, dated August 23, 2005, and July 25, 2007, respectively,
- Petitioner Exhibit 2 – Two Applications for Property Exemption – Form 136, dated May 13, 2005, and May 11, 2007, respectively,
- Petitioner Exhibit 3 – Articles of Incorporation for Debbie Werbrouck’s School of Dance, Inc., dated November 17, 1988,
- Petitioner Exhibit 4 – By-Laws of Debbie Werbrouck’s School of Dance, Inc., dated November 21, 1988,
- Petitioner Exhibit 5 – Indiana Board of Tax Review Final Determination in *Mark & Deborah Shubert v. Elkhart County Property Tax Assessment Board of Appeals*, Petition No. 20-015-05-2-8-00002, dated December 18, 2006,
- Petitioner Exhibit 6 – Two Petitions to the Indiana Board of Tax Review for Review of Exemption – Form 132, dated September 14, 2005, and August 29, 2007, respectively,
- Petitioner Exhibit 7 – Curriculum and Syllabus for Debbie Werbrouck’s School of Dance,
- Petitioner Exhibit 8 – Resume of Debbie Werbrouck,
- Petitioner Exhibit 9 – Debbie Werbrouck’s School of Dance educational guidelines for parents,
- Petitioner Exhibit 11 – Zoning Variance for Debbie Werbrouck’s School of Dance,
- Petitioner Exhibit 12 – Letter from Patchwork Dance Co. to Indiana Board of Tax Review, dated May 1, 2008,
- Petitioner Exhibit 13 – Letter from Deborah Shubert to Indiana Board of Tax Review, dated May 1, 2008,

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<sup>3</sup> The St. Joseph County Assessor, Mr. David Wesolowski, was late in arriving at the Board hearing and therefore he was not identified on the record. Mr. Wesolowski also was not sworn in to present testimony.

<sup>4</sup> Petitioner’s Exhibit cover sheet identifies a “letter from engineer” as Petitioner Exhibit 10. The Petitioner, however, failed to submit this letter into the record.

Petitioner Exhibit 14 – Mission Statement for Debbie Werbrouck’s School of Dance.

6. The Respondent submitted the following exhibits:
  - Respondent Exhibit 1 – Petition to the Indiana Board of Tax Review for Review of Exemption, dated September 15, 2005,
  - Respondent Exhibit 2 – Application for Property Tax Exemption – Form 136, dated May 13, 2005,
  - Respondent Exhibit 3 – Notice of Action on Exemption Application – Form 120, dated August 23, 2005,
  - Respondent Exhibit 4 – Curriculum and Syllabus for Debbie Werbrouck’s School of Dance,
  - Respondent Exhibit 5 – Curriculum and Syllabus for Debbie Werbrouck’s School of Dance,
  - Respondent Exhibit 6 – Articles of Incorporation for Debbie Werbrouck’s School of Dance, Inc., dated November 21, 1988,
  - Respondent Exhibit 7 – By-Laws for Debbie Werbrouck’s School of Dance, Inc., dated November 21, 1988,
  - Respondent Exhibit 8 – U.S. Income Tax Return for an S Corporation – Form 1120S for 2002, 2003, and 2004,
  - Respondent Exhibit 9 – 2002 property record card for O.C. Properties, LLC., brochure and educational guidelines for parents from Debbie Werbrouck’s School of Dance.
  
7. The following additional items are officially recognized as part of the record of the proceedings and labeled Board Exhibits:
  - Board Exhibit A – Form 132 petitions with attachments,
  - Board Exhibit B – Notices of Hearing on Petition,
  - Board Exhibit C – Orders Regarding Conduct of Exemption Hearing,
  - Board Exhibit D – Hearing sign-in sheets.
  
8. The property at issue is a 5,574 square foot building with a 960 square foot detached garage on a 120’ x 205’ lot, located at 686 Apple Road, Osceola, in Penn Township, St. Joseph County.
  
9. The ALJ did not conduct an on-site inspection of the subject property.

10. For 2005 and 2007, the PTABOA determined the land and improvements were 100% taxable. In 2005, the PTABOA also determined the personal property was 100% taxable.
11. For 2005 and 2007, the Petitioner contends that the real property should be 100% tax-exempt. For 2005, the Petitioner contends the personal property should also be 100% tax-exempt.

### **Jurisdictional Framework**

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1 (a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1 (b); Ind. Code § 6-1.1-15-4.

### **Administrative Review and Petitioner's Burden**

13. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t

is the taxpayer's duty to walk the Indiana Board ... through every element of the analysis").

15. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

### **Basis of Exemption and Burden**

16. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.
17. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
18. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E.2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).

19. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

### **Petitioner's Contentions**

20. The Petitioner contends that the property at issue should be 100% exempt from property taxation under Ind. Code § 6-1.1-10-16, because it is owned, occupied and used for educational purposes. *D. Shubert testimony*. The property is used by Debbie Werbrouck's School of Dance and the Patchwork Dance Company for the study of the art of dance. *Id.* According to Ms. Shubert, the Werbrouck's School of Dance has operated for 40 years. *Id.* The property has never been used or occupied by any other person or organization. *Id.*
21. The Petitioner's representative testified that the subject property was purchased and remodeled specifically for use as a dance studio. *D. Shubert testimony*. Further, the property is a residentially zoned property for which the Petitioner obtained a use-variance to allow Werbrouck's School of Dance to operate a dance studio. *D. Shubert testimony; Petitioner's Exhibit 11*. According to Ms. Shubert, the property can only be used for the dance studio. *Id.*
22. The Petitioner argues that Werbrouck's School of Dance's curriculum and class syllabus demonstrate that the school offers a broad range of instruction relating to many aspects of dance. *D. Shubert testimony; Petitioner Exhibits 7 and 9*. According to Ms. Shubert, the pre-school curriculum follows standards used for

pre-school students as preparation for public schools. *D. Shubert testimony*. Further, the school's curriculum has been used in dance classes at Penn High School in Mishawaka and the school's educational materials have been taught at St. Mary's College and Goshen College. *Id.* The fact that classes offered at public schools are based on the materials taught at the school, the Petitioner argues, substantiates the educational purpose of the school. *Id.*

23. The Petitioner contends that several Indiana Tax Court and Board of Tax Review cases such as *Trinity School of Natural Health v. Kosciusko Cty. Property Tax Assessment Bd. of Appeals*, 799 N.E.2d 1234 (Ind. Tax 2003); *State Bd. of Tax Comm'rs v. Professional Photographers of America*, 268 N.E.2d 617 (Ind. App. 1971); and *Elkhart Child Development Center, Inc.*, Petition No. 20-012-04-2-8-00009, support the Petitioner's exemption.<sup>5</sup> *D. Shubert testimony*. According to the Petitioner, to qualify for an educational purpose exemption, a taxpayer must demonstrate that the predominant use of the property is educational, the use of the property provides a public benefit, and the use relieves the State of the financial obligation of furnishing the instruction. *D. Shubert testimony*. In addition, the Petitioner argues, the statute does not differentiate between not-for-profit organizations and for-profit organizations in determining an exemption. *Id.*, citing *College Corner, L.P. v. Dep't of Local Gov't. Fin.*, 840 N.E.2d 905 (Ind. Tax 2006), *Sangralea Boys Fund, Inc. v. State Bd. of Tax Commr's.*, 686 N.E.2d 954, 956-59 (Ind. Tax Ct. 1997) and *Mark and Deborah Shubert*, Petition No. 20-015-05-2-8-00002.
24. In response to the Respondent's questions, the Petitioner's representative testified that O.C. Properties owns twelve other properties in St. Joseph and Elkhart counties. *M. Shubert testimony*. According to Mr. Shubert, one of those

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<sup>5</sup> The Petitioner also cited *Richmond Gymnastics Training Center v. Department of Local Government Finance* (Ind. Tax Ct. 2003), which granted exemption to a gymnastics training facility that offers classes and private lessons to children, as authority in support of its exemption claim. Citing this case is improper because it is designated "Not For Publication." Ind. Tax Court Rule 17. Therefore, the Board will not address this case.

- properties is another dance school and the remaining properties are commercially leased as residential and commercial properties. *Id.* Thus, Mr. Shubert admitted that O.C. Properties has no charitable purposes for the ownership of eleven of its thirteen properties and that “more than 50% of the buildings that O.C. Properties owns are used for other than educational purposes.” *Id.*
25. Further, the Petitioner’s representative admitted that for the last 30 years the Petitioner has had a standard lease agreement with Werbrouck’s School of Dance, but argues that the dance schools pays the rent only when the funds are available. *M. Shubert testimony.* Ms. Shubert testified that the rent is used to cover the expense of purchasing and maintaining the property. *D. Shubert testimony.* Moreover, the Patchwork Dance Company is a 501(c)(3) organization that uses the facility rent free. *Id.*

### **Respondent’s Contentions**

26. The Respondent contends the petition for exemption under Ind. Code § 6-1.1-10-16 should be denied because O.C. Properties has not shown the subject property was owned for an exempt purpose. *Agostino argument.* According to the Respondent, O.C. Properties is in the business of operating rental properties. *Id.* Mr. Agostino argues that more than 50% of the Petitioner’s rental properties are not held for exempt purposes. *Id.* Thus, while Werbrouck’s School of Dance may be engaged in educational services, the Respondent argues, O.C. Properties is not. *Id.*
27. Further, the Respondent contends that O.C. Properties filed for the exemption but failed to provide any documentation such as articles of incorporation, bylaws, balance sheets, income statements or the terms of the lease with Werbrouck’s School of Dance to show it qualifies for exemption under Ind. Code § 6-1.1-10-16. *Agostino argument.*

## Analysis of the Issue

28. O.C. Properties contends that its property should be exempt from taxation under Ind. Code § 6-1.1-10-16. Thus, it bears the burden of proving, by a preponderance of the evidence, that the subject property is owned, occupied, and predominately used for one of the exempt purposes in that statute. *See Indianapolis Osteopathic Hospital Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009, 1114 (Ind. Tax Ct. 2004). While Ind. Code § 6-1.1-10-16(a) lists a number of exempt purposes, O.C. Properties claims only that its property is used for an educational purpose.
29. The exemption requires probative evidence that the property at issue is owned, occupied, and used for an exempt purpose. While the words “owned, occupied and used” restrict the activities that may be conducted on the property that can qualify for exemption, they do not require a single entity to achieve a unity of ownership, occupancy and use. Rather, these words are used to ensure that the particular arrangement involved is not driven by a profit motive. Once these three elements are met, the property can be exempt from property taxation. *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005).
30. While Ind. Code § 6-1.1-10-16 does not require a single entity to own, occupy and use a property for exempt purposes, the exemption statute “contains specific limits of ownership, occupation, and use in furtherance of [exempt] goals. These limits prevent an entity from leasing property to another, for either party’s profit and claiming an exemption.” *Sangrlea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E.2d 954, (“Sangrlea does not own the property as investment property or with a motive of profit. The use and occupation of the property by the Lessees is in furtherance of Sangrlea’s exempt purposes.”).

Thus, the Tax Court in *Sangralea* excludes properties owned for investment or profit purposes from exemption.

31. Here, the subject property is owned by O.C. Properties and occupied and used by Debbie Werbrouck's School of Dance and the Patchwork Dance Company. O.C. Properties is a for-profit company that owns and leases real estate. *M. Shubert testimony*. Mr. Shubert testified that the Petitioner owns thirteen commercial and residential properties, two of which are operated as dance studios. *Id.* The Werbrouck's School of Dance is a for-profit subchapter-S corporation operating out of the subject property. *Respondent Exhibit 8; D. Shubert testimony*. Werbrouck's School of Dance operates under a "standard lease" with O.C. Properties and pays rent, ranging from \$129,734 in 2003 to \$109,094 in 2004. *M. Shubert testimony; Respondent Exhibit 8*. The school's curriculum and syllabus demonstrate that the school offers a range of instructions relating to many aspects of dance. *Petitioner Exhibits 7 and 9*. The Patchwork Dance Company is a not-for-profit, 501(c)(3) company that uses the property rent-free. *Petitioner Exhibit 12*. Patchwork Dance Company provides educational and cultural programs for St. Joseph County. *Id.*
  
32. Werbrouck's School of Dance and O.C. Properties are both owned by Mark and Deborah Shubert. As a legal entity, however, O.C. Properties is separate both from its officers and shareholders and from the Werbrouck's School of Dance. *See McQuade v. Draw Tite, Inc.*, 659 N.E.2d 1016, 1020 (Ind. 1995) ("Under Indiana law, a corporation is a legal entity separate from its shareholders."). In its application for exemption and in presenting its case before the Board, O.C. Properties focused on how Werbrouck's School of Dance and Patchwork Dance Company used the subject property. The Board will not simply impute to O.C. Properties motives held by the Werbrouck's School of Dance or the Shuberts. Thus, the Petitioner has the burden to specifically show that O.C. Properties' intent in owning the property was for educational purposes.

33. The language of Ind. Code § 6-1.1-10-16 does not differentiate between entities that are not-for-profit and those that are for-profit. *College Corner, LP v. Department of Local Government Finance*, 840 N.E.2d 905, 911 (Ind. Tax Ct. 2006). While the Petitioner’s status as a for-profit entity is not a determining factor, the manner in which the Petitioner uses its property is relevant. Here, the Petitioner is in the business of owning and leasing commercial and residential real estate. The evidence shows that the Petitioner owns thirteen properties that it leases out for profit.<sup>6</sup> Mr. Shubert testified that a “standard” lease agreement has been in place between O.C. Properties and Werbrouck’s School of Dance for 30 years. *M. Shubert testimony*. The Petitioner failed to offer the lease as an exhibit or present evidence that different lease terms apply to the dance school than to other properties it owns.
34. Further, the evidence shows that Werbrouck’s School of Dance pays significant rent. The Respondent presented copies of Werbrouck’s School of Dance, Income Tax Returns for 2002, 2003 and 2004. *Respondent Exhibit 8*. Its returns show a deduction for rental expense in the amounts of \$121,963, \$129,734 and \$109,094 respectively. *Id.* The assessed value of the property is \$139,100. *Respondent Exhibit 9*. The Petitioner provided no evidence that Werbrouck’s School of Dance pays less than market rate for its lease and the Board will not assume that the substantial rent paid by Werbrouck’s School of Dance is below market rent for a property valued at less than \$140,000.<sup>7</sup>

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<sup>6</sup> The Petitioner failed to submit the Articles of Incorporation and Bylaws for O.C. Properties with its application for exemption as required by the Application for Property Tax Exemption. Instead, the taxpayer provided the documents of its lessee, Debbie Werbrouck’s School of Dance. However, the application identifies O.C. Properties as a limited liability corporation whose purpose is to “engage in any and all legal business activities/Real estate.” *Petitioner Exhibit 2*.

35. The Petitioner argues that it purchased and remodeled the property specifically for use as Werbrouck's School of Dance. There was no evidence, however, that the Petitioner would not purchase or remodel a property specifically for any other lessee's use. Further, the Petitioner presented no corporate documents that dedicate the property to educational purposes or that evidence a requirement that a lessee use the subject property for educational purposes. In fact, no evidence was offered to show that the Petitioner put any type of limitation on how Werbrouck's School of Dance uses the property. Although the Petitioner claims to have obtained a variance that limits the use of the property, Petitioner's Exhibit 11 merely allows the Petitioner to add an addition to the property. There is no limitation in that transcript that the property can only be used as a dance studio.
36. The Petitioner presented some evidence that it owned the property for the purpose of renting the property to Werbrouck's School of Dance. A lessor's intent to rent a property to a lessee that is educational, however, does not make a lessor's purpose in owning the property educational. Here, the Petitioner is in the business of leasing property. Without strong evidence that the Petitioner treats the dance school differently than other properties it leases or has set aside the property for an exempt purpose and has or would refuse to lease the property to another lessee regardless of the lease terms or rent, the Board will not simply assume that O.C. Properties' purpose in owning the subject property differs from its purpose in owning its other commercial real estate. Thus, the Petitioner failed

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<sup>7</sup> Mr. Shubert testified that two out of thirteen properties owned by O.C. Properties were used for educational purposes. However, in a similar matter in which the Board is concurrently issuing a determination, *Mark and Deborah Shubert v. Elkhart County Property Tax Assessment Board of Appeals*, Petition No. 20-015-07-2-8-00037, Ms. Shubert testified that the rent expense identified on the dance school's 2004 – 2006 tax returns was for three locations as well as for auditoriums used by the dance school for performances. The property at issue in that matter assessed for \$106,200. Even if the Board were to assume that the \$109,094 to \$129,734 rent paid from 2002-2004 represents three properties (of which there is no evidence in this case), that equates to an average of from \$36,365 to \$43,245 per year for properties which are assessed at values between \$106,000 and \$140,000 each.

to present sufficient evidence to overcome the presumption that the property was owned for commercial profit and not to promote dance education.<sup>8</sup>

37. The Petitioner’s representative also testified that the Patchwork Dance Company uses the subject property rent-free. *Petitioner Exhibit 12; D. Shubert testimony.* The Patchwork Dance Company is a 501(c)(3) company that promotes educational and cultural programs for St. Joseph County. Leasing the property rent-free may overcome the presumption that O.C. Properties owns the property for commercial profit. To qualify for an exemption, however, O.C. Properties must demonstrate that Patchwork Dance Company used or occupied the property for an exempt purpose for more than 50% of the time. *See* Ind. Code § 6-1.1-10-36.3 (“(a) For purposes of this section, property is predominantly used or occupied for [an educational purpose] if it is used or occupied for [the educational] purpose[] during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property.”). Here, the Petitioner failed to provide any evidence of how much of the subject property is occupied or how often the property is used by the Patchwork Dance Company. Thus, without determining that the Patchwork Dance Company’s use is exempt, the Board finds that the dance company’s use of the property does not meet the predominate use test as required by Ind. Code § 6-1.1-10-36.3.

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<sup>8</sup> The Petitioner’s operation as a commercial real estate company and its failure to sufficiently show that O.C. Properties owns the subject property for an exempt purpose rather than as part of its leasing business distinguishes this case from the concurrent case being decided, *Mark and Deborah Shubert v. Elkhart County Property Tax Assessment Board of Appeals*, Petition No. 20-015-07-2-8-00037, and a former case in which the Board granted Mark and Deborah Shubert an exemption. *See Mark and Deborah Shubert v. Elkhart County Property Tax Assessment Board of Appeals*, Petition No. 20-015-05-2-8-00002 (Dec. 18, 2006). Those cases involve a Goshen property owned by the Shuberts in their individual capacities. Like this case, the Werbrouck’s School of Dance occupied and used the Goshen property. Unlike this case, however, there was no evidence that the Shuberts, in their individual capacities, owned commercial properties or that the Shuberts were in the business of renting properties. Further, in *Mark and Deborah Shubert v. Elkhart County Property Tax Assessment Board of Appeals*, Petition No. 20-015-07-2-8-00037, the petitioners presented clear evidence that the Goshen property had a determination from the City Board of Zoning Appeals granting a use variance to permit a dance studio to be located in a residentially zoned area. In this case, while there is a variance to add an addition to the building on the property, it is not clear that the variance limits the use of the property to a dance studio.

38. Finally, the Petitioner claimed an exemption for personal property for 2005. While the personal property of Werbrouck's School of Dance or the Patchwork Dance Company may be exempt independent of the exempt status of the real property, the Petitioner presented no evidence of the content of the personal property being claimed as exempt. Nor did the Petitioner present any evidence of the use or ownership of the property at issue. Thus, the Board cannot grant an exemption for the personal property for 2005.

### **Summary of Final Determination**

39. The Petitioner failed to prove that it is entitled to exemption on its real and personal property. The Board finds in favor of the Respondent.

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

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Chairman,  
Indiana Board of Tax Review

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Commissioner,  
Indiana Board of Tax Review

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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>.**