

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 82-029-11-1-4-04617
82-029-11-1-4-04618
Petitioner: Eternal Security, LLC
Respondent: Vanderburgh County Assessor
Parcels: 82-06-29-021-090.010-029
82-06-29-021-090.017-029
Assessment Year: 2011

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter. It finds and concludes as follows:

Procedural History

1. The property under appeal consists of two contiguous parcels. Parcel 82-06-29-021-090.017-029 is located at 430 Washington Avenue in Evansville and has a church building on it. Parcel 82-06-29-21-090.010-029 is located at 927 S. Elliott Street and has a parking lot for the church on it.¹
2. Eternal Security, LLC (“Petitioner”) filed a 2011 appeal with the Vanderburgh County Assessor (“Respondent”) on May 23, 2012.
3. Petitioner raised the issue of exemption along with the issue of valuation.
4. The Vanderburgh County Property Tax Assessment Board of Appeals (“PTABOA”) issued its final determination on June 22, 2013.
5. Petitioner filed a Petition for Review of Assessment with the Board on August 8, 2013.
6. Administrative law judge Gary Ricks (“ALJ”) held the administrative hearing on April 28, 2015. Neither he nor the Board inspected the subject property. When they got to the Board hearing, the parties already had agreed to a value and both cases focused entirely on the exemption issue.
7. Carl Carick, Chief Executive Officer for Petitioner, appeared *pro se* and was sworn as a witness. Candy Wells, Deputy for Not-for-Profit Real Estate and Level III Certified Indiana Assessor-Appraiser, was sworn and testified for Respondent.

¹ Candy Wells testified that in 2013 the Assessor changed the coding of one parcel number. Parcel 82-06-29-021-090.017-029 had previously been coded as 82-06-32-021-090.017-029.

8. The official record contains the following:

a) A digital recording of the hearing,

b) Petitioner Exhibit A: 2012 property record card (“PRC”) for the church,

Respondent Exhibit A: Auditor’s MVP Document regarding exemption removal,

Respondent Exhibit B: Minutes from June 18, 2013 PTABOA meeting,

Respondent Exhibit C: Form 130 for the church dated May 23, 2012,

Respondent Exhibit D: PRC for the church,

Respondent Exhibit E: PRC for the parking lot,

Respondent Exhibit F: Determination memorandum for the church,

Respondent Exhibit G: Determination memorandum for the parking lot,

Respondent Exhibit H: Department of Local Government Finance (“DLGF”), memorandum dated July 20, 2009,

Respondent Exhibit I: DLGF memorandum dated December 11, 2009,

Respondent Exhibit J: Part of Form 136 filed by the taxpayer on May 14, 2012, (pages 1, 2, and 3 of 5)

Respondent Exhibit K: Exemption Memorandum and Forms 120,

Board Exhibit A: Forms 131 and attachments,

Board Exhibit B: Notices of hearing,

Board Exhibit C: Notice of appearance of Nick Cirignano,

Board Exhibit D: Hearing sign-in sheet,

c) These Findings and Conclusions.

9. Summary of Petitioner’s case:

a) Petitioner purchased the property in November of 2010. Up until that time the property had been allowed an exemption. *Carick testimony.*

b) Winds and storms had caused significant damage that made the building unusable when Petitioner bought it. Petitioner began restoration in May of 2011. At the time of the filing of the Form 136, an insurance claim was pending and the building was unoccupied. *Petitioner’s Ex. C.*

c) The property was allowed exemptions for 2010 and for 2012. Petitioner contends that, pursuant to Ind. Code 6-1.1-11-4, the subject property qualifies for an exemption for 2011 as a result of its religious use both before and after Petitioner bought it. *Respondent’s Ex. H, Carick testimony.*

d) Notice of change of ownership of an exempt property is to be filed with the county assessor’s office. Transfer of ownership of an exempt property, however, will not necessarily result in the loss of exempt status if the property continues to meet the

exemption requirements under Ind. Code § 6-1.1-10-16 or Ind. Code § 6-1.1-10-21. *Carick testimony. Respondent's Ex. I.*

- e) To suspend an exemption, a county assessor is required to send notice that an affidavit is required to maintain the exemption. At no time, however, did Petitioner receive such a notification from Respondent. Therefore, the elimination of the exemption for 2011 was improper and it should be reinstated, regardless of when a Form 136 was filed. *Carick testimony; Respondent's Ex. H, p 1.*

10. Summary of Respondent's case:

- a) Petitioner took ownership of the subject property on November 24, 2010. The exemption was suspended on April 14, 2011. It was suspended because of the change in ownership--exempt status is always suspended when ownership changes. The new owner must apply for an exemption using Form 136. *Respondent Ex. H, Wells testimony.*
- b) Petitioner's Form 136 exemption application was not filed until May 14, 2012. But for a 2011 exemption, the filing deadline was May 15, 2011. Consequently, Petitioner's Form 136 was considered as an application for 2012. *Wells testimony.*
- c) The parties reached an agreement regarding valuation. Specifically, they agreed to lower the assessed value of the church from \$70,200 to \$49,300 for 2011. *Wells testimony.*
- d) The subject property was not being used for an exempt purpose. In 2011 and 2012 Rev. Donna Beccia, Petitioner's president, made statements that wind and storm damage had left the church building "unusable" and "unoccupied" until an insurance claim was settled and repairs were made. *Respondent's Ex. J, p. 2.*

Analysis

- 11. Initially, the ALJ commenced the hearing under the impression that the assessed value of the property for 2011 was at issue, but he learned that was not the case. The parties had agreed to a valuation. The only remaining dispute was the exemption for 2011.
- 12. As a general rule, all real property in Indiana is subject to taxation. Ind. Code § 6-1.1-2.1. Nevertheless, the General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, §1.
- 13. Ind. Code § 6-1.1-10-16(a) states that "[a]ll 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 to in subdivision (1) is situated on it.” Ind. Code § 6-1.1-10-16(c).

14. Storm damage left the church temporarily unusable in 2011-2012. Respondent, however, provided no authority for that fact being a legitimate reason to take away the exemption. The Board is aware of no such authority and attaches no significance to that point.
15. According to Respondent, the denial of the exemption for 2011 was because Petitioner failed to notify Respondent of the change in ownership of the subject property. At the time of the change of ownership, the following provision applied:

A change in ownership of property does not terminate an exemption of the property if after the change in ownership 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. 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 of the property shall notify the county assessor for the county where the tangible property is located of the change in the year that the change occurs. The notice must be in the form prescribed by the department of local government finance.

Ind. Code § 6-1.1-11-4(d)(3).

16. Here, ownership of the property changed and Petitioner was required to provide notification of the change to Respondent which it failed to do. However, there is no specific consequence expressed in the above portion of the statute for failure to provide such notification.
17. Ind. Code § 6-1.1-11-4(d)(3) further provided:

If the county assessor discovers that title to property granted an exemption described in IC 6-1.1-10-16, IC 6-1.1-10-21, or IC 6-1.1-10-24 has changed, the county assessor shall notify the persons entitled to a tax statement under IC 6-1.1-22-8.1 for the property of the change in title and indicate that the county auditor will suspend the exemption for the property until the persons provide the county assessor with an affidavit, signed under penalties of perjury, that identifies the new owners of the property and indicates that the property continues to meet the requirements for an exemption under IC 6-1.1-10-21, IC 6-1.1-10-16, or IC 6-1.1-10-24. Upon receipt of the affidavit, the county assessor shall reinstate the exemption for the years for which the exemption was suspended

and each year thereafter that the property continues to meet the requirements for an exemption under IC 6-1.1-10-21, IC 6-1.1-10-16, or IC 6-1.1-10-24.

Id.

18. When Respondent discovered the change in title, it was required to notify Petitioner that the auditor would suspend the exemption until an affidavit was provided identifying the new owners and indicating the property continued to meet the requirements for exemption. Respondent failed to provide the required notification, but suspended the exemption nonetheless.
19. It is not clear as to whether Respondent's failure to provide notification to Petitioner with regard to the affidavit rendered the suspension of the exemption invalid. If it did, the property should maintain its exempt status for 2011.
20. In the alternative, if the suspension is valid despite Respondent's failure to make notification to Petitioner, the Board finds that Petitioner nonetheless satisfied the required elements of the affidavit sufficiently to have the exemption reinstated.
21. Specifically, in the course of filing its appeals and presenting its information before the PTABOA and the Board, Petitioner sufficiently identified itself as the new owner of the subject property and indicated that the subject property continued to meet the exemption requirements.
22. In summary, the property was exempt for religious purposes under the prior owner. During the year at issue, Petitioner commenced restoring it with the objective of continuing the exempt purpose. While Petitioner failed to notify Respondent of the change of ownership, Respondent similarly failed to notify Petitioner of the affidavit requirement. Regardless of the validity of the suspension, Petitioner sufficiently addressed the affidavit requirements over the course of this appeal warranting reinstatement of exemption status. Finally, Petitioner was granted an exemption for 2012 and going forward that is still in place.
23. There is no need for the Board to determine any valuation matter.

CONCLUSION

In accordance with the above findings and conclusions, the Board determines that the subject property is exempt for 2011.

Issued: August 26, 2015

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 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 Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.