

REPRESENTATIVE FOR PETITIONER:
Samuel Kamwenji, Pastor, Rise Up and Walk Christian Ministries, Inc.

REPRESENTATIVE FOR RESPONDENT:
Cathy Searcy, Elkhart County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Rise Up and Walk Christian Ministries, Inc.)	Petition Nos.: 20-027-11-2-8-00001
)	20-027-11-2-8-00002
Petitioner,)	
)	Parcel Nos.: 02-33-329-001-027
v.)	02-33-329-002-027
)	
Elkhart County Assessor,)	
)	County: Elkhart
Respondent.)	
)	Assessment Year: 2011

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

April 15, 2013

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence, and 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 should be granted an exemption under Indiana Code § 6-1.1-10-16 for 2011 because the property was owned, occupied and used for religious purposes.

PROCEDURAL HISTORY

2. On November 19, 2010, Pastor Samuel Kamwenji, on behalf of Rise Up and Walk Christian Ministries, Inc. (Rise Up and Walk), filed two Form 136, Applications for Property Tax Exemption, seeking an exemption for its real property for the 2011 assessment year. The Elkhart County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations on June 13, 2011, finding the Petitioner's real property to be 100% taxable. On August 25, 2011, the Petitioner filed two Form 132 Petitions for Review of Exemption, petitioning the Board to conduct an administrative review of the above petitions.¹

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Indiana Code § 6-1.1-15-4, Ellen Yuhan, the duly designated Administrative Law Judge (ALJ) appointed by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, held a hearing on January 23, 2013, in Goshen, Indiana.
4. The following persons were sworn as witnesses at the hearing:

¹ According to a letter from the Deputy Assessor dated October 18, 2011, although the Form 120 was dated June 13, 2011, the Petitioner's representative did not receive notice of the PTABOA's determination until August 3, 2011. Thus, the Petitions in this matter are considered timely filed with the Board.

For the Petitioner:

Samuel Kamwenji, Pastor, Rise Up and Walk,
David L. Poole, Pastor, Rise Up and Walk,

For the Respondent:

Cathy Searcy, Elkhart County Assessor.

5. The Petitioner presented the following exhibits:

- Petitioner Exhibit 1 – Certificate of Incorporation for Rise Up and Walk issued by the Indiana Secretary of State,
- Petitioner Exhibit 2 – Indiana Business Entity Report, dated January 21, 2013,
- Petitioner Exhibit 3 – Brochure outlining the purposes of Rise Up and Walk,
- Petitioner Exhibit 4 – The by-laws and constitution for Rise Up and Walk,
- Petitioner Exhibit 5 – Rise Up and Walk Program for the May 1, 2011, Sunday Service,
- Petitioner Exhibit 6 – The CMC Newsletter,
- Petitioner Exhibit 7 – Rise Up and Walk flyer for the June 11-13, 2010, “Back to God Crusade,”
- Petitioner Exhibit 8 – Rise Up and Walk flyer for a 2003 Revival Meeting,
- Petitioner Exhibit 9 – Rise Up and Walk Parade and Public Assembly Permit application dated May 25, 2010.

6. The Respondent did not present any exhibits.

7. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:

- Board Exhibit A – Form 132 Petitions with attachments,
- Board Exhibit B – Notice of Hearing, dated November 19, 2012,
- Board Exhibit C – Hearing sign-in sheet.

8. The properties at issue include a church and a house located at 1116 Violet Road identified as Parcel No. 02-33-329-001-027 and an adjacent vacant lot at 1403 Baldwin Street identified as Parcel No. 02-33-329-002-027, in Elkhart, Indiana.

9. The ALJ did not conduct an on-site inspection of the subject property.

10. For 2011, the Elkhart County PTABOA determined the subject properties to be 100% taxable.
11. The Petitioner contends the properties were entitled to a 100% exemption in 2011.

JURISDICTIONAL FRAMEWORK

12. The Indiana Board of Tax Review is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits 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 Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

BASIS OF EXEMPTION AND BURDEN

13. 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.
14. 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 a property owner 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).

15. Worthwhile activity or noble purpose alone is not enough to qualify for an exemption. 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)).
16. The taxpayer seeking an exemption bears the burden of proving its 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

17. The Petitioner contends that its property is exempt from taxation pursuant to Indiana Code § 6-1.1-10-16 because it is owned, occupied and used for religious purposes. The Petitioner presented the following evidence in regard to this issue.
 - A. The Petitioner's representative, Pastor Samuel Kamwenji, contends that Rise Up and Walk should be granted a property tax exemption under Indiana Code § 6-1.1-10-16. *Kamwenji testimony*. According to Pastor Kamwenji, Rise Up and Walk is a non-denominational fellowship which began in 1999. *Id.* Pastor Kamwenji testified that the church started in a community building, but the ministry expanded, requiring more space, so the Petitioner purchased the subject property in 2006 from another church. *Id.* Rise Up and Walk has continued to use the property as a church since the date it purchased the properties. *Id.*
 - B. The Petitioner's representative testified that the church is used for services on Sundays, for Bible study and prayer on Wednesdays, and for special events on

Saturdays. *Kamwenji testimony; Petitioner Exhibit 3.* In addition, the Petitioner’s representative testified that the church conducts various other events, such as revival meetings and block parties for evangelism. *Id.; Petitioner Exhibits 7 and 8.*

C. Finally, the Petitioner’s representative contends that the house adjacent to the church was used as a parsonage until April 1, 2011. *Kamwenji testimony.* According to Pastor Kamwenji, when the church funds began to decrease, the house was temporarily rented out to generate income to pay the mortgage and expenses. *Id.* When the church has the funds, Pastor Kamwenji testified, the Petitioner is planning to use the house as a half-way house for people transitioning from prison or rehabilitation programs – because it is the mission of the church to reach out and help the community. *Id.*

RESPONDENT’S CONTENTIONS

18. The Respondent’s representative, Ms. Searcy, contends that the Elkhart County PTABOA questioned whether the subject property was being used as a church, so they denied the Petitioner’s exemption request. *Searcy testimony.* Ms. Searcy argues that the subject property would only be entitled to a partial exemption because the house is being rented out. *Id.* Ms. Searcy argues that the aerial map submitted by the Petitioner indicates the exempt portion of the subject property should be 69%. *Id.*

ANALYSIS

19. Indiana Code § 6-1.1-10-16(a) states that “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.” Further, “a tract of land ... is exempt from property taxation if: (1) a building that is exempt under subsection (a) or (b) is situated on it; [or] (2) a parking lot or structure that serves a building referred in subdivision (1) is situated on it.” Ind. Code § 6-1.1-10-16(c).

20. The test used to determine whether all or a portion of a subject property qualifies for an exemption is the “predominant use” test. *New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002). Indiana Code § 6-1.1-10-36.3(a) states that “property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more of those purposes 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.” Indiana Code § 6-1.1-10-36.3(c) further provides that “[p]roperty that is predominantly used or occupied for one (1) or more of the stated purposes by a church, religious society, or not-for-profit school is totally exempt under that section.”
21. “The evaluation of whether property is owned, occupied, and predominately used for an exempt purpose,” however, “is a fact sensitive inquiry; there are no bright-line tests.” *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13 (Ind. Tax Ct. 2009). Thus every exemption case “stand[s] on its own facts” and on how the parties present those facts. *See Indianapolis Osteopathic Hospital, Inc.*, 818 N.E.2d 1009, 1018 (Ind. Tax Ct. 2004); and *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that a taxpayer has a duty to walk the Indiana Board through every element of its analysis; it cannot assume the evidence speaks for itself).
22. Here the Petitioner contends its property is 100% exempt because it is owned, occupied and used for religious purposes. The property is comprised of two parcels: a lot located at 1116 Violet Road improved with a church building and a house; and a vacant lot located at 1433 Baldwin Street. There is no dispute that the church building is used for religious purposes. Therefore, the Board must determine if the house on the 1116 Violet Road parcel and the vacant lot located at 1403 Baldwin Street are also used for exempt purposes.
23. The Board first examines whether the house located at 1116 Violet Road should be exempt. Indiana Code § 6-1.1-10-21 states that a “a building that is used as a parsonage” and the “tract of land, not exceeding fifteen (15) acres, upon which a building that is used as a parsonage is situated” is exempt from property taxation if it is owned by, or held in

trust for the use of, a church or religious society. Ind. Code § 6-1.1-10-21(b). To obtain an exemption for a parsonage, however, a church or religious society must provide the county assessor with an affidavit signed under oath by the church's or religious society's head rabbi, priest, preacher, minister or pastor at the time it applies for the exemption. Ind. Code § 6-1.1-10-21(c). The affidavit must state the parsonage is being used to house the church's priest, preacher, ministers or pastors and that none of the parsonage is used to make a profit. *Id.*

24. According to the Petitioner's Form 132 Petition, "31% of the property was used as a parsonage til [sic] 4/1/2011."² Similarly, the Petitioner's Form 136 application for exemption states "Pastor lives in the Parsonage." Both forms were signed under the penalties of perjury by the Petitioner's representative. The Respondent's representative argues that the house should not be entitled to an exemption because it is rented out to make a profit. And Pastor Kamwenji admitted that the house is currently rented out to provide income to support the ministry of Rise Up and Walk; however, he testified that the house was used as a parsonage by the pastor of Rise Up and Walk on March 1, 2011. Thus the Board finds that, as of the 2011 assessment date, the house located on 1116 Violet Road was used as a parsonage.³
25. But it is not enough for a house to simply be used as a parsonage to receive an exemption. Indiana Code § 6-1.1-10-21(c) is clear that the church or religious society "must provide the county assessor with an affidavit at the time the church or religious society applies for the exemptions." And this, the Petitioner failed to do. If a petitioner fails to comply with the statutory procedures for obtaining an exemption, the exemption

² The remaining 69% of the property is the church building which the parties agreed is owned, occupied and used for religious purposes.

³ At one point in the hearing, Pastor Kamwenji suggested that a pastor only lived in the house "as late as 2006" but the Petition states that the house was used as a parsonage until April 1, 2011. And Pastor Kamwenji later confirmed the property housed a pastor on March 1, 2011. In fact, Pastor Poole testified that the Petitioner's ministry started facing financial trouble and had been renting out the house to help fund the church operations for "a year and a few months" as of the date of the hearing. Thus, despite the somewhat inconsistent testimony, the weight of the evidence supports a finding that the house was used as a parsonage until April 1, 2011.

is waived. *See, e.g., Gulf Stream Coach v. State Bd. of Tax Comm'rs*, 519 N.E.2d 238, 242 (Ind. Tax Ct. 1988).

26. The Board's analysis, however, does not end there. Even if the Petitioner did not meet the requirements for an exemption under Indiana Code § 6-1.1-10-21(c), the building may still be exempt under Indiana Code § 6-1.1-10-16(a). For example, in *State Board of Tax Comm'rs v. Wright*, 215 N.E.2d 57 (Ind. Ct. App. 1966), the Court of Appeals held that personal living quarters are exempt from taxation if "incidental and necessary" for the effective welfare of the exempt religious institution. *Id.* at 62. In that case, cabins used for temporary housing for clergy and lay persons were exempt because the only purpose and use of the cabins was shown to be religious.
27. Here, the Petitioner's representative testified that the pastor of Rise Up and Walk was living in the house as of March 1, 2011. Thus, the house was being used for a religious purpose. As such, the Board finds that the house was owned, occupied and used for religious purposes in 2011 and therefore the Board finds this building 100% exempt as well.
28. The Board now turns its attention to the vacant parcel, which is identified as Parcel No. 02-33-329-002-027. Although this parcel has an address of 1403 Baldwin Street, it is land bordering the church and the house located at 1116 Violet Road. The Petitioner stated on its Form 132 that the parcel was purchased along with the church for a "future additional church building," but the application also states that "100% of the parcel is dedicated for religious purposes."
29. Indiana Code § 6-1.1-10-16(d) provides that a "tract of land is exempt from property taxation if: it is purchased for the purpose of erecting a building that is to be owned, occupied, and used in such a manner that the building will be exempt under [Ind. Code § 6-1.1-10-16(a) or (b)]; and not more than four (4) years after the property is purchased, and for each year after the four (4) year period, the owner demonstrates substantial progress and active pursuit towards the erection of the intended building and use of the

tract for the exempt purpose...” Thus, if the only reason the land was purchased and held by the Petitioner was for future construction, the Petitioner would have had to demonstrate “substantial progress and active pursuit” of the building. However, the evidence suggests that the Petitioner holds revivals and “outside crusades” on the property. Thus, while the property may have been purchased with some intent to expand the church building or construct additional buildings, the property is being used for religious purposes separate from any future plans to build.

30. Moreover, the Petitioner’s representative testified that even though the two parcels have different addresses “the whole property is just one.” And, in fact, the map attached to the Petitioner’s Petition on the 1403 Baldwin Street property makes clear that the vacant lot is the “backyard” of the church property – despite the church’s 1116 Violet Road address. *See Board Exhibit A*. Thus, the fact that the vacant parcel and the adjacent parcel containing the church and parsonage are separate parcels with distinct parcel numbers does not alter the intended use of the property, nor does it diminish Rise Up and Walk’s religious purpose. *See Cedar Lake Conference Assoc. v. Lake Cty. Property Tax Assessment Bd. of Appeals*, 887 N.E.2d 205, 208-209 (Ind. Tax Ct. 1008) (“the fact that the RV Park and the Conference Center are delimited (i.e., they are separate parcels with distinct key numbers) neither alters the manner in which CLCA used those properties nor diminishes CLCA’s religious purpose.”) *Cf. Ind. Code Ann.* § 6-1.1-1-8.5 (West 2000) (indicating that a “key number” is merely a tool used by assessing officials to distinguish properties from one another for various administrative purposes); *see also Lesea Broad Corp. v. State Board of Tax Commissioners*, 525 N.E.2d 637, 639 (Ind. Tax Ct. 1988) (stating that “innocent collateral activities and buildings essential to the furtherance of the true purposes of the corporation should not blind the court to the genuineness of the those purposes nor to the sincerity of their actual accomplishment.”) Because the vacant parcel is merely an extension of the church, the Board finds that the vacant parcel should be granted a 100% exemption as well.

31. Finally, although the Petitioner failed to raise the matter in hearing, in a letter attached to its Petition on the 1116 Violet Road property, the Petitioner stated that there was a

misunderstanding as to the necessity of filing an exemption application because the previous owner informed the Petitioner that the property would automatically be tax-exempt. The Petitioner therefore requested that the Elkhart County PTABOA "back date" the exemption to the date of purchase and refund the taxes paid.

32. Under Indiana Code § 6-1.1-11-4(d), an exemption application is not required if "the exempt property is tangible property used for religious purposes described in IC 6-1.1-10-21;... the exemption application referred to in section 3 or 3.5 of this chapter was filed properly at least once for a religious use; and the property continues to meet the requirements for an exemption under IC 6-1.1-10-16, IC 6-1.1-10-21, or IC 6-1.1-10-24." Ind. Code § 6-1.1-11-4(d). "However, if title to any of the real property subject to the exemption changes or any of the tangible property subject to the exemption is used for a nonexempt purpose after the date of the last properly filed exemption application, the person that obtained the exemption or the current owner or the property shall notify the county assessor..." *Id.* Thus, when the Petitioner purchased the subject properties, title to the real estate changed and the Petitioner was required to properly apply for the exemption. The Petitioner's representative admitted that Rise Up and Walk did not file an application prior to the 2011 assessment year.
33. An exemption is a privilege that may be waived by a person who would otherwise qualify for it. Ind. Code § 6-1.1-11-1. "If the exemption is waived, the property is subject to taxation." *Id.* See *Kentron, Inc. v. State Bd. of Tax Comm'rs*, 572 N.E.2d 1366 (Ind. Tax Ct. 1991) ("Kentron was required to comply with the statutory procedures set forth in IC 6-1.1-10-31 and IC 6-1.1-11-1 to receive the exemption provided under IC 6-1.1-10-30(b). Failing to comply, Kentron has waived the exemption privilege as a matter of law.") Thus, while there is no dispute that the Petitioner's property was used for religious purposes, there is no authority that would allow the Board to simply ignore the statutory requirements cited in Indiana Code § 6-1.1-11-1 and retroactively apply an exemption to the property or refund taxes paid. Thus, the Board can only address the properties' exempt status for the 2011 assessment year.

CONCLUSION

34. The weight of the evidence shows that the subject properties are owned, occupied and used for religious purposes, thereby qualifying the Petitioner for an exemption under Indiana Code § 6-1.1-10-16. Accordingly, the subject properties are granted a 100% exemption for the 2011 assessment year.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board grants the Petitioner a 100% exemption on both properties for the 2011 assessment year.

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>.