REPRESENTATIVES FOR PETITIONERS:
Joshua C. Neal and William A. Ramsey, Barrett McNagny, LLP

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

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Goshen Land Development, LLC) and GK Goshen Childcare Corp.) d/b/a Growing Kids Learning Center,)	Petition Nos.: 20-013-19-2-8-00741-19 20-013-19-2-8-00742-19
Petitioners,)	Parcel Nos.: 20-07-31-351-011.000-013 07-31-351-011-013
v.)	County: Elkhart
Elkhart County Assessor,)	Assessment Year: 2019
Respondent.)	

September 13, 2021

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:

INTRODUCTION

1. Goshen Land Development, LLC ("GLD") applied for an educational exemption for real and personal property it leases to GK Goshen Childcare Corp. d/b/a Growing Kids Learning Center ("GK") for use as a for-profit early childhood educational facility. Indiana Code § 6-1.1-10-46 requires that for-profit early childhood educational facilities must be owned by the educational provider to qualify for an exemption. It further requires the educational provider to predominantly occupy and use the property for providing early childhood education services to children who are at least four (4) but less

than six (6) years of age. Because GLD and GK are separate and distinct legal entities and only 34% of GK's total enrollment are children between 4 and 5 years of age, the property does not qualify for an exemption.

PROCEDURAL HISTORY

2. On April 1, 2019, GLD applied for an educational exemption for the 2019 assessment year for real and personal property located at 3212 Elkhart Road in Goshen.[1] On July 31, 2019, the Elkhart County Property Tax Assessment Board of Appeals ("PTABOA") issued a Form 120 determination finding the real property to be 100% taxable. However, the PTABOA's determination failed to address the personal property. On August 26, 2019, GLD timely filed a Form 132 petition challenging the denial of the educational exemption as to the real property and GK filed a concurrent Form 132 petition challenging the denial of the educational exemption as to the personal property.[2]

3. On April 28, 2021, our designated Administrative Law Judge, David Smith ("ALJ"), held a telephonic hearing on both petitions. Neither he nor the Board inspected the subject property.

4. GLD and GK's Chief Financial Officer Sandy Harvey, GK's Area Director Beth Lovelady, and Elkhart County Assessor Cathy Searcy testified under oath.

5. GLD and GK submitted the following exhibits:

Petitioner Ex. 1:	GLD's Form 136 exemption application and attachments
Petitioner Ex. 2:	GLD's Form 132 petition and attachments
Petitioner Ex. 3:	GK's Form 132 petition and Notice of Appearance
Petitioner Ex. 4:	Assessor's Responses to Petitioners' Interrogatories

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[1] On its exemption application, GLD included a notation indicating that the property was leased to GK.

[2] GK claimed it filed its appeal directly with us because the PTABOA failed to issue a determination within 180 days of the filing of GLD's Form 136 exemption application. *See* Ind. Code § 6-1.1-11-7(d) (allowing taxpayers to appeal to the Board if the county board fails to approve or disapprove an exemption application within 180 days of the date the exemption application was filed). Although it had only been approximately 147 days since GLD applied for the exemption, we note that the Assessor never challenged the timeliness of GK's Form 132 petition and the PTABOA's 180 days had long since run by the date of our hearing.

Petitioner Ex. 5:	Petitioners' Responses to Respondent's Interrogatories and Requests for Production
Petitioner Ex. 6:	Educational Programming
Petitioner Ex. 7:	Corporate Structure
Petitioner Ex. 8:	Floorplan for Growing Kids Learning Center
Petitioner Ex. 9:	Room Usage and Square Footage Calculation
Petitioner Ex. 10:	Five-year lease between GLD and GK effective September 1, 2017
Petitioner Ex. 11:	Management and Services Agreement

6. The Assessor submitted the following exhibits:

Respondent Ex. R-1:	GLD's Form 132/Form 136 exemption application and attachments
Respondent Ex. R-2:	GLD's Operating Agreement
Respondent Ex. R-3:	Facility Lease between GLD and GK
Respondent Ex. R-4:	GK's Certification of Incorporation
Respondent Ex. R-5:	GK's Certificate of Assumed Name
Respondent Ex. R-6:	GK's Operating Agreement
Respondent Ex. R-7:	GK's Bylaws
Respondent Ex. R-8:	GK's Form 113 & 114
Respondent Ex. R-9:	GK's Form 132/Form 136 Application
Respondent Ex. R-10:	GLD's Form 103 Personal Property Return (Confidential)
Respondent Ex. R-11:	GLD's Assumed Name History

7. The record also includes the following: (1) all pleadings, briefs and documents filed in these appeals, including the parties' post-hearing briefs; (2) all orders and notices issued by the Board or our ALJ; and (3) an audio recording of the hearing.

FINDINGS OF FACT

8. GLD is a real estate holding company formed by Mike and Beth Garatoni for the purpose of constructing the facility located at 3212 Elkhart Road. It owns both the real and personal property at issue in this appeal. GLD has no employees, and it does not provide any childcare or educational services. GLD leases the real and personal property to GK, who uses it as a for-profit early childhood educational facility serving children ranging in age from infant to 7 years old. GK is the sole occupant and user of the real property and no other activities of any kind occur on the property. *Lovelady and Harvey testimony; Pet'r Exs. 1, 2, 5, 7, 10; Resp't Exs. R-2, R-3 R-10.*

9. GK opened the facility in 2015. It is one of nine childcare and early development centers in northern Indiana that are owned by Mike and Beth Garatoni. GK was certified as a Level 4 provider under Indiana's Paths to Quality certification program as of January 1, 2019. GK has established curriculums for all age groups which are reflected in the daily lesson plans and activity schedules. Each of the classrooms is separately furnished and supplied, and each has two bathrooms and outside egress. There are centers for math, arts, science, nutrition, sensory activities, and a manipulative center in each classroom. The total enrollment at GK on January 1, 2019 was 212, of which 73 (34%) were between the ages of 4 and 5. *Lovelady and Harvey testimony; Pet'r Exs. 6, 7, 8, 9.*

Conclusions of Law

10. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Hamilton County Property Tax Assessment Bd. of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 657 (Ind. 2010). A taxpayer has the burden of proving it is entitled to exemption. *Id.* Because exemption statutes release properties from bearing their fair share of the cost of government and disturb the equality and distribution of the common burden of government, they are strictly construed against the taxpayer. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2014).

11. 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. Ind. Code § 6-1.1-10-16(a). That exemption extends to the land on which the building sits and to personal property that is owned and used in such a manner that it would qualify for exemption if it were a building. I.C. § 6-1.1-10-16(c) and (e). However, Ind. Code § 6-1.1-10-46 sets strict limitations on when a property used to provide for-profit early childhood educational services, such as the subject property, can receive an exemption. It provides, in relevant part:

> (a) Tangible property owned, occupied, or used by a for-profit provider of early childhood education services to children who are at least four (4) but less than six (6) years of age is exempt from property taxation under section 16 of this chapter only if all of the following requirements are satisfied:
>
> (1) The primary purpose of the provider is educational.
>
> (2) The provider is the property owner and the provider also predominately occupies and uses the tangible property for providing early childhood education services to children who are at least four (4) but less than six (6) years of age…

Ind. Code § 6-1.1-10-46(a).

12. Here, GLD owns both the real and personal property, but it admittedly has no role in providing childcare or education at the facility. It instead leases the property to GK, who uses it to provide childcare and early childhood education services to children ranging in age from infant to 7 years old. Because GLD is the owner but not the provider of educational services, the property does not satisfy Ind. Code § 6-1.1-10-46(a)(2), which requires that the provider of the educational services also be the property owner.

13. GLD and GK ask us to look past this statutory requirement, arguing that they should nevertheless be entitled to an exemption because both entities share common ownership. But the requirement that the owner and provider be one and the same is a substantive requirement of the statute, not a mere procedural hurdle. For us to hold otherwise would be to ignore the clear intent of the legislature. Thus, we cannot simply disregard the fact that GLD and GK are two separate legal entities. *See St. Mary's Building Corporation v. Redman*, 135 N.E. 3d 681 (Ind. Tax Ct. 2019) (explaining that a basic principle of the U.S. legal system recognizes that corporate entities are separate legal personalities). Furthermore, the cases they cite in support of their argument that two related entities can combine to satisfy the statutory exemption requirements, including *Johnson County Property Tax Assessment Board of Appeals v. KC Propco, LLC* 28 N.E. 3d 370 (Ind. Tax Ct. 2015), all predate the creation of Ind. Code § 6-1.1-10-46 and thus do not control.

14. Even if GLD and GK prevailed on their common ownership argument, we would still find that the property does not qualify for an exemption. In addition to requiring the educational provider to be the property owner, Ind. Code § 6-1.1-10-46(a)(2) also requires the provider to predominately occupy and use the property for providing early childhood education services to children who are at least four (4) but less than six (6) years of age. Because only 34% of GK's total enrollment are children between 4 and 5 years of age, we conclude that GK does not satisfy the statute's predominate use requirement.

15. In the alternative, GLD argues that the requirements of Ind. Code § 6-1.1-10-46 do not apply to it because they are "relevant only to a "provider" of services seeking an exemption" and thus owners who are not providers can seek an exemption under the general exemption statute without meeting the requirements of Ind. Code § 6-1.1-10-46. But the language of the statute clearly applies to any property used for for-profit educational services, regardless of whether the owner or the provider is seeking the exemption. In addition, such an interpretation would render the requirement that the educational provider be the property owner meaningless. For-profit early childhood education centers must meet the requirements of Ind. Code § 6-1.1-10-46 to receive an exemption.

Conclusion

In accordance with the above findings of fact and conclusions of law, we find the subject property to be 100% taxable.

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Chairman, Indiana Board of Tax Review

Betsy J. Brand
Commissioner, Indiana Board of Tax Review

Jonathan R. Elrod
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 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>.