

REPRESENTATIVE FOR PETITIONER: Roger A. Bird, Bird, Svendsen, Brothers, Scheske, Pattison, P.C.

REPRESENTATIVE FOR RESPONDENT: Lori Carney, LaGrange County Assessor

---

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

CITY OF STURGIS D/B/A	)	Petition No's.: 44-012-09-2-8-00001
STURGIS HOSPITAL	)	44-012-09-2-8-00002
	)	44-012-09-2-8-00003
	)	
Petitioner	)	Parcel No's.: 44-03-25-200-004.003-012
	)	44-03-24-400-013.000-012
v.	)	44-03-25-200-012.000-012
	)	Township: Lima
	)	
	)	LaGrange County
	)	
LAGRANGE COUNTY	)	
PROPERTY TAX ASSESSMENT	)	Assessment Years: 2008, 2009
BOARD OF APPEALS	)	
	)	
Respondent	)	
	)	

---

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

---

**July 21, 2010**

**FINAL DETERMINATION**

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

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Introduction

1. Although the City of Sturgis Michigan did not apply for an exemption for 2008 or 2009, it claims that Ind. Code § 6-1.1-11-4(a) excuses political subdivisions from having to file such applications. Contrary to Sturgis's view, that statute applies only to political subdivisions of the State of Indiana. Thus, by failing to timely apply for an exemption, Sturgis waived any right to have the subject property exempted from taxes for 2008 and 2009.

### Background and Procedural History

2. Sturgis had previously applied for and received an exemption for the three parcels under appeal, which Sturgis apparently treats as a single property, and to which the Board will refer collectively as the "subject property." The subject property, however, did not receive an exemption for 2008 or 2009. *See Pet'r Exs 1-2; Resp't Ex. 1.* On September 30, 2009, Sturgis's chief financial officer sent an e-mail to a LaGrange County deputy treasurer asking why the property had not received an exemption. *Resp't Ex. 1.* That same day, Jerri Brown, a LaGrange County deputy assessor, responded that Sturgis had not applied for an exemption in 2008. *Id.* A little more than a week later, on October 9, 2009, counsel for Sturgis wrote a letter to Ms. Brown arguing that Sturgis was not required to file an application. *Pet'r Ex. 1.* Apparently in response to that letter, the LaGrange County Property Tax Assessment Board of Appeals ("PTABOA") scheduled the matter for a hearing. *Board Ex. A.* Following that hearing, on December 15, 2009, the PTABOA issued Form 120 determinations denying the subject property an exemption. *Id.*
3. On January 14, 2010, Sturgis filed Form 132 petitions with the Board. In those petitions, Sturgis claimed an exemption under Ind. Code Ind. Code § 6-1.1-10-5 and Ind. § 6-1.1-10-16. *Board Ex. A.* On April 28, 2010, the Board held an administrative hearing though its duly designated Administrative Law Judge, Jennifer Bippus.

4. The following people were sworn in at the hearing:

For Sturgis:

Robert LaBarge, CEO Sturgis Hospital. Although he was sworn in, Mr. LaBarge did not testify.

For the Assessor:

Lori Carney, LaGrange County Assessor

5. The parties offered the following exhibits:

For Sturgis:

- Petitioner Exhibit 1: Letter dated October 9, 2009, from Roger A. Bird to Jerri Brown, Deputy Assessor, LaGrange County,
- Petitioner Exhibit 2: Letter dated November 19, 2009, from Roger A. Bird to Jerri Brown,
- Petitioner Exhibit 3: Form 120 Notice of Action on Exemption Application parcel no. 44-03-25-200-004.003-012,
- Petitioner Exhibit 4: Form 120, parcel no. 44-03-25-200-012.000-012,
- Petitioner Exhibit 5: Form 120, parcel no. 44-03-24-400-013.000-012,
- Petitioner Exhibit 6: Memorandum of Contract dated December 29, 1998, between Memorial Health System, Inc. and the City of Sturgis,
- Petitioner Exhibit 7: Copy of I.C. § 6-1.1-11-4,
- Petitioner Exhibit 8: Copy of I.C. § 36-1-2-13,
- Petitioner Exhibit 9: Stipulation agreement dated June 20, 2002,
- Petitioner Exhibit 10: *State v. Derossett*, 714 N.E.2d 205 (Ind. Ct. App. 1999),
- Petitioner Exhibit 11: *Boone County Area Planning Commission v. Delores Shelbourne et al.*, 754 N.E.2d 576 (Ind. Ct. App. 2001).

For the Assessor:

- Respondent Exhibit 1: September 30, 2009 e-mails between, Bonnie Brown, County Treasurer, Deb Naylor, Deputy Auditor, Jerri Brown, and Sterling W. Bill Johnson, CFO, Sturgis Hospital,
- Respondent Exhibit 2: October 1, 2009, e-mail between Jerri Brown and Maureen Teunissen,
- Respondent Exhibit 3: October 9, 2009, letter from Roger Bird to Jerri Brown,
- Respondent Exhibit 4: November 13, 2009 e-mail from Maureen Teunissen to Jerri Brown,
- Respondent Exhibit 5: November 19, 2009 letter from Roger Bird to Jerri Brown,

- Respondent Exhibit 6: Form 120, parcel no. 44-03-24-400-013.000-012,
- Respondent Exhibit 7: Form 120, parcel no. 44-03-25-200-004.003-012,
- Respondent Exhibit 8: Form 120, parcel no. 44-03-25-200-012.000-012,
- Respondent Exhibit 9: December 21, 2009 e-mail from Maureen Teunissen to Jerri Brown,
- Respondent Exhibit 10: January 4, 2010 letter from Jerri Brown to Memorial Health Systems, Inc.,
- Respondent Exhibit 11: January 5, 2010 e-mail from Jerri Brown to Maureen Teunissen and January 6 e-mail from Teunissen to Brown,
- Respondent Exhibit 12: E-mail string between Maureen Teunissen and Jerri Brown dated January 5 and 6, 2010,
- Respondent Exhibit 13: January 26, 2010 letter from Roger Bird to County Assessor's office,
- Respondent Exhibit 14: January 26, 2010 letter from Roger Bird to Indiana Board of Tax Review,
- Respondent Exhibit 15: February 2, 2010 letter from Jerri Brown to Memorial Health Systems, Inc.,
- Respondent Exhibit 16: February 5, 2010 letter from Carol Dangler to "To whom it may concern,"
- Respondent Exhibit 17: February 9, 2010 memo from LaGrange County PTABOA regarding "CITY OF STURGIS DBA STURGIS HOSPITAL,"
- Respondent Exhibit 18: August 7, 2009 memo from Timothy J. Rushenberg, Commissioner, Department of Local Government Finance to county assessors and auditors,
- Respondent Exhibit 19: July 20, 2009 memo from Rushenberg to county assessors and auditors,
- Respondent Exhibit 20: Copy of I.C. §§ 6-1.1-11.3.8 and 6-1.1-11-4,
- Respondent Exhibit 21: Copy of I.C. §§ 36-1-2-8 through -13,
- Respondent Exhibit 22: Copy of I.C. §§ 36-1-2-8 through -13,
- Respondent Exhibit 23: Copy of I.C. §§ 6-1.1-10-4 through -8
- Respondent Exhibit 24: IBTR Notice of Hearing for 44-012-09-2-8-00001,
- Respondent Exhibit 25: IBTR Notice of Hearing for 44-012-09-2-8-00002,
- Respondent Exhibit 26: IBTR Notice of Hearing for 44-012-09-2-8-00003.<sup>1</sup>

6. The Board also recognizes the following items as part of the record of proceedings and labels them as Board Exhibits:

---

<sup>1</sup> At the hearing, Roger Bird, counsel for Sturgis, objected to the Respondent's exhibits because he did not think that he had received them before the hearing. *Bird objection*. Mr. Bird said that he would waive the objection if it turned out that he actually had received those exhibits. *Id.* After the hearing, on April 30, 2010, Mr. Bird sent the ALJ a letter acknowledging that he had received the exhibits and waived his objection. *Board Ex. F.*

Board Ex. A: Form 132 petition,  
Board Ex. B: Hearing notice dated March 8, 2010,  
Board Ex. C: April 19, 2010, order on conducting exemption hearings,  
Board Ex. D: Notice of Appearance for Roger Bird,  
Board Ex. E: Hearing sign-in sheet,  
Board Ex. F: April 30, 2010 letter from Roger Bird to Jennifer Bippus.

7. Neither the Board nor the ALJ inspected the subject property.

### **Findings of Fact**

8. The record is short on facts about the subject property. That is partly because Sturgis did not call any witnesses. While Roger Bird, Sturgis's attorney, referenced various facts in his presentation, he did not swear an oath. Thus, except to the extent that they were offered independently of Mr. Bird's presentation, none of the facts that Mr. Bird referenced are before the Board.
9. Nonetheless, the record does show some things about the subject property. It is located on State Road 9 in Howe, Indiana. Sturgis, which is a city in Michigan, has some interest in the property as evidenced by a "Memorandum of Contract," dated December 29, 1998. *See Pet'r Ex. 6*. Mr. Bird also conceded that, for 2008 and 2009, "there was a portion of [the subject property] leased to Parkview Hospital out of LaGrange, but it was owned and maintained by the City of Sturgis throughout those years." *Bird statement*.
10. The subject property was granted exemptions for 2001 and 2006. *See Pet'r Ex. 9 (Stipulation Agreement for 2001 assessment appeal); Resp't Ex. 15 (letter from Jerri Brown, deputy assessor, referencing exemption application from 2006)*. The property may also have received exemptions in the intervening years. *See id.* Sturgis, however, did not apply for an exemption in 2008 or 2009, and the subject property did not receive an exemption for those years. *Resp't Ex. 1*.

## Conclusions of Law and Analysis

11. Generally speaking, tangible property located in Indiana is taxable. *See* I.C. § 6-1.1-2-1. Nonetheless, the Indiana Constitution allows the General Assembly to exempt any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. IND. CONST. Art. 10, § 1. The General Assembly, in turn, has enacted legislation exempting, among other things, property that is “owned by a city or town and used to provide a municipal service” and property that is owned, occupied, and predominately used for a charitable purpose. I.C. § 6-1.1-10-5 (2009 supp.); I.C. § 6-1.1-10-16(a)-(c), (e) (2009 supp).
12. An exemption, however, is a privilege that a taxpayer may waive by failing to comply with the statutory procedures for obtaining it. I.C. § 6-1.1-11-1 (2009 supp.). If an exemption is waived, the property is taxable. *Id.*
13. Generally, a property owner must file a written application on or before May 15 of the year for which it seeks an exemption, or in the case of a not-for-profit organization seeking to continue an exemption previously granted under Ind. Code § 6-1.1-10, on or before May 15 of every even-numbered year. *See* I.C. § 6-1.1-11-3(a) (2009 supp.); I.C. § 6-1.1-11-3.5(a) (2009 supp.). That general rule, however, is subject to exceptions. In its Form 132 petitions, Sturgis relied on three of those exceptions, although it apparently abandoned two of them at the hearing. The Board will briefly address the two abandoned claims before turning to the heart of Sturgis’s argument.
14. First, a taxpayer seeking an exemption under Ind. Code § 6-1.1-10-16 or Ind. Code § 6-1.1-10-21 need not continue to file applications provided that: (1) the taxpayer properly filed an application at least once, and (2) the property continues to meet the statutory requirements for exemption. I.C. § 6-1.1-11-4(d) (2009 supp.). Before June 30, 2009, however, that exception applied only to a narrow class of exemptions: exemptions under Ind. Code § 6-1.1-10-21 and exemptions for property that was both owned by a church or

religious society and used for educational purposes under Ind. Code § 6-1.1-10-16.<sup>2</sup> It did not apply to other exempt uses under Ind. Code § 6-1.1-10-16. Thus, for the 2008 and 2009 assessment years, taxpayers seeking charitable-use exemptions under Ind. Code § 6-1.1-10-16 still had to file applications.

15. Second, section 479 of Public Law 182-2009ss, as amended by Public Law 113-2010 section 178 (collectively “Section 479”), provided a mechanism for certain taxpayers to receive exemptions for assessment years 2001 through 2009 where the taxpayers had waived those exemptions by failing to timely file an application. To qualify, a taxpayer needed to meet certain requirements. Among other things, the taxpayer needed to be exempt from taxation under section 503(c)(3) of the Internal Revenue Code, and it needed to file an exemption application for those earlier assessment years before September 1, 2009. P.L. 182-2009ss § 479; P.L.113-2010 § 178.
16. Sturgis, however, did not offer any evidence to show that it was exempt under section 501(c)(3) of the Internal Revenue Code. Sturgis similarly did not file an exemption application before September 1, 2009. In fact, Sturgis did not file an exemption application at all. At best, the record shows that Sturgis’s representatives sent e-mails and letters to county officials regarding the subject property not having received an exemption for 2008 or 2009. Even if the Board were to view those letters and e-mails as applications, they were untimely: the first e-mail is dated September 30, 2009, and the first letter is dated October 9, 2009. *See Pet’r Exs. 1-2; Resp’t Exs. 1-5*. Thus, Section 479 does not excuse Sturgis from its failure to file an exemption application for 2008 or 2009.
17. Perhaps in recognition of the problems described above, Sturgis did not rely on either Ind. Code § 6-1.1-11-4(d) or Section 479 at the Board’s hearing. Instead, Sturgis relied solely on Ind. Code § 6-1.1-11-4(a), which provides:

The exemption application referred to in section 3 of this chapter is not required if the exempt property is owned by the United States, the state, an

---

<sup>2</sup> See I.C. § 6-1.1-11-4(d)(1) and (2) (2006 replacement vol.); P.L. 182-2009ss § 107 (amending I.C. § 6-1.1-11-4(d) to add subdivision (1)(C), which references other exempt uses under Ind. Code § 6-1.1-10-16 besides religious and educational).

agency of this state, or a political subdivision (as defined in IC 36-1-2-13). However, this subsection applies only when the property is used, and in the case of real property occupied, by the owner.

I.C. § 6-1.1-11-4(a) (2009 supp.).

18. Sturgis claims that it was excused from having to file an exemption application because it is a political subdivision within the meaning of Ind. Code § 6-1.1-11-4(a). Although Sturgis is located in Michigan instead of Indiana, Sturgis argues that Ind. Code § 6-1.1-11-4(a) does not require a political subdivision to be an Indiana municipality. In that vein, Sturgis points out that the General Assembly chose to qualify the term “agency” with “of this state,” but did not do the same for “political subdivision.” *Bird argument*.
19. The Board disagrees with Sturgis’s interpretation. Indiana Code § 6-1.1-11-4(a) does not excuse political subdivisions of other states from having to file exemption applications. Although, in drafting Ind. Code § 6-1.1-11-4(a), the General Assembly did not expressly qualify the term “political subdivision” with “of this state,” it did not need to do so. It instead expressly referenced the definition of “political subdivision” contained in Ind. Code § 36-1-2-13. That section defines a “political subdivision” as a “municipal corporation or special taxing district.” I.C. § 36-1-2-13 (2009 supp.). “Municipal corporation,” in turn, is defined as follows:

[A] unit, school corporation, library district, local housing authority, fire protection district, public transportation corporation, local building authority, local hospital authority or corporation, local airport authority, special service district, or other separate local governmental entity that may sue and be sued. The term does not include special taxing district.

I.C. § 36-1-2-10 (2009 supp.).

20. Title 36, which contains the definitions for “political subdivision” and “municipal corporation,” lays out the organization, powers, and duties of local governmental entities. The Indiana General Assembly cannot prescribe the powers and duties of local governments in other states. So the terms “political subdivision” and “municipal corporation” as defined in Title 36 necessarily apply only to Indiana entities. Thus, the General Assembly did not need to expressly limit the term “political subdivision” in Ind.



Code § 6-1.1-11-4(a) by saying “of this state,” because it referenced a definition of that term that necessarily incorporates that limitation.

21. Even if Sturgis were right and municipal corporations from other states were generally excused from having to apply for exemptions, Sturgis still would not have been excused from having to apply for an exemption in this case. By its terms, Ind. Code § 6-1.1-11-4(a) applies “only when the property is used, and in the case of real property occupied, by the owner.” I.C. § 6-1.1-11-4(a) (2009 supp.). Counsel for Sturgis, however, conceded that Sturgis leased a portion of the subject property to Parkview Hospital during 2008 and 2009. Sturgis therefore did not occupy the leased portion of the subject property. And Sturgis did not offer any evidence to show what, if any, portion of the property it did occupy
  
22. Thus, because Sturgis is not an Indiana municipal corporation and did not occupy and use the subject property during the years at issue, Sturgis was required to file an exemption application. By failing to do so, Sturgis waived any claim it had to exempt the subject property from taxation for 2008 or 2009.

### **Summary of Final Determination**

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

---

Chairman, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

---

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>>