

REPRESENTATIVE FOR PETITIONER:
Robert Laatz, Owner/Member of Dover Hills

REPRESENTATIVE FOR RESPONDENT:
Greg Steuerwald, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Dover Hills,	)	Petition No.:	32-016-16-2-8-01340-16
)		
)		
Petitioner,	)	Parcel No.:	32-07-02-454-011.000-016
)		
v.	)	County:	Hendricks
)		
Hendricks County Assessor,	)	Township:	Lincoln
)		
Respondent.	)	Assessment Year:	2016

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

December 19, 2018

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. The parties agree the Petitioner's real and personal property is entitled to a 35% educational exemption in accordance with Ind. Code § 6-1.1-10-16(p) and Ind. Code § 6-1.1-10-46. The Petitioner brought this appeal to the Board to seek a "jury trial" to nullify

the early childhood exemption law that was changed in 2015. Does the Board have the authority to grant the Petitioner's request?

PROCEDURAL HISTORY

2. The Petitioner initiated its 2016 appeal with the Hendricks County Assessor claiming its real and personal property should be found 100% exempt for educational purposes pursuant to Ind. Code § 6-1.1-10-16.¹ The Hendricks County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on April 25, 2016, denying the Petitioner's request, and finding the real and personal property to be 100% taxable. On June 10, 2016, the Petitioner filed a Petition for Review of Exemption (Form 132) with the Board.²

HEARING FACTS AND OTHER MATTERS OF RECORD

3. On September 20, 2018, the Board's designated administrative law judge (ALJ), Dalene McMillen, held a hearing on the petition. Neither the Board nor the ALJ inspected the property.
4. Robert Laatz appeared for the Petitioner. Attorney Greg Steuerwald appeared for the Respondent. Hendricks County Assessor Larry Scott, Deputy Assessor Nicole Lawson, and PTABOA member Robert Cheek were sworn as witnesses for the Respondent.
5. The Petitioner did not present any exhibits for the record.
6. The Respondent offered the following exhibits:
 - Respondent Exhibit A: The Board's hearing notice, dated June 27, 2018,
 - Respondent Exhibit B: The Board's hearing information and instructions,
 - Respondent Exhibit C: Email from Robert Laatz to Larry Scott dated August 24, 2016,

¹ The Application for Property Tax Exemption (Form 136) was not signed or dated by a representative of the Petitioner.

² The Board sent a Notice of Defect to the Petitioner on June 24, 2016, requesting the Form 136 and Notice of Action on Exemption Application (Form 120) for 2016. The Petitioner responded claiming his request for review was for both 2015 and 2016. The Petitioner attached a Form 132, where the year 2016 was marked out and 2015 was written in and highlighted. However, the Form 136 and Form 120 reflect the PTABOA only acted on the Petitioner's 2016 exemption application. Accordingly, the Board will only treat this as a 2016 appeal.

- Respondent Exhibit D: Revised 2016 Form 120 indicating a 35% exemption for the subject property, dated February 24, 2017,
Respondent Exhibit E: Subject property record card,
Respondent Exhibit F: Dover Hills' real estate details,
Respondent Exhibit G: Children's School of Brownsburg, Inc., personal property details,
Respondent Exhibit H: Children's School of Brownsburg, Inc., 2016 Business Tangible Personal Property Return (Form 104).

7. The record also includes: (1) all pleadings, briefs, motions, and documents filed in the current appeal, (2) all orders and notices issued by the Board or ALJ, and (3) a digital recording of the hearing.

SUMMARY OF PETITIONER'S CASE

8. The Petitioner owns and operates the subject property, the Goddard School. The Goddard School provides early childhood educational services. *Laatz testimony.*
9. The Petitioner filed an appeal to the Board "requesting a jury trial" to argue for the nullification of the early childhood exemption law that was changed in 2015. According to the Petitioner, the law eliminated the educational exemption for all children under the age of four. As a result, instead of receiving a 100% education exemption, the Petitioner now receives a percentage based on the age and number of children in the school. The Petitioner argued this change is not in the "people's best interest" and increases the cost of early childhood education, therefore the law should be nullified. *Laatz testimony.*
10. According to the Petitioner, the original Form 120 issued by the PTABOA on April 25, 2016, denying the Petitioner's exemption was reissued at a later date allowing a partial educational exemption. The Petitioner agrees that the 35% educational exemption calculated by the PTABOA is in accordance with regulations set forth by the current statute. *Laatz testimony (referencing Resp't Ex. D).*

SUMMARY OF RESPONDENT'S CASE

11. The Petitioner's original 2016 exemption application was denied for untimely filing. When the PTABOA later discovered the exemption application was "under appeal" they

“revisited” the application. On February 24, 2017, the PTABOA granted the Petitioner’s real and personal property a 35% educational exemption. *Cheek testimony; Resp’t Ex. C, D.*

ANALYSIS

12. As a general proposition, all tangible property in Indiana is subject to taxation. Ind. Code § 6-1.1-2-1. But Ind. Code § 6-1.1-10-16(a) provides an exception: “all 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.”³
13. 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 if certain requirements are met. Ind. Code § 6-1.1-10-16(p) and Ind. Code § 6-1.1-10-46. Once the requirements are met, the amount of the exemption must be on that part of the assessment that bears the same proportion to the total assessment of the property as the percentage of the property’s owner’s enrollment count of children who are at least four (4) but less than six (6) years of age compared to the property owner’s total enrollment count of children of all ages. Ind. Code § 6-1.1-10-46.
14. There is no dispute the Petitioner met the requirements to claim the exemption during the year at issue. The parties agreed prior to the Board’s hearing, that the PTABOA calculated the 35% exemption correctly based on the property’s owner’s enrollment count of children who are at least four (4) but less than six (6) years of age compared to the total enrollment of children for 2016. Therefore, the Board will accept the parties agreement the Petitioner’s real and personal property be assessed according to a 35% educational exemption.

³ Separate subsections, 16(c) and 16(e), allow for exemptions of land and personal property, but they specifically relate back to the requirement in 16(a).

15. With regard to the Petitioner's request the Board order a "jury trial" to nullify the early childhood exemption law that was changed in 2015, the Board lacks the authority to change or invalidate a statute. The Board is a creation of the legislature, and it has only those powers conferred by statute. *Whetzel v. Dept. of Local Gov. Fin.*, 761 N.E.2d 904 (Ind. Tax Ct. 2002) citing *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999); *Hoogenboom-Nofziger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1021 (Ind. Tax Ct. 1999). The statutes governing the Board's operations do not contemplate jury trials.
16. The Petitioner failed to offer any authority to support its request. Accordingly, to the extent the Petitioner requests the Board to order a "jury trial" to argue for nullifying the early childhood exemption law, the Board will not grant that request.

SUMMARY OF FINAL DETERMINATION

17. Based on the parties' agreement, the Board orders the Petitioner's real and personal property be assessed according to a 35% educational exemption for the year under appeal. The Board will not order a "jury trial" as requested by the Petitioner.

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

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>>.