

REPRESENTATIVE FOR PETITIONER:  
Russell L. Ellis, Gibbs & Associates Law Firm, LLC

REPRESENTATIVE FOR RESPONDENT:  
Beth Henkel, Law Office of Beth Henkel, LLC

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

SPA, Inc.	)	Petition Nos.: 20-012-12-2-8-00001
	)	20-012-12-2-8-00002
Petitioner,	)	
	)	Parcel Nos.: 20-06-05-301-014.000-012
v.	)	20-06-05-484-005.000-012
	)	
Elkhart County Assessor,	)	
	)	County: Elkhart
Respondent.	)	
	)	Assessment Year: 2012
	)	

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

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**March 24, 2014**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence. Having considered the issues, the Board now finds and concludes the following:

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

### **Introduction**

1. SPA, Inc., a not-for-profit corporation with a religious mission, uses two properties—a free standing house and part of a duplex—to help women who suffer from addiction and other serious problems get back on their feet. While it charges some rent to the women who stay at those properties, SPA does not do so to make a profit but rather to help the women learn how to budget so that they can successfully re-integrate themselves into the community. The properties are therefore exempt under Ind. Code § 6-1.1-10-16(a), which, among other things, exempts property that is owned, occupied, and predominately used for charitable purposes.

### **Procedural History**

2. On March 7, 2012, SPA applied for a 100% exemption for two properties located in Elkhart: a house at 132 Middlebury Street and a duplex at 313-315 N. Riverside. On October 10, 2012, the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) determined that the properties were 100% taxable. SPA then timely filed Form 132 petitions with the Board seeking a review of the PTABOA’s determinations.
3. On November 14, 2013, the Board’s designated administrative law judge, Jennifer Bippus, held a hearing on SPA’s petitions. She did not inspect the properties.
4. Sandra Bontrager, SPA’s founder and president, and Cathy Searcy, the Elkhart County Assessor, were sworn in.
5. SPA offered the following exhibits:
  - Petitioner Exhibit 1: Certificate of Incorporation and Articles of Incorporation,
  - Petitioner Exhibit 2: Certificate of Amendment and Articles of Amendment,
  - Petitioner Exhibit 3: Bylaws,
  - Petitioner Exhibit 4: December 16, 2004 letter to SPA from Louis G. Lerner of The United States Department of Revenue,
  - Petitioner Exhibit 5: Use policies,
  - Petitioner Exhibit 6: Faith House Objectives,

- Petitioner Exhibit 7: Four signed occupancy contracts for Faith House (2<sup>nd</sup> Phase) and one blank contract,
- Petitioner Exhibit 8: Quitclaim Deed for 132 Middlebury Street and Warranty Deed for 313-315 N. Riverside,
- Petitioner Exhibit 9: *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commr's*, 550 N.E.2d 850 (Ind. Tax Ct. 1990),
- Petitioner Exhibit 10: *Sangralea Boys Fund, Inc. v. State Board of Tax Comm'rs*, 686 N.E. 2d 954 (Ind. Tax Ct. 1997),
- Petitioner Exhibit 11: *Hamilton County Property Tax Assessment Board of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654 (Ind. Tax Ct. 2010),
- Petitioner Exhibit 12: *State Board of Tax Comm'rs v. Indianapolis Lodge #17, Loyal Order of Moose, Inc.*, 254 Ind. 614, 200 N.E.2d 221 (1964),
- Petitioner Exhibit 13: *Alte Salems Kirche, Inc.v. State Board of Tax Comm'rs*, 733 N.E.2d 40 (Ind. Tax Ct. 2000).

6. The Assessor offered the following exhibits:

- Respondent Exhibit A: Documents that SPA submitted to the PTABOA,<sup>1</sup>
- Respondent Exhibit C: *Living Word of God Ministries v. Allen County Assessor*, pet. no. 02-074-11-2-8-00002 (Ind. Bd. Tax Rev. Oct. 8, 2013).<sup>2</sup>

7. The Board also recognizes the following items as part of the record of proceedings:

- Board Exhibit A: Form 132 petitions,
- Board Exhibit B: September 5, 2013 hearing notices,
- Board Exhibit C: Notice of Appearance by Beth Henkel,
- Board Exhibit D: Assessor's Motion for Continuance, dated September 13, 2013,
- Board Exhibit E: Order granting continuance, dated September 16, 2013,
- Board Exhibit F: September 20, 2013 hearing notices,
- Board Exhibit G: Notice of Appearance by Russell Ellis and SPA's Motion for Submission of Evidence,
- Board Exhibit H: Motion to Exclude Respondent's Witness and Exhibit List,<sup>3</sup>
- Board Exhibit I: Hearing sign-in sheet.

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<sup>1</sup> The Assessor offered a separately marked Exhibit A for each petition at issue. The Board refers to those collectively as Respondent's Exhibit A.

<sup>2</sup> Although the Assessor marked a document for identification as Respondent's Ex. B, she did not offer it.

<sup>3</sup> SPA withdrew the motion at the beginning of the hearing.

## Objections

8. The Assessor objected to Petitioner's Exhibits 1, 4-7, and part of Exhibit 8 (warranty Deed for 313-315 N. Riverside) on two grounds: (1) that SPA did not submit those documents with its exemption applications, and (2) that she received neither an exhibit list nor actual copies of the documents within the times specified by the Board's procedural rules governing pre-hearing exchanges. *Henkel objection.*
9. As to the first ground, the Assessor argued that a taxpayer waives any entitlement to have its property exempted from taxation by failing to follow the statutory procedures for claiming an exemption. That proposition is generally true. *See* I.C. § 6-1.1-11-1 ("If the owner does not comply with the statutory procedures for obtaining an exemption, he waives the exemption."). But as explained below, neither the statutes governing exemption applications nor the application forms themselves require a taxpayer to submit all documents that might be relevant to its claim at the time it applies for an exemption. Those statutes likewise say nothing about the admissibility of documents in proceedings before the Board.
10. As to the Assessor's second ground, it appears that SPA failed to comply with the deadlines for pre-hearing exchanges laid out in the Board's plenary rules. *See* 52 IAC 2. Under those rules, a party must give all other parties a list of its witnesses and exhibits at least 15 business days before a hearing and copies of its documentary evidence at least five business days before a hearing. 52 IAC 2-7-1(b).
11. SPA, however, claims that its appeals are not governed by the Board's plenary rules but rather by its rules for small claims. Under the Board's small claims rules, a party need identify its witnesses and provide copies of its documentary evidence only if requested another party. *See* 52 IAC 3-1-5(d). The Assessor responded that small claims procedures are not intended for exemption appeals.
12. The Assessor is right. The rule governing eligibility for small claims provides:

Sec. 2. (a) Unless a party elects to transfer out under section 3 of this rule, an appeal petition shall be subject to the small claims procedure if the property under appeal is:

- (1) an unimproved parcel of land with an assessed value not in excess of one million dollars (\$1,000,000);
- (2) a parcel of land, as improved, with an assessed value for land and improvements not in excess of one million dollars (\$1,000,000); or
- (3) personal property not in excess of one million dollars (\$1,000,000).

50 IAC 3-1-2(a). Although the rule does not explicitly exclude appeals of exemption determinations, it is phrased in terms of a property's assessed value. More importantly, the Board's authority to promulgate rules governing small claims comes from Ind. Code § 6-1.5-6-2(a)(8). And for purposes of that statute, the term "small claim" is defined in relevant part as "an appeal . . . of a determination of assessed valuation of tangible property . . . that does not exceed one million dollars (\$1,000,000)." I.C. § 6-1.5-1-4 (emphasis added).

13. That being said, it is difficult to see how the Assessor could be surprised or prejudiced by SPA's failure to strictly comply with 52 IAC 2-7-1(b)'s exchange deadlines. SPA ultimately gave the Assessor the disputed exhibits seven calendar days (although only four business days) before the hearing. The exhibits are short, and several, such as SPA's articles of incorporation, its use policies, and sample contracts, do little more than corroborate either Ms. Bontrager's testimony or other exhibits to which the Assessor did not object. The one exhibit that does not fall into that category—the warranty deed for 313-315 N. Riverside—was offered to show that SPA owns the property, a proposition that is not even in dispute. The Board therefore overrules the Assessor's objection and admits all of SPA's exhibits.

### **Findings of Fact**

14. SPA, which stands for "spiritual and personal adjustment," is a not-for-profit corporation that helps women get back on their feet and change their lifestyles so they can become vital parts of the community. *Bontrager testimony; Pet'r Exs. 1, 3.* Among other things, its By-Laws provide the following:

- 2: The corporation is organized and shall be operated exclusively for Christian religious, charitable and education purposes. It is authorized to receive, hold, administer, invest and disburse any funds received for Christian, religious, charitable and educational purposes. To do all the things that may appear necessary and useful in accomplishing the purposes hereinabove set out.
- 3: The purpose of “S.P.A.” is to establish a strong ministry for women by:
  - A. Providing safe, quiet, and joyful home atmosphere, separating them from everything that stands in their way.
  - B. Encouraging and assisting them to develop their abilities and potentials, to assume their responsible place in the community.
  - C. Offering classes that will bring them to maturity.
  - D. Developing life skills.
  - E. Broadening vocational opportunities.
  - F. Giving and sharing with them the Word of God.

*Pet’r Ex. 3.*

15. SPA offers housing, case management, counseling through social services, and pastor counseling to various women in need. It focuses on women who have addictions as well as on those who have been involved in the court system, have been abused, or have been divorced. SPA works together with child protective services to help those women learn the skills necessary to put their families back together. Many of the case managers, including the ones that SPA’s founder and president, Sandra Bontrager referred to as SPA’s “peer-to-peer” specialists, are volunteers. *Bontrager testimony.* The peer-to-peer specialists are trained by an organization known as Access to Recovery, and some have credentials in social work. *Id.*
16. The program involves three phases, which take place at different properties. During Phase I, SPA helps women prepare for and find employment. They graduate in six months. About 30 women per year participate in Phase I, which has a 46% graduation rate. SPA has not sought an exemption for the property that it uses for Phase I. Ms. Bontrager, owns that property and SPA pays her annual rent of \$15,000. *Bontrager testimony.*

17. Six to eight women move on to Phase II. In that phase, SPA uses the house at 132 Middlebury to provide women a place from which to transition back into the community and work force. The women need to stay employed, learn to budget their money, and remain stable. They live in a safe, sober environment in which they can visit with their children and rebuild their lives. SPA continues to provide case management services and offers them groups to attend. Those groups are usually geared to the women's particular needs. SPA also subjects the women in Phase II to random drug tests. *Bontrager testimony; Pet'r Ex. 5.*
18. To participate in Phase II the women must sign contracts under which they pay rent (which includes utilities) equal to 20% of their income. Many of the women have entry-level jobs, so the rent averages around \$50 to \$70 per week. Although Ms. Bontrager testified that six women had used the house "this year," it is unclear how many lived at the house at any particular time during the year leading up to March 1, 2012. *Bontrager testimony; Pet'r Ex. 7.*
19. In Phase III, SPA uses one half of the duplex at 313-315 N. Riverside—the half at 313 N. Riverside—to offer housing to one graduate of Phase II so she can attempt to put her family back together. Because this woman normally comes into the program with debt to the court and to society, she needs very low rent. SPA therefore charges \$100 per week. The woman and her family are allowed to stay until she has all of her bills up to date and can move forward. As with Phase II, the rent for Phase III is designed to teach budgeting, a skill that many women in the program lack. Also as with Phase II, a woman in Phase III is subjected to random drug tests. *Bontrager testimony.*
20. 313 N. Riverside was rented as part of Phase III in July 2011. *Bontrager testimony.* Nobody testified that 313 N. Riverside was used for any other purpose during the year leading up to March 1, 2012. The Board therefore infers that it was vacant except for the time it was used as part of Phase III.

21. Ms. Bontrager and SPA volunteers live rent free in the other half of the duplex. Although SPA originally applied for a 100% exemption covering the entire duplex, it now seeks to exempt only the 313 N. Riverside portion of the property. *Bontrager testimony; Ellis argument.*

### Conclusions of Law and Discussion

22. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004) (citing Ind. Code §6-1.1-2-1). Thus, all or part of a building that is owned, occupied, and predominantly used for educational, literary, scientific, religious, or charitable purposes is exempt from taxation. See I.C. §6-1.1-10-16(a); I.C. §6-1.1-10-36; *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 909 N.E.2d 1138, 1141 (Ind. Tax Ct.2009). That exemption extends to the land on which the building is situated and to personal property contained therein. I.C. §6-1.1-10-16(c) and (e). A taxpayer, however, bears the burden of proving that its property qualifies for exemption. *Indianapolis Osteopathic Hospital*, 818 N.E.2d at 1014.
23. SPA claims that it owns, occupies, and predominately uses the two properties at issue for charitable purposes.<sup>4</sup> The exact meaning of what constitutes a charitable purpose has spawned much litigation. 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."). Thus, to show a charitable purpose, a taxpayer must demonstrate (1) the "relief of human want . . . manifested by obviously charitable acts different from the everyday purposes and activities of man in general," and (2) a benefit

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<sup>4</sup> On the part of the application form calling for a taxpayer to identify the statutory basis for its claims, SPA checked only the box for charitable purposes under Ind. Code § 6-1.1-10-16. *Resp't Ex. A*. In its Form 132 petitions to the Board, SPA claimed both religious and charitable purposes. *Bd. Ex. A*. But at the hearing, SPA focused on showing that it used the properties for charitable purposes.



inuring to the public that is sufficient to justify the loss of tax revenue. *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 909 N.E.2d 1138, 1141 (Ind. Tax Ct. 2009), *reh'g den.* 914 N.E.2d 13 (Ind. Tax Ct. 2009) (quoting *Indianapolis Elks Bldg. Corp. v. State Bd. of Tax Comm'rs*, 145 Ind. App. 522, 251 N.E.2d 673, 683 (1969)).

24. SPA did not offer significant detail about its operations or about how it uses the two properties at issue. But what evidence there is demonstrates that SPA owns and operates the properties as part of its ministry to provide shelter, counseling, and other services to women in need. Thus, SPA has shown that it uses the properties to relieve human want in ways that differ from the ordinary activities of man in general.
25. The Assessor disagrees, pointing to the fact that SPA charges rent to the women who live at both properties. But there is no evidence that SPA charges rent in order to make a profit. To the contrary, SPA pegs the rent for Phase II to a percentage of the women's income, which tends to be very low given their entry-level jobs. While the rent for Phase III is slightly higher, there is still nothing to show that SPA seeks to profit from that rent. Instead, SPA charges rent as part of teaching the women in both phases of the program budgeting skills as a necessary component of their recovery.
26. Under those circumstances, the fact that SPA charges rent does little to negate a charitable purpose. As both the Indiana Court of Appeals and Indiana Tax Court have explained in the context of facilities that care for the aged, the mere fact that such facilities charge residents a fee for their stays "does not necessarily negate the charitable purpose of the institution, particularly 'when it does not appear that the fees are more than sufficient to pay the expenses of maintenance or that the proprietors of the institution derive any profit therefrom.'" *Knox County Property Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 184 (Ind. Tax Ct. 2005) (quoting *State Bd. of Tax Comm'rs v. Methodist Home for the Aged*, 143 Ind. App. 419, 241 N.E.2d 84, 88-89 (1968)).

27. Of course, having a charitable purpose by itself is not enough. The property also must be predominately used for that purpose. A property is predominantly used or occupied for an exempt purpose if it is used or occupied for that purpose more than 50% of the time that it is used or occupied in the year ending on the assessment date. I.C. § 6-1.1-10-36.3(a). If it is exclusively used or occupied for an exempt purpose, the property is 100% exempt. I.C. § 6-1.1-10-36.3(a)(c)(1). If it is predominantly—but not exclusively—used for an exempt purpose, the property is exempt from taxes “on the part of the assessment of the property that bears the same proportion to the total assessment of the property” as the amount of time that the property was used or occupied for exempt purposes. I.C. § 6-1.1-10-36.3(a)(c)(3).<sup>5</sup> The determination applies separately to each part of the property identified under Ind. Code § 6-1.1-11-3(c)(5). That statute (Ind. Code § 6-1.1-11-3(c)(5)), in turn, requires taxpayers applying for exemptions to identify each part of a property that is and is not used for exempt purposes in the year leading up to the assessment date. I.C. § 6-1.1-10-36.3(b); I.C. § 6-1.1-11-3(c)(5).
28. SPA uses the house at 132 Middlebury exclusively for exempt purposes and is therefore entitled to a 100% exemption. The question of predominate use is a little more complicated for the duplex at 313-315 N. Riverside. SPA no longer claims that the half of the duplex used by Ms. Bontrager and the volunteers (315 N. Riverside) is exempt. The predominate-use analysis, however, applies separately to each part of the property. The Board must therefore examine whether the half of the duplex used as part of Phase III (313 N. Riverside) was used for an exempt purpose more than 50% of the time that it was in use for the year leading up to March 1, 2012.
29. It was. In fact, the undisputed evidence shows that SPA used 313 N. Riverside for only one purpose in the year leading up to March 1, 2012—to provide a Phase II graduate with housing so that she could attempt to re-unite her family. As already explained, that is an exempt purpose. It appears that one woman from the program stayed at 313 N. Riverside in July 2011 and that it remained vacant the rest of the year. Indiana Code § 6-1.1-10-

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<sup>5</sup> A property is 100% exempt, however, if it is predominately used or occupied for an exempt purpose by a church, religious society, or not-for-profit school. I.C. § 6-1.1-10-36.3(c)(2).

36.3, however, only requires that a property be used for an exempt purpose a majority of the time that it is in use. Based on the admittedly lean record in this case, the Board concludes that 313 N. Riverside was used for an exempt purpose 100% of the time that it was in use for the year leading up to March 1, 2012. That portion of the property is therefore entitled to a 100% exemption.

30. The Assessor apparently believes that applying an exemption to only part of the duplex will pose a problem because, as she testified, the duplex's assessment is not broken down between the two sides. SPA attempted to solve that problem by saying that it was seeking a 50% exemption for the entire property. While that is not how the exemption statute works, it may be functionally equivalent to applying a 100% exemption to the half of the duplex located at 313 N. Riverside, at least if the two halves of the duplex are mirror images. The parties did not offer a property record card. But given that SPA's exemption application describes each side of the duplex as having three bedrooms, a living room, a dining room, a kitchen, and a bath, the two sides of the duplex may well be identical. In any case, SPA is entitled to an exemption for the portion of the duplex located at 313 N. Riverside and the land on which it is situated.
31. The Assessor contends that SPA should nonetheless be denied exemptions because it did not adequately support its claims at the time it filed its applications. In the Assessor's view, that failure operated to waive SPA's exemption claims. The Board disagrees. As explained above, SPA substantially complied with the statutory procedures for claiming an exemption.
32. The Assessor apparently focuses on the fact that SPA did not include with its exemption applications every document that supports its claims. But neither the relevant statutes nor the exemption application form itself requires a taxpayer to do so. Instead, the exemption statute requires a taxpayer to provide the following information:
  - (1) A description of the property claimed to be exempt in sufficient detail to afford identification.
  - (2) A statement showing the ownership, possession, and use of the property.
  - (3) The grounds for claiming the exemption.
  - (4) The full name and address of the applicant.

(5) For the year that ends on the assessment date of the property, identification of:

(A) each part of the property used or occupied; and

(B) each part of the property not used or occupied;

for one (1) or more exempt purposes under IC 6-1.1-10 during the time the property is used or occupied.

(6) Any additional information which the department of local government finance may require.

I.C. § 6-1.1-11-3. Similarly, the exemption application form indicates that a taxpayer “must present evidence that a property qualifies under a specific statute.” And it asks the taxpayer to indicate that it has provided the following documents: articles of incorporation or other organizational documents, By-laws, and financial statements for the last three years consisting of either balance sheets or a summary of income and expenditures. *Resp’t Ex. A.*

33. SPA answered most of the questions on the exemption applications and provided all of the statutorily required information. Similarly, SPA attached certificates of amendments to its articles of incorporation together with its By-Laws, profit and loss statements, and balance sheets for three years. Thus, SPA substantially complied with the application requirements and did not waive its exemption claims.
34. This case differs from *State Bd. of Tax Comm’rs v. Stanadyne, Inc.*, 435 N.E.2d 278 (Ind. Ct. App. 1982), which the Assessor cites in support of her position. In *Stanadyne*, the taxpayer had filed a personal property return claiming an exemption for a portion of its inventory located at a warehouse in Indiana. *Stanadyne*, 435 N.E.2d at 279. At a later hearing before the State Board of Tax Commissioners, the taxpayer claimed all of its inventory at the warehouse should be exempt, a claim the trial court granted on judicial review. *Id.* at 279-80. Among other things, the court of appeals held that the trial court erred in granting a larger exemption than what the taxpayer claimed on its return. *Id.* at 283-84. The court cited Ind. Code § 6-1.1-11-1, which it described as codifying the long established principle that an exemption unclaimed is forever lost. *Id.* at 283. In response to the taxpayer’s argument that it did not waive the exemption for its inventory but merely claimed an incorrect amount, the court explained that Ind. Code § 6-1.1-11-1

requires taxpayers to comply with the statutory procedures for claiming an exemption. And to claim the type of exemption at issue, a taxpayer had to report on its return the true cash value of all the property for which it claimed an exemption. *Id.* at 283-84. Thus, the taxpayer was entitled to an exemption, but only to the extent claimed on its return. *Id.*

35. Unlike Stanadyne, SPA did not seek to bypass the application procedure by claiming a greater exemption on appeal than it had claimed below. While the Assessor argues that SPA cannot offer any documents to support its claims beyond those attached to its applications, the exemption statutes do not support her position.

#### **SUMMARY OF FINAL DETERMINATION**

36. In this case, 132 Middlebury Street was owned, occupied, and exclusively used for religious and charitable purposes in the year leading up to March 1, 2012. That property is entitled to a 100% exemption. The 313 N. Riverside portion of the duplex located at 313-315 N. Riverside was also owned, occupied, and exclusively used for charitable purposes. Thus, that portion of the duplex and the land on which it is situated are similarly entitled to a 100% exemption.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first 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

### 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 <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/juciciary/rules/tax/index.html>>.