

REPRESENTATIVE FOR PETITIONER: Kevin Mitschelen, Transformational Spaces

REPRESENTATIVES FOR RESPONDENT: Frank J. Agostino, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Transformational Spaces, Inc.)	Petition No.: 71-026-15-2-8-00399-18
)	
Petitioner,)	
)	
v.)	Parcel No.: 71-08-12-302-004.000-026
)	
St. Joseph County Assessor,)	County: St. Joseph
)	
Respondent.)	Assessment Year: 2015

May 13, 2019

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. In this exemption appeal, we find that the St. Joseph County Auditor improperly removed the 2015 exemption for a property that Transformational Spaces, Inc., bought from a church approximately five months after the assessment date and continued to use for exempt purposes. While Transformational Spaces was tardy under Ind. Code § 6-1.1-11-4(e) in notifying the St. Joseph County Assessor of the ownership change, the statute does not contemplate terminating the exemption as a remedy for that tardiness.

Procedural History

2. We begin with a brief procedural history outlining how the appeal came before us and what happened at our hearing. In our statement of facts, we set out additional procedural information that bears on our resolution of the appeal.
3. Transformational Spaces filed petitions to correct an error addressing the removal of the subject property's exemption for the 2015 assessment year. On February 20, 2018, the St. Joseph County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying Transformational Spaces relief. Transformational Spaces responded by timely filing a Form 132 petition with us.
4. On February 13, 2019, our designated Administrative Law Judge, Jeremy Owens ("ALJ"), held a hearing on Transformational Spaces' petition. Neither he nor the Board inspected the property. Kevin Mitschelen, Jim Champer, Rob Staley, and Jeanette Hamel were sworn in and testified for Transformational Spaces. Rosemary Mandrici and Kathy Gregorich were sworn in and testified for the Assessor.
5. The parties offered the following exhibits without objection:

Petitioner's Exhibit 1:	Change in Ownership (DLGF)
Petitioner's Exhibit 2:	Letter from the Internal Revenue Service to Transformational Spaces
Petitioner's Exhibit 3:	Change in Ownership or Use
Petitioner's Exhibit 4:	Form 136 CO/U Notice of Change of Ownership
Petitioner's Exhibit 5:	Purchase Agreement and closing documents for sale of the subject property
Respondent's Exhibit 1:	Form 136 CO/U
Respondent's Exhibit 2:	Form 130 petition stamped "Correction of Error Notice to Initiate an Appeal"
Respondent's Exhibit 3:	Form 115 determination
Respondent's Exhibit 4:	Form 132 petition
Respondent's Exhibit 5:	2015 property record card

6. The record also includes the following: (1) all pleadings, briefs and other documents filed in the appeal; (2) all orders and notices issued by the Board or our ALJ; and (3) an audio recording of the hearing.

Objection

7. In cross-examining the Assessor, Transformational Spaces' director, Kevin Mitschelen, indicated that the PTABOA had reached an impasse similar to a "hung jury" and had given the appeal to its attorney to "make the final agreement." The Assessor objected to Mitschelen's statements on grounds that he was impermissibly testifying while cross-examining a witness and that he had mischaracterized both what happened at the PTABOA hearing and the process by which the PTABOA issues a determination. The Assessor moved to strike the statements as prejudicial. The ALJ took the objection under advisement and we now sustain it.¹

Findings of Fact

8. The subject property is located at 202 Western Ave. in South Bend. City Chapel Evangelical Free Church previously owned the property. Crossroads, a school that caters to troubled teens, rented space at the property. The property received an exemption while owned by City Chapel. *Mitschelen testimony*;² *see also Pet'r Ex. 5 at Tax Proration Agreement, Schedule B II.*
9. After merging with another church, City Chapel decided to move to a different building. In August 2015, it sold the property to Transformational Spaces for \$200,000. Transformational Spaces is a not-for-profit entity organized for the purpose of contracting with public schools and helping to educate troubled teens. Its mission

¹ The Assessor also raised as a "point of order" the fact that Jim Champer, who is not an attorney or certified tax representative, signed the correction-of-error petitions as Transformational Spaces' authorized representative. Champer, however, appeared at the hearing as a witness rather than as Transformational Spaces' representative. Transformational Spaces' director, Mitschelen, represented it at the hearing.

² Mitschelen, who was sworn under oath, made some factual statements in what was nominally Transformational Spaces' opening statement. We treat those statements as testimony.

includes a faith-based component. Transformational Spaces contracts with 34 public schools and serves approximately 1,500 students statewide each year. Crossroads continued to operate a school at the subject property after Transformational Spaces bought it. *Champer, Mitschelen, and Staley testimony; Pet'r Ex. 5.*

10. Both before and after the sale, the subject property was owned, occupied, and used for exempt purposes.
11. Transformational Spaces hired real estate professionals to help with the sale. Mitschelen had no idea that Transformational Spaces needed to file any forms to maintain an exemption for the property. *Mitschelen testimony.*
12. The St. Joseph County Auditor's office was aware the property had been sold to Transformational Spaces. During the period at issue in this appeal, the Auditor's office followed a policy where it checked with the Assessor to see whether a Form 136-CO/U change of ownership notice had been received for exempt properties that had been transferred to new owners. On January 15, 2016, as Kathy Gregorich, the Auditor's office manager and settlement specialist, was preparing to calculate tax bills, she called the Assessor and determined that the Assessor had not received a Form 136-CO/U notice for the subject property. She therefore "permanently removed" the exemption before calculating the tax bill. *Gregorich testimony.*
13. After receiving a tax bill for the 2015 assessment, Transformational Spaces filed a Form 136 exemption application for 2016, which the PTABOA granted. On May 19, 2016, it filed a Form 136-CO/U notifying the Assessor that it had bought the property, that the property's use had not changed, and that it remained qualified for an exemption. *Mitschelen testimony; Mandrici testimony; Resp't Ex. 1.*

Conclusions of Law

14. This appeal differs from a typical exemption appeal in that there is no dispute as to whether the property was owned, occupied, and used for exempt purposes at any time relevant to the appeal. The only question is whether Transformational Spaces' failure to timely notify the Assessor of the property's change in ownership allowed the Auditor to terminate the exemption for 2015. The Assessor believes it did. We disagree.
15. The confusion stems from some of the language in Ind. Code § 6-1.1-11-4 that in certain situations allows an exemption to continue without a taxpayer having to reapply. Under that section, a person who has successfully applied for an exemption once may continue to receive the exemption without having to reapply. I.C. § 6-1.1-11-4(d). Of course, the legislature did not intend to exempt a property from taxes forever, regardless of whether a property continues to qualify for that treatment under the substantive exemption statutes. That is where Ind. Code § 6-1.1-11-4(e)—the subsection on which the Assessor relies—comes into play. That subsection creates a self-reporting mechanism designed to alert local officials to changes in ownership or use that might affect a property's continued entitlement to exemption:

(e) If, after an assessment date, an exempt property is transferred or its use is changed resulting in its ineligibility for an exemption under IC 6-1.1-10, the county assessor shall terminate the exemption for that assessment date. *However, if the property remains eligible for an exemption under IC 6-1.1-10 following the transfer or change in use, the exemption shall be left in place for that assessment date.* For the following assessment date, the person that obtained the exemption or the current owner of the property, as applicable, shall, under section 3 of this chapter and except as provided in this section, file a certified application in duplicate with the county assessor of the county in which the property that is the subject of the exemption is located. *In all cases, 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 ownership or use in the year that the change occurs.* The notice must be in the form prescribed by the department of local government finance.

I.C. § 6-1.1-11-4(e) (emphasis added).

16. The first sentence is perplexing: it is not clear what, if any, changes occurring after an assessment date would make a property ineligible for an exemption for that assessment date. Our state’s courts have held that the purposes for which a property was owned, occupied, and used on the assessment date controls whether it qualifies for exemption. *See, e.g., Trinity Episcopal Church v. State Bd. of Tax Comm’rs*, 694 N.E.2d 816, 819 (Ind. Tax Ct. 1998) (explaining that while “[p]roperty either is or is not exempt from taxation according to the situation on the 1st day of March of each year[,]” the “situation on the assessment date can be evidenced by occurrences happening outside that date.”); *see also Stark v. Kreyling*, 207 Ind. 128, 131, 188 N.E. 680, 681 (1934). And in determining whether a property was predominantly used for exempt purposes, the relevant statute looks backward, not forward. I.C. § 6-1.1-10-36.3(a) (“For purposes of this section, property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more of those purposes during more than fifty percent (50%) of the time that it is used or occupied *in the year that ends on the assessment date* of the property.”) (emphasis added)
17. But we need not decide whether the first sentence of subsection (e) created a brief exception³ to that general rule, because the second sentence controls this appeal: “However, if the property remains eligible for an exemption under IC 6-1.1-10 following the transfer or change in use, *the exemption shall be left in place for that assessment date.*” It is undisputed that the subject property continued to be eligible for exemption after Transformational Spaces bought it. So the property’s 2015 exemption had to be left in place.

³ In 2014, the legislature enacted Ind. Code § 6-1.1-11-1.5, which provides that an exemption award for a given assessment date must be based on a property’s eligibility on that date, and that subsequent acts, including changes to the property’s use or ownership, do not affect its eligibility. I.C. § 6-1.1-11-1.5(b); 2014 Ind. Acts 111, § 19. But Ind. Code § 6-1.1-11-1.5 applies only to assessment dates after December 31, 2015. I.C. § 6-1.1-11-1.5(b).

18. The Assessor, however, argues that the last two sentences of subsection (e), which indicate that the person who obtained the exemption or the new owner shall provide notice of the change in ownership or use in the year that the change occurs, overrides the directive that the exemption be left in place. We disagree. Subsection (e) does not specify any negative consequence for failing to notify an assessor about the change in ownership or use of an exempt property, much less require the exemption to be terminated. To the contrary, the immediately following subsection shows the legislature's overarching intent to give taxpayers an opportunity to cure any failure to self-report a change in ownership or use and thereby maintain an exemption for property that continues to qualify:

(f) If the county assessor discovers that title to or use of property granted an exemption under IC 6-1.1-10 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 or use 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 or use of the property and indicates whether the property continues to meet the requirements for an exemption under IC 6-1.1-10. Upon receipt of the affidavit, the county assessor shall reinstate the exemption under IC 6-1.1-15-12.1.* However, a claim under IC 6-1.1-26-1.1 for a refund of all or a part of a tax installment paid and any correction of error under IC 6-1.1-15-12.1 must be filed not later than three years after the taxes are first due.

I.C. § 6-1.1-11-4(f) (emphasis added).

19. The Assessor complains that our reading of the statute puts auditors in a difficult situation. If they calculate tax bills assuming a property is not exempt because its ownership has changed and the new owner did not file written notice under subsection (e), the counties will have to pay refunds and their budgeting process will be affected. But nothing in the statute suggests that auditors or assessors should conclusively presume a property no longer qualifies for exemption simply because its ownership has changed. If, as happened in this case, an auditor becomes aware that a property has changed hands and nobody has filed the notice referenced in subsection (e), she can tell the assessor to

notify the taxpayer that the exemption will be suspended until the taxpayer files an affidavit showing the property still qualifies.

20. The Assessor did not notify Transformational Spaces or City Chapel that the Auditor was suspending the property's exemption for 2015 (or for any future year). Had she done so, she would have had to reinstate the exemption, because she acknowledged that Transformational Spaces provided the required affidavit in May 2016. *See Agostino opening statement.*⁴

CONCLUSION

21. In accordance with the above findings of fact and conclusions of law, we find the subject property is entitled to an exemption for 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 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>>.

⁴ The Assessor's counsel apparently was referring to the certified Form 136 CO/U that Transformational Spaces filed on May 19, 2016. Transformational Space's March 30, 2016 Form 136 application also informed the Assessor of the property's change in ownership and continued use for exempt purposes. And Mitschelen signed that application subject to the penalties for perjury. *See Form 136 application attached to Form 132 petition.*