

REPRESENTATIVE FOR PETITIONER:
Ben Anderson, Executive Director

REPRESENTATIVE FOR RESPONDENT:
Beth Henkel, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

THINGS TO COME MISSION, INC.,)	Petition No.: 49-300-07-2-8-00001
)	
Petitioner,)	Parcel No.: 3006222
)	
v.)	Marion County
)	Franklin Township
MARION COUNTY ASSESSOR,)	
)	Assessment Year: 2007
Respondent.)	

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

September 23, 2010

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 of fact and conclusions of law.

ISSUE

In late 2006, the Petitioner bought and moved into its new headquarters/office. There appears to be no dispute about the religious use of the property or the fact that it was allowed 100% exemption for 2008. Nevertheless, was the exemption lost for 2007 because the application was not filed until August 1, 2007?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. The subject property is a house and pole barn located at 6202 East Thompson Road in Indianapolis that the Petitioner purchased late in 2006.
2. On August 1, 2007, the Petitioner filed an Application for Property Tax Exemption (Form 136) claiming that its real and personal property should be 100% exempt for 2007 because of religious use. The statutory basis for the claim was Ind. Code § 6-1.1-10-16. According to the Form 136, the assessed value of the land is \$25,700 and the assessed value of the improvements is \$124,600.
3. The Marion County Property Tax Assessment Board of Appeals (PTABOA) determined the subject property was 100% taxable for 2007. The PTABOA issued its decision on a Form 120 dated October 26, 2007. Noting the application's filing date, the PTABOA said the exemption was not allowed because the application was not timely according to Ind. Code § 6-1.1-11-3(a).
4. The Petitioner filed a Petition for Review of Exemption (Form 132) on November 2, 2007, claiming the property should be entirely exempt based on its religious use and Ind. Code § 6-1.1-10-16.

HEARING FACTS AND OTHER MATTERS OF RECORD

5. Administrative Law Judge Ted Holaday held the Board's hearing in Indianapolis on July 13, 2010. There was no inspection of the property by either the ALJ or the Board.
6. Ben Anderson, the Petitioner's Executive Director, was the only person who testified at the hearing.

7. The parties submitted the following exhibits:
 - a. Petitioner Exhibit A – IRS letter recognizing the Petitioner as an exempt 501(c)(3) organization,
Petitioner Exhibit B – Certificate of Incorporation and Articles of Incorporation,
Petitioner Exhibit C – Indiana Nonprofit Sales Tax Exemption Certificate,
Petitioner Exhibit D – Notice of Action on Exemption Application,
Petitioner Exhibit E – Photographs of sign with Things To Come Mission on the sign (buildings shown are not the subject property),
Petitioner Exhibit F – Warranty Deed for the subject property,
Petitioner Exhibit G – Affidavit of Benjamin Nate Anderson,
Petitioner Exhibit H – Tax Notice to the Petitioner dated October 2, 2007,
Petitioner Exhibit I – Tax Court’s St. George Serbian Orthodox Church decision dated May 7, 2009,
Petitioner Exhibit J – HEA 1001(ss) Section 479,
 - b. Respondent Exhibit1 – The Petitioner’s Application For Property Tax Exemption.
8. The Respondent objected to Petitioner Exhibit F (the deed) because the Petitioner failed to provide a copy prior to the hearing as required by 52 IAC 2-7-1(b). The Petitioner offered no substantial response or excuse for this failure. Consequently, the objection to Petitioner Exhibit F is sustained. Nevertheless, during the hearing it was agreed that the Petitioner purchased the subject property on or about September 7, 2006.
9. The following additional items are recognized as part of the record of the proceedings:
 - Form 132 Petition,
 - Notice of Hearing,
 - Conduct of Exemption Hearing Order,
 - Hearing sign-in sheet.

SUMMARY OF PETITIONER’S CASE

10. Things To Come Mission was incorporated in 1955. It was granted 501(c)(3) status beginning in 1959.
11. The Petitioner moved its headquarters to Marion County Indiana in 1990. It was incorporated in Indiana as a not-for-profit corporation on December 12, 1990.
12. The Petitioner holds a not-for-profit sales tax exemption certificate.

13. From 1990 to October 31, 2006, the Petitioner continuously operated its headquarters within the tax exempt property of Grace Church on English Avenue. The relationship with Grace Church was stated openly on the sign out in front of that property, which is shown in Petitioner Exhibit E. During this time the Petitioner shared expenses with Grace Church.
14. On September 7, 2006, the Petitioner purchased the subject property (6202 East Thompson Road) for the sole purpose of relocating its non-profit headquarters. On November 1, 2006, the Petitioner moved its headquarters to the subject property.
15. Things To Come Mission has 40 missionaries. The subject property is the headquarters/offices for the Petitioner's foreign mission. Six people work in this office, but nobody lives there. It is not used as a residence. The work performed at the subject property includes sending out newsletters, receiving and processing donations, taking care of finances, interviewing new missionaries and commissioning missionaries. Religious services, however, are not held at this location.
16. On December 8, 2006, the Petitioner's Executive Director (a/k/a Ben Anderson) had a telephone conversation with someone at the Assessor's Office. During this conversation he informed the Assessor's Office of the Petitioner's tax exempt nature and requested the steps that needed to be taken to get property tax exemption. The person at the Assessor's Office (whose name is unknown to Mr. Anderson) said it was too early to apply for exemption.
17. In July 2007, the Petitioner's Executive Director again communicated with the Assessor's Office to determine the Petitioner's status. This conversation was with Melissa Tetrick, who advised how to get the papers to apply for exemption. This was done immediately and the application for 2007 was submitted on August 1, 2007.
18. Using the phrase "and the corporation did not receive the exemption for the preceding year" in Ind. Code § 6-1.1-11-3.5(a) indicates a need to show continuity of tax

exemption. The Petitioner demonstrated continuity of tax exempt status from not just the preceding year, but for 20 years because the Petitioner was in tax exempt property since moving to Indianapolis, although admittedly it was not the subject property.¹

19. The application that the Petitioner filed on August 1, 2007, is in accord with the requirement in Ind. Code § 6-1.1-11-3.5(a) that “the corporation must file an application for the exemption in the year for which the exemption is sought.”
20. Indiana Code § 6-1.1-11-3(a) requires the application to be filed on forms prescribed by the Department of Local Government Finance. This language indicates that the burden of prescribing such forms rests with the stated department. The Petitioner requested the prescribed forms on or about December 8, 2006. Such forms, however were not prescribed as requested, nor were they prescribed until July 2007. Upon the forms being prescribed, the application was submitted within a few days.
21. The decision in *St. George Serbian Orthodox Church v. Lake County Property Tax Assessment Board of Appeals*, Petitioner Exhibit I, and the legislation discussed therein support considering the Petitioner’s application for exemption for 2007 as being timely. They say that if a not-for-profit organization functioning as a tax-exempt entity was denied exemption simply because it did not file the application for exemption in a timely manner, then the application should be considered to be timely filed. The Petitioner’s application for exemption should be considered in the same category as that of the St. George Church.
22. House Enrolled Act 1001(ss), Sec. 479, also establishes that the Petitioners 2007 petition must be considered as being timely. This act says, in part, that “[notwithstanding IC 6-1.1-11 or any other law, an entity described in subsection (a) may, before September 1, 2009, file or refile with the county assessor an application for a property tax exemption under IC 6-1.1-10-16 for an assessment date occurring after March 1, 2000, and before March 1, 2010. Notwithstanding IC 6-1.1-11 or any other law, an application for a

¹ On cross-examination Mr. Anderson explained more specifically that the 2006 exemption to which he referred was that of Grace Church. He also admitted that the Petitioner did not have a real property or personal property exemption in its own name prior to 2007.

property tax exemption that is filed under subsection (b) is considered to be timely filed for the assessment date for which it is filed....” The Petitioner’s application in this case comes within the intent of this law.

SUMMARY OF RESPONDENT’S CASE

23. The Petitioner filed its application for religious use exemption on the subject property for 2007 on August 1, 2007, but the Petitioner missed the filing deadline. Consequently, it was properly denied for that year, even though the exemption subsequently was allowed for 2008.
24. The Petitioner acknowledged that the subject property was not exempt in 2006, which was before the Petitioner bought it. The Petitioner also acknowledged that prior to 2008 it did not have an exemption for any tangible property in Indiana.
25. The *St. George Serbian Orthodox Church* decision and the non-code legislation discussed in it (2008 Ind. Acts 131, § 66) do not apply to this matter. Specifically, the Petitioner does not meet the condition in subsection (b)(3), which requires that the subject property, or other tangible property owned by the Petitioner in the same county, was exempt from taxation in the prior calendar year. The fact that the Petitioner held a sales tax exemption is irrelevant and does not satisfy this requirement.
26. House Enrolled Act 1001(ss), Sec. 479 (Petitioner Exhibit J) also does not provide support for allowing the Petitioner’s 2007 exemption claim because that section only applies to claims for a charitable exemption and the Petitioner’s claim is based on religious exemption.

ANALYSIS

27. The General Assembly may exempt any property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. IND. CONST., Art. 10 § 1. This provision, however, is not self-enacting. The General Assembly must enact legislation granting an exemption.
28. A taxpayer seeking exemption bears the burden of proving the property is entitled to the exemption by showing that the property is specifically within the statutory authority for the exemption. *See Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004); *Monarch Steel v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Assoc. of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).
29. 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 Petitioner does not comply with the statutory procedures for obtaining an exemption, the exemption is waived. *Gulf Stream Coach v. State Bd. of Tax Comm'rs*, 519 N.E.2d 238, 242 (Ind. Tax Ct. 1988).
30. Indiana Code § 6-1.1-11-3(a) requires a property owner to file a written application on or before May 15 of the year for which it seeks the exemption. Indiana Code § 6-1.1-11-3.5 allows a slightly different requirement for not-for-profit corporations such as the Petitioner. Section 3.5(a) states:

A not-for-profit corporation that seeks an exemption provided by IC 6-1.1-10 for 2000 or for a year that follows 2000 by a multiple of two (2) years must file an application for the exemption in that year. However, if a not-for-profit corporation seeks an exemption provided by IC 6-1.1-10 for a year not specified in this subsection and the corporation did not receive the exemption for the preceding year, the corporation must file an application for the exemption in the year for which the exemption is sought. The not-for-profit corporation must file each exemption application in the manner (other than the requirement for filing annually) prescribed in section 3 of this chapter.

31. Nevertheless, the legislature has enacted limited exceptions to the May 15 filing requirement.
32. One of those exceptions is the non-code section, 2008 Ind. Acts 131, § 66, that was dispositive in *St. George Serbian Orthodox Church v. Lake Co. Property Tax Assessment Bd. of Appeals*, 905 N.E.2d 539, 541 (Ind. Tax Ct. 2009). Subsection (b) has several conditions that all must be met to get the benefit of this exception. Although the Petitioner and the subject property apparently satisfied many of those conditions, (b)(3) requires that the subject property or other tangible property owned by the Petitioner in Marion County to have been exempt in a prior calendar year. The undisputed evidence established that the Petitioner did not satisfy the prior exemption condition. Therefore, this exception does not support the Petitioner's claim.
33. The Petitioner also claimed to qualify for the exception provided by 2009 Ind. Acts (ss) 1001, §479. This exception permits an entity that failed to file a timely application for exemption under Ind. Code § 6-1.1-10-16 to file an application that will be considered as timely. The Respondent correctly pointed out, however, that in subsection (a)(2) this exception is limited to "property that would have qualified for an exemption under IC 6-1.1-10-16 as property owned, occupied, and predominately used for a charitable purpose...." And here the Petitioner's case is entirely based on religious use. The legislature's limitation of this exception to properties that would have qualified for charitable use exemption is clear and unambiguous. It cannot be disregarded. Therefore, the Board concludes that the §479 exception to the May 15th filing requirement does not apply in this case.
34. In addition to those specific exceptions, the Petitioner attempted to get around the specific May 15th filing requirement in other ways. The Petitioner claimed the fact that it demonstrated "continuity of tax exemption" (through its previous location in Grace Church) somehow supports its claim. But the Petitioner failed to establish how another entity's exemption for a different property in prior years has any relevance to this case. The continuity argument appears to be based on a misinterpretation of Ind. Code § 6-1.1-11-3.5(a). There was no dispute about the fact that the Petitioner did not have any

exemption of its own in 2006. Therefore, in order to get an exemption for 2007 the plain language of subsection 3.5(a) required the Petitioner to file an exemption application in the manner prescribed by section 3. The continuity argument does not support the Petitioner's case in any substantial way.

35. Part of Ind. Code § 6-1.1-11-3(a) says, "The application must be filed annually on or before May 15 on forms prescribed by the department of local government finance." Rather than focusing on its May 15th deadline, the Petitioner focused on the obligation to "prescribe" forms as a justification for its late filing. But there is no evidence that the application for exemption forms were not prescribed as required at the time the Petitioner should have filed the 2007 application. Furthermore, the Petitioner failed to establish how the conversations Mr. Anderson had with people in the Assessor's Office had any relevance to the prescribing forms requirement, which applies to an entirely different entity. The most fundamental problem with the Petitioner's case appears to be the failure to acknowledge and accept its own responsibility for actually filling-out and filing the application for exemption form as the statutes specifically require.

36. In a telephone conversation on December 8, 2006, Mr. Anderson told someone in the Assessor's Office about purchasing the subject property and asked about the steps he needed to take to get an exemption. The person he was talking with purportedly said it was too early to apply for an exemption. No evidence was presented about what (if anything) might have been done about the exemption between December 2006 and July 2007. In July 2007 Mr. Anderson again discussed the matter with the Assessor's Office and at that time Melissa Tetrick told him how to get the exemption application. The application was obtained "immediately" and then it was filed on August 1, 2007. The Respondent did not dispute this sequence of events. Consequently, we will assume that it is accurate, but it does not lead to the conclusion that the Petitioner's exemption claim should be allowed. The applicable provisions in Ind. Code § 6-1.1-11-3 and 3.5 make it clear that the Petitioner was required to file an application for exemption by May 15, 2007, in order to obtain an exemption for 2007. The Petitioner has provided no substantial basis to conclude that Mr. Anderson's conversations with the Assessor's

Office somehow take the place of actually filing a timely exemption application or that the May 15 deadline was extended because of them.

37. The Board finds the Petitioner's 2007 claim for exemption must be denied because it was filed too late and because the Petitioner failed to establish that it satisfied the requirements for any exception that might have allowed approval of such a claim.

FINAL DETERMINATION

In accordance with these findings and conclusions the Petitioner's claim for exemption is denied.

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>.